

[IN THE PRIVY COUNCIL.]

1933 Present : Lord Atkin, Lord Tomlin, and Lord Thankerton.

MUTTU MOHAMMADO *v.* RAMASAMY CHETTY *et al.*

Insolvency—Licences to hold stalls—Assets of insolvent—Conduct as trader—Discretion of District Judge—Court of Appeal.

Licences to hold stalls in a public market, which are personal and non-transferable, do not form assets of an insolvent in insolvency proceedings.

The question of the insolvent's conduct as a trader or in relation to his estate is a matter which rests mainly within the discretion of the District Judge; and where the latter accepts the explanations offered by the insolvent, a Court of Appeal should be slow to interfere with that discretion.

A PPEAL from a judgment of the Supreme Court¹.

November 7, 1933. Delivered by LORD THANKERTON.—

On November 21, 1927, the appellant's estates were sequestrated and he was adjudged insolvent in the District Court of Colombo, on the petition of a creditor and a declaration of insolvency and consent to the sequestration by the appellant himself. A provisional assignee was appointed on that date, and an assignee was appointed on December 13, 1927. The appellant having passed his last examination on January 29, 1929, the public sitting for the allowance of his certificate was held on various dates from September 19, 1929, to November 10, 1930, the granting of the certificate being opposed by the present respondents. By order dated December 18, 1930, the District Judge awarded the appellant a certificate of the second class, and, on appeal by the present respondents, the Supreme Court of the Island of Ceylon, on June 25, 1931, set aside the order of the District Judge and refused the certificate of conformity. Hence the present appeal by the appellant. The respondents, who are creditors, were not represented in the appeal.

¹ 33 N. L. R. 57.

Of the five grounds of objection taken by the respondents, only four need be referred to, viz. :—

- (1) The insolvent has unduly preferred one of his creditors, Pona Vana Nadar.
- (2) The insolvent has concealed and put away from his creditors all his property and assets by handing over his business and effects to his various nominees.
- (3) The insolvent has accounted for his property by fictitious loans and expenses.
- (4) The insolvent is carrying on a large and lucrative business at this moment through and in the name of his nominees.

From the year 1920 the appellant had carried on an extensive butcher's business at eight stalls in various public markets in Colombo under licences from the Municipal Council, which were non-transferable and renewable each year, and as security for which a deposit of three months' rent was required to be made. The amount of the appellant's deposit was Rs. 945. As the result of competition between the butchers carrying on business in these markets, the prices which they had to pay for cattle were inflated, while the price of meat remained stable, and serious losses were incurred by them, with the result that in 1926 the wealthiest of them, G. S. Mohammed Sultan, had ruined all his competitors. In that year three of the butchers became insolvent and the appellant sustained heavy losses. Moreover, the appellant's bank account was closed because somebody, probably Sultan, informed the bank that the appellant was issuing post-dated cheques. This was followed by the appellant's insolvency on November 21, 1927, as already stated.

On or about March 20, 1928, the appellant filed his balance sheet, as required by the Ordinance, showing liabilities amounting to Rs. 180,108 and assets amounting to Rs. 46,161. The second largest liability was a sum of Rs. 48,574, shown as due on promissory notes to Pona Vana Nadar, and the largest asset was a sum of Rs. 22,311, shown as due to the appellant from T. O. S. Rodrigo.

The respondents' grounds of objection related to the debt to Pona Vana Nadar and the debt due from Rodrigo, to the transfer of the appellant's Municipal licences to Pona Vana Nadar, and to the allegation that the appellant was still carrying on a butcher's business in the name of nominees at a profit. There was also a small point as to a motor car, which does not seem to have been pursued in the Court of Appeal.

The allegation that the appellant was carrying on business through nominees was supported by three witnesses, whose evidence the District Judge disbelieved for reasons stated by him, and their Lordships feel bound to accept this conclusion of the Judge who saw and heard these witnesses.

With regard to the debt due to Pona Vana Nadar and the debt due by Rodrigo, the appellant gave a full explanation in his statement to the assignee and in his examination before the District Judge, at which he was fully cross-examined on behalf of the creditors, who produced no counter evidence. Further, the appellant had kept regular books,

which were handed over to the assignee, and their Lordships see no reason for doubting that these were fully examined by the assignee before he made his statutory report.

With regard to the transfer of the licences to Pona Vana Nadar, the appellant wrote to the Municipal Treasurer on November 17, 1927—four days before his adjudication—stating that he intended to go to India to recruit his health for a few months and asking that the licences might be transferred to Nadar for a few months; the application was granted for six months only. On June 20, 1928, the appellant applied for an extension of the transfer for another six months. In the first application the appellant did not mention his financial difficulties, nor was his insolvency mentioned in the second application, but his insolvency must have been within the knowledge of the Municipal Treasurer by that time. In the first place, their Lordships agree with the District Judge that the licences, which were personal and not transferable, could not form assets in the insolvency, and secondly, in so far as the matter affected the question of the appellant's conduct as a trader or in relation to his estate, their Lordships see no sufficient reason to differ from the District Judge, who accepted the explanations given by the appellant and in whose discretion the question mainly rests. A Court of Appeal should be slow to interfere with that discretion.

It is difficult to reconcile the reasons given in the judgment of the learned Judges of the Supreme Court with the order pronounced by them; the reasons appear to call for further inquiry into circumstances which the Court characterize as suspicious, while the order supersedes further inquiry and condemns the appellant as guilty of fraudulent conduct and refuses a certificate, which has very serious statutory consequences for the appellant.

As already indicated, their Lordships see no sufficient reason for differing from the conclusion of the learned District Judge, and they will humbly advise His Majesty that the order of the Supreme Court dated June 25, 1931, should be set aside, and that the order of the District Judge dated December 18, 1930, should be restored, the appellant to have his costs in the proceedings before the Supreme Court and such costs of this appeal as are chargeable having regard to the fact that the appellant was by His Majesty's Order in Council of November 10, 1932, granted special leave to enter and prosecute this appeal *in forma pauperis*.
