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**(1978) 02 MAD CK 0020**  
**In the Madras High Court**  
**Case No : C.R.P. No. 387 of 1975**

Syed Ismail

APPELLANT

Vs

S. Abdul Salam and Others

RESPONDENT

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**Date of Decision :** 13-02-1978

**Acts Referred:**

Provincial Insolvency Act, 1920 — Section 41(2)

**Citation :** AIR 1979 Mad 24 : (1978) 91 LW 470 : (1977) 90 LW 470

**Hon'ble Judges :** Suryamurthy, J

**Bench :** Single Bench

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**Judgement**

Suryamurthy, J.—This is a civil revision petition against the judgment of the learned Additional District Judge and Presiding Officer, Labour

Court, Coimbatore, dismissing C. M. A. No. 112 of 1972, preferred against the order of the learned II Additional Subordinate Judge,

Coimbatore, who while dismissing the petition for discharge, directed the insolvent "to pay Rs. 50 per mensem towards the debt owned by him to

the 4th respondent." The learned Subordinate Judge as well as the learned District Judge erred in directing the insolvent to pay, after refusing to

grant an order of discharge. By reason of Section 41, sub-sec (2)(c) of the Provincial Insolvency Act, the court can grant an order discharge

subject to any conditions with respect to any earning or income which may afterwards become due to the insolvent or with respect to his having

acquired property. One such condition may be a direction to pay, as in the instant case. The insolvency court has no power, while refusing to grant

a discharge u/s 41(2)(a) of the Provincial Insolvency Act, to direct the insolvent to pay any amount every month to his creditor. Therefore, the

order of the learned Subordinate Judge, confirmed by the learned District Judge,

cannot be sustained. There can, however, be an order directing the insolvent to pay Rs. 50 per mensem, if he is granted discharge. This can only be done after adducing sufficient evidence to prove that the insolvent has been doing the business of a broker and contractor in the railway goods shed yard for the purpose of carrying goods on behalf of the consignors and consignees. No evidence has been adduced to prove the contentions of the creditors. An opportunity may be afforded to them to prove their contention. The creditors may also examine the Goods clerk and other members of the railway staff in the goods shed yard for the purpose of proving their contention. For this purpose, and for the reasons already indicated, the judgment of the learned District Judge and the order of the learned Subordinate Judge are set aside and the matter is remanded to the learned Subordinate Judge for enquiry afresh and disposal anew in the light of the observations made above. This civil revision petition is ordered accordingly. No costs.

2. Order accordingly.