(1942) 02 MAD CK 0001

In the Madras High Court

The Official Assignee APPELLANT

Vs

C. Manickavelu Mudaliar RESPONDENT

Date of Decision : 09-02-1942

Acts Referred:
Pensions Act, 1871 — Section 11

Citation : AIR 1943 Mad 512 : (1943) 56 LW 192 : (1943) 1 MLJ 265

Hon'ble Judges : Chandrasekhara Ayyar, J;Chandrasekhara Aiyar, J

Bench : Division Bench

Judgement

Chandrasekhara Ayyar, J.—The Official Assignee took out this application for an order to direct the insolvent Manickavelu Mudali to pay

to him from and out of the commutation sum received by him a sum of Rs. 5,700. The insolvent was the Head Clerk in the Office of the Post-

Master General, Madras, on a salary of Rs. 220, per mensem. He retired from service from the 1st June, 1941 on a pension of Rs. 101-10-0. He

commuted one half of his pension and received a consolidated sum of Rs. 7060-14-0 as commutation. He did not pay any portion of this com-

mutation sum to the Official Assignee, nor did he appear before him for examination though called upon to do so. The Official Assignee had to

obtain a warrant on the 11th September, 1941.

2. The insolvent told the Official Assignee that he had paid most of the amount received by him to his creditors and he handed over a sum of Rs..

500 only to the Official Assignee. He then gave a list of persons to whom he made payments and of what amounts. The Official Assignee was not

satisfied with the story and has come forward with this application. Dividends to the extent of 0-3-9 have been declared, but the Official Assignee is of opinion, and rightly if I may say so, that more could be realised from this insolvent for the benefit of the creditors.

3. It was contended on behalf of the insolvent by Mr. Varadaraja Mudaliar that the commutation amount received by his client would not vest in

the Official Assignee as it partakes of the nature of pension. He also argued that the payments made by the insolvent could not be questioned by

the Official Assignee as there was no intervention by him before the payments were made.

4. Both the contentions appear to me to be untenable. The decision in C. Gopalachariar Vs. Deepchand Sowcar, , has little bearing on the

question now at issue. There Pandrang Row, J. held that an amount that was in process of transmission through post to a retired Government

servant as commutation of his pension was not liable to attachment at the hands of his creditors; and he came to this conclusion because of the

particular language employed in Section 11 of the Pensions Act, which provides--I am omitting the unnecessary words--that '' no money due or to

become due on account of any such pension or allowance shall be liable to seizure, attachment or sequestration.'' The learned Judge held that the

amount was money due on account of pension. We have no such language to construe in the case before us. After-acquired property of an

insolvent vests in the Official Assignee, though, so long as the money was payable as a pension month after month, it was not attachable and was

therefore beyond the reach of the Official Assignee. But it shed this character as soon as it was converted into a lump sum payment as the result of

commutation. It was so held in Municipal Council Salem v. Guriirajah Rao, (1934) 68 M.L.J. 118 : ILR Mad. 469. In that case the distinction

between a pension and a commuted sum of money in lieu of pension was pointed out, following the decision in Crowe v. Price (1889) 22 Q.B.D.

4290 where it was decided that commutation money was alienable and liable to be taken in execution. Two cases relating to provident fund

deposits are found reported in Ranganayaki Animal v. The Official Assignee of Madras (1930)61 M.L.J. 354 and Walchand Molaji v. Charles A.

Williams ILR (1935) 59 Bom. 517 where also it is pointed out that once the money ceases to be a compulsory deposit and comes into the hands

of the insolvent, it becomes subject to the . claim of the Official Assignee.

5. The well-known case of Cohen v. Mitchell (1890) 25 Q.B.D. 262 dealing with after-acquired property has no relevancy to the point now under

consideration. It is perfectly true that, until the trustee intervenes, all transactions by a bankrupt after his bankruptcy with any person dealing with

him bona fide and for value in respect of his after-acquired property, whether or not with knowledge of the bankruptcy, are valid against the

trustee. If the Official Assignee were attempting now to recover amounts that the insolvent says he paid to his creditors, the applicability of Cohen

v. Mitchell (1890) 25 Q.B.D. 262 may arise for consideration. But the present application is directed against the insolvent and is to compel him to

bring back the money that he received by commuting his pension. The insolvent has and can have no valid answer.

6. The insolvent was examined by me. He has no accounts. He says he paid several sums out of the amount to creditors to whom he owed moneys

in respect of advances made by them from time to time and for a series of years. Out of these creditors, one is his wife Jagadeeswari Ammal to

whom he gave Rs. 2,235 V another is his mother-in-law Sundarammal to whom he alleges he paid Rs. 500; and the third is Punyakoti Mudaliar a

relation of his who got Rs. 1,225. Vouchers have do doubt been produced; but it is easy to obtain them from near relations. It must also be noted

that the account he gave to the Official Assignee in the first instance of how he spent the commutation amount is different in material particulars

from his present account. When he was originally examined he mentioned only a few creditors and accounted for Rs. 4,695, besides the sum of

Rs. 500 that he paid to the Official Assignee. He has now increased the number of his creditors and shown larger amounts as due to them and as

paid by him and in his counter-affidavit filed on the 5th January, 1942, he has for the first time introduced several items of expenses for medical

treatment for himself and his sons, expenses for his own maintenance, train fare, etc., payment of petty debts, clothing for himself and his family and

children, and money spent on a southern tour on pilgrimage.

7. I am clearly convinced that the insolvent has not been honest in the matter of this commutation amount that he received. It was his obvious duty

to inform the Official Assignee of the receipt and to have placed the sum of money into the hands of the Official Assignee for the benefit of his creditors. He has failed to account satisfactorily for the disposal of the amount. I am of the opinion that he must bring into Court or pay to the

Official Assignee at least the three sums of Rs. 1,225, 2235, and 500 which he says he paid to Punyakoti Mudaliar, Jagadeeswari Ammal and

Sundarammal, and he will have a month for doing this. If he commits default in payment, necessity will arise for taking proceedings for contempt

against him.

