

1959 *Present* : Weerasooriya, J., and H. N. G. Fernando, J.

HABEEBDEANE, Appellant, and INDO EUROPEAN EXPORT LTD.,
Respondent

S. C. 354—Application in revision in D. C. Colombo, 5991/Insolvency

*Insolvency Ordinance (Cap. 36)—Protection granted to insolvent—Withdrawal thereof—
Permissibility—Sections 36, 151.*

Under section 36 read with section 151 of the Insolvency Ordinance an insolvent who has duly surrendered after adjudication is entitled to protection during the period of his examination. Such protection cannot be withdrawn unless he is shown to have committed any of the offences enumerated in section 151.

APPPLICATION to revise an order of the District Court, Colombo.

M. T. M. Sivardeen, for insolvent-petitioner.

G. D. C. Weerasinghe, for petitioning creditor-respondent.

Cur. adv. vult.

September 8, 1959. WEERASOORIYA, J.—

The petitioner is an adjudicated insolvent. In the course of his examination at the second sitting, held on the 9th April, 1957, he stated that a business conducted by him under the name of the Overseas Trading Society had been given over to one W. A. Peiris. The Court thereupon issued notice on Peiris to produce the books of account relating to that business. This notice could not be served on Peiris although it was re-issued several times, and despite an open warrant for his arrest and his having been proclaimed all attempts to secure his attendance in Court have so far been of no avail. In the meantime the second sitting and further examination of the petitioner stand adjourned. On the 12th May, 1959, the District Judge made order withdrawing the protection

granted to the petitioner stating as the reason for the order as follows :
“ I am inclined to believe that the Insolvent could if he wishes serve the attachment on W. A. Peiris ”. The petitioner now applies to have this order revised.

With regard to the belief expressed by the learned Judge, there seems to be nothing in the proceedings to indicate that the insolvent is in a better position than the Fiscal and Police authorities to get at Peiris. But even if the belief is well founded it does not appear to be a ground for withdrawing the protection. Under section 36 read with section 151 of the Insolvency Ordinance (Cap. 82) an insolvent who has duly surrendered after adjudication is entitled to protection during the period of his examination unless he is shown to have committed any of the offences enumerated in section 151. This was also the view taken in *Fernando v. Miller & Co. et al.*¹. There is no suggestion, and far less any proof, that the petitioner has committed any of the offences enumerated in section 151. The order withdrawing protection is set aside, and the District Judge is directed to grant protection in terms of section 36. The certificate in form R which issued against the petitioner on the application of the petitioning creditor-respondent on the withdrawal of protection is discharged.

The petitioner will be entitled to the costs of this application.

H. N. G. FERNANDO, J.—I agree.

Application allowed.
