

either petition is set aside. The cases will now go back to the learned trial Judge for trial on merits and according to law. The parties, through their counsel, are directed to appear in the trial Court on December, 18, 1958. There is no order as to costs in these petitions:

Sansar Chand  
v.  
Ram Lall and  
another  
-----  
Mehtar Singh, J.

.....R. S.

### REVISIONAL CIVIL

*Before D. Falshaw and I. D. Dua, JJ.*

JOINT HINDU FAMILY FIRM KNOWN AS RAM LAL-  
GANPAT RAI OF AMRITSAR AN' ANOTHER,—  
*Petitioners.*

versus

FIRM NARAIN DASS-FAQIR CHAND OF AMRITSAR.  
AND ANOTHER,—*Respondents.*

**Civil Revision No. 410 of 1954.**

*Provincial Insolvency Act (V of 1920)—Sections 69, 70 and 75—Order refusing to prosecute the insolvent under Section 69 at the instance of the Official Receiver and a creditor—Whether appealable under Section 75.*

1958  
Nov., 21st

*Held*, that in order to have a right of appeal it is necessary for the Official Receiver or any of the other persons mentioned in Section 75 of the Provincial Insolvency Act to be aggrieved by the order against which an appeal is sought. The word "aggrieved" means something more than merely "disappointed" and it means "being deprived of something which the person who wishes to file an appeal was entitled to claim", which certainly cannot be said of the prosecution of an insolvent by the Court under Section 70 for any of the offences specified in Section 69 of the Provincial Insolvency Act. The Official Receiver and a creditor have, thus, no right of appeal against the order refusing to prosecute the insolvent.

*Case referred by Hon'ble Mr. Chief Justice A. N. Bhandari, on 26th August, 1955, to a larger Bench for*

decision owing to a conflict of decision on the law point involved in the case. The case was finally decided by Hon'ble Mr. Justice Falshaw, and Hon'ble Mr. Justice Dua on 21st November, 1958.

*Petition under section 75 of the Insolvency Act for revision of the order of Shri Manohar Singh, Additional District Judge, Amritsar, dated the 21st October, 1954, dismissing the appeal against the order of Shri Chetan Dass, Jain, Insolvency Judge, Amritsar, dated the 17th May, 1954, (rejecting the recommendations of the Official Receiver for prosecuting the respondents) as incompetent.*

BAHGIRATH DASS, for Petitioners.

S. L. PURI, for Respondents.

#### JUDGMENT

Falshaw, J.

FALSHAW, J.—The facts in this case, which has been referred by my Lord the Chief Justice to a larger Bench, are that a firm Messrs Narain Dass-Faqir Chand and Faqir Chand, one of the proprietors, were adjudicated as insolvents by the Court at Amritsar and the Official Receiver, not believing that the firm's account-books had been destroyed in the disturbances as was alleged, and believing that the said account-books were being deliberately withheld by the insolvents, made a recommendation to the learned Insolvency Judge in which a creditor firm also joined that the insolvents should be prosecuted under section 69 of the Provincial Insolvency Act, and after holding an inquiry into the matter under section 70 the learned Insolvency Judge decided that although the plea of the Official Receiver was probably correct, there was not sufficient material for prosecuting the insolvents and rejected the Official Receiver's recommendation. An appeal filed under section 75 of the Act by the Official Receiver and the creditor firm was dismissed by the learned Additional District Judge who, while he did not agree with

the learned Insolvency Judge on the merits, held that the Official Receiver had no right of appeal under section 75. The present revision petition has been filed jointly by the Official Receiver and the creditor firm.

Joint Hindu  
Family Firm  
known as Ram  
Lal-Ganpat Rai  
of Amritsar  
and another  
v.  
Firm Narain  
Dass-Faqir  
Chand  
of Amritsar  
and another  
———  
Falshaw, J.

The question of the interpretation of section 75 on this matter is not free from difficulty, since the view expressed by Tek Chand, J., in *Ram Chand v. Mohra Shah Attar Chand* (1), that the debtor, any creditor and the receiver have an automatic right of appeal under section 75, was dissented from by Dalip Singh and Sale, JJ., in *Achhru Ram v. Padam Parshad and another* (2). The first part of section 75(1), reads—

“The debtor, any creditor, the receiver or any other person aggrieved by a decision come to or an order made in the exercise of insolvency jurisdiction by a Court subordinate to a District Court may appeal to the District Court, and the order of the District Court upon such appeal shall be final.”

In the case decided by Tek Chand, J., the appeal to which objection was taken was filed by an insolvent against an order overruling his objections against the sale of certain property belonging to him by the Official Receiver in favour of certain auction-purchasers, and the view was taken that whereas under the Act of 1907, the right of appeal was confined to persons aggrieved, it was now given in the Act of 1920, to “the debtor, any creditor, the receiver or any other person aggrieved by a decision.”

(1) A.I.R. 1929 Lah. 622.

(2) A.I.R. 1941 Lah. 243.

Joint Hindu  
Family Firm  
known as Ram  
Lal-Ganpat Rai  
of Amritsar  
and another  
v.

Firm Narain  
Dass-Faqir  
Chand  
of Amritsar  
and another

Falshaw, J.

In the later Lahore case this view was questioned and it was held that the wording of section 75 as it stood in the Act of 1920, meant that in order to have a right to file an appeal the debtor, a creditor or the receiver must be aggrieved. That case, like the present, was also a case where the Insolvency Court had rejected an application for the prosecution of the insolvent filed by the Official Receiver whose appeal was accepted by the District Judge and the prosecution of the insolvent was ordered. The insolvent moved the High Court in revision against the order of the District Judge, and when the case was referred to a Division Bench it was held that since neither any creditor nor the receiver had any right to demand the prosecution of the insolvent, they could not be said to be aggrieved by an order refusing to prosecute the insolvent under section 69 and consequently they had no right of appeal against that order under section 75.

In the absence of any authority on the point, I should have been inclined to take the view that in such circumstances the Official Receiver would be aggrieved within the meaning of section 75(1), since the Official Receiver appears to me to be on a different footing even than from a creditor or any other person in that it is his duty to realise the assets of the insolvent and distribute them among the creditors and if, as was alleged in the present case, his efforts were thwarted or hindered by the wilful withholding of his accounts by the insolvent, he would, in my opinion, be entitled; and it would indeed be his duty, to invite the insolvency Court to prosecute the insolvent under the appropriate clause of section 69, and on the refusal of the Court to order the prosecution of the insolvents it is certainly arguable that it is not a misues of the word "aggrieved" to apply it to the Official Receiver.

There appears, however, to be almost complete unanimity to the contrary in the views of those High Courts before whom this matter has come for decision. The case decided by Tek Chand, J., is of little help, since it does not relate to an application by the Official Receiver for the prosecution of the insolvent, and in any case I fully agree with the general view that in order to have a right of appeal it is necessary for the Official Receiver or any of the other persons mentioned in section 75 to be aggrieved by the order against which an appeal is sought. Indeed I cannot conceive of an appeal being filed by a person not aggrieved. The only other views available to the right of a creditor to appeal against an order refusing a prosecution are in two brief judgments by Srivastava, J., and Ziaul Hasan, J., in *Har Pershad v. Dargahi Lal* (1), and *Pirey Miza v. Kazim Ali Khan* (2), but in neither of these cases is there much discussion and the decision of Srivastava, J., proceeds on the same lines as that of Tek Chand, J. namely, that the persons first named in the section have a right of appeal under any circumstances whatever. No expressions of opinion appear to be available from the High Courts of Patna and Calcutta, but the learned Judges of the Madras, Bombay, Nagpur and Allahabad Courts have expressed the view that no appeal lies against an order refusing to prosecute an insolvent.

In a case where the applicant was a creditor *Lada Ram and another v. Mahabir Prasad* (3), Walsh and Stuart, JJ. have held that the creditor-applicant was not a person "aggrieved" within the meaning of section 46, sub-section (2) of the Act, and had no right of appeal against the Court's

Joint Hindu  
Family Firm  
known as Ram  
Lal-Ganpat Rai  
of Amritsar  
and another  
v.  
Firm Narain  
Dass-Faqir  
Chand  
of Amritsar  
and another  

---

Falshaw, J.

(1) A.I.R. 1932 Oudh. 61.

(2) A.I.R. 1937 Oudh. 247.

(3) I.L.R. 39 All. 171.

Joint Hindu  
Family Firm  
known as Ram  
Lal-Ganpat Rai  
of Amritsar  
and another  
v.  
Firm Narain  
Dass-Faqir  
Chand  
of Amritsar  
and another  

---

Falshaw, J.

order. In *Pur Singh v. Aladkhan* (1), Grille, A.J.C., held that there is no provision in the Insolvency Act of 1920, for the making of an application for prosecuting a debtor by a creditor or anyone else, and although there is nothing to prohibit the Court's attention being drawn to facts, the Court is acting *suo motu* and not on the application of anyone entitled to move it. Hence no creditor, receiver or third party can be aggrieved by an order made under section 72, whether it is an order directing the prosecution of the debtor or whether it is an order declining to direct the prosecution. The only person who can appeal against an order under section 72 is the debtor himself in the case where his prosecution has been ordered.

In *Lalchand-Hirachand, Gujar v. Tuljaram Raoji, Gujar and others* (2), Beaumont, C. J. and Sen; J.; held that the words "aggrieved by a decision" and so forth must be read as qualifying all the persons who are entitled to appeal, and that a creditor whose application for the prosecution of the insolvent has been rejected had no right of appeal.

The matter came before a Full Bench of the Madras High Court consisting of Rajamannar, C. J., and Viswanatha Sastri and Panchapakesa Ayyar, JJ., in *the Official Receiver of Ramanathapuram at Madura v. P: L: S: L: Chellappa Chettiar* (3). This was a case in which the official Receiver had moved the insolvency Court for prosecuting the insolvent and the Court had refused to prosecute. The appeal of the Official Receiver had been dismissed by the District Judge on the ground that it did not lie. It was held by the Full Bench that in these circumstances the

(1) A.I.R. 1933 Nag. 9.

(2) A.I.R. 1942 Bom. 27.

(3) A.I.R. 1951 Mad. 935.

receiver was not a person aggrieved by the decision of the insolvency Court declining to make a complaint for an offence under section 69 against a debtor under section 70 of the Act. The reasoning is more or less summed up in the following passage at page 937:—

“But neither a creditor nor the Receiver has a direct interest in sending a debtor to jail for offences under section 69 of the Act. He may be indirectly interested like the rest of the public in the purity and efficiency of insolvency administration. But he has no further or other interest in the matter. The Act does not specifically provide for an application under section 70 either by a Receiver or a creditor praying for action to be taken against the debtor. Neither the Receiver nor a creditor has any right to demand the prosecution of the debtor for an offence under section 69 and they cannot be said to be “aggrieved” by a refusal of the insolvency Court to make a complaint under section 70 of the Act. The matter is left to the Court’s discretion. This is not to say that the Receiver or creditor cannot file an application in the Insolvency Court for action being taken against a debtor under section 70 of the Act or that he cannot place before the Court material in support of the application. Such assistance to the Court is legitimate and is rightly given. But then there is no dispute to which the applicant is a party or by the decision of which the applicant suffers a legal grievance. Whether the application succeeds or fails, he has no further

Joint Hindu  
Family Firm  
known as Ram  
Lal-Ganpat Rai  
of Amritsar  
and another  
v.  
Firm Narain  
Dass-Faqir  
Chand  
of Amritsar  
and another  

---

Falshaw, J.

Joint Hindu  
Family Firm  
known as Ram  
Lal-Ganpat Rai  
of Amritsar  
and another  
v.

Firm Narain  
Dass-Faqir  
Chand  
of Amritsar  
and another

—  
Falshaw, J.

concern in the matter. He has done his duty and the responsibility for the decision rests with the insolvency Court which hears his application. The decision or order of the Court does not in any way affect directly or indirectly the rights of the creditors or the Receiver. The creditors or the Receiver is no more 'aggrieved' than any other member of the public by the Court's decision not to make a complaint against a debtor, and there is no reason why he should have a right of appeal against the decision of the insolvency Court under section 75(1).

Section 476, Criminal Procedure Code, providing for an application to the Court to make a complaint in respect of offences against public justice, and section 476B providing for a right of appeal against an order refusing to make a complaint may be usefully contrasted with the provisions of sections 70 and 75 of the Act, which neither contemplate a formal application to the Court nor expressly provide a right of appeal from a decision of the Court refusing to make a complaint. The marked difference between these two sets of provisions shows that the Legislature in enacting section 70 of the Act merely allowed the Receiver or creditor to bring to the notice of the Court the fraudulent dealings of the insolvent with his property and affairs in order that the Court might take disciplinary action against the erring debtor. If the Court declines to make a complaint it cannot be said that it has



refused the applicant, the Receiver or creditor, something which he had a right to demand. Nor has it deprived him of anything or affected his right or title to any property. He is not, therefore, 'aggrieved' in the relevant sense of that expression."

Joint Hindu  
Family Firm  
known as Ram  
Lal-Ganpat Rai  
of Amritsar  
and another  
v.  
Firm Narain  
Dass-Faqir  
Chand  
of Amritsar  
and another

Falshaw, J.

The views of all these learned Judges are obviously entitled to the greatest respect and the most serious consideration, and it must certainly be accepted that the differences between the provisions of sections 70 and 75 of the Provincial Insolvency Act and the provisions contained in sections 476 and 476B, Criminal Procedure Code, are not accidental and were deliberately introduced. The position would obviously be very different if the appropriate sections of the Insolvency Act specifically provided for the filing of applications by the receiver or a creditor for the prosecution of an insolvent, and on the whole I am inclined to accept the view of the Madras High Court that "aggrieved" means something more than merely "disappointed", and that it must mean being deprived of something which the person who wishes to file an appeal was entitled to claim, which certainly cannot be said of the prosecution of an insolvent by the Court under section 70 for any of the offences specified in section 69 of the Insolvency Act. In the circumstances I would dismiss the revision petition but leave the parties to bear their own costs in this Court.

I. D. DUA, J.—I agree.

Dua, J.

B. R. T.