

**Pooran Chand Vs. State and**

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**Court :** Delhi

**Decided On :** Jan-27-1986

**Reported in :** 1986(3)Crimes50; 1986(10)DRJ192

**Judge :** Charanjit Talwar, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 245(2)

**Appeal No. :** Criminal Miscellaneous (Main) Appeal No. 1050 of 1985

**Appellant :** Pooran Chand

**Respondent :** State and ;ram Asrey

**Advocate for Pet/Ap. :** S.K. Bhatia and; O.K. Srivastava, Advs

**Judgement :**

**Charanjit Talwar, J.**

(1) A complaint was filed by respondent No. 2 herein. Ram Asrey, against M.B. Singh, Advocate, who had been appointed local commissioner by the Court of a Sub-Judge 1st Class, for having committed an offence under Section 167, Indian Penal Code. The petitioner herein, Puran Chand, was alleged to have abetted the said Advocate in the commission of that offence. The trial Court vide its order dated 26th April, 1980, summoned the petitioner herein as well as M.B Singh. It is the admitted case of the parties that the complaint had been filed some time in the

year 1977. It appears that the petitioner herein moved an application on 25th June, 1983, under Section 245(2) of the Code of Criminal Procedure seeking to be discharged. By order of 7th August, 1985, that application was dismissed. It is that order which is impugned in this miscellaneous petition under Section 482 of the Code of Criminal Procedure. It is the admitted case of the parties that so far the pre-charge evidence has not been recorded.

(2) In support of his plea that the charge as alleged in the complaint is groundless, Mr. Bhalla, learned counsel for the petitioner, relies on two judgments-one given in, entitled Ram Asrey v Puran Chand and others, Cr.M. (M) 751 of 1983, delivered by D.R.Khanna J., on 2nd August, 1984, and the other by Shri S.P. Singh Chaudhry, Additional District Judge, Delhi, delivered on 29th January, 1983, in Miscellaneous Civil Appeal No. 28 of 1982. In this case also the parties were the same. Before the Additional District Judge the appeal was under Section 341 of the Code against the order dated 3rd June, 1977, passed by a Sub-Judge who had declined the application under Section 340 of the Code filed by Ram Asrey, plaintiff against Puran Chand, defendant (petitioner herein) and the said Advocate M.B. Singh. The allegations in the application were that the said Advocate had been made to change his report dated 6th June, 1974, for considerations other than legal. It is not necessary to go into those allegations for the decision of this case. Suffice it to say that the appellate Court dismissed the appeal. It was thereafter that the plaintiff Ram Asrey filed Misc. application which was decided by D.R. Khanna, J. vide his judgment of 2nd August, 1984. However, when the petition was admitted by M.L. Jain, J. by his order of 22nd August, 1983, the learned Judge said 'Heard No. case is made out against Puran Chand. Issue notice to show cause why the petition be not admitted to Shri M.B. Singh for 410.83'.

(3) Thus, the petition against Puran Chand having been dismissed at the preliminary stage in liming any observations in the main judgment of Khanna, J. cannot be construed either for or against Puran Chand who is the present petitioner before me. Mr. Bhalla's effort was to show that the Additional District Judge as well as this Court by the said two judgments have completely exonerated the petitioner and, therefore, the learned Magistrate, before whom the said two

judgments were referred, ought to have discharged the petitioner herein.

(4) In my view, the petition is pre-mature. Qua the offence alleged to have been committed under Section 167 of the Indian Penal Code, the complaint of the Court concerned is not required. The said two judgments, referred to and relied upon by the petitioner, deal entirely with the allegations contained in the application under Section 340 of the Code of Criminal Procedure for which allegations the complaint of the Court in which the civil su was pending, was required. As far as the present petitioner is concerned allegations against him are, as I have noticed above, that he has abetted the offence. Relying on the law laid down by the Supreme Court in *Khacheru Singh v. State of U.P. and another* : 1982 CriLJ629 , I hold that as at present advised the petitioner, who has admittedly been summoned and against whom the charge has yet not been framed, cannot be discharged. I uphold the impugned order.

(5) With these observations the present petition is dismissed. I make it clear that any observations on the merits have been made only to deal with the argument raised before me. Those observations will not be kept in view by the learned Magistrate while deciding the case at the time of framing of the charge.

(6) The parties through their counsel are directed to appear before the learned Magistrate on 17th February, 1976. The record be sent back immediately.

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