

**Phool Chand Jain Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/688796](http://sooperkanoon.com/688796)

**Court :** Delhi

**Decided On :** Feb-19-1987

**Reported in :** 1988(1)ARBLR308(Delhi); 1987(2)Crimes567; 32(1987)DLT4

**Judge :** Malik Sharief-ud-Din, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 186; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 468

**Appeal No. :** Criminal Miscellaneous (Main) Appeal No. 558 of 1986

**Appellant :** Phool Chand Jain

**Respondent :** State

**Advocate for Pet/Ap. :** K.K. Sud and; Rajiv Chauhan, Advs

**Judgement :**

**Malik Sharief-ud-Din, J.**

(1) Mr. Sud was heard. The petitioner was prosecuted on a police report under Section 186 Indian Penal Code . but the learned Magistrate has discharged him by his order dated May 3, 1983 after holding that Section 195 of the Code of Criminal Procedure was a bar to the taking of cognizance unless the complaint is made by the public servant himself or by his immediate superior.

(2) Pursuant to this a complaint was subsequently made which came up before Shri. D.R. Jain, Metropolitan Magistrate, Delhi. An argument was raised before the learned Magistrate that the complaint was time-barred envisaged by section 468 C.r P.C. The learned the magistrate, however, seems to have fallen in an error and by curious reasoning dismissed the argument and decided to proceed in the matter and take cognizance by his order dated 17.2.86. According to him the cognizance of the case will be deemed to have been taken when the earlier challan was produced before the Magistrate which was dismissed for want of a formal complaint.

(3) It is necessary at this stage to notice certain dates which are important for the disposal of the petition. The offence was committed on 22nd of March 1980. The accused was arrested on 30th October, 1980 and the chargesheet was produced by the police in court on 17.1.1981. The petitioner was discharged on 3.5.83 while complaint was filed on 19th May 1983. It would be noticed that there was no complaint filed before the court on 17.1.1981 and the chargesheet filed by the police was dismissed as the court could not take cognizance except on a complaint in writing by the public servant or his superior as envisaged by Section 195 Cr. P.C. It would thus be seen that if the court was not competent to take cognizance, it would be no cognizance in the eyes of law. In fact, the court had specifically said that it is incompetent to take cognizance in the absence of complaint in writing. The complaint ultimately awoke only after the petitioner was discharged and filed complaint on 19.5.1983 which is beyond the period of limitation of one year as prescribed by Section 468 Cr.P.C. The offence having been committed on 22nd of March 1980, the complaint should have been filed at the most by 22nd of March 1981. In that view of the matter, the impugned order dated 17th of February, 1986 issuing notice to the petitioner under section 251 Cr. P.C. is quashed. The petition is allowed and the petitioner shall stand discharged.