

Shib Chandra Ghosh Vs. the State

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Court : Kolkata

Decided On : Feb-16-1953

Reported in : AIR1953Cal475

Judge : J.P. Mitter and ;Sen, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 256 and 537

Appeal No. : Criminal Revn. No. 555 of 1952

Appellant : Shib Chandra Ghosh

Respondent : The State

Advocate for Def. : Harideb Chatterjee, Adv.

Advocate for Pet/Ap. : Ajit Kumar Dutta, Adv.

Disposition : Application fails

Judgement :

Mitter, J.

1. This is a petition for revision of an order of a learned Presidency Magistrate convicting the petitioner of an offence under Section 7(2), Essential Supplies Act, 1946, and sentencing him to rigorous imprisonment for three months. This conviction followed an order of this Court made in disposing of a Rule against a

previous order of conviction. This Court then directed that the learned trial Court should take additional evidence on a specific matter, viz., as to whether or not the commodity concerned was flour. This Court also directed that upon such evidence, the Magistrate should decide if the petitioner was guilty or not. Pursuant to that order, the learned Magistrate took additional evidence and gave the accused an opportunity to cross-examine the witnesses who gave that evidence. The accused was also examined under Section 342, Criminal P. C., after such evidence had been taken.

2. It does not appear from the record that the accused was then formally called upon to enter upon his defence and produce his evidence. It is accordingly urged before us that the present conviction was illegal, in that the mandatory provisions of Section 256, Criminal P. C., had not been complied with. It seems to us, on a perusal of the evidence, that there was no doubt that the commodity concerned was flour. However, additional evidence on the point was adduced before the petitioner was again convicted. There is no doubt that an accused has a right under Section 256, Criminal P. C., to be called upon to enter upon his defence and adduce evidence. There is nothing before us to show that the accused, who was represented by a learned lawyer, desired to adduce any evidence on his behalf. It is true that a duty is cast upon the Court which tries him to observe the provisions of Section 256, Criminal P. C. The record shows that in the previous trial the petitioner had declined to call any evidence on his own behalf, and, therefore, the learned Magistrate did not formally ask the accused if he wanted to do so. The omission to so ask the petitioner, in our view, did not prejudice the accused. It appears to us that although what the learned Magistrate did was to carry out the directions of the High Court in the matter, the accused could not be deprived of his right and he would have been allowed to call evidence, if he was minded to do so. The additional evidence, however, was of such a formal kind that any evidence which the accused might have called would have made no difference to the outcome of the prosecution. It is for that reason that we are disinclined to send this case back for another retrial.

3. Looking at the matter all round, we are of the view that the charge against the petitioner was amply proved and that in connection with the last trial no prejudice

was in fact caused to him by not being asked formally if he desired to adduce evidence on his own behalf. In our view, the omission complained of did not, in all the circumstances of this case, cause any failure of justice, and therefore we are not prepared in this case to exercise our powers of revision. It appears that although a certain amount of time was given to the Learned lawyer for the petitioner, the learned lawyer did not appear to argue his client's case.

4. In these circumstances, this application fails and the Rule is discharged.

5. The petitioner must surrender to his bail bond forthwith and serve out the remainder of his sentence.

Sen, J.

6. I agree.

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