

**The State Vs. Pulish Ghosh**

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**Court :** Kolkata

**Decided On :** Mar-04-1971

**Reported in :** 1973CriLJ510

**Judge :** R.N. Dutt and ;K.K. Mitra, JJ.

**Appellant :** The State

**Respondent :** Pulish Ghosh

**Judgement :**

**R.N. Dutt, J.**

1. This is a reference under Section 438 of the Code of Criminal Procedure made by the Sessions Judge. Murshidabad On a complaint of a Food Inspector under the Berhampore Municipality the accused. Pulish Ghosh, was being tried before Shri S.S. Bhattacharvva a First Class Magistrate at Berhampore under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act. On September 17 1968 the prosecution examined one witness and wanted time for examination of other witnesses. The accused at that stage said that he would plead guilty. The learned Magistrate thereafter framed charge against the accused under Section 16(1)(a)(i). explained the charge to the accused who pleaded guilty. The learned Magistrate acted on the Plea of guilt and convicted the accused and sentenced him to rigorous imprisonment for six months and a fine of Rs. 1000/- in default, to rigorous imprisonment for one month more. The accused then preferred an appeal

before the Sessions Judge. Murshidabad (Criminal Appeal No. 160 of 1968). The then Sessions Judge Shri Chunilal Ghosh upheld the conviction but set aside the sentence and sent back the record to the Magistrate for imposing sentence after examination of the accused under Section 342 of the Code. When the record was received by the Magistrate he did not however examine the accused under Section 342 of the Code but imposed a sentence of rigorous imprisonment for five months and a fine of Rs. 900/- in default, to rigorous imprisonment for nine months. The accused then filed a fresh appeal before the Sessions Judge (Criminal Appeal No. 60 of 1969) and the new Sessions Judge. Shri D.C. Chakrabarti. while hearing this appeal issued a suo motu Rule on the State and the accused and then made this reference recommending that the charge framed by the Magistrate on September 17. 1968, the conviction and sentence made by the Magistrate first on September 17 1968 and again on April 25 1969 and the order made by the Sessions Judge. Shri Chunilal Ghosh, in Criminal Appeal No. 160 of 1968 should all be set aside and the Magistrate should be directed to proceed with the trial afresh. The learned Sessions Judge who has made the reference has not however made any recommendation about Criminal Appeal No. 60 of 1969 which was pending with him. The record of that appeal has not been sent to us and we do not know what final order the learned Judge has made in that appeal.

2. Be that as it may we now proceed to consider the points raised in the letter of reference. The learned Sessions Judge Shri D.C. Chakrabarti has said that the learned Magistrate was not competent to frame the charge under Section 254 of the Code at the stage of hearing when he did frame the charge on September 17 1968. Section 252 of the Code states that when the accused is brought before a Magistrate, the Magistrate shall proceed to hear, the complainant and take all such evidence as may be produced in support of the prosecution. Section 254 of the Code states that if when such evidence and examination have been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence, he shall frame in writing a charge against the accused So. under Section 254 of the Code the Magistrate is no doubt competent to frame a charge after the prosecution has adduced its evidence. But Section 204 also empowers a Magistrate to frame a

charge at any previous stage of the case, that may be even after the examination of one witness-Here one witness was examined. Shri Chakrabarti has said that the learned Magistrate did not frame the charge on the evidence of that witness but he framed the charge because the accused wanted to plead guilty. What Section 254 of the Code states is that when evidence has been taken or at any previous stage of the case the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence, he shall frame in writing a charge against the accused. What is necessary for the Magistrate is that he must be of opinion that there is ground for presuming that the accused has committed an offence. Here in this case apart from the evidence of the witness who was examined, the accused made a statement that he would plead guilty True, it was not necessary for him to make that statement at that stage but since the prosecution wanted time for further evidence, the accused made that statement obviously in order to avoid delay in the trial. That was a circumstance which the learned Magistrate was competent to take into his consideration in order to find out whether there was sufficient ground for presuming that the accused had committed an offence. The learned Magistrate therefore acted not only on the evidence on record but also on this statement made by the accused and since he was of the opinion that there was ground for presuming that the accused had committed an offence he was competent at that stage to frame the charge under Section 254 of the Code. Obviously therefore, the charge framed against the accused on September 17 1968 need not be set aside.

3. The previous Sessions Judge Shri Chunilal Ghosh, made a very peculiar order in the first appeal preferred by the accused (Criminal Appeal No. 160 of 1968). He upheld the conviction but set aside the sentence and sent the record to the Magistrate for imposition of sentence after examination of the accused under Section 342 of the Code. Firstly. If the learned Judge thought that the sentence should be reduced, he could himself reduce the sentence under Section 423 of the Code. Secondly the order that he made could not have been made under the powers which he as the appellate Court had under Section 423 of the Code. Thirdly he should have realised that since he was maintaining, the conviction there was no further scope for the learned Magistrate to examine accused under Section 342 of the Code. Thus, in any view of the matter, the order made by the Sessions Judge. Shri Chunilal Ghosh in the first appeal should be set aside.

4. When the record was received back by the learned Magistrate he imposed a new sentence but he did not examine the accused under Section 342 of the Code. It is true that with the conviction upheld, there was no scope, as we have said, for further examination under Section 342 of the Code: but he was under an obligation to be the direction of the appellate Court and whatever the legal consequence he ought to have examined the accused as directed by the learned Sessions Judge. The learned Magistrate is however wholly wrong when he says that when the accused pleaded guilty under Section 255 of the Code, there was no scope for examining the accused under Section 342 of the Code. Section 342 of the Code says that for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him the Court may at any stage of any inquiry or trial examine the accused. So the Magistrate was competent to examine the accused under Section 342 of the Code even after he pleaded guilty under Section 255 of the Code. The circumstances under which the accused had pleaded guilty in the instant case on September 17, 1968 were such that the Magistrate should have examined the accused under Section 342 of the Code to enable him to explain the circumstances under which the offence was committed. But in view of the fact that the matter is hanging fire for more than three years we do not propose to set aside the conviction on that ground particularly as Mrs. Maitra who appears for the accused has placed the relevant circumstances before us. We find that the instant case comes under the first proviso to Section 16(1) of the Prevention of Food Adulteration Act and so it is not necessary to impose the minimum sentence in law.

5. In the result, the reference is accepted. The order of the Sessions Judge. Shri Chunilal Ghosh, made on November 23, 1966 upholding the conviction but setting aside the sentence and sending back the case to the Magistrate for imposition of sentence after examination of the accused under Section 342 of the Code is set aside and the proceedings in that appeal. Criminal Appeal No. 160 of 1968 and the proceedings in the subsequent appeal Criminal Appeal No. 60 of 1969. are all quashed. The order made by the learned Magistrate on April 25, 1969 imposing the new sentence on the accused is also set aside. The conviction of the accused on his plea of guilt made by the learned Magistrate on September 17 1968 is affirmed but the sentence is reduced to rigorous imprisonment for the period

already undergone the accused appears to have suffered some imprisonment and a fine of Rs. 50/- (Rupees fifty) in default, to rigorous imprisonment for one month.

6. Let copies of this order be forwarded to the two Sessions Judges. Shri Chunilal Ghosh and Shri D.C. Chakrabarty and the Magistrate Shri S.S. Bhattacharvva.

**K.K. Mitra, J.**

7. I agree.

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