

**(1942) 03 CAL CK 0023**  
**In the Calcutta High Court**

Joykali Ganguly and Others

APPELLANT

Vs

P. Banerjee, Sanitary Inspector, Howrah Municipality

RESPONDENT

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**Date of Decision :** 20-03-1942

**Acts Referred:**

Calcutta Municipal Act, 1923 — Section 3, 3(2)(c)(i), 406, 407

**Citation :** AIR 1943 Cal 88

**Hon'ble Judges :** Henderson, J

**Bench :** Division Bench

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**Judgement**

Henderson, J.—The petitioners have been convicted of an offence punishable under Sections 406 and 407, Calcutta Municipal Act. So far as the latter is concerned, I need merely say that the Magistrate has not come to any finding nor is there any evidence upon which such a conviction could be found. The petitioners have a sweet-stall in the compound of the Howrah Court. Petitioner 3 who was in charge of the stall, was frying some luchis in ghee. The Sanitary Inspector took a sample of the ghee. The petitioners have been prosecuted with respect to the luchis. The only witness is the Sanitary Inspector. He gave evidence that he took the sample of the ghee from the tin from which petitioner 3 was using ghee to fry the luchis. This sample was sent to the public analyst. He said that it was grossly adulterated. Nobody knows what he meant by that expression, but he stated as a fact that it did not contain any butter fat. "Adulterated" is defined in Section 3 of the Act. The Magistrate found that the case comes within Section 3(2)(c)(i) which is in these terms:

If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

2. Now it is not the prosecution case that the ghee formed one of the constituents of the luchis. Their case is that the luchis were fried in it. The luchis were not seized or analysed. In the absence of such evidence, there is nothing to show that any of this ghee was in the luchis. Then, in the second place, it has to be shown that luchis fried in this ghee would be of an inferior quality to those

fried in ghee which the public analyst would describe as unadulterated. There is no such evidence. The rule is accordingly made absolute, the conviction and sentence are set aside and the fines, if paid, will be refunded.