

(1924) 09 CAL CK 0004
In the Calcutta High Court

Lalji Ram

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 18-09-1924

Acts Referred:

Calcutta Municipal Act, 1923 — Section 412

Criminal Procedure Code, 1898 (CrPC) — Section 242, 244

Citation : AIR 1928 Cal 243

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Judgement

Mukerji, J.—This Rule has been issued to show cause why the conviction and sentence of the petitioner u/s 412, Calcutta Municipal Act of 1923, should not be set aside. The Rule has been issued on three of the grounds stated in the petition. In answer to the Rule the learned Magistrate has submitted an explanation to this Court in which the grounds upon which the Rule has been issued are not attempted to be met. He relies upon the record which he made of what was supposed to be an admission of guilt on the part of the petitioner. The learned Magistrate says this in his explanation:

I have no personal recollection of what took place at the hearing, but it is impossible that I should have recorded the admission of the defendant who appeared without his having done so. On the charge being explained Lalji Ram admitted and pleaded guilty and thereupon I found him guilty and fined him Rs. 60, in default two months imprisonment.

2. The petitioner, in his petition to this Court, alleged that he did not plead guilty. He says that when he was called upon to plead he only said that the bottles had been taken from his shop and he remained silent and he apprehends that his silence was construed by the learned Magistrate as an admission of his guilt.

3. Of late several cases have come up to this Court from the Court of the learned Municipal Magistrate in which convictions were passed by him upon records of pleas as to admission of guilt on behalf of accused persons, and after such

convictions this Court has been moved on the ground that there was no plea of guilty. It always becomes difficult in such cases to determine what exactly happened, unless the provisions of the law as to procedure are strictly followed. The present case was one u/s 412, Calcutta Municipal Act. It was a summons case, and the procedure to be adopted for the trial of this case is what is laid down in the Code of Criminal Procedure with regard to the trial of summons cases. It appears that summons in this case was issued on 30th May 1924, and the date fixed for the case was 20th June 1924. On that day the petitioner was not present and the case was adjourned to 18th July 1924. On 18th July, presumably in the presence of the petitioner who had by that date appeared, the Food Inspector, Mr. K.D. Banerjee, was examined as a witness on behalf of the prosecution and the case was thereafter adjourned to 25th July for further evidence. On 25th July the following note was made by the learned Magistrate:

Lalji admits and pleads guilty and I fine him Rs. 60; in default two months imprisonment.

4. It is difficult to see what was the procedure that was being adopted by the learned Magistrate in connexion with the trial of this case. In a summons case to which the provisions of Ch. 20 of the Code are applicable u/s 242, Criminal P.C., when the accused appears, or is brought before the Magistrate the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted. u/s 243 if the accused admits that he has committed the offence of which he is accused his admission shall be recorded as nearly as possible in the words used by him, and if he shows no sufficient cause why he should not be convicted the Magistrate may convict him accordingly. u/s 244, if the Magistrate does not convict the accused u/s 243, or if the accused does not make such admission the Magistrate should proceed to hear the complainant and take all such evidence as may be produced in support of the prosecution and also to hear the accused and to take all such evidence as he produce in his defence. On 18th July the learned Magistrate examined the complainant in the case and it would, therefore, appear that he was proceeding u/s 244, Criminal P.C., and not u/s 243, which would apply if there was admission by the accused that he had committed the offence for which he was being tried. Having adopted the procedure prescribed by Section 244 on the footing that there was no admission of guilt on the part of the accused person the learned Magistrate was not competent to take a further plea from the accused person of guilty and relieve himself of the duty of examining other witnesses who could be called on behalf of the prosecution for the purpose of proving the case. The result has been that in this case there has been really no evidence upon which there could be a conviction of the petitioner, and I am not prepared to hold that there was a plea of guilty with regard to the offence upon the basis of which the petitioner could have been convicted by the learned Magistrate. The law enjoins, and that for a very good reason, that the admission shall be recorded as nearly as possible in the words used by the accused. Omission to comply with the law in this respect cannot be countenanced as it invariably leads to complications.

5. Turning now to the grounds on which the Rule has been issued : it seems to me that the evidence that has been adduced in this case is not at all sufficient for the conviction. Section 412, Calcutta Municipal Act, makes it punishable to sell, store for sale, expose or hawk about for sale, or keep for sale food which is unsound, unwholesome or unfit for human food. The act itself provides for the method that has got to be adopted for the purpose-of determining whether the food is unsound, unwholesome or unfit for human food. Of course there may be cases where it will not be necessary to send the objectionable article - I mean the food in respect of which the prosecution is started - for examination by a Public Analyst. But this was not a case of that description. It was thought necessary by the Food Inspector to send the bottles of aerated water to the Public Analyst for analysis. He states in his evidence this:

I found in the bottles of aerated water foreign particles floating inside. I showed it to the man who gave his name as Lalji Ram. I told him I am sending these four bottles to the laboratory for their analysis. Out of four bottles two were declared to be bacteriologically unfit for human food. The matter was reported to the vendor after receiving the report. Four bottles were made over to him. The vendor does not say that they are different bottles.

6. There is a procedure prescribed in the Act for insuring the examination of the identical food which is seized by the officers of the Municipality and sent for the purpose of analysis. This is laid down in Section 424(4). That sub-section says that when any sale under Sub-section (1) or Sub-section (2) is completed, or when any food is surrendered under Sub-section (3), the Health Officer or the person authorized by him in this behalf, or any purchaser who wishes to have an article of food analyzed u/s 423, shall forthwith notify to the seller or his agent selling the articles or the person in possession thereof, as the case may be, his intention to have the same analyzed and shall divide the article into three parts, to be then and there separated and each part to be marked and sealed or fastened up in any manner which its nature will permit. Sub-section (5) says that the Health Officer or the person authorized by him in this behalf, or the purchaser referred to in Sub-section (4), shall deliver one of the said parts to the seller or his agent, shall retain another for future comparison and may send the third to a Public Analyst. This procedure has been prescribed in Order that there may be a guarantee of identity as to the article that is examined by the Analyst and the article that is seized by the Food Inspector, and in the absence of any guarantee to that effect it would be difficult for the Court to hold that what was examined by the Analyst was really what was taken from the Vendor. In any event such procedure not having been adopted in the present case I am not prepared to hold that the report of the Public Analyst, whatever it was, was in respect of any of the bottles of aerated water which were taken from the shop of the vendor. Furthermore : the Analyst himself has not been examined in the case, though if his certificate had been put in and filed in the case on behalf of the prosecution he need not have been examined. Beyond the statement of the Food Inspector that he sent two bottles to the laboratory and received a report to

the effect that their contents were bacteriologically unfit for human food there is nothing upon which it can be held that the petitioner committed the offence u/s 412.

7. The conviction of the petitioner therefore seems to be unjustifiable, and in that view of the matter I make the Rule absolute, set aside the conviction of the petitioner and the sentence passed upon him and direct that the fine if paid be refunded.