

(1968) 08 CAL CK 0014

Calcutta High Court

Case No: Criminal Revision No. 632 of 1968

Girin Chandra Majumdar

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision:** Aug. 6, 1968**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 243, 342

**Citation:** 74 CWN 286**Hon'ble Judges:** N.C. Talukdar, J**Bench:** Single Bench

**Advocate:** Gopal Chandra Chakraborty and Rathindra Nath Bhaduri, for the Appellant; Amiyalal Chatterjee and Bibhuti Roy for Opposite Party No. 2 and Sudhindra Kumar Palit for the State, for the Respondent

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### Judgement

N.C. Talukdar, J.

This Rule is against an order dated 15th April, 1968 passed by Shri S.N. Ghosh, Presidency Magistrate, 15th court, Calcutta convicting the accused-petitioner u/s 52 read with section 111 of the By-Laws for the Port of Calcutta upon his plea of guilty and sentencing him to pay a fine of Rs. 20/- in default to undergo simple imprisonment for 20 days. The facts can be put in a short compass. On or about the 11th April, 1968, at about 10 p.m. while the accused-petitioner was moving with a tin of Mobil Oil and some Fuel Oil in a small tin, he was arrested and the present proceedings u/s 52 read with section 111 of the Port By-Laws was started. The accused-petitioner was ultimately placed on his trial before Shri S.N. Ghosh, Presidency Magistrate, 15th Court, Calcutta u/s 52/111 of the By-Laws for the Port of Calcutta. On 15th April, 1968, when Presidency Magistrate put to him u/s 242 of the Code of Criminal Procedure the particulars of the offence, the accused pleaded guilty. He was accordingly convicted and sentenced as mentioned above by the trying Magistrate. The said order of conviction has been impugned and forms the subject-matter of the present Rule.

2. Mr. Gopal Chandra Chakraborty, Counsel (appearing with Mr. Rathindra Nath Bhaduri, Advocate) appearing on behalf of the petitioner has made a two-fold submission. Mr. Chakraborty has contended in the first place that in view of the fact that the accused-petitioner had the requisite cash-memo in his possession, the order of conviction and sentence has been grossly improper. The second contention of Mr. Chakraborty is that there has been a non-conformance to the mandatory provision of sections 242 and 243 of the Code of Criminal Procedure inasmuch as neither the particulars of the offence were explained to the accused-petitioner nor was his purported admission recorded as nearly as possible in the words used by the accused-petitioner and, therefore, the resultant order of conviction and sentence is bad in law and improper. Mr. Amiya Lal Chatterjee, Advocate (with Mr. Bibhuti Roy, Advocate) appearing on behalf of the opposite-party No. 2, the Commissioners for the Port of Calcutta, has submitted in the first place that the first contention of Mr. Chakraborty is unwarranted in view of the ultimate plea that the accused had taken in the court below, viz., the plea of guilty. With regard to the second contention of Mr. Chakraborty, Mr. Chatterjee has joined issue and has submitted in that context that there has been a due compliance with the provisions of sections 242 and 243 of the Code of Criminal Procedure and the plea of the accused has been correctly taken down. Mr. Sudhindra Kumar Palit, Advocate appearing on behalf of the State has submitted that the question of the merit of the charge does not at all arise in the instant case. With regard to the point of law taken by Mr. Chakraborty as to the non-conformance to the mandatory provisions of sections 242 and 243 Cr. P.C. Mr. Palit has submitted in the first place that in view of the explanation that has been submitted by the Presidency Magistrate, the averments made to the contrary on behalf of the accused-petitioner are not maintainable. Mr. Palit has further submitted that the trial in question has been a summary trial and in view of the provisions of section 263 of the Code of Criminal Procedure the substance of the plea by the accused as taken down by the Presidency Magistrate is a substantial conformance to the provisions of law.

3. Upon ultimate analysis, as has been contended by Mr. Chakraborty, the point involved is a point of law as to whether there has been a conformance to the provision of sections 242 and 243 of the Code of Criminal Procedure. I have heard the respective arguments advanced by the learned counsel appearing on behalf of the different parties and I have also gone through the records. So far as the contention of Mr. Chakraborty is concerned with regard to the purported non-conformance to the provisions of section 242 Cr. P.C. and the averment that has been made in the petition, upon which the present Rule was issued, that the Presidency Magistrate did not at all mention the particulars of the offence of which the petitioner was accused before taking his plea and convicting and sentencing him as mentioned above, the trying magistrate has shown cause to the Rule that has been issued and therein it has been clearly stated that the accused pleaded guilty when the accusation was explained to him in the open Court. u/s 441 of the Cr. P.C.

the statement which the Presidency Magistrate has submitted along with the record is to be taken into consideration by this Court before finally determining the point at issue. In view of the said explanation by the Presidency Magistrate, it is difficult for me to hold in this case that the particulars of the offence of which the petitioner was accused have not been explained to him as alleged or at all. This contention of Mr. Chakraborty, therefore, fails. The other contention on merit also is not maintainable in view of the ultimate plea that was taken up by the accused-petitioner, viz., the plea of guilty, and sitting here in revision, I am not going to enter into the same. But there is considerable force behind the last submission that was advanced by Mr. Chakraborty in this context, viz., the non-conformance to the mandatory provisions of section 243 Cr. P.C. This is undoubtedly a summons case under Chapter 20 of the Code of Criminal Procedure and section 243 of the Code applies to the facts of the present case. It has been provided in section 243 of the Code that 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. A reference to the relevant records would show that under the heading "the plea of the accused and his examination, if any" it is merely recorded "pleads guilty". The point that has been raised for determination is as to whether the same can be taken to be a proper conformance to the mandatory provision of section 243 Cr. P.C. It would appear in the first blush that it does not. A reference in this connection may be made to the case of (1) [Sailabala Dasi Vs. Emperor](#), wherein Lord Williams and Jack, JJ. held that: "In cases where an accused person makes some statement during the course of the trial which is interpreted as a plea of guilty, the court should record the exact words used, especially in this case, when a statement is made in answer to questions put by the Court under S. 342 Cr. P.C.

4. The said case has been referred to in the case of (2) [Mahant Kaushalya Das Vs. State of Madras](#), V. Ramaswami J. who delivered the judgment of the Court observed at pages 23 and 24 that "In our opinion, the requirements of S. 243 of the Criminal Procedure Code are mandatory in character and a violation of these provisions vitiates the trial and renders the conviction legally invalid. The requirement of the section is not a mere empty formality but is a matter of substance intended to secure proper administration of justice..... The legislature requires that the exact words used by the accused in his plea of guilty should, as nearly as possible, be recorded in his own language in order to prevent any mistake or misapprehension".

His Lordship further proceeded to observe that "In our opinion, S. 362(2A) of the Criminal Procedure Code has no application in a case where the accused pleads guilty and the special provision of S. 243 of the Criminal Procedure Code would be attracted in such a case. Section 243 of the Criminal Procedure Code is a provision of a special character and according to well-established rule of interpretation, that special provision will take precedence and override the general provision of S. 362(2A) of the Criminal Procedure Code."

I respectfully agree with the said observations and find that the point at issue in the instant case comes within the ambit of the principles laid down by Their Lordships of the Supreme Court. Mr. Palit has contended, however, that the facts in the present case are distinguishable. He has submitted in the first place that although it is a summons case it was also a summary trial under chapter 22 of the Code and, therefore, the position is not the same as in the case of (2) Mahant Kaushalya Das which was decided by the Supreme Court. It is difficult to agree with Mr. Palit. Section 262 clearly provides that in trials under this chapter, the procedure prescribed for summons cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, subject to some exceptions as provided there-under. Accordingly the position is quite clear that although there was a summary trial, the provision of chapter 20 of the Code, which includes sections 242 and 243, would apply. Mr. Palit has then tried to make a distinction by referring to the provision of section 263 with regard to cases where there is no appeal. Section 263, however, I find, does not improve matters. The principles that have been laid down by Their Lordships of the Supreme Court are quite clear, cogent and unequivocal. In a case, as Their Lordships have held, where the accused pleads guilty, section 362(2A) of the Code of Criminal Procedure should not apply but the special provision of section 243 of the Code of Criminal Procedure would override the said general provision. The principle is the same here and I hold that the provisions of sections 242 and 243 Cr. P.C. would apply and the provisions of the said sections would override the other general provisions. The contention made in this behalf by Mr. Chakraborty, therefore, succeeds and I hold that there has been a non-conformance to the material provision of section 243 of the Code of Criminal Procedure.

In the result, the Rule is made absolute: the impugned order dated the 15th April, 1968 passed by Shri S.N. Ghosh, Presidency Magistrate, 15th Court, Calcutta is set aside and the fine, if paid, is to be refunded; and the case is remanded back to the court below to be tried in accordance with law and expeditiously by some other Presidency Magistrate to be selected by the Chief Presidency Magistrate, Calcutta.

Let the records go down as early as possible.