falling under the three provisos to regulation 5 and to the extent stated therein. As has been observed earlier, none of the provisos to regulation 5 covers the petitioner's case so as to justify the impugned action of the Government. Admittedly, there is no other regulation which entitles the (Government to withhold the petitioner's pension for the period during which he served as Chairman of the Punjab Public Service Commission after his retirement from the Indian Administrative Service. Similarly, there is no specific authority conferred on the Government to deduct anything from his fixed salary of Rs. 2,250 on account of the benefit to which the petitioner is entitled on his retirement by way of gratuity. It may be *casus omissus* but that would not alter the situation. In fact, so far as the death-cum-gratuity benefit is concerned, no deduction on that account can be made even in cases falling under the various provisos to Regulation 5. Learned counsel for the State has not been able to support the impugned order of the Government except by reference to the instructions contained in the Government of India's letter (annexure K). As has been observed earlier, executive instructions do not have the force of law, and any action taken thereon, if it is contrary to or unwarranted by the provisions of law must be struck down. I, accordingly, accept the petition and order that the necessary writ shall issue directing the Punjab State to pay the amount that it has deducted as equivalent of death-cum-retirement gratuity from the petitioner's salary as Chairman of the Punjab Public Service Commission since 24th March, 1962, and also the pension which has been held in abeyance since that day. In the circumstances of the case, I, however, leave the parties to bear their own costs.

K. S.

APPELLATE CRIMINAL

Before H. R. Sodhi and A. D. Koshal, JJ.

MUNICIPAL COMMITTEE, AMRITSAR,—*Appellant.*

versus

OM PARKASH,—*Respondent.*

June 26, 1968.

Criminal Appeal No. 392 of 1966

Code of Criminal Procedure (Act V of 1898)—S. 342—Examination of the accused under—Whether confined to circumstances emerging from prosecution

evidence only—Prevention of Food Adulteration Act (XXXVII of 1954)—S. 13—Certificate issued by Director, Central Food Laboratory, Calcutta received after the close of prosecution case—Conviction of the accused based on the certificate—Such certificate—Whether obligatory for the trial court to put to the accused.

Held, that the principle is well-settled that if a material circumstance emerging from the evidence in the case is intended to be used against the accused, he must be afforded an opportunity of explaining such circumstances and that if such opportunity is not afforded, the trial would be vitiated if a prejudice is thereby caused to him. This principle has to be followed irrespective of the source which supplies such evidence. The examination of the accused under section 342 of the Code of Criminal Procedure cannot be confined to only such circumstances as appear in the prosecution evidence. He has to be examined about all the circumstances which go against him and which are intended by the Court to be used in convicting him.

(Para 17).

Held, that even if the Director's certificate is received after close of prosecution case, it becomes, for all practical purposes, part of the prosecution evidence in as much as it supersedes and, therefore, replaces the Public Analyst's report on which the prosecution relies and has to rely for conviction of the accused till the certificate of the Director is received. The Director's certificate obliterates the Public Analyst's report and takes its place. It is obligatory on the part of the trial Court to put to the accused the certificate which becomes part of the prosecution evidence and on which the conviction of the accused is based.

(Para 26).

Appeal from the order of Shri H. K. Mehta, Additional Sessions Judge, Amritsar, dated the 4th September, 1965.

Charge under section 16(1)(a)(i) of the Prevention of Food, Adulteration Act, 1954.

Rup Chand, Advocate, for the Appellant.

R. K. Chhibbar, Advocate, for the Respondent.

JUDGMENT

The judgment of the Court was delivered by:

Koshal, J.—Om Parkash, respondent, a Ghee dealer of Amritsar, was convicted under sectoin 16 (1) (a) (i) of the Prevention of Food

Adulteration Act, 1954, by Shri Sher Singh, Judicial Magistrate, 1st Class, Amritsar, on 31st of July, 1965, for having displayed for sale adulterated Ghee on 20th of June, 1964, at his business premises known as Amrit Dairy and was sentenced to rigorious imprisonment for a year and a fine of Rs. 1,500, the sentence in default of payment of fine being rigorous imprisonment for six months. He was acquitted in appeal by Shri H. K. Mehta, Additional Sessions Judge, Amritsar, against whose judgment dated 4th of September, 1965, the present appeal has been filed by the Municipal Committee, Amritsar, to whom leave for the purpose was granted by this Court under section 417 (3) of the Code of Criminal Procedure.

(2) The facts of the case may briefly be stated thus. On 20th of June, 1964, at 10.30 a.m., Dr. Sujan Singh Sodhi, Assistant Medical Officer of Health and Food Inspector, Municipal Committee, Amritsar (P. W. 1), organised a raid party of which the other members were Shri Tara Singh Ghuman, Judicial Magistrate 1st Class, Amritsar (P.W. 2), Shri Krishan Kumar, Sanitary Inspector, Shri Kartar Singh and Shri Shori Lal. The Amrit Dairy was raided by this party with whom were associated Virsa Singh (D.W. 1) and Santokh Singh (D. W. 2). Dr. Sujan Singh Sodhi, P.W., informed the respondent, who was present at the premises, that the former was a Food Inspector who wanted to take a sample of the Ghee displayed by the respondent for analysis. Dr. Sodhi then purchased 450 grams of the said Ghee on payment of Rs. 3.60 for which receipt Exhibit P.B. attested by Virsa Singh and Santokh Singh, D.Ws., was issued. The Ghee thus purchased was divided into three equal parts, each one of which was put into a separate phial. All the three phials were duly labelled, stoppered and sealed. One of the phials was handed over to the respondent against receipt Exhibit P.C., another was sent to the Public Analyst and the third was retained by Dr. Sodhi. After the analysis of the sample sent to him, the Public Analyst issued his report (P.F.). The report stated the result of the analysis to be as follows:—

B. R. V.	..	43.2 per cent.
Rechert value	..	31.6 per-cent.
F. F. A.	..	1.0 per cent.

Baudouin test positive instead of being negative.

(3) The Public Analyst stated as his opinion that the sample of Ghee was adulterated as it did not conform to the specifications in respect of Bhaudouin test. It was in view of this opinion that the respondent was prosecuted.

(4) When the charge was read over and explained to the respondent before the commencement of the trial, he admitted that the sample in question was taken from him as alleged by the prosecution. He took the stand, however, that utensil (Batti) brought from outside by the peon of Dr. Sodhi was used in transferring the sample from the Ghee can to the bottles, that the Ghee was heated in the Batti before being so transferred and that the said bottles were unclean.

(5) Dr. Sodhi and Shri Tara Singh Ghuman, Judicial Magistrate, Amritsar, were the only two witnesses examined for the prosecution whose case they fully supported. Both of them admitted, however, that a Batti was used in transferring the Ghee from the Ghee can to the bottles, but they asserted that the Batti had been supplied by the respondent himself and that the Ghee was not heated before being transferred to the bottles.

(6) After the depositions of Dr. Sodhi and Shri Ghuman had been recorded on 10th of December, 1964, the respondent was examined in pursuance of the provisions of section 342 of the Code of Criminal Procedure. The material questions and answers are reproduced below for facility of reference:

"*Question* 5: It is in evidence that the second sealed bottle was sent to the Public Analyst, Municipal Committee, Amritsar, who found your ghee to have Baudouin test positive instead of being negative and thus adulterated under section 2(i) (1) of the Prevention of Food Adulteration Act, 1954. What have you to say to it?

Answer : It is incorrect.

Question 6: Have you anything else to say?

Answer : The ghee was taken out of my can with the help of a Bati which the peon of the Food Inspector had brought from an adjoining hotel keeper. The ghee was heated in

that Bati and was then bottled and sealed. The bottles were also not clean.

Question 7: Will you produce defence?
Answer : Yes."

(7) Virsa Singh (D.W. 1), and Santokh Singh (D.W. 2), both deposed that a peon had brought the Bati in question from nearly Dhaba belonging to Virsa Singh, D.W.

(8) The respondent closed his defence on 19th of February, 1965. The arguments in the case were heard by the trial Court and 30th of March, 1965, was fixed for orders. On that date, however, the respondent presented an application that the bottle containing a part of the sample of Ghee taken from him by the Food Inspector be sent to the Director, Central Food Laboratory, Calcutta, for analysis. The application was allowed, but the bottle developed a leak during transit to Calcutta, and later on the third bottle, which was in the custody of the Food Inspector, was sent for by the trial Court. Half of the sample contained in the bottle last mentioned was sent to the said Laboratory on 8th of June, 1965. The Director of the Laboratory stated the result of the analysis in his certificate dated 23rd of June, 1965 (which bears no exhibit mark) to be as under:—

Moisture	..	1.8 per cent.
Butyrorefractometer reading at 40° C.	..	43.0 per cent.
Reichart value	...	32.1 per cent
Free fatty acids as oleie acid	..	1.9 per cent.
Baudouin test for sesam oil	..	Negative.
Halphn test for cottonseed oil	..	Negative.

In the opinion of the Director, the sample of Ghee was adulterated.

(9) After this certificate was received, the respondent presented two applications on 28th of July, 1965. In one of these applications the request made was that the remaining half of the sample of Ghee in the third bottle be sent to the Chemical Examiner. In the second application, it was prayed that the Director aforesaid be examined on commission. Both of these applications were disallowed.

(10) The conviction was based by the trial Court on the certificate issued by the Director, Central Food Laboratory, Calcutta, according to which the moisture in the sample of Ghee analysed by the Director was 1.8 per cent instead of 9.3 per cent which is the maximum permissible under item A. 11.14 in Appendix B of the Prevention of Food Adulteration Rules, the Court being of the opinion that under the proviso of sub-section (5) of section 13 of the Prevention of Food Adulteration Act, the certificate was final and conclusive evidence of the facts stated therein.

(11) In appeal, the learned Additional Sessions Judge was of the opinion that report Exhibit P.F. made by the Public Analyst must be ignored as it was superseded by the certificate of the Director in view of the provisions of section 13(3) of the Prevention of Food Adulteration Act. He held, however, that the respondent had been deprived of a legal right and had been prejudiced at the trial as he was not afforded any opportunity by the trial Court to explain the presence of moisture found in the sample by the Director or to produce any defence in support of any explanation that he might have given. The rejection of the prayer of the respondent that the Director be cross-examined on commission was also adversely commented upon by the learned Additional Sessions Judge who further found that it could not be said with certainty that the sample which was sent to Calcutta was a counter-part of that analysed by the Public Analyst, as the certificate of the Director ran counter to the report of the Public Analyst on very important points, namely, the presence of moisture and sesame oil. It was on these findings that the learned Additional Sessions Judge accepted the respondent's appeal and acquitted him.

(12) Shri Rup Chand learned counsel for the appellant Municipal Committee, has contended that it was not open to the learned Additional Sessions Judge to use the report of the Public Analyst for any purpose whatsoever, after the certificate of the Director, Central Food Laboratory, Calcutta, had been received. Reliance is placed by him on the provisions of sub-sections (3) and (5) of section 13 of the Prevention of Food Adult eration Act, 1954, which run as under:—

> "(3) The certificate issued by the Director of the Central Food Laboratory under sub-section (2) shall supersede the report given by the public analyst under sub-section (1)."

"(5) Any document purporting to be a report signed by a public analyst, unless it has been superseded under sub-section (3) or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under sections 272 to 276 of the Indian Penal Code:

"Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein."

(13) A perusal of these provisions shows that they have a two fold effect. Firstly the Director's certificate becomes final and conclusive evidence of the facts stated therein and, secondly that certificate also supersedes the report given by the Public Analyst. It is contended that the effect of sub-section (3) is to render the report of the Public Analyst non-existent after the Director has issued the certificate, in which case, according to the learned counsel for the appellant, the report of the Public Analyst cannot be used as evidence for any purpose. Support for the contention is sought to be found in the following observations of Dua and Mahajan, JJ., in *Municipal Corporation of Delhi* v. *Jai Dayal* (1):—

"Sub-section (5) provides that any document purporting to be a report sent by a Public Analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein *inter alia*, in any proceedings under this Act. According to the proviso to this sub-section, any document purporting to be a certificate signed by the Director is final and conclusive evidence of the facts therein. The scheme of the Act seems to show that it is only when a certificate from the Director of Central Food Laboratory is to be treated as final and conclusive evidence of the facts stated therein under the law that the report of the Public Analyst may be considered to be superseded and ignored. If, however, the certificate of

(1) 1964 1 P.L.R. 1016.

the Director is not to be considered as final and conclusive evidence of the facts stated therein and is considered to be defective for the purpose of serving the object for which the certificate has been obtained, namely, for determining the issue of adulteration of the food-stuff in question, then the report of the Public Analyst cannot be ignored on the ground that having been superseded it is no longer evidence in the case."

(14) Reference has also been made to *Municipal Corporation of Delhi* v. *Ghisa Ram* (2), in which the following observations occur:—

"If, for any reason, no certificate is issued, the report given by the Public Analyst does not cease to be evidence of the facts contained in it and does not become ineffective merely because it could have been superseded by the certificate issued by the Director of the Central Food Laboratory.

* * * * * *

"Learned counsel for the appellant drew our attention to a decision reported in *Suckling* v. *Parker* (3). That case was concerned with similar law in England, but, there, the provision relating to the testing of the sample kept with the vendor was quite different. In England, there was no restriction that the vendor could not have his sample tested until after the prosecution was launched, nor did the subsequent report have the effect of completely superseding the earlier report of the Analyst.

* * * * * *

The report of the Public Analyst, as we have said earlier, does not cease to be good evidence merely because a certificate from the Director of the Central Food Laboratory cannot be obtained."

(15) These observations as also those made in *Jai Dayal's* case (supra) do appear to support the contention of the learned counsel for the appellant. Reliance, however, is placed by Shri R. K. Chhibbar, learned counsel for the respondent, on three unreported

(2) A.I.R. 1967 S.C. 970.
(3) (1906) 1 K.B. 527.

decisions of this Court, namely, *Municipal Committee, Jullundur City* v. *Naranjan Das* (4), decided by G. D. Khosla and Gurnam Singh, JJ., *Tara Singh* v. *The State* (5), decided by Mehar Singh, J., and *Pritam Dass* v. *The State* (6), decided by R. P. Khosla, J. In all these three cases the divergence between the report of the Public Analyst and the certificate of the Central Food Laboratory, Calcutta was construed as a factor sufficient for the prosecution case to be thrown out. It has been urged on behalf of the appellant that these rulings do not lay down the law correctly and with the utmost respect to the learned Judges, who decided the three cases last mentioned, we are inclined to think, in view of the express provisions of sub-section (3) of section 13 of the Prevention of Food Adulteration Act, that there is some force in the contention, but as we are dismissing the appeal on another point, we refrain from expressing any final opinion in the matter.

(16) Shri Rup Chand had vehemently argued that it was not at all incumbent on the trial Court to examine the respondents so as to afford him an opportunity of explaining those features of the Director's certificate which went against him and that the learned Additional Sessions Judge seriously erred in holding that non-examination of the respondent with regard to the contents of the certificate deprived him of a legal right or caused him prejudice at the trial. Reliance in this connection is placed on the provisions of sub-section (1) of section 342 of the Code of Criminal Procedure which are:—

> "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, without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence."

(17) It is contended that although it is incumbent on a trial Court to question an accused persons generally on the case after the prosecution witnesses are examined and before he is called on for

(4) Crl. A. 299 of 1958 decided on 21st Nov., 1958.
(5) Crl. R. 280 of 1962, decided on 25th July, 1962.
(6) Crl. R. 679 of 1965 decided on 8th Dec., 1965.

his defence, the position with regard to other stages of a criminal trial is different in as much as the section confers a discretion on the trial Court to examine or not to examine an accused person for the purpose of enabling him to explain any circumstances appearing in the evidence against him, in so far as any stage other than that arising immediately after the close of the prosecution evidence is concerned. It is stressed that in the present case, the respondent was examined after the witnesses for the prosecution had made their depositions and before the respondent was called on for his defence and that, therefore, the respondent had no right to an opportunity enabling him to explain the contents of the Director's certificate which was received not only after the close of the prosecution evidence, but at as late a stage as the conclusion of arguments. On a cursery examination, the argument appears to be attractive, but on serious consideration, we find that it is without force. Doubtlessly the trial Court is given a discretion to examine the accused at any stage other that arising immediately after the close of the prosecution evidence, but then such discretion has to be used judicially and, therefore, in conformity with established principles of criminal jurisprudence. It is well settled by now that if a material circumstances emerging from the evidence in the case is intended to be used against the accused, he must be afforded an opportunity of explaining such circumstances and that if such opportunity is not afforded, the trial would be vitiated if a prejudice is thereby caused to him. Numerous authorities on the point have been brought to our notice by Shri R. K. Chibbar, learned counsel for the respondent, from whose industry we have derived a lot of assistance in deciding this case, but we shall quote only a few of them.

(18) In *Emperor* v. *Jit Lal Bahadur* (7), Henderson and Sen, JJ,. observed :

> "The object of an examination under section 342 is for the purpose of enabling the accused to explain circumstances which appear against him. If the learned Judge considered that an explanation was necessary regarding this matter it was his duty to have placed the matter before the accused and to have asked him whether he wished to given any explanation. It seems to me to be extremely unfair for a Judge to rely upon a circumstances as

(7) A.I.R. 1940 Cal. 378.

being incriminating without giving the accused any notice of it and without giving him an opportunity of explaining the circumstances. The accused may have had any number of reasons to give as to why he did not go to the school on that night at 8 to 9 p.m."

(19) Panigrahi, C.J., interpreted section 342 of the Code of Criminal Procedure thus in *Busi Biswal* v. *Nakhyatramalini Devi and others* (8):

"The section is wide in its language and does not limit the power of the Court to examine the accused at any particular stage. The Court can examine him as often as it thinks it necessary to do so, to enable the accused person to explain any circumstances appearing against him in the evidence, the object of the section being to see whether the accused can give an innocent explanation of the facts spoken to against him. There is nothing in the language of the Section which would prevent the Court from examining the accuesd even after the defence evidence has been recorded, ...".

(20) The relevant observations of Jaganmohan Reddy and Ranganadham Chetty, JJ., *in re Kamya* (9), are—

" It must be borne in mind that the accused, placed as he is must be given full liberty to explain all the incriminating circumstances which appear against him and which the Judge is likely to use in support of a conviction. If he fails to do so that again would, in our view, cause prejudice vitiating the trial."

(20) The principle has been enunciated and stressed by their Lordships of the Supreme Court in *Hate Singh Bhagat Singh* v. *State of Madhya Bharat* (10), thus—

"We have a further comment to make. Both the Sessions Judge and the High Court have attached importance to

(8) A.I.R. 1954 Orissa 65.
(9) A.I.R. 1960 A.P. 490.
(10) A.I.R. 1953 S.C. 468.

> the fact that both accused absconded, but at no stage of the case have they been asked to explain this. We have stressed before the importance of putting to the accused each material fact which is intended to be used against him and of affording him a chance of explaining it if he can. We regret to find that this rule is so often ignored."

and again in *Machander* v. *The State of Hyderabad* (11), in the following terms:—

> "This is another of those cases in which Courts are compelled to acquit because Magistrates and Sessions Judges fail to appreciate the importance of S. 342, Criminal Procedure Code and fail to carry out the duty that is cast upon them of questioning the accused properly and fairly bringing home to his mind in clear and simple language the exact case he has to meet and each material point that is sought to be made against him, and of affording him a chance to explain then if he can and so desires. Had the Sessions Judge done that in this case it is possible that we would not have been obliged to acquit."

(22) Applying the principle enunciated above to the facts of the present case, we feel that it was obligatory on the part of the trial Court to put to the respondent that part of the Director's certificate in which the percentage of moisture in the sample of Ghee in question was stated to be 1.8 per cent and which forms practically the entire case against the respondent. It has been contended by Shri Rup Chand that under the provisions of section 342 of the Code of Criminal Procedure, the Court is bound to put to the accused only such circumstances as appear in the *prosecution* evidence. The word "prosecution", however, cannot be read into the first part of sub-section (1) of section 342 of the Code of Criminal Procedure where the language used is—

> "any circumstances appearing in the evidence against him."

(23) It is thus clear that the principle enunciated above would apply to all circumstances which go against the accused and which

(11) A.I.R. 1955 S.C. 792.

are intended by the Court to be used in convicting him. In holding this opinion, we are fortified by what was laid down in *Allah Dito* **v.** *Emperior* (12) and *Nijamuddin Mia and another* v. *Abdulhei Mia* (13).

(24) In the Sind authority certain witnesses were called by the Court and examined and it was held that the omission to put their testimony to the accused was not fatal to the prosecution. However, the reason for this finding was that the additional evidence did not disclose any fresh facts. On the other hand, it was observed in relation to section 342 of the Code of Criminal Procedure:

> "This provision appears to be based on the well-known principle that no man should be condemned unheard. It seems to me that it makes no difference whether the additional evidence is introduced by a prosecutor or whether it is brought on the record by the Court itself and the general principle is the same that before the accused is condemned he should have an opportunity of making any explanation he wishes to make with regard to the circumstances appearing in evidence against him. This, however, is open to the exception that where the additional evidence does not really, disclose any fresh facts or does not affect the decision of the case, the accused is in no way prejudiced in not having had an opportunity to render a further explanation."

(25) In the Manipur case, the question arose as to whether it was the duty of the trial Magistrate to examine the accused in order to afford him an opportunity of explaining the evidence consisting of the impressions formed by the Magistrate on a local inspection of the spot and was answered in the affirmative.

(26) The conclusion which must be reached, therefore, is that the principle which enjoins on the trial Court to offer to the accused an opportunity of explaining the circumstances appearing in the evidence against him has to be followed irrespective of the source which supplies such evidence. However, it may be stated that in the instant case the Director's certificate has for all practical purposes become part of the prosecution evidence in as much as it has superseded and, therefore, replaced the Public Analyst's report on which

(12) A.I.R. 1929 Sind. 5.
(13) A.I.R. 1959 Manipur 38.

the prosecution relied and had to rely for a conviction of the respondent till its (the certificate's) receipt. It is true that it was the respondent who asked for a fresh analysis of the sample by the Director, but the analysis itself was done and the certificate is sought to be uesd against the respondent by virtue of a special statutory provision to the benefit of which both the prosecution and the respondent are entitled and which obliterates the Public Analyst's report and substitutes instead the Director's certificate. As a necessary consequence of that provision, the prosecution evidence must be read after the receipt of the certificate as if the certificate had taken the place of the Public Analyst's report in regard to which the examination of the respondent already made by the trial Court (Questions and Answers Nos. 5, 6 and 7 reproduced in an earlier part of this judgment) must be deemed to have become redundant. The result is that even if the contention that the circumstances appearing in the prosecution evidence alone have to be put to the accused (which contention we have already repelled) were acceptable, it would be of no assistance to the appellant's case.

(27) The only other contention raised by Shri Rup Chand was that the respondent was aware of the contents of the Director's certificate and that, therefore, it cannot be said that the failure to examine him with regard thereto caused any prejudice to him. We cannot agree with this contention. The respondent could have offered a hundred and one explanations of the presence of moisture, including the one based on his assertion that the bottles into which the sample was transferred were unclean. He may have supplemented the assertion by stating that the bottles were not dry and contained some water which was responsible for the adverse finding given by the Director. He could also have, for aught we know, produced evidence in support of the assertion and it would then have been for the trial Court to see what value to attach to such evidence. It cannot be said that it would have been impossible for the respondent to prove that the presence of moisture was detected not because the sample of Ghee was adulterated, but because of some other circumstance for which he could not be legally held responsible. Under the circumstances, prejudice to the respondent resulting from the failure of the trial Court to examine him with regard to the Director's certificate must be presumed. We hold, accordingly, that the trial stands vitiated.

(28) Ordinarily, our finding just above given would necessitate a retrial of the respondent; but the same in our opinion is not called

for because of the circumstances that these proceedings have gone on for more than 3½ years during which period the respondent has suffered from suspense and it would not be conducive to justice if a retrial is ordered resulting in the proceeding starting a fresh. In this connection, we may refer with advantage to the observations of their Lordships of the Supreme Court in *Machander* v. *The State of Hyderabad* (11), (supra):

> "Justice is not one-sided. It has many facts and we have to draw a nice balance between conflicting rights and duties. While it is incumbent on us to see that the guilty do not escape it is even more necessary to see that persons accaused of crime are not indefinitely harassed. They must be given a fair and impartial trial and while every reasonable latitude must be given to those concerned with the detection of crime and entrusted with the administration of justice, limits must be placed on the lengths to which they may go.
>
> "Except in clear cases of guilt, where the errors is purely technical, the forces that are arrayed against the accused should no more be permitted in special appeal to repair the effects of their bungling than an accused should be permitted to repair gaps in his defence which he could and ought to have made good in the lower courts. The scales of justice must be kept on an even balance whether for the accused or against him, whether in favour of the State or not; and one broad rule must apply in all cases."

(29) The accused in that case whose trial was held to have been vitiated by reason of material circumstances appearing in the evidence against him not having been put to him under section 342 of the Code of Criminal Procedure was acquitted, their Lordships not being prepared to order retail in view of the fact that the proceedings had continued already for 4½ years.

9. For the reasons stated, the appeal is dismissed.

K.S.