

THE HIGH COURT

[2023] IEHC 426
[Record No. 2022/1033SS]

BETWEEN:-

DIRECTOR OF PUBLIC PROSECUTIONS

PROSECUTOR

AND

LUKE KINNANE

ACCUSED

JUDGMENT of Mr Justice Barr delivered on the 19th day of July, 2023.

Introduction.

1. This is a consultative case stated pursuant to s.52 of the Courts (Supplemental Provisions) Act, 1961. The learned District Court judge has stated a case for the opinion of this Court, which effectively raises two core issues: (a) whether the charge sheet upon which the accused was brought before the District Court contained sufficient particulars of both the offending behaviour and the alleged breach of statutory provisions, to enable the matter to proceed before the District Court; and, (b) if not, whether she had jurisdiction to amend the charge sheet to remedy any defect or omission therein.

2. The relevant background facts are set out in the case stated formulated by the District Court judge, which is set out hereunder.

The Case Stated.

3. At a sitting of Tipperary District Court on 7 October 2021, the accused appeared before the District Court on foot of charge sheet number 2173124, charged with the following offence:

"That you the said accused/defendant, on the 26/04/2020 at Lacken Kilshane, Tipperary, said District Court area of Tipperary, did contravene a penal provision of a regulation made under section 31A(6) of the Health Act 1947 as amended, to prevent, limit, minimise or slow the spread of Covid-19. Contrary to section 31A(6)(a) and 12 of the Health Act 1947 (as amended by section 10 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020."

4. At the outset of the hearing in the District Court, an application was made by the prosecution to amend the date of the alleged offence to read 25 April 2020. The defence consented to that amendment being made to the charge sheet.

5. At the start of the hearing, the prosecuting officer, Inspector Lee, submitted a folder to the court containing the relevant statutory instruments. She stated that S.I. 120/2020 declared that the State was the area affected by Covid regulations; S.I. 121/2020 provided for restrictions; Regulation 5 thereof restricted events and made it a penal provision for the purposes of s.31A of the Health Act 1947; S.I. 128/2020 extended the date of operation of S.I. 121 of 2020 from 12 April 2020 to 5 May 2020. Inspector Lee stated that the prosecution case was an alleged breach of Regulation 5 of S.I. 121/2020.

6. The defence solicitor then interjected stating that it was his understanding that the offence alleged in the charge sheet, was an offence under reg. 6 of S.I. 448/2020. He stated that the submission by Inspector Lee was an attempt by the prosecution to amend the charge. The prosecution rejected that claim, pointing out that S.I. 448/2020 had only come into effect after the date of the alleged offence. Inspector Lee reiterated that the prosecution was proceeding on the basis of an offence under reg. 5 of S.I. 121/2020. At the suggestion of the District Court judge, in order for her to adjudicate on the legal issue raised, it was suggested that it would be preferable to hear evidence and thereafter any legal argument could be made. The judge noted that both prosecution and defence had agreed to proceed with the hearing of the case on that basis.

7. In the case stated, the learned District Court judge went on to outline the evidence that had been led before her. On behalf of the prosecution, Garda Gerard Hallinan, gave evidence that on 25 April 2020, while on mobile patrol, and accompanied by Garda Peter Cleary, he received a report at 23.20 hours of a large fire and a party at Lacken, Kilshane, Tipperary, at a place known to him as Luke Kinnane's yard. He arrived at the scene at approximately 23.30 hours. On arrival a large number of people, which he estimated to be approximately twenty in number, fled on foot into the darkness into adjoining farmland. He stated that he witnessed what appeared to be a barbeque, a lot of food, a lot of beer cans, spirits, wine and bottles and a lot of seating around a large fire. He noted a number of cars parked in the yard; two of the cars were still running and music was being played from one of the cars. There was lighting in the area. The accused, who was known to him, was the only person to remain at the scene. He advised the accused that the gathering was in breach of the Covid regulations.

8. The accused stated to Garda Hallinan that it was a private party, being held on private property and that the gardaí did not have permission to attend. Garda Hallinan stated

that he pointed out serious concerns about the bonfire, in particular, as it was adjoining a shed containing inflammable and hazardous material, where the gardaí knew the accused and his father operated a mechanical business. Garda Hallinan stated that the accused was intoxicated and declined to identify who had been present. On questioning by Garda Hallinan, the accused confirmed that there were no other members of the Kinnane family present.

9. Garda Peter Cleary gave evidence, corroborating the evidence that had been given by Garda Hallinan. He confirmed that he had counted the chairs around the bonfire; there being twenty in number. He also confirmed that the call had come over the radio that there was a bonfire and big party at Kilshane, Bansha and that he believed that the accused was holding the party.

10. The learned District Court judge stated that at the conclusion of the prosecution case, the accused's solicitor made a number of submissions seeking a dismissal of the charge. The judge ruled against him on those, with the exception of his submission that there was an inherent unfairness to the accused in defending the charge, when it was not clear what charge he was facing. The accused's solicitor stated that he had understood the charge sheet to read that the accused was facing an alleged breach of reg. 6 of S.I. 448/2020, being restrictions on events in dwellings. He submitted that as the actual regulation was not specified in the charge sheet, it had left an uncertainty to the defence, as to what case they had to meet. In response, Inspector Lee pointed out that the form of charge had been approved by the DPP. The judge directed that the prosecuting inspector should notify the DPP of the case being made by the defence; so as to afford the DPP an opportunity to respond.

11. On the date of the adjourned hearing on 6 December 2021, Inspector Lee referred to the court's powers under the District Court rules to amend charge sheets. In the case stated the learned District Court judge stated that in respect of the lack of specificity on the face of the charge sheet, she had posed the question whether the disclosure of the prosecution's statements to the defence in advance of the hearing, had clarified the offence to be met and as to whether she could take that into account in determining the issue. Statements of the prosecuting gardaí had been furnished to the defence on 25 January 2021. The judge requested that written submissions be furnished by the parties.

12. When the matter came before the court again on 3 March 2022, the learned District Court judge indicated that having considered the written submissions received from the

parties, and having regard to the relevant provisions in the District Court rules and the case law that had been referred to by the parties, she had decided to refer the following questions for the opinion of the High Court:

The opinion of the High Court is sought on the following questions of law:

(a) in the circumstances, does the omission of a detailed description of the behaviour that is alleged to constitute the offence charged, together with the omission to specify the regulation alleged to have been breached, result in a defective complaint?

(b) if the answer to (a) is yes, am I prohibited from exercising the discretion afforded me under the District Court rules and as expanded in case law to amend the charge and am I therefore obliged to dismiss the charge?

(c) If the answer to (a) is [yes], does the fact that disclosure had been provided to the defence in advance of the trial remedy any defect or prejudice that may arise from said omissions?

(d) if the answer to (a) is [yes], am I entitled to exercise my discretion to amend the charge to include the said omissions and continue with the proceedings?

(e) if the answer to (a) is no, has the accused been prejudiced to the extent that the exercise of my discretion to amend the charge to include the said omissions would be unjust?

Relevant Statutory Provisions.

13. There are a number of provisions in the District Court rules that are relevant to this case. Order 17 provides as follows:

(1) Whenever a person is arrested and brought to a Garda Síochána station, and is being charged with an offence, or where an offence is alleged against a person who is already on remand to the Court and a summons in respect of the offence is not issued, particulars of the offence alleged against that person shall be set out on a charge sheet (Form 17.1, Schedule B).

(2) When particulars of any offence are set out on a charge sheet in accordance with this rule, a copy of the particulars shall be furnished as soon as may be to the person against whom the offence is alleged.

14. The provisions of O.38(2) and (3) are relevant in relation to the power of a District Court judge to amend, *inter alia*, a charge sheet. They provide as follows:

(2) Subject to the provisions of paragraph (3), no objection shall be taken or allowed on the ground of a defect in substance or in form or an omission in the summons, warrant or other document by which the proceedings were originated, or of any variance between any such document and the evidence adduced on the part of the prosecutor at the hearing of the case in summary proceedings or in proceedings in the Court relating to an indictable offence, but the Court may amend any such summons, warrant or other document, or proceed in the matter as though no such defect, omission or variance had existed.

(3) Provided, however, that if in the opinion of the Court the variance, defect or omission is one which has misled or prejudiced the accused or which might affect the merits of the case, it may refuse to make any such amendment and may dismiss the complaint either without prejudice to its being again made, or on the merits, as the Court thinks fit; or if it makes such amendment, it may upon such terms as it thinks fit adjourn the proceedings to any future day at the same time or at any other place.

15. Section 10 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act, 2020, amended the Health Act 1947, by providing for the insertion of s. 31A into the 1947 Act. The section gave the Minister wide powers to make regulations for the purpose of preventing, limiting, minimising or slowing the spread of Covid-19 within the State. He was given the power *inter alia* to make regulations concerning the prohibition of events, or classes of events. Section 31A(6) provided that a person who contravened a provision of a regulation made under sub. (1) that was stated to be a penal provision, shall be guilty of an offence. The meaning of the word "event" was defined in sub-s. (16) as meaning a gathering of persons, as more particularly described therein.

16. As previously noted, S.I. 120/2020 provided that the State was the affected area for the purposes of the 1947 Act.

17. S.I. 121/2020 set out a number of regulations that were made by the Minister to prevent or limit the spread of Covid-19 within the State. Regulation 4 contained detailed provisions in relation to the restrictions of movement of applicable persons within the affected area. Regulation 5 provided for restrictions on events. Regulation 5(1) provided that a person shall not hold an event in a relevant geographical area unless it was a relevant event, or must not participate in such an event. A relevant event meant an event held for

the purpose of any matter which fell within any subparagraph of reg. 4(2), being in broad terms, events carried out for essential purposes of the types outlined therein.

Submissions on behalf of the Accused.

18. By agreement of the parties at the hearing of the case stated, it was agreed that the accused would go first. On behalf of the accused, Mr. Philip Sheahan SC submitted that the case made by the accused could be reduced to a number of relevantly non- controversial propositions. First, it was submitted that it was clearly established on the authorities that where an accused person was brought before a court, whether on foot of a charge sheet, or a summons, or on indictment, the critical requirement was that they should know with specificity the broad nature of the statutory or other offence with which they were charged and a broad statement of the behaviour on their part which was alleged to contravene the statutory, or other legal provisions. In essence, an accused was entitled to be given reasonable particulars of the statutory provisions that he was accused of breaching and of the behaviour that was alleged to constitute a breach of those provisions. It was stated that this was necessary to enable a defendant to know what case was being made against him and, what defences may be open to him. In this regard counsel referred to the decisions in *State (Sugg) v. O'Sullivan* (Unreported, High Court, Finlay P., 23rd June, 1980) and *Attorney General (McDonnell) v. Higgins* [1964] IR 374.

19. Counsel submitted that this requirement was clearly provided for in the rules of the District Court in relation to charge sheets in the provisions of O.17.

20. Secondly, counsel accepted that it was not necessary to set out the exact statutory provisions in great detail, nor was it necessary to set out in detail the behaviour that was alleged to constitute a breach of the statutory provisions; but he submitted that there was a minimal level of detail that had to be contained in the summons or charge sheet in order for it to be effective.

21. It was submitted that in this case there was no indication of what regulations it was alleged had been breached by the accused, nor was there any description of the behaviour that the accused was alleged to have engaged in on the relevant date, which was alleged to constitute a breach of the unspecified regulation. Counsel pointed out that an online search of statutory instruments from 2020, indicated that there were approximately fifty-three different enactments pursuant to the powers contained in s.31A in that year. It was submitted that there was no immediate method of accurately ascertaining how many penal

provisions were contained within those enactments, but it was submitted that there were in or around twenty such provisions, if not more. It was submitted that, in these circumstances, the charge sheet was so deficient in informing the accused as to what behaviour was alleged against him and what regulation he was supposed to have breached, that it was a nullity.

22. Thirdly, counsel accepted that there was a wide power of amendment given to a judge in the District Court to amend a summons, or a charge sheet. However, it was submitted, that the power of amendment could only arise where the charge sheet itself was effective in charging the accused with a specific criminal offence known to the law. It was submitted that in this case, the charge sheet did not do that. It was submitted that in this case the charge sheet had only referred to contravention of a penal provision of a regulation made under s.31A(6) of the 1947 Act, as amended. Counsel submitted that that did not in fact involve an allegation that the accused had breached any particular regulation, because s.31A(6) merely provided that a person who contravened a provision of a regulation made under sub-s. (1), that was stated to be a penal provision, shall be guilty of an offence. It did not specify any particular regulation, nor did it specify any particular behaviour. It was submitted that in these circumstances, the charge sheet was in fact a nullity.

23. It was submitted that that being the case, it was not possible for the District Court judge to exercise her power of amendment, because to do so would in effect create a new charge sheet in place of the old charge sheet, which was a nullity. It was submitted that that was not permissible at law. It was submitted that the court could not amend a document that was so fundamentally flawed. In this regard, counsel referred to the decisions in *MacAvin v. DPP* (Unreported, High Court, Ó'Caomh J., 14th February, 2003) and to *DPP v. Grimes* [2021] IEHC 484 and in particular to principle (7) in para. 20 thereof, which provided that, so long as the original complaint disclosed an offence known to the law, a defect in the wording (such as the addition of unnecessary words) would not be beyond the reach of amendment, citing *DPP (King) v. Tallan* [2007] 2 IR 230 and Walsh on Criminal Procedure, 2nd Ed, 2016, para. 14-73.

24. Fourthly, it was submitted that even if the learned District Court judge held that she did have jurisdiction to make an amendment in the circumstances arising in this case, the rules provided that she should only do so, if she was satisfied that such amendment could be made without prejudice to the rights of the accused. It was submitted that the combination of the lack of any reference to a specific regulation and the lack of any

particulars of the alleged behaviour by the accused which was alleged to constitute a breach of the regulations, taken together, made the complaint in this case so defective, as to render the complaint prejudicial. It was submitted that the amendments necessary to remedy that defect would be so drastic, that it must cause the accused prejudice. In these circumstances, it was submitted that the court should answer the relevant question in the case stated in the negative.

Submissions on behalf of the Prosecutor.

25. On behalf of the prosecutor, Mr. Feichín McDonagh SC accepted that O.17, r.1 of the District Court rules provided that particulars of the offence alleged against a person had to be set out on a charge sheet. He submitted that that requirement had been considered in *Attorney General (McDonnell) v. Higgins*, where the Supreme Court had upheld the amendment of the charge sheet to provide for a statement that the alleged behaviour was contrary to statute. It was submitted that it was not necessary to state with particularity the precise provisions of the statute that were alleged to have been breached. Counsel also referred to the decision in *DPP v. Grimes*, where Barrett J. had referred to the decision in the *Higgins* case and had held that the Supreme Court had set its face against “magical forms of wording” which were required to be included, in order for a charge to be valid. He had gone on to hold that there was no need for there to be precise citation of the relevant regulations, in order for the charge sheet to be valid.

26. It was submitted that in this case, the charge sheet clearly alleged that on a particular date and at a particular place, the accused had breached a penal regulation made under s.31A(6)(a) of the 1947 Act, as amended.

27. It was submitted that details of the allegation made against the accused, had been supplemented by the disclosure which had been made many months in advance of the trial and also by the submission of the prosecuting inspector at the outset of the trial, in which she had clarified the regulation under which the offence was alleged to have been committed. Finally, the court and the accused were given full details in the context of the evidence that was called before the learned District Court judge, which procedure had been consented to by the solicitor acting for the accused.

28. Counsel referred to the decision in *State (Duggan) v. Evans* [1978] 112 ILTR 61, where Geoghegan J. had held that what was of fundamental importance, was that the District Court judge was clear at all stages as to what the offence he or she was trying and that that

was clear to everybody in court. It was submitted that that essential requirement had been more than complied with in this case.

29. Without prejudice to that submission, counsel submitted in the alternative, that if the learned District Court judge was of the opinion that adequate particulars had not been given to the accused, to enable him to know what offence he was charged with and what behaviour was alleged to constitute breach of the statutory provisions, the District Court rules had given the judge wide powers to amend the charge sheet so as to ensure that the true matters in issue were properly determined at the trial. In this regard, the judge was given the power to remedy any defect or omission that there may be in the content of the summons or charge sheet. It was submitted that the authorities had clearly decided that the day was long past when justice could be defeated by mere technicalities see: *DPP v. Corbett* [1992] ILRM 674; *DPP v. Conniffe* [2002] 3 IR 554.

30. It was submitted that the only restriction on the wide powers that were given to a District Court judge to amend the charge sheet, were those set out in the rules, which provided that if the court was of the opinion that the variance, defect or omission, was one which had misled or prejudiced the accused, or which might affect the merits of the case, the judge could refuse to make any such amendment and could dismiss the complaint either without prejudice to its being made again, or on the merits, as the court thought fit; or if it made an amendment, it could upon such terms as it thought fit, adjourn the proceedings to any future date, or to any other place.

31. It was submitted that in this case there was no prejudice to the accused if the learned District Court judge came to the opinion that it was necessary to amend the charge sheet. This was due to the fact that the accused had been furnished by way of disclosure with statements from the two garda witnesses many months in advance of the trial in the District Court; the misapprehension of the accused's solicitor as to the particular regulation had been cleared up in advance of the commencement of the trial; and the evidence of the garda witnesses had been given without objection to the District Court judge for the purpose of enabling her to decide whether or not to make any amendments to the charge sheet. It was submitted that in these circumstances, there was no basis on which the accused could allege that he was prejudiced, either in relation to the exact nature of the offence with which he was charged, or in relation to the behaviour which was alleged to constitute the offence, or

in relation to any defence that he may have under the regulations in relation to the alleged offending behaviour.

32. It was submitted that in these circumstances, the rules of court, the relevant case law and the merits of the case, all supported the making of any necessary amendments by the District Court judge to the charge sheet and it was urged that this Court should so advise the learned District Court judge.

Conclusions.

33. Before coming to the specific issues that arise for determination in this case stated, it will be helpful to set out in very brief terms, some of the relevant legal principles which must guide the court in answering the case stated raised by the learned District Court judge.

34. First, it was accepted by both parties that an originating document which brings an accused before the court, be it a summons or a charge sheet, must set out with reasonable particularity the offence for which he or she is charged. In relation to charge sheets, that requirement is provided for in O.17 of the Rules of the District Court, which has been quoted above.

35. In *State (Sugg) v. O'Sullivan*, Finlay P. stated as follows:

"It has been stated before that the purpose of a summons bringing a person before the District Court on a criminal charge is to inform that person in clear and unambiguous language not only of the offence being alleged against him but also of the main or constituent facts surrounding that offence so as to enable him to prepare for his defence."

36. In *Attorney General (McDonnell) v. Higgins*, there are similar *dicta* in relation to the content of a valid charge sheet. In this regard, Kingsmill Moore J. stated as follows at p. 393:

"Subsequently, when the charge sheet is put before the District Justice and the final two columns are utilised by him to record his decisions, it becomes a document of the Court, but before the District Justice enters on the case it seems to me that there must be a complaint to him by some person, preferably but not necessarily the Superintendent, alleging the commission of the offences by the defendant with such particularity and details as are required by the authorities for a legal complaint. Only when this has been done is jurisdiction conferred to enter on the hearing of the case."

37. Secondly, the parties were also agreed that the District Court judge enjoys a wide power to amend any variance, defect or omission in a charge sheet or summons. This is specifically provided for in the rules of the District Court in O.38.

38. The leading case on the power of amendment is *State (Duggan) v. Evans*, where Finlay P. stated as follows:

"If on his own initiative or as a result of submissions made before him, a District Justice concludes that there is a defect in substance or form or an omission in the document by which a prosecution before him has been originated or that there is a variance between it and the evidence adduced for the prosecution, he is bound to proceed as follows:

1. He must first ascertain as to whether the variance, defect, or omission has in his opinion misled or prejudiced the defendant or might in his opinion affect the merits of the case.

2. If he is of opinion that none of these consequences has occurred he must either amend the document or proceed as if no such defect, variance, or omission had existed.

[...]

3. If on the other hand the justice is of the opinion that the frailty in the document has misled or prejudiced the defendant or if of the opinion that it might affect the merits of the case three alternative courses are open to him:

(a) He may dismiss the case without prejudice,

(b) He may dismiss the case on the merits,

(c) He may amend the document and adjourn the case upon terms."

39. There are dicta to similar effect by Lynch J. in *DPP v. Corbett* where the learned judge stated as follows at p.4:

"The day is long past when justice could be defeated by mere technicalities which did not materially prejudice the other party. While Courts have a discretion as to amendment that discretion must be exercised judicially and where an amendment can be made without prejudice to the other party and thus enable the real issues to be tried the amendment should be made. If there might be prejudice which could be overcome by an adjournment then the amendment should be made and an adjournment also granted to overcome the possible prejudice and if the amendment

might put the other party to extra expense that can be regulated by a suitable Order as to costs or by the imposition of a condition that the amending party shall indemnify the other party against such expenses."

40. The nature of the prejudice that may be required to prevent a necessary amendment being made to a charge sheet or summons, was considered by Humphreys J. in *Rostas v. DPP* [2021] IEHC 60, where he stated as follows at paras. 32 and 33:

"32. Unfair prejudice is something that may need to be considered in a number of procedural contexts, not simply an amendment. It also arises in respect of dismissal of proceedings or adjournment. In The State (Duggan) v. Evans [1978] 112 I.L.T.R. 61, Finlay P. noted that in deciding on procedural questions of the type at issue here, specifically whether to dismiss a charge or adjourn it where a defect in substance or form or an omission comes to light, the court "should have regard to the extent or nature of the misleading prejudice or possible effect on the merits of the case set against the requirements of justice between the prosecution and the defendant." But unfair prejudice is to be distinguished from merely being disadvantaged by a particular ruling or decision. The applicant contends that a striking out of the reference to causing annoyance has the effect that the prosecution didn't have to prove that. That is misconceived because the prosecution never had to prove that.

33. The appropriate alternative to striking out those words was to disregard them under O. 38 DCR. The inclusion of the words did not have the effect that an irrelevant point about annoyance suddenly had to be proved. In any event, that sort of argument is not the kind of prejudice that precludes an amendment because that argument could be made in response to the striking out of any surplusage. Fundamentally the problem for the applicant is that not just any old prejudice will do. It has to be prejudice rendering the amendment unjust: see D.P.P. v. Corbett (No. 2) [1992] I.L.R.M. 674 at 678, per Lynch J, who made the point that "[t]he day is long past when justice could be defeated by mere technicalities which did not materially prejudice the other party." In this specific context Finlay P. in The State (Duggan) v. Evans held that if the defect did not mislead or prejudice or affect the merits of the case, the judge "must either amend the document or proceed as if no defect, variance or omission had existed", viewing the requirement to rectify as imperative rather than discretionary in such circumstances."

41. Finally, in *DPP v. Grimes*, Barrett J. summarised the relevant law in relation to the content of originating documents and the amendment thereof. At para. 20 of the judgment, he set out eleven principles that arose from his analysis of the existing state of the authorities. I respectfully agree with his analysis of the authorities and adopt his statement of principles as set out therein.

42. Turning to the application of the relevant legal principles to the facts in this case, I am satisfied that the charge sheet in this case, is deficient in the level of detail which was furnished to the accused. The document alleged that on a particular stated date, at a particular stated place, the accused had contravened a penal provision of a regulation made under s.31A(6) of the 1947 Act, as amended, to prevent, limit, or minimise the spread of Covid-19, contrary to ss. 31A(6)(a) and 12 of the Health Act 1947, as amended. Thus, it was clearly alleged that he had breached a penal provision of a regulation made under s.31A(6) of the 1947 Act. By omitting to give any indication of what specific regulation the accused was alleged to have breached and by omitting to give any description of the behaviour on the part of the accused, that was alleged to have constituted a breach of the regulation, the complaint was defective. Accordingly, I would answer the first question raised by the learned District Court judge in the affirmative.

43. That brings the court to the key question in this case which is whether the learned District Court judge has the power to amend the charge sheet. I am satisfied having regard to the relevant provisions of the District Court rules and having regard to the case law cited above, that the learned District Court judge does have power to amend the charge sheet to enable the insertion therein of particulars of the specific regulation, the breach of which is alleged against the accused, and by insertion of a brief description of the behaviour on the part of the accused that is alleged to constitute breach of the regulation.

44. I do not accept the argument on behalf of the accused that the charge sheet in this case is so defective as to be a nullity and is therefore beyond correction by amendment. While the charge sheet was defective, because it did not specify the specific regulation that was allegedly breached by the accused, nor did it give a brief description of the alleged offending behaviour on his part, that did not render the charge sheet a nullity. It alleged that on the date and place specified, he had breached a penal regulation that was extant at the date of the alleged offence.

45. The relevant rules of court specifically provide that such defects and omissions can be remedied by the making of the necessary amendments. In *DPP v. Canniffe*, the Supreme Court had to consider whether the Circuit Court judge, sitting on appeal from the District Court, could amend a summons, which had mistakenly charged the accused with a breach of regulations that had been repealed by subsequent regulations, that were in force at the time when the alleged offence occurred.

46. The conviction in the District Court made it clear that the accused had been convicted of an offence contrary to the correct regulations. The Circuit Court judge had amended the summons to reflect the correct position. He stated a case for the opinion of the Supreme Court as to whether he had been correct in so doing. The Supreme Court held that the Circuit Court judge on appeal, could not amend the summons if the defect had led to an invalid conviction. The court remitted the matter back to the Circuit Court to receive evidence about whether the summons had been amended before conviction, or the District Court had clarified the nature of the trial. The clear import of the decision of the Supreme Court was that the court of trial had jurisdiction to make the necessary amendment and that the originating document was not a nullity because it had alleged the commission of an offence contrary to regulations that had been repealed.

47. In *DPP v. Grimes*, the accused had been prosecuted for possession of a controlled drug with intent to sell or otherwise supply it, otherwise than in accordance with the applicable regulations. The charge sheet had referred to regulations made under the relevant Misuse of Drugs Act, which regulations had been repealed when the offence was committed. The DPP had applied in advance of the scheduled hearing date, to amend the charge sheet to correct the regulations referred to therein. The learned District Court judge had held that it was not appropriate for her to amend the charge sheet. She stated a case for the opinion of the High Court. Barrett J., having reviewed the applicable case law and having set out the relevant principles, held that the District Court judge had been incorrect in deciding not to amend the charge and he answered the case stated accordingly.

48. I am satisfied that as the accused was charged with an offence known to the law in the charge sheet, albeit he was not given adequate particulars thereof, the charge sheet is defective, but is not a nullity; therefore, it is capable of being rectified by amendment, should the learned District Court judge be of opinion that it is appropriate to do so. Thus, in answer to question (b) the court is of the opinion that the District Court judge is not prohibited from

exercising her discretion to amend the charge sheet and she is not required to dismiss the charge.

49. Whether the learned District Court judge should exercise the power of amendment, is a matter for the decision of the learned District Court judge, based on all the evidence before her and on the submissions that may be made to her in that regard.

50. In looking at the issue of prejudice, the court is of the view that the making of disclosure is relevant in this regard. It was abundantly clear to the accused from January 2021, when the statements of Garda Hallinan and Garda Cleary were furnished to him, what exact behaviour on his part was alleged to constitute a breach of the regulations. That his solicitor may have operated under a misapprehension as to the applicable regulation, believing that the charge against his client related to a breach of reg. 6, which had not in fact been brought into force at the date of the commission of the alleged offences, is not a matter that can be laid at the door of the prosecution.

51. The court is of the view that the making of disclosure in this case, well in advance of the commencement of the trial and the clarification by Inspector Lee at the outset of the trial, that the accused was being prosecuted for breach of reg. 5, are matters which the District Court judge is entitled to take into account in considering whether or not there would be any actual prejudice suffered by the accused, if an amendment of the charge sheet were allowed.

52. The learned District Court judge can also consider whether, in the event that any prejudice is found by her to have arisen due to the defective wording of the charge sheet, that can be removed by either adjourning the resumption of the criminal trial, or by directing that the prosecution should start afresh on the adjourned date.

53. In relation to question (c), it was agreed between the parties that the question should read "[i]f the answer to (a) is yes", rather than 'no'. I have amended the question and answered the amended question accordingly. The court is of the view that the fact that disclosure was made, cannot of itself be regarded as remedying any defect in the lack of particulars given in the charge sheet. The court accepts the submissions that were made by counsel on behalf of the accused in this regard. It is not appropriate for the prosecution to make disclosure and use that as a means of "filling in gaps" that there may be in the originating document, which should set out with particularity the offence with which the accused is charged. Accordingly, the court would answer this question in the negative,

insofar as the making of disclosure does not remedy any defect in the content of the charge sheet. However, as already noted, the making of disclosure is relevant to the issue of prejudice that may be said to arise as a result of any lack of clarity in the charge sheet and any consequential amendment thereof. Accordingly, it is not possible to give a single one-word answer to the question raised at item (c) of the case stated.

54. In relation to the question raised at item (d) the court is satisfied that the learned District Court judge is entitled to exercise her discretion to amend the charge sheet and to continue with the proceedings, if she is of opinion that to do so would not result in undue prejudice to the accused in the conduct of his defence of the proceedings and that such prejudice cannot be removed by the granting of an adjournment, or the making of any necessary directions in relation to the further prosecution of the matter. Accordingly, the court would answer question (d) in the affirmative, that the learned District Court judge is entitled to exercise her discretion to amend, if she comes to the view that it is appropriate so to do.

55. Finally, in relation to question (e) raised in the case stated, the court cannot give an opinion on whether the accused has been prejudiced to such an extent that the exercise of discretion of the learned District Court judge to amend the charge to remedy the said omissions in the charge sheet, would be unjust. That is a matter for the decision of the District Court judge, having regard to the evidence that she has heard to date and having regard to any submissions that may be made in relation to the issue of prejudice by each of the parties. Accordingly, this Court declines to furnish any answer to question (e) raised in the case stated.

56. As this judgment is being delivered electronically, the parties will have one week within which to furnish brief written submissions on the terms of the final order and on costs and on any other matters that may arise.

57. The matter will be relisted for mention at 10.30 hours on 28th July, 2023 for the purpose of making final orders.