

## APPELLATE CRIMINAL.

Before Mr. Justice Benson and Mr. Justice Miller..

1907  
September 2  
13.

RAGHAVALU NAIDU (COMPLAINANT), PETITIONER,

v.

SUNDRAMURTHI MUDALI AND ANOTHER (ACCUSED),  
RESPONDENTS.\*

*Merchandise Marks Act, Act IV of 1889—Books are goods within the meaning of the Act—Indian Penal Code, s. 482—Ingredients of offence under.*

Books are 'goods' within the meaning of the Merchandise Marks Act of 1889. *Kanai Das Bairagi v. Radha Shyam Basack*, (I. L. R., 26 Calc., 232), followed.

Where a spurious publication by *K* of a book by *A* is identical with the genuine publication of *A*, the description in the title page of the former that it is the book of *A*, is not, if it is a trade description, untrue in a material respect as regards the goods to which it is applied.

To constitute an offence under section 482 of the Indian Penal Code, it must be shown that the goods were marked in a manner, reasonably calculated to cause it to be believed that they were the manufacture or merchandise of, or that they belonged to a person whose manufacture or merchandise they were not or to whom they did not belong. If this is shown it will be on the accused to show that it was not done to defraud any one.

THE facts are stated in the order of the Magistrate, the material portions of which are as follows :—

"The complainant has a proprietary right in the copyright of a publication entitled 'A Manual of Telugu Grammar.' This grammar is known in the market as 'Abboyyee Naidu's Grammar.' The gist of the complaint is that first accused unauthorisedly printed the grammar, and that second accused sold them. The complainant states that the contents of the spurious and genuine publication are exactly the same, the only difference being that, on the outer cover, a few words are introduced, a part of the preface omitted, and, on the reverse side, the list of books published by the same author is also omitted. These are of such a trifling

\* Criminal Revision Case No. 255 of 1907, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the order of J. B. Coombes, Esq., Presidency Magistrate, Georgetown, in Calendar Case No. 817 of 1907.

nature that the two books are practically identical, the large type which is intended to attract notice being 'Telugu Grammar' by 'Abbojee Naidu.' Counsel urges that the changes in the title page, preface, etc., were made for a particular reason, say to prevent complainant from instituting a civil suit; and that the case quoted in XXVI Bom., p. 289, is not on all fours and does not apply. In this particular case, no one was defrauded. On those facts counsel charges accused under sections 478, 489, Indian Penal Code, and section 7, Act IV of 1889.

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Assuming the facts stated to be true, is an offence disclosed? In this particular case, the idea that the book conveys to the purchaser is that the Telugu Manual is Abbojee Naidu's Grammar. It does not purport to be what it is not. It does not profess to say that it was printed by complainant in the "K.R." Press, for it distinctly states that it was printed at Bargavi Press. The "Manufacture," *i.e.*, the actual printing of the work is distinctly stated to be that of the Bargavi Press. What it does state is that it is the identical grammar written by Abbojee Naidu. From an examination of the genuine and spurious publication I find that the two copies are identical, and that, therefore, so far as the substance of the publication is concerned the accused did not attempt to pass off a spurious article as a genuine one. The book is Abbojee Naidu's, *verbatim, etc.*, I hold that the purchaser got what he wanted, *viz.*, Abbojee Naidu's Grammar, and therefore *he*, at all events, was not defrauded. Nor could that class of purchaser who wanted the particular publication or edition have been deceived for the origin of manufacture is printed and he was in a position to choose or reject any copy."

Mr. E. R. Osborne for petitioner.

N. Rajagopalachari for respondent.

JUDGMENT.—The complainant's case in effect is that the accused has, with intent to defraud, published a book, of which the copyright is vested in him (the complainant), and we may say at the outset that we have not been shown any reason why we should refuse our assent to the ruling in *Kanai Das Bairagi v. Radha Shyam Basaok*(1) that books are goods within the meaning of the Merchandise Marks Act IV of 1889.

(1) I. L. R., 26 Calc., 232.

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The complaint contains allegations of offences punishable under section 482 of the Indian Penal Code, sections 12 and 16 of Act XXV of 1867, and sections 6 and 7 of Act IV of 1889. The Presidency Magistrate has dismissed it under section 203 of the Criminal Procedure Code, finding, after examining the complainant, that it discloses no offence.

He has not dealt with the allegations in regard to the Act of 1867, but we have no reason to believe that the complainant withdrew them or professed his inability to prove them, and we think that enquiry should be made into them.

With regard to the charges under the Merchandise Marks Act, sections 6 and 7, the Magistrate following *Radha Krishna v. Kissonlal* (1) has held that the description on the cover of the book complained of is not a false trade description. If that part of the title which describes the book as "a Manual of Telugu Grammar by P. Abboyi Naidu" is a trade description it is not untrue in a material respect as regards the goods to which it is applied. It accurately describes the book to which it is applied.

Before us it was contended that the phrase "all rights reserved" is a trade description within the meaning of section 2 (2) (e) of Act IV of 1889. As applied to the book in question that phrase may be untrue but it is not perhaps very easy to see how it is untrue in a material respect. It may be however that the complainant can prove that it is so, and we must leave the question to the decision of the Magistrate.

With regard to the charge under section 482 of the Indian Penal Code the question will be whether the accused has marked the book in a manner reasonably calculated to cause it to be believed that it is the manufacture or merchandise of, or that it belongs to, a person whose manufacture or merchandise it is not, or to whom it does not belong.

It is contended that the name P. Abboyi Naidu is a property mark, used to denote that the books bearing that name on the cover are the property of the complainant, and are recognised as such in the Madras book market; in other words a buyer of books, say a schoolmaster, buying "a Manual of Telugu Grammar for the use of junior classes by P. Abboyi Naidu" asks for and believes that he is getting not merely a work of which P. Abboyi

(1) I. L. R., 26 Bom., 282.

Naidu is the author, but a book of which the complainant is the proprietor. RAGHAVALU  
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If this is made out, and if it be further shown that the accused has applied the name "P. Abboyi Naidu" to books published by himself, in a manner reasonably calculated to evidence the belief that those books belong to the complainant, it will then lie on the accused to show that what he has done was done without intent to defraud the complainant or any one else. v.  
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The question is a question of fact. To us it may appear that there are in the way of the complainant difficulties so great as to be almost insuperable : to others more conversant than we are with the book trade of the Madras Presidency the matter may bear a different complexion. The complainant will have to satisfy the Magistrate by sufficient evidence ; and it is not for us, on evidence having as yet been recorded, to say that he cannot do so.

The Magistrate is accordingly directed to make further inquiry into all the charges made by the complainant against the accused.

## APPELLATE CRIMINAL.

*Before Mr. Justice Sankaran-Nair.*

JOGHI KANNIGAN

v.

EMPEROR.\*

1908  
September  
11.

*Criminal Procedure Code, Act V of 1898, ss. 123, 397—Sentence of imprisonment on person already in prison under s. 123.*

A person committed to prison under section 123 of the Code of Criminal procedure is not undergoing a 'sentence' of imprisonment.

Where such a person is convicted of an offence and sentenced to a term of imprisonment, such term cannot, under section 397 of the Code of Criminal Procedure, be made to commence on the expiry of the period for

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\* Case referred No. 62 of 1908 (Criminal Revision Case No. 274 of 1908) for the orders of High Court, under section 438 of the Code of Criminal Procedure by the Acting District Magistrate of Chingleput in his letter, dated 1st June 1908.