

REVISIONAL CRIMINAL.

1930

April, 16.

Before Mr. Justice Muhammad Raza.

MUHAMMAD RAZA *alias* SHAMSHAD (*Accused-Applicant*) *v.* KING-EMPEROR THROUGH ABDUL SHAKUR (COMPLAINANT-OPPOSITE PARTY).*

Indian Penal Code (Act XLV of 1860), section 482—Trade mark—Infringement of trade mark, remedies open to aggrieved party—Registration, if necessary to acquire title to a trade mark—Acquiring exclusive title to a trade mark by user—Use of trade mark of another firm with deliberate and dishonest intention, whether an offence under section 482 of the Indian Penal Code.

Where the accused used the trade mark of another firm manufacturing *biri*, with deliberate and dishonest intention and with the object of passing his *biris* off as if they had been manufactured by that firm, *held*, that he was guilty of an offence under section 482 of the Indian Penal Code.

In India registration is not necessary in order to complete title to a trade mark, but where a firm has been using a distinctive mark for their goods for a number of years they acquire property in that mark as indicating that all goods which bear it have been manufactured by that firm.

A person aggrieved by the infringement of his trade mark has two remedies open to him: (1) he can institute criminal proceedings under the Indian Penal Code, or (2) he can bring an action for an injunction and damages; and, although the criminal court has a discretion in view of the peculiar circumstances of a particular case, e.g. if there exists a *bona fide* dispute as to the right to use a trade mark, or where there has been undue delay in commencing criminal proceedings to stay its own hands and direct the complainant to establish his rights in a civil court, it is nowhere laid down by the Legislature that an aggrieved person should seek his remedy in a civil court and not in a criminal court. *Banarsi Das v. The Crown, through Hansraj* (1).

*Criminal Revision No. 32 of 1930, against the order of L. S. White, Sessions Judge of Lucknow, dated the 13th of January, 1930, upholding the order of Khan Sahib Kunwar Bashir Ali Khan, Magistrate, 1st class, dated the 22nd of November, 1929.

(1) (1928) I.L.R., 9 Lah., 491.

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Messrs. *H. C. Dutt* and *S. M. Ahmad*, for the applicant.

Messrs. *Iqbal Ahmad*, *Manik Chand* and *Muhammad Husain Usmani*, with the Assistant Government Advocate* (*Mr. H. K. Ghosh*), for the Crown.

RAZA, J. :—This is an application in criminal revision. The applicant Muhammad Raza *alias* Shamshad has been convicted of an offence under section 482 of the Indian Penal Code and sentenced to a fine of Rs. 100 (or in default two months' rigorous imprisonment). His appeal was dismissed by the learned Sessions Judge of Lucknow on the 13th of January, 1930.

It has been found that the applicant used the trade-mark of the firm of Anwar Khan Mahboob, who manufacture *biris* in Jubbalpore, with deliberate and dishonest intention and with the object of passing his *biris* off as if they had been manufactured by that firm. The learned Sessions Judge has made the following observations in his judgment :—

“The learned Magistrate who tried the case found that both the label and the green strip used by the appellant are deliberate imitations of those used by the firm of Anwar Khan Mahboob and before dealing with the points raised in the arguments addressed to me it will be convenient to record at once that I entirely agree with the view taken by the learned Magistrate. In my opinion both the label and green strip are flagrant imitations of those used by Anwar Khan Mahboob, and in my opinion they are imitations used with deliberate and dishonest intention . . . The imitation is deliberate and the purpose of using the label and strip was to make it appear that the *biris* sold by the appellant were made by the Jubbalpore firm . . . It is a question

of fact whether the imitation has been such as to cause it to be believed that the goods on which it is used were the goods of some one else . . . We are concerned rather with what, as I have held, is a deliberate attempt to reproduce copies of Anwar Khan Mahboob, and before dealing with as to be calculated to deceive anyone except a very close observer. In fact there is, in my opinion, no question here of any *bona fide* dispute which should be settled in a civil court.”

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I have read the detailed and careful judgment of the learned Sessions Judge. So far as I see he has considered all the relevant questions very carefully. The applicant's learned counsel has contended before me that the lower court has not decided that the trade mark in question is the exclusive property of the opposite party. I think this contention is not well founded. The lower court has found in effect that the trade mark in question is the exclusive property of the firm of Anwar Khan Mahboob of Jubbalpore. The trade mark in question is a distinctive mark which the firm has been using ever since 1919. Anwar Khan Mahboob have acquired property in that mark as indicating that all goods which bear it have been manufactured by their firm at Jubbalpore. In my opinion the lower courts were perfectly right in holding that the charge under section 482 is made out against the applicant. I should like to refer to the case of *Banarsi Das and another v. The Crown through Hans Raj* (1). In that case a manufacturer of cotton thread balls having acquired by user (since 1917) the right to the mark "D. I" for the purpose of denoting his goods, prosecuted the accused who had lately begun to manufacture cotton thread balls and to attach the mark "D. I" and to imitate the mark and the "get up" of the complainant's label so closely that his goods were

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calculated to deceive purchasers into the belief that the accused's goods were those of the complainant. It was held that in India registration is not necessary in order to complete title to a trade mark, and there is no warrant for the broad proposition that a letter or a combination of letters cannot constitute a trade mark. It was further held that a person aggrieved by the infringement of his trade mark has two remedies open to him: (1) he can institute criminal proceedings under the Indian Penal Code, or (2) he can bring an action for an injunction and damages; and, although the criminal court has a discretion in view of the peculiar circumstances of a particular case, e.g. if there exists a *bona fide* dispute as to the right to use a trade mark, or where there has been undue delay in commencing criminal proceedings, to stay its own hands and direct the complainant to establish his rights in a civil court, it is nowhere laid down by the Legislature that an aggrieved person should seek his remedy in a civil court and not in a criminal court. I take the same view. The application must therefore be rejected.

Hence I dismiss the application.

Application dismissed.