

**Emperor Vs. Latif**

**Emperor Vs. Latif**

**SooperKanoon Citation :** [sooperkanoon.com/449812](http://sooperkanoon.com/449812)

**Court :** Allahabad

**Decided On :** Jul-25-1916

**Reported in :** (1917)ILR39All123

**Judge :** Lindsay, J.

**Appellant :** Emperor

**Respondent :** Latif

**Judgement :**

**Lindsay, J.**

1. This is the application in revision of one Latif Miyan who has been convicted of an offence under Section 482 of the 'Indian Penal Code, that is to say, the offence of using a false trade-mark

2. The facts as found by the court below are as follows : The accused and one Ali Miyan carry on business as commission agents in the bazar in Cawnpore and deal principally in sugar. A few doors away from the accused's place of business is the shop of another firm of commission agents called Hardeo Das and Kalyan Mal. This firm too deals in sugar, and the evidence is that they have established a special line of trade in hand-made sugar which they export from Cawnpore to Rajputana. It appears that they deal in machine-made sugar as well, but in the cases where they supply the hand-made article they have it put up in sacks

stamped with the name of their firm. The machine-made sugar on the contrary is supplied in the sacks as they come from the manufacturer. According to the evidence, when orders are placed for hand-made sugar, the complainant firm procures the goods from certain manufacturers in Ghazipur, Azamgarh and Ballia. This sugar is then put in bags bearing the name of the firm and passed on to the purchaser. The complainants say that in this way they have acquired a trade reputation and that their firm's name stamped on the bags is accepted as a guarantee that the bags contain hand-made and not machine-made sugar.

3. On the 9th March an employee of the complainants noticed outside the place of business of the accused a collection of forty sacks stamped with the name of the complainants' firm. Having ascertained that no bags bearing the name had been sold to the accused's firm he questioned the accused, who gave evasive replies. The police were communicated with and in the meantime the accused began to obliterate the marks. The learned Judge has held that the marks were a colourable imitation of the marks used by the complainants. The defence was that the sugar in these bags-machine made sugar-had been obtained to the order of a merchant named Qasim Miyan, and that it was the latter and not the accused who had put the marks on the sacks. This man was summoned as a witness for the defence, but his attendance could not be procured. The Judge was of opinion that in any case it was proved that the accused had abetted Qasim Miyan in the matter of affixing the false marks, and, as I have said, there is the evidence to show that it was the accused who began to obliterate the marks when the complainants' man went to inform the police.

4. It has been argued in the first place that on the facts found no case of 'using' the false marks was established against the accused. This contention is disposed of by what has just been said. The anxiety of the accused to cause the disappearance of the marks can only be attributed to the fact that he put them there himself or assisted in putting them there.

5. The principal argument has been that the mark which the complainants put upon their bags containing hand-made sugar is not a trade-mark. It is true that the complainants do not profess to manufacture this kind of sugar, but I think it is

established, that the hand-made sugar in which these complainants deal is their 'merchandise' within the meaning of Section 478 of the Indian Penal Code. It has been held that a distinctive mark may be adopted by a person who is not the manufacturer but the importer of goods, and he will acquire the property in that mark as indicating that all goods which bear it have been imported by him. *Ralli v. Fleming* (1878) I.L.R. 3 Calc. 417 and *Lavergne v. Hooper* (1884) I.L.R. 8 Mad. 149

6. As was observed in the judgement in the latter case, 'the object of the law in recognizing a right to trade-marks is to protect the public from fraud, to secure to a purchaser reasonable certainty that he is purchasing an article which has certain reputation in the market, and to secure to a manufacturer or selector the reward of his skill and care, the benefit of the custom which he deserves and which is intended for him' -*Millington v. Fox* ( ) My. and Cr. 338 : 45 R.R. 271.

7. Applying these principles here, we find that the complainants are selectors who import hand-made sugar to Cawnpore when they receive orders for it. They use the mark in question for the purpose of denoting that the sugar contained in bags so marked has been selected and imparted by them : their customers accept the mark as a guarantee that the sugar is hand-made, and by reason of the reputation so acquired for the mark the complainants have established a special trade to the benefit of which they are

8. I have no difficulty in finding, therefore, that the complainant firm's mark is a 'trade-mark' as defined in Section 478 of the Indian Penal Code and that the accused was rightly found guilty of an offence punishable under Section 482 of the Indian Penal Code. The application is dismissed.