

**Abdul Rashid Vs. Emperor**

**Abdul Rashid Vs. Emperor**

**SooperKanoon Citation :** [sooperkanoon.com/467452](http://sooperkanoon.com/467452)

**Court :** Allahabad

**Decided On :** Apr-06-1918

**Reported in :** AIR1918All109(2); 46Ind.Cas.402

**Judge :** P.C. Banerji, J.

**Appellant :** Abdul Rashid

**Respondent :** Emperor

**Judgement :**

1. The accused in this case has been convicted under Section 482 of the Indian Penal Code of having used a false trade-mark. The accused is the agent of the Burma Oil Company. The trade-mark which he is said to have used is the trademark of the Standard Oil Company of the United States. Since the war it had been agreed between different Oil Companies that tins belonging to one Company might be used by another Company, provided that the other Company put upon the cap of the tin a distinctive mark indicating that it was the oil of the Company which was using the tin. In the case of the Burma Oil Company they had to put on the cap the word 'Victoria' showing that the oil, though contained in the tin of the Standard Oil Company, was oil of the Burma Oil Company. It has been proved that the accused sold eight tins of kerosine oil to one Shekhar Chand. The caps of two of the tins bore the word 'Victoria', the remaining six had only plain caps. It is in respect of these tins that the accused has been convicted. Two questions arise in this case. The first is whether the accused used a false trade-mark and the second

is whether he has proved that he did not use the trade-mark with intent to defraud? As to the first point it has been fully established that in using tins which had plain caps on them he used a false trade-mark. Section 480 of the Indian Penal Code defines what is meant by a false trade-mark. According to that section whoever used any receptacle with any mark thereon in a manner reasonably calculated to cause it to be believed that the goods contained in such receptacle were the manufacture or merchandise of a person whose manufacture or merchandise they were not, was said to use a false trade-mark. In the present case if there was no mark on the cap the accused used a receptacle which was reasonably calculated to cause it to be believed that the goods contained in - the tin's were the manufacture of the Standard Oil Company, and not of the Burma Oil Company. Therefore in using the tins of the Standard Oil Company without putting on the cap the mark of the Burma Oil Company, he used a false trade-mark. We have next to see whether the accused has been able to prove that he acted without intent to defraud because if he proved that he had acted without such intention, he would not be punishable under Section 482 of the Indian Penal Code. The accused sold the tins in question to one Shekhar Chand. Shekhar Chand was examined as a witness and he clearly swore that at the time that he bought the tins from the accused the latter told him that they contained not the oil of the Standard Oil Company but the oil of the Burma Oil Company and that the price agreed upon was the price prevailing in the market of the Burma Oil Company's product. If that statement was true, there was no fraud in the case and it was apparent that there was no intention to defraud. There was nothing to show that there was any conspiracy or collusion between Shekhar Chand and the accused, Shekhar Chand is not a dealer who sells kerosine oil in the neighbourhood of the place where the accused carried on his business. The Courts below have not disbelieved him. If Shekhar Chand sells this oil, which he knew to be the oil of the Burma Oil Company and which he had purchased as such, as oil manufactured by the Standard Oil Company, he would be punishable under Section 486 of the Indian Penal Code but that would not justify the conviction of the accused under Section 482. This being so, it seems to me that the conviction under Section 482 of the Indian Penal Code cannot be sustained.

2. I allow the application, set aside the conviction and sentence and direct that the fine imposed on the accused, if paid, be refunded.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**