

A.N. Deen Vs. Jacob

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Court : Kerala

Decided On : Mar-04-1982

Reported in : 1982CriLJ2089

Judge : P. Janaki Amma, J.

Appellant : A.N. Deen

Respondent : Jacob

Judgement :

P. Janaki Amma, J.

1. The appellant in Criminal Appeal No. 470 of 1979 (hereinafter referred to as the Complainant) is the Sales Manager of the Pioneer Match Works, Sivakasi, which is a unit of M/s. Asia Match Company Private Ltd., Sivakasi. M/s. Asia Match Company Pvt. Ltd., is engaged in the manufacture and sale of safety matches under the Trade Mark 'Chavi'. The trade mark has been duly registered under the Trade and Merchandise Marks Act, 1958, Accused 1 and 2 are brothers. Their elder brother K. O. Davis is a licensee of two match factories viz., St. Mary's Match Works at Kattoor and Fathima Match Works at Kizhuthany, within the jurisdiction of the Chief Judicial Magistrate, Trichur. The licensee Davis is away in the Middle Eastt According to the complaint, the factories are being manned by the accused and they are controlling the industry. The income therefrom is appropriated by the accused. The accused used to affix labels on the match boxes one of the labels

being a photograph of 'Jocker' with the writing 'Jocker' and another with the writing 'Major'. The quality of matches manufactured by the accused being poor they could not compete with the 'Chavi' brand matches manufactured by the Pioneer Match Works of the complainant. The complainant subsequently came to know that the accused had falsified the trade mark 'Chavi' of the complainant and were using labels for their match boxes which were deceptively similar to that of the complainant. The complainant made enquiries and found that the accused after falsifying the trade mark of the complainant sold their matches and also exposed them for sale. The Swastik mark, the word 'superior quality' and the photograph of the Chavi shown in the label of the accused are similar in colour combination as that of the complainant's label, the only difference being that instead of 'Chavi' the word 'Thakkol' is used. The word 'Thakkol' and the word 'Chavi' indicate the same thing viz., a key. The purpose of imitating the label of the complainant by the accused is to deceive the public and to market their low quality matches and make an unlawful gain to the prejudice of the complainant. The complainant's firm was having an exclusive market in the Perumbavoor area, within the jurisdiction of the Judicial Magistrate, First Class, perumbavoor. The accused dumped their matches into this area under the false trade mark and sold them at a low price. The deception practised by the accused resulted in loss to the complainant. The action of the accused fell Under Section 77 of the Trade and Merchandise Marks Act 1958 (for short the Act) and is punishable Under Sections 78 and 79 thereof. A complaint was accordingly filed against the accused before the Chief Judicial Magistrate, Trichur.

2. The accused pleaded not guilty to the charges. The prosecution examined PWs. 1 to 5 and marked M. Os. 1 to 12. During the course of the examination PW-1 admitted that he has seen no document to show that the accused were either owners or occupiers of the Fathima and St. Mary's Match Works. The only evidence connecting the accused with the concern is that the first accused was present at the St. Mary's Match Works when a search was conducted by the police and he signed the search list as a representative of the occupier. The trial Court held that that by itself was not sufficient to show that the accused were in charge of the business in the factory. The court therefore concluded that the prosecution failed to prove that the accused falsified the trade mark of the complainant's

company or that they falsely applied the trade mark of the complainant to the match boxes. The accused were therefore acquitted of the offence under Section 78 of the Act, 1958. As regards the offence punishable under Section 79 of the Act, the trial Court held that since the place alleged was at Perumbavoor, outside the jurisdiction of the Chief Judicial Magistrate, Trichur, that court had no territorial jurisdiction to try the case. On the above basis, the 'further trial' of the accused for the offence under Section 79 of the Act was stopped and the accused were discharged. Criminal Appeal No. 470 of 1979 is filed by the complainant against the acquittal of the accused of the offence Under Section 78 of the Act. CrI. R. P. No. 499 of 1979 is filed by the same person against the discharge of the accused in respect of the offence punishable Under Section 79 of the Act.

3. The complaint proceeded on the footing that the accused manufactured the matches in the two factories referred to and sold them in the Perumbavoor area. The trial proceeded before the Chief Judicial Magistrate, Trichur, on the basis that the manufacture and sale were parts of the same transaction and therefore Under Section 220 of the Criminal p. C (for short the Code) the Court had jurisdiction to try both offences. This is not disputed by the accused.

4. The offences alleged being punishable with a term of imprisonment which may extend to two years the Court followed the procedure prescribed for a summons case. After the complainant examined five witnesses, the accused were questioned as provided in Section 313 of the Code. It was thereafter that the Court found the accused not guilty of the offence Under Section 78 of the Act and discharged the accused of the offence Under Section 79 of the Act.

5. The contention put forward on behalf of the complainant; is that the evidence in the case is sufficient for holding the accused guilty of an offence punishable Under Section 78 of the Act. Section 78 of the Act deals with falsification of trade mark. Of the witnesses examined in the case PW-1 alone speaks to the fact that the first accused was responsible for manufacturing the matches and for putting a false trade mark. The case alleged in the complaint is that the two match factories, St. Mary's Match Works at Kattoor and Fathima Match Works at Kizhuthany, were owned by K. O. Davis, a brother of the accused, and the two accused were

persons who were running the factories and controlling their work. Immediately after the filing of the complaint a search warrant was issued for taking into custody the blocks, dies of the labels, printed labels, match boxes and other articles in the two factories. Certain articles were seized from St. Mary's Match Works. The first accused was present at the time of the search and he has attested the mahazar. This is the sole circumstance relied upon by the complainant to show that the first accused has control over the industry and that he is responsible for the falsification of trade marks. But PW-1 during his cross-examination admitted that he does not know anything about the ownership of the factories. As matters now stand there is only the evidence regarding the presence of the first accused in the St. Mary's Match Factory from where the incriminating articles were seized. No articles were seized from Fathima Match Works, The mere fact that the first accused was present at the time of the search and recovery of the articles is inconclusive in showing that he was responsible for the running of the factory or for the falsification of the trade mark or for the use of the false labels on the matches. In the absence of more cogent evidence the trial Court was justified in acquitting the accused of the offence Under Section 78 of the Act.

6. What remains is the order discharging the accused of the offence Under Section 79 of the Act. The order of discharge is based on the ground that 'there is no evidence to show that the manufacture of the match boxes in Trichur District and their sale at Perumbavoor were done in the course of the same transaction'. The complainant as the petitioner in Crl. R. P. No. 499 of 1979 challenges both the order of discharge and the ground thereof. As already stated, the trial proceeded as in a summons case, Being a summons case, there was no occasion for framing a charge, In a summons case what the Court does on the appearance of the accused is to state the particulars of the offence, and to ask him whether he pleads guilty or has any defence to make, If the accused does not plead guilty the Court will proceed to record the evidence on the side of the prosecution, hear the accused and take the evidence' that the defence may produce. The Court will then either hold the accused not guilty or convict him. Section 255(3) of the Code empowers the Court to convict the accused of any offence which from the facts admitted or proved he appears to have committed, if the Magistrate is satisfied that the accused would not be prejudiced thereby, It is significant to note that

Chap. XX of the Code, which deals with trial of summons cases, does not contemplate a discharge of the accused. On this very ground the order of discharge passed by the Magistrate deserves to be set aside,

7. The further question is whether the order of discharge is otherwise sustainable for the reason that the Chief Judicial Magistrate, Trichur, had no local jurisdiction to try the offence Under Section 79 of the Act, According to the averments in the complaint the accused were responsible for the manufacture and sale of the matches. In other words, the complaint proceeded on the footing that the manufacture and sale of the matches formed a single transaction and a joint trial was permissible. In fact, Section 184 of the Code directs that in a case where more offences than one are committed in the course of the same transaction trial may be conducted by a Court competent to inquire into or try any of the offences. Therefore, in this case when the trial commenced the Magistrate had jurisdiction to try the offences under both Sections 78 and 79 of the Act.

8. The further point to be considered is whether the fact that the Magistrate found the accused not guilty of the offence Under Section 78 would affect the trial of the offence Under Section 79 of the Act. In other words, the question to be decided is whether the lack of evidence and the consequent acquittal in respect of the offence Under Section 78 of the Act would deprive the Court of the jurisdiction which it had to dispose of the case so far as it relates to the offence Under Section 79. Jurisdiction of the Court means the competency of the Court to try the case. This competency should ordinarily be decided before the trial starts. Trial in a summons case commences with the taking of the plea of the accused after his appearance. Examination of witnesses and hearing the accused on the evidence are different stages of the trial. It is pertinent to note that the heading of Chap. XIII is 'jurisdiction of criminal court in enquiry and trials'. It does not make any special mention of the jurisdiction to dispose of the case or jurisdiction to convict or acquit. If the trial Court had competency to try the case when the trial commenced and also when the trial proceeded, to hold that it has no jurisdiction to decide the case is something which does not appeal to reason. If by virtue of Sections 184 and 220 of the Code a person is tried by a particular Court for more than one offence, and after trial he is acquitted of one offence, on the ground that there is no evidence,

there is no meaning in saying that the Court is not competent to convict him of another offence for which also he was tried, merely on the footing that that offence was committed outside the local limits of the Court. In such cases, if the Court when it started trial had jurisdiction to try the offender in respect of all the offences as parts of the same transaction the acquittal in respect of one offence will not take away the jurisdiction to take a decision in respect of other offences.

9. It is now well settled that if the Magistrate is otherwise competent to try an offence, lack of local jurisdiction alone is not sufficient to vacate an order of conviction and that it is incumbent on the person who challenges the conviction to make out that he has been prejudiced by the trial. Under Section 462 of the Code no finding, sentence or order of any Criminal Court is to be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed took place in a wrong sessions division, district, sub-divisional or other local area, unless it appears that such error has in fact occasioned a failure of justice. In *Nasiruddin Khan v. State of Bihar* : 1973 CriLJ241 the appellant, a Sepoy of the Bihar Military Police V deserted the police force while on active service in Kashmir. He was tried for desertion at Patna and convicted for the offence. In appeal objection was raised that the Patna Court had no territorial jurisdiction. The objection was held to be non-meritorious in the absence of allegation of failure of justice,

10. I may also refer here the observations of B.P. Sinha C.J., in *Hiralal Patni v. Kali Nath* : [1962]2SCR747 :

It is well settled that the objection as to local jurisdiction of a Court does not stand on the same footing as an objection to the competence of a Court to try a case. Competence of a Court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand, an objection as to the local jurisdiction of a Court can be waived and this principle has been given a statutory recognition by enactments like Section 21 of the Civil P.C.

I may add, that Section 462 of the Criminal P.C. is based on the same principle.

11. In the present case, it cannot be said that the Chief Judicial Magistrate, Trichur, was not competent to try a case falling Under Sections 78 and 79 of the Act. There was therefore no inherent want of jurisdiction. No objection was raised when the trial started. No failure of justice is alleged on account of lack of territorial jurisdiction of the Chief Judicial Magistrate, Trichur. If that be the case, there is no justification for the Court to discharge the accused at the close of the trial on the sole ground that there was lack of territorial jurisdiction.

12. Assuming that the Chief Judicial Magistrate is not competent to proceed with the trial on the ground that that Court had no power to take cognizance of the offence on account of lack of territorial jurisdiction the proper course open is not to discharge the accused but to return the complaint for presentation to proper Court as directed in Section 201 of the Code. This is the procedure to be followed even if it is a case where the lack of jurisdiction was for the first time noticed after the trial commenced and at a later stage. (See State v. Amrutlal : AIR1964 Guj248 . But such a return of complaint is unnecessary here because the Court exercised jurisdiction by virtue of Sections 184 and 220 of the Code.

Criminal R. P. No. 499 of 1979 is allowed. The order of discharge is set aside. The case is remanded to the trial Court for disposal afresh according to law in so far as it relates to the offence Under Section 79 of the Act.

Criminal Appeal No. 470 of 1979 will stand dismissed.

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