

E.S. Olpadvolla Vs. James Wright

E.S. Olpadvolla Vs. James Wright

SooperKanoon Citation : sooperkanoon.com/871467

Court : Kolkata

Decided On : May-22-1928

Reported in : AIR1928Cal873,117Ind.Cas.691

Appellant : E.S. Olpadvolla

Respondent : James Wright

Judgement :

1. In this case the petitioner who is the proprietor of the well-known firm of Soda-water manufacturers called Byron & Co. has been convicted under Sections 483 and 486, I.P.C., and 6 and 7, Merchandise Marks Act. The short facts involved in this case are as follows : It appears that the complainant James Wright who is connected with a firm called Rose and Thistle has introduced into the market soda-water supplied in bottles with a 'frosted appearance bearing the letters 'R and T Ltd.' at the bottom of the bottles. These bottles have a special paper label bearing the words 'Rose and Thistle Ltd. Frosted Soda.' These bottles have a capsule called crown cork. It appears that in Calcutta there is a common practice for various kinds of bottles to be used by different mineral water manufacturing firms indiscriminately, that is to say, customers send in indiscriminately, Byron's bottles to Rose and Thistle in 'order that the bottles may be filled with soda-water or other waters and Rose and Thistle bottles to Messrs. Byron & Co., for a like purpose. The complainant says that the accused in this case has no right whatsoever to fill his bottles. The accused has stated before the Magistrate that he has no intention of filling the complainant's bottles but hat inasmuch as these

bottles are brought in by coolies and sent to the manufacturers in order that they may be filled in it is not possible for him to prevent what has happened in this case. The Magistrate observes that the complainant's manager admits that he has given orders in their factory that outsider's bottles will not be accepted; but he finds it difficult to get the order carried out owing to the fact that the men cannot read English and that the bottles are brought in indiscriminately. In these circumstances the complainant complained before the Magistrate in respect of the user of his bottles by Messrs. Byron & Co.

2. The Magistrate has found that the design of the bottle of the complainant described as a bottle with a 'frosted appearance' has been registered under the Patents and Designs Act, that the label is also registered under the said Act, but he states that the bottle itself is part of the complainant's trade-mark and he has accordingly gone into the case on that footing and has found that the accused has been guilty of counterfeiting the complainant's trade-mark and further that he has been selling goods with a mark i.e., with counterfeit trade-mark and has thereby rendered' himself punishable under Sections 483 and 486, I.P.C.

3. It is not necessary for us to refer to the sections in the Merchandise Marks Act because those sections follow closely the provisions of the Indian Penal Code in that behalf.

4. The first question is whether the accused is guilty of having committed an offence punishable under Section 483, I.P.C. The two ingredients mentioned in the section itself are, first, that there should be a trade-mark and, secondly, that there should have been a counterfeiting of the trademark.

5. Mr. James' first contention is that the design of the bottle being registered under the Patents and Designs Act, it is not a trade-mark because, having regard to the language used in the Patents and Designs Act, a design registered under the Patents and Designs Act cannot be a trade-mark as defined in Section 478, I.P.C. Secondly Mr. James contends that even assuming that the design of the bottle itself is a trade-mark there is no counterfeiting in this case having regard to the definition of the word counterfeit in Section 28, I.P.C. Thirdly Mr. James's contention is that having regard to the findings of fact arrived at by the learned

Chief Presidency Magistrate it is quite clear that what has happened has been done innocently.

6. So far as the last point is concerned it is abundantly clear from the judgment of the learned Chief Presidency Magistrate that he has found practically, if not in so many words, that there was no intention to do anything harmful within the meaning of Section 486, I.P.C., and that all that has happened has so happened in the usual course of business in this trade in Calcutta. It is not clear why the accused should be deprived of the benefit of the findings of fact arrived at by the learned Chief Presidency Magistrate when considering the words specified in Section 486, I.P.C. In our opinion it is clear that the accused has acted innocently within the meaning of Section 486 and that that being so the conviction and sentence under Section 486, I.P.C., must be set aside.

7. So far as the conviction under Section 483 is concerned, there is a good deal to be said in favour of the view that the bottle itself, frosted though it be, cannot be considered a trade-mark. At any rate, there is sufficient doubt on the facts of this case which would entitle us to give the benefit of the doubt to the accused. There is also considerable force in the contention that having regard to the language of Section 28, I.P.C., the case cannot properly be brought within the four corners of Section 483, I.P.C. In that view of the matter the conviction and sentence under Section 483, I.P.C., must be set aside.

8. It follows from what has been stated above that the conviction under the corresponding sections, namely, Sections 6 and 7, Merchandise Marks Act must also be set aside.

9. The fine, if paid, will be refunded.