

Haveli Ram vs The State on 5 September, 1955

Equivalent citations: AIR1956ALL132, 1956CRILJ183, AIR 1956 ALLAHABAD 132

ORDER

Roy, J.

1. This is an application in revision by Haveli Ram. He was charged by the Magistrate under Sections 482, 483 and 486, I. P. C. Upon the evidence that was produced before the Magistrate, the Magistrate was of the opinion (that offences under Section 482 and 483, I. P. C. were not made out, but the offence under Section 486, I. P. O. was established The learned Magistrate accordingly convicted the applicant under Section 486, I. P. C. and sentenced him to six months' rigorous imprisonment. In appeal before the learned Sessions Judge the conviction and sentence were maintained. The" applicant has accordingly come up in revision to this Court.

2. The facts may be briefly stated. Messrs. Lever Brothers (India) Ltd. is a joint stock company incorporated under the Indian Companies Act. They are manufacturers of certain well-known brands of soap known as the "Sun-Light" soap, 'Lux' and the 'Lifebuoy' soap. The names and the labels of these soaps are registered under the Trade Marks Act.

The company received complaints that spurious soaps with colourable imitation of the wrappers were afloat in the market in place of their genuine soaps at Kanpur. Accordingly the Company deputed its own officers to look into the matter. As a result of their inquiry the matter was put into the hands of the police. The police made certain searches; and search of the shop of Haveli Ram the applicant, situate in mohalla Dal Mandi, within police circle Collectorganj in Kanpur, was also effected.

As a result of that search 36 dozen cakes of soap marked with the imprint of 'Sunlight' soap with wrappers of the same description and three dozen cakes of soap with the imprint and wrapper of 'Lifebuoy' soap along with two cakes of genuine 'Sunlight' soap were recovered from his shop. Some of these soaps were displayed for sale by the applicant at the sale counter of the shop while the rest were kept in wooden boxes and in almiraha and also on the floor inside the shop itself.

The recovery was made according to law under a proper recovery memo, prepared by the police. At the trial the applicant contended that his shop was no doubt searched by the police in his presence on 4-4-1951, but he contended that only two cakes of genuine soap were actually recovered from his shop and the rest of it was not at all recovered from there.

His defence further was that he had incurred the wrath of the police by reason of the fact that when the shop of his neighbour Naraindas Chimanlal was being searched by the police, there were certain irregularities and illegalities and he had had the temerity of bringing that to the notice of the police on which account the police got annoyed against him and the police accordingly bolstered up a false case against him. Evidence was led on behalf of the prosecution in the testimony of Sri M. V. Peter, Officer In-Charge, legal Department Messrs. Lever Brothers (India) Ltd., Sri Bhagwan Swarup Saxena, Trade Marks Investigator of Lever Brothers (India) Ltd., and Sri Bam Nath, Ganeshi Lal and Sub-Inspector Manzoorui Nabi.

There was also the evidence of Sub-Inspector Ram Singh of the Special Investigation Staff, C. I. D., Kanpur, and Police Constables Sughar Singh and Bharat Singh. On the side of defence five witnesses were produced, namely Banwari Lal, Sobh Raj, Jagdish Narain, Ram Kumar and Sheocharan Lal. It was brought out in the cross-examination of Sub-Inspector Manzoorul Nabi that some of the offending articles were displayed for sale by the accused at his sale counter and the rest were kept in wooden boxes inside the shop as well as in almirahs and also on the floor of the shop.

It was further established beyond any shadow of doubt that 36 dozen cakes of soap bearing the imprint and wrapper of "Sunlight" soap and 3 dozen cakes of soap bearing the imprint and the wrapper of 'Lifebuoy' soap together with two cakes of genuine Sunlight soap were recovered from the possession of Haveli Ram the applicant. As has been found by the learned Magistrate, the soap had been exposed for sale at the shop.

Both the Courts below have found that the imprint and the wrappers were colourable imitations of the genuine soap manufactured by Messrs' Lever Brothers (India) Ltd. Upon the finding aforesaid the Magistrate was of the opinion, and with that opinion the learned Sessions Judge has concurred, that the charge under Section 482 or Under Section 483 was not made out but an offence under Section 486, I. P. C. was established.

It has been contended on behalf of the applicant that Section 486, I. P. C. mentions that whoever sells or exposes or has in his possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade-mark or property mark affixed to or impressed upon the same or to or upon any case, package or receptacle in which such goods are contained shall, unless he proves that having taken all reasonable precautions against committing an offence under this section he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade-mark, and that on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons of whom he obtained such goods or things, or that otherwise he had acted innocently, shall be punished.

It has been argued that since in the present case the allegation is not of counterfeiting a trademark or property mark, the case could not come within the four corners of Section 486, I. P. C. Section 486, I. P. C. refers to counterfeiting a trade-mark or property mark. The present case is not a case of counterfeiting. Here it was a colourable imitation of the trade-mark or property mark of genuine 'Sunlight' and Lifebuoy soap manufactured by Messrs. Lever Brothers, Ltd. Consequently Section 486, I. P. C. was not in my opinion properly applied to the case.

The facts and circumstances of the case and evidence on the record, however, establish an offence under Section 480, I. P. C. punishable under Section 482, I. P. C. The question in a case like this always is whether the alleged false trade-mark was likely to deceive the buyers in thinking that they were buying not the goods of the actual manufacturer, but that they were buying goods of some other manufacturer.

The test is not that the trade-mark in question is an exact or substantial copy of the trademark used by the complainant, but whether the imitation of the trade-mark of the complainant has been done in a manner likely to cause the trade-mark in question to be mistaken for the trade-mark of the complainant. It is the totality of impression which is likely to be left by the trade-marks in the mind of a probable purchaser that has to be considered. The differences on non-essential points are not important.

What is important is the main idea conveyed to the mind by the two trade-marks. If the marking on the goods or on the package in which the goods are marketed are similar in design, shape and colour-scheme with the marking of the complainant, as they are in the present case, it must be held that, although there may be differences in a detail between the two markings, the markings used by the accused were calculated to mislead the buyers.

The test of comparison of the marks side by side is not always a sound one, since a purchaser will seldom have the two marks actually before him when he makes his purchase; and marks with certain minor details or differences may yet have an element of similarity which will cause deception, more especially if the goods are in practice asked for by a name which denotes the mark or the device of the name on it.

In the present case the wrappers and the imprints on the offending articles used by the applicant for the purposes of sale and exposed by him for sale may reasonably be said to have calculated to cause it to be believed that the goods so marked or any goods contained in any such receptacle so marked have connection, in the course of trade with a person with whom they have not any such connection and such a use could be the use of a false trade-mark within the meaning of Section 480, I. P. C. punishable under Section 482 I. P. C,

3. Learned counsel for the applicant, relying upon a decision of the Patna High Court in -- 'Nehal Chand v. State of Bihar', AIR 1954 Pat 102 (A), has urged that persons who merely sell or stock the goods of the manufacturer who uses a false trade-mark cannot be held to have either committed the offence under Section 480 or to have abetted the commission of it. In that case there was no question that the goods were marked or that any goods, package or other receptacle meant to contain goods manufactured by other persons had been used.

There what the Court was concerned with was the marking of a case or package of 'biris' manufactured by the accused.

Upon a consideration of the facts and circumstances of that particular case it was held that Section 480, I. P. C. was not applicable. The present case is different on facts. In this case the applicant

cannot be said to have marked goods or any case, package or other receptacle containing goods, but he certainly used in a case, package or other receptacle with mark thereon in a manner reasonably calculated to cause it to be believed that the goods so marked or any goods contained in any such receptacle so marked have a connection in the course of trade with Messrs, Lever Brothers, Ltd., with whom they have not any such connection.

In my opinion therefore the decision in --'Nehal Chand v. State of Bihar', (A) referred to above is distinguishable on the facts. I am also of opinion that having regard to the facts of this particular case the applicant "must be deemed to have used the false trade-mark within the meaning of those words under Section 480, I. P. C. punishable under Section 482, I. P. C.

4. Under the provisions of Section 439, Criminal P. C. read with Section 423 of the same Code this Court has got the power in revision to alter the finding and maintain the sentence or, with or without altering the same, reduce the sentence, or with or without reduction or with or without altering the finding, alter the nature of the sentence but subject to the provisions of Section 106, Sub-section (3) not so as to enhance the same. Acting under these provisions I am of opinion that the conviction should in the present case be altered from Section 486 to one under Section 482, I. P. C.

5. There is next the question of sentence. It has been urged on behalf of the applicant that the applicant is a refugee from the Punjab and he has at his shop general articles of merchandise inclusive of soap in which he also stocked genuine Sunlight soap and it has been contended on that basis that, even if spurious soaps were found at his shop for which he himself was not personally liable because he himself had not manufactured them, a lenient view of the sentence should be taken, although technically he may be said to have committed an offence under Section 482, I. P. C. The evil of selling spurious goods instead of genuine goods is no doubt on the increase and in certain masters our experience is that the market is flooded on an unprecedented " scale with such spurious goods. Drastic steps should therefore be taken to eradicate this evil.

In the present case, however, having regard to the fact that the applicant is not said to be a manufacturer of spurious goods and also having regard to the fact that he is a refugee from the Punjab and he deals with general articles of merchandise inclusive of soap, where he keeps genuine products of Lever Brothers, Ltd., as well, it would serve the ends of justice if the sentence is maintained and reduced to the period already undergone by him. In the present case it appears from the record that he has undergone about one month and eight days of imprisonment. That would serve as an eye-opener to the applicant.

Under the circumstances I allow the application in revision to this extent that, while setting aside the conviction and sentence of the applicant under Section 486, I. P. C., I convict him under Section 482, I. P. C. and sentence him to the period of imprisonment already undergone by him. The order of forfeiture of the offending article is maintained. The applicant is on bail. He need not surrender to his bail.