

(1957) 11 MP CK 0016
In the Madhya Pradesh High Court
Case No : Criminal A. No. 38 of 1957

Chandkhan Noonkhan Musalman and Another

APPELLANT

Vs

Kishanlal Gangaram Parwal

RESPONDENT

Date of Decision : 03-11-1957

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 545
Penal Code, 1860 (IPC) — Section 482

Citation : (1958) MPLJ 182

Hon'ble Judges : A.H. Khan, J

Bench : Single Bench

Advocate : P.L. Dubey, for the Appellant; Manik Chand and Kak, for the Respondent

Final Decision : Allowed

Judgement

A.H. Khan, J.

The short facts leading to this revision are that the complainant Kishanlal, partner of the Jain Bidi Company, Guna, filed a complaint against Moti Khan and Chand Khan, proprietors of C.M. Bidi Company, alleging that the accused have used the false "trade mark". The trial Court convicted the accused u/s 482 of the Indian Penal Code for using false trade-mark and sentenced them to a fine of Rs. 250, and the complainants were also awarded compensation to the tune of 200 rupees u/s 545 of the Code of Criminal Procedure. Aggrieved by this decision, the accused filed an appeal before the Sessions Judge, Guna but that decision was confirmed by him. Now the accused have filed this revision.

I am surprised that the lower Courts have failed to consider an elementary point, which is so patent on the face of the record. The label fixed on the bundle of the complainants' Bidis bears No. "16", whereas the label on the bundle of the Bidis of the accused bears No. "19". The short question in the circumstances is whether in view of the two totally different numbers, it can be said that the accused have marked their labels in a manner reasonably calculated to cause it

to be believed that the goods so marked are manufactured by the complainants. The offence of using a false trade-mark is defined in Section 480 of the Indian Penal Code. It runs thus:

Whoever marks any goods or any case, package or other receptacle containing goods, or uses any case, package or other receptacle with any 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 a person with whom they have not any such connection, is said to use false trade mark.

A look at the above section would show that in order to establish a case u/s 480, the prosecution must prove that the accused marked his goods in a manner which reasonably showed to others that the goods so marked were the merchandise of some other person.

Now when the numbers on the packages are different (one is "16" and the other is "19"), I fail to understand how the accused can be said to have marked his goods in a manner reasonably calculated to cause it to be believed that the goods are other than those of the accused. The difference in numbers is so patent on the face of it that it cannot reasonably cause a misapprehension. It being so, I do not think that the lower Court was justified in convicting the accused.

Mr. Kak, Learned Counsel for the opponents before me, has argued vehemently and he has produced a number of authorities (Nehal Chand and Others Vs. The State of Bihar, , but I am sorry to say that they bear no discussion whatsoever on the point which is the basis of my decision, namely, the effect of difference in numbers on the two labels.

If there is a distinguishing mark, such as different numbers on the labels, then it cannot be said with any justification that the accused is guilty of "passing off".

For reasons stated above, I allow the revision and set aside the conviction and sentence of the accused. The fine if paid shall be refunded and the compensation if realised by the complainant, shall also be returned to the accused.