(1907) 02 CAL CK 0005

In the Calcutta High Court

Nemi Chand APPELLANT

Vs

Secretary of State for India RESPONDENT

Date of Decision : 20-02-1907

Acts Referred:
Penal Code, 1860 (IPC) — Section 480
Sea Customs Act, 1878 — Section 18

Citation : (1907) ILR (Cal) 511

Hon'ble Judges : Francis W. Maclean, C.J;Woodroffe, J;Geidt, J

Bench : Full Bench

Judgement

Francis W. Maclean, C.J.—This is an appeal from the decision of Mr. Justice Sale dismissing the suit of the plaintiff against the Secretary of State for India in Council, in which he claims Rs. 50,000 as damages against the Secretary of State, for the alleged wrongful detention by the Collector of Customs of Calcutta of certain bales of grey shirtings. The success of this appeal is dependent in a great measure upon the evidence in the case we have just disposed of. In that case we found as a matter of fact that the marks upon the plaintiff''s grey shirtings were a colourable imitation of those upon Messrs. Dewhurst''s goods. We do not propose to go again into that question and it has been conceded that the findings upon that question in the appeal just disposed of must be taken as conclusive upon the question of fact in the present suit. The question then is whether the Collector of Customs had power to detain the goods. That in effect is all that he has done, for though, as is pointed out in the previous case, the Collector ordered the goods to be reshipped, in point of fact that has not been done.

2. The powers of the Collector are derived from statute, namely the Sea Customs Act, VIII of 1878, amended by the Merchandise Marks Act IV of 1889. The question is whether the plaintiff''s goods are marked with a counterfeit trade mark within the meaning of the Act. u/s 18 of the Sea Customs Act as amended by the Merchandise Marks Act of 1889 "no goods specified in the following clauses [Clauses (a) to (f)] shall be brought, whether by land or sea into British

India" and Clause (d) refers to "goods having applied thereto a counterfeit trade-mark within the meaning of the Indian Penal Code, or a false trade-description within the meaning of the Indian Merchandise Marks Act 1889." The language of the section is strong, namely, that no goods of the class mentioned in the section shall be brought into British India; and, if that is so, and if the goods in question came within the specification mentioned in the section, it would be the duty of the Collector of Customs as representing the Government to stop the goods from being brought into British India. What we have to consider, therefore, is whether the goods in this case, "have applied thereto a counterfeit trade-mark within the meaning of the Indian Penal Code." That takes us to the Indian Penal Code (Section 28) which says, "A person is said to ''counterfeit'' who causes one thing to resemble another thing, intending by means of that resemblance to practice deception or knowing it to be likely that deception will thereby be practised." And the explanations to that section, which are important are as follows:

Explanation I. It is not essential to counterfeiting that the imitation should be exact.

"Explanation 2" which is very pertinent to the present enquiry runs as follows: When a person causes one thing to resemble another, and the resemblance is such that a person might be deceived thereby, it shall be presumed until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.

3. We entertain little doubt in this case, as a matter of legitimate inference, from the facts proved, that the plaintiff was the person who caused the marks on his cloth to resemble the marks on Dewhurst''s & Co.''s cloth, and there is no doubt as we have found in the previous case, that the resemblance is such that a person might be deceived thereby. If so, the presumption arises that the plaintiff intended by means of the resemblance, to practise deception or knew it to be likely that deception would thereby be practised. If that is so, the mark on the plaintiff''s goods is clearly a counterfeit trade-mark within the meaning off the Act.

4. It is contended that the Collector had no power to detain the goods as no regulations had been framed by the Governor-General; in Council under Sub-section (2) of Section 19A. The power of detention is clearly implied by Section 19A of the Act--apart from the positive words of Section 18 that no goods of the class specified are to be brought into British India. It is contended that the Collector could not act until and unless the Governor General in Council had framed Regulations under Sub-section (2) of Section 19A and, that no such Regulations had been framed, as apparently is the case, when the goods were detained. We do not think that the enabling power given to the Governor General in Council to frame Regulations can over-ride the prohibiting language of Section 18 or the implied power of detention, u/s 19A.

5. It is suggested that the plaintiff was not the person who caused the marks on his cloth to resemble those on that of Dewhurst & Co. We think as we have already said, that it is a perfectly legitimate inference from the evidence in the case that he was the person who caused the resemblance to be effected. For my own part, I think that the marks on the plaintiff''s cloth may properly be regarded as a "false trade-mark" within the meaning of Section 480 of the Indian Penal Code.

6. For these reasons, the appeal fails and must be dismissed with costs.

Geidt, J.

7. I agree.

Wooroffe, J.

8. I also agree.

