Dau Dayal

Vs

The State of Uttar Pradesh

Criminal Appeal No. 118 of 1958

(T. L. Venkatarama Ayyar, P. B. Gajendragadkar, A. K. Sarkar JJ)

24.11.1958

JUDGMENT

VENKATARAMA AIYAR, J. -

The facts leading up to this appeal are these : On April 26, 1954, the appellant was arrested by the Sisamau Police for offences under sections 420, 482, 483, 485 and 486 of the Indian Penal Code on the allegation that he was in possession of 25 packets of 'Chand Chhap Biri', which were alleged to bear counterfeit trade marks. On May 26, 1954, one Harish Chandra Jain acting on behalf of Messrs. Mohan Lal Hargovind Das filed a complaint charging that the appellant was in possession of counterfeit bidis, wrappers and labels and praying that a case under the sections above mentioned be registered and investigated. On that, the Magistrate passed the following order :

> "S. O. Sisamau. Please investigate and register a case."

After investigation, the police submitted their charge-sheet on September 30, 1954, and summons was ordered to the appellant on July 22, 1955. On September 17, 1955, the appellant filed an application before the Magistrate wherein he raised a preliminary objection that the proceedings were barred by section 15 of the Indian Merchandise Marks Act, 1889 (4 of 1889), hereinafter referred to as the Act. That section provides :

> "No such prosecution as is mentioned in the last foregoing section shall be commenced after the expiration of three years next after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens."

The contention of the appellant was that the offence was discovered on April 26, 1954, when he was arrested and the goods seized, and that, in consequence, the issue of process on July 22, 1955, was beyond the period of one year provided under section 15 of the Act, and that the proceedings should therefore be quashed as barred by limitation. The Magistrate rejected this contention, and a Revision Petition preferred against this order to the Additional Session Judge, Kanpur, shared the same fate. The appellant then filed a further Revision Petition to the High Court of Allahabad, being Criminal Revision No. 1594 of 1956, and the same was heard along with other similar Revision Petitions by a Bench consisting of James and Takru, JJ. By their judgment dated May 13, 1958, the learned Judges held that the prosecution commenced when the complaint was presented on May 26, 1954, and that as the discovery was on April 26, 1954, the proceedings were within time under section 15 of the Act. In view of the importance of the question raised, they granted leave to appeal to this Court under Article 134(1)(c) of the Constitution, and that is how the matter comes before us.

The point for decision is, when does a prosecution commence for purposes of section 15 of the Act, whether on the date when the complaint is preferred, or when the process is issued thereon ? The word "prosecution" is not defined in the Act, nor are there any provisions therein bearing on this question. Now, under the law and apart from statutory prescriptions, a prosecution commences, where it is at the instance of a private prosecutor, when the complaint is preferred. The position is thus stated in Halsbury's Laws of England, Vol. X, 3rd Edn., p. 340, para. 630 :

> "Criminal prosecutions, except where there are statutory provisions to the contrary, may be commenced at any time after the commission of the offence. A prosecution is commenced, when an information is laid before a justice, or, if there is no information, when the accused is brought before a justice to answer the charge, or, if there is no preliminary examination before a justice, when an indictment is preferred."

It is further stated there that different statutes provide for various periods of limitation within which a prosecution could be commenced after the commission of the offence, and that three years is the period provided for an offence under the Merchandise Marks Act, 1887, which corresponds to the Indian Merchandise Marks Act, 1889. It is therefore settled law that unless there is something to the contrary in the statute, when a private complaint is presented it is the date of presentation thereof that marks the commencement of the prosecution.

Now, what is the nature of the prosecution under section 15 of the Act ? It is relevant in this connection to refer to sections 13 and 14, which run as follows :

> Section 13 : "In the case of goods brought into India by sea, evidence of the port of shipment shall, in a prosecution for an offence against this Act or section 18 of the Sea Customs Act, 1878, as amended by this Act, be prima facie evidence of the place or country in which the goods were made or produced."
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> Section 14(1) : "On any such prosecution as is mentioned in the last foregoing section or on any prosecution for an offence against any of the sections of the Indian Penal Code, as amended by this Act, which relate to trade, property and other marks, the Court may order costs to be paid to the defendant by the prosecutor or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.
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> (2) Such costs shall, on application to the Court, be recoverable as if they were fine."

The object of the above provisions is to protect the rights of persons who manufacture and sell goods with distinct trade marks against invasion by other persons passing off their goods fraudulently and with counterfeit trade marks as those of the manufacturers. Normally, the remedy for such infringement will be by action in Civil Courts. But in view of the delay which is incidental to civil proceedings and the great injustice which might result if the rights of manufacturers are not promptly protected, the law gives them the right to take the matter before the Criminal Courts, and prosecute the offenders, so as to enable them effectively and speedily to vindicate their rights. It is for this reason that a short period of limitation is provided for their preferring a complaint under section 15 of the Act, and there is also a special provision for award of the costs of the proceedings to or by the complainant.

In Ruppell v. Ponnuswami Tewan ((1899) I.L.R. 22 Mad. 488), the question arose whether a prosecution launched by the complainant in 1898 in respect of goods sold and marked with what was alleged to be a counterfeit trade mark in 1893 was in time. In deciding that it was barred under section 15 of the Act, the Court observed as follows :

> "Section 15 of the Merchandise Marks Act IV of 1889, enacts that no prosecution such as the present shall be commenced after the expiration of one year after the first discovery of the offence by the prosecutor. The reason for this limitation is clear.
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> Ordinarily the infringement of a trade mark is rather a civil than a criminal wrong, but as civil proceedings may require much time and expenditure to bring them to a conclusion, the Legislature, in its anxiety to protect traders, has allowed resort to the criminal courts to provide a speedy remedy in cases where the aggrieved party is diligent and does not by his conduct show that the case is not one of urgency. If, therefore, the person aggrieved fails to resort to the criminal courts within a year of the offence coming to his knowledge, the law assumes that the case is not one of urgency, and it leaves him to his civil remedy by an action for injunction."

It will be noticed that the complainant is required to resort to the Court within one year of the discovery of the offence if he is to have the benefit of proceeding under the Act. That means that if the complaint is presented within one year of such discovery, the requirements of section 15 are satisfied. The period of limitation, it should be remembered, is intended to operate against the complainant and to ensure diligence on his part in prosecuting his rights, and not against the Court. Now, it will defeat the object of the enactment and deprive traders of the protection which the law intended to give them, if we were to hold that unless process is issued on their complaint within one year of the discovery of the offence, it should be thrown out. It will be an unfortunate state of the law if the trader whose rights had been infringed and who takes up the matters promptly before the Criminal Court is, nevertheless, denied redress owing to the delay in the issue of process which occurs in Court.

The appellant relies on certain decisions as showing that the prosecution must be held to commence only when process is issued and not when complaint is filed. In Sheik Meeran Sahib v. Ratnavelu Mudali ((1912) I.L.R. 37 Mad. 181), De Rozario v. Gulab Chand Anundjee ((1910) I.L.R. 37 Cal. 358) and Golap Jan v. Bholanath Khettry ((1911) I.L.R. 38 Cal. 880) cited by the appellant, the question was whether an action for damages for malicious prosecution would lie when the complaint was dismissed without notice to the plaintiff. It was held that the plaintiff could not be held to have been prosecuted unless process was issued to him and that where the complaint was dismissed without such process being issued, there was no prosecution and no action for damages in respect of such prosecution would lie. These decisions have no bearing on the present question. In suits for damages for malicious prosecution, one of the points to be decided is, whether the plaintiff was, in fact, prosecuted; and if he was, no question arises as to when the prosecution commenced. On the other hand, the point for decision in a prosecution under the Act is, not whether there was a prosecution but when it was instituted; and a question as to whether there was prosecution or not would be wholly foreign to it. Indeed, in an action for damages for malicious prosecution, when it is held that there was prosecution, that could properly be held to have commenced when the complaint was field and not when the process was issued. Vide the observations of Woodroffe, J., in the course of the argument in Golap Jan v. Bholanath Khettry ((1911) I.L.R. 38 Cal. 880) at p. 884. The decisions in Sheik Meeran Sahib v. Ratnavelu Mudali ((1912) I.L.R. 37 Mad. 181), De Rozario v. Gulab Chand Anundjee ((1910) I.L.R. 37 Cal. 358) and Golap Jan v. Bholanath Khettry ((1911)

I.L.R. 38 Cal. 880) therefore do not throw any light on the matter now under consideration. It may be that these decisions may have to be reconsidered in the light of the recent decision of the Privy Council in Mohamed Amin v. Jogendra Kumar Bannerjee ([1947] A.C. 322, 331), wherein it was observed :

> "The test is not whether the criminal proceedings have reached a stage at which they may be described as a prosecution; the test is whether such proceedings have reached a stage at which damage to the plaintiff results."

Vide also Ramaswami Iyer on The Law of Torts, 4th Edn., p. 318.

The decision in R. R. Chari v. The State of Uttar Pradesh ([1951] S.C.R. 312) was relied on by the appellant as showing that until process was issued, there was no prosecution. There, the appellant was proceeded against under the provisions of the Prevention of Corruption Act No. 2 of 1947. The Deputy Magistrate, Kanpur, issued a warrant for his arrest on October 22, 1947. Thereafter, on December 6, 1948, the prosecution obtained the necessary sanction under the Act. The contention of the appellant was that the prosecution must be held to have been instituted against him on October 22, 1947, when he was arrested, that as no sanction for his prosecution had been obtained at that time, the proceedings were bad, and that the defect was not cured by sanction being obtained subsequently on December 6, 1948. This Court held that under the special provisions of the Prevention of Corruption Act, the police had the power to arrest the appellant pending investigation and that was all the effect of the order of the Deputy Magistrate dated October 22, 1947, and that therefore there was no prosecution on the date of the arrest. But here, we are dealing with a private complaint, and as pointed out at p. 315 of the Report, section 190(1)(a) of the Criminal Procedure Code would apply to such cases, and the Magistrate must be held to have taken cognizance when the complaint was received. This decision, in our opinion, does not assist the appellant; nor does the decision in Gopal Marwari v. King-Emperor ((1943) I.L.R. 22 Pat. 433). There, considering sections 200 and 202 of the Criminal Procedure Code, the learned Judges observed that there was a distinction between initiation of proceedings before the Magistrate and his taking cognizance of the same. It is sufficient to say that that is not the question which we have got to decide here, and on the language of section 15 of the Act, which is what we are concerned with in this appeal, all that is required is that a private prosecutor should prefer his complaint within one year of the discovery of the offence, and if that is done, the bar under that section cannot apply. We agree with the decision of the learned Judges of the Court below that the proceedings are not barred by section 15 of the Act.

This appeal is accordingly dismissed.

Appeal dismissed.

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