

CALCUTTA HIGH COURT

Ashutosh Das

Vs

Keshab Chandra Ghosh

(Cunliffe ,J.)

29.05.1936

JUDGMENT

Cunliffe, J.

1. The opposite party in this case was convicted and fined in the Magistrate's Court under Section 483, I. P. C. for counterfeiting a trade mark. When the matter came on appeal to the Sessions Judge of Howrah, for the reasons which commended themselves to him, he ordered the acquittal of the opposite party and reversed the conviction and the sentence. The learned Sessions Judge took the view that the dispute between the parties (the complainant and the accused) was in reality a civil dispute and not a criminal one.

2. The facts revealed in the trial Court were somewhat curious. The, complainant, it appears, inherited a business from his father, a concern of manufacturing weights and measures with a special trade mark stamped on the various articles of weights and measures with the father's name incorporated in the design. It appears that the complainant carried on the business for a short while and then he abandoned it owing to extreme competition. The trade mark on the weights and measures had been registered as far back as 1897. The learned Sessions Judge found that the abandonment by the son of the business persisted for about 20 years, but after that lapse of time he recommenced the business in weights and measures only to find that the accused was carrying on trade, having adopted his father's on trade-mark stamped upon the weights and measures.

3. There is some evidence to show that there were other traders who had done the same thing. One of the tests which, is always applied as to whether a dispute between the parties over trade-marks and commercial designs should be allotted on the one hand to a civil Court, on the other hand to a criminal Court is the question of diligence in bringing the action. It has been held innumber of cases that if the criminal Courts observe that there has been a delay in asserting proprietary rights in designs, they will not entertain prosecution of that kind. From this point of view, I think it can be said that the laying by on the part of the complainant ought ordinarily to have driven him from the criminal Court into the civil Court.

4. Another point which has to be considered is, of course, the question of abandonment of user. Abandonment of user for such a lengthy period would militate very much against the success of

the plaintiff in a civil Court from obtaining damages or injunction. I do not say that it would be an insuperable obstacle to obtaining such relief, because it might be shown that there were stocks in existence of the articles which were still on the market in the hands of other people, but ordinarily it would be so. The real practical test, in my opinion, as to the difference controlling prosecutions with regard to statutory crimes of this character in civil actions is this, that the Criminal Procedure Code is only to be used in simple and clear cut cases where a very speedy relief is required by the prosecution. In all cases where complicated matters of registration, abandonment of user and so on are concerned, it is very much better that the dispute should be given to the civil Courts. Consequently, this Rule must be discharged.

Henderson, J.

5. In my opinion, it would be against the long and settled practice of this Court to interfere in revision in a matter of this kind. I therefore agree that this Rule should be discharged.