

1931 Present : Akbar J.

MOHAMED CASSIM v. YOOSOOF.

43—*P. C. Colombo*, 19,539.

Trade Marks Ordinance—Use of the word “registered”—Goods sold with trade mark—Ordinance No. 15 of 1925, s. 64—Cost of appeal—Criminal Procedure Code s. 352.

The use of the word “registered” in connection with a trade mark represents that registration of the trade mark had been obtained in terms of section 64 of the Trade Marks Ordinance, No. 15 of 1925.

Where an accused has appealed without good grounds the complainant is entitled to his costs under section 352 of the Criminal Procedure Code.

A PPEAL from a conviction by the Police Magistrate of Colombo.

H. V. Perera (with him *Gratiaen*), for accused, appellant.

F. A. Hayley, K.C. (with him *Garvin*), for complainant, respondent.

March 6, 1931. AKBAR J.—

The accused was charged with having represented that a certain trade mark was registered, when it was in fact not registered, an offence punishable under

section 64 (1) of the Trade Marks Ordinance, No. 15 of 1925. The Police Magistrate convicted him and sentenced him to pay a fine of Rs. 50 or in default six weeks' simple imprisonment. The trade mark in question represents a lion in a circle printed inside an umbrella. Below it there are these words “Registered Number 13972” and below this the name of the accused and his address appear; on the top of the circle there are the words “Best English Make”. It is admitted that the accused sold an umbrella bearing this mark to the agent of the complainant on September 24, 1930, and that the accused firm gave the purchaser a receipt stating that the umbrella was one of “J. C. & Co.’s” umbrellas. Mr. Perera for the accused argued that as the number was given after the word “registered” the accused had not committed an offence under section 64 (1). I do not see how this argument can be of any use, because by section 64 (2) a person is deemed to represent that a trade mark is registered if he uses the word “registered” or any word or words expressing or implying that registration has been obtained for the trade mark. The whole mark was a representation to the public that the mark in question had been registered in Ceylon as pointed out by the English Court in the case of *Wright, Crossley and Co. v. William Dobbins and Co.*¹ There was no indication in the mark that it was registered not in this country but in England. The facts in the case show that the accused had applied to register this trade mark in Ceylon on April 25, 1930. There was an opposition by the complainant and the matter is pending. It was after this application that the accused sold this umbrella. Mr. Perera argued that the Police Magistrate should have postponed this case until the decision of the application. I do not see how I can decide this point at this stage of the case. This is an appeal from a conviction under section 64. The

¹ (1898) *Reports of Patent Cases*, vol. XV., p. 21

only question I have to consider is whether such an offence was committed by the accused when he admittedly sold the umbrella on September 24, 1930. On the authority of the case I have stated above and on the authority of another case which will be found in the same volume of the reports, page 748, namely, the case of *MacSymons Stores, Ltd. v. Shuttleworth*, and the local case of *Sahib v. Mudaliyar*¹, it is quite clear to my mind that the judgment of the Police Magistrate is right. In these circumstances the appeal is dismissed. Mr. Hayley argued

that under section 352 of the Criminal Procedure Code he was entitled to his costs. It seems to me that the accused was ill-advised to appeal from his conviction, and by his action he has put the complainant to unnecessary expense. I think the justice of the case requires that he should pay the costs incurred by the complainant in the hearing of this appeal. The appeal is dismissed and the accused will pay the complainant the costs of the appeal incurred by the complainant as taxed by the Registrar of this Court.

¹ 31 N. L. R. 288.

Appeal dismissed.

