

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 1666 of 2011 (O&M)

Date of decision : 30.1.2018

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Malhotra Book Depot

.....Petitioner

vs.

Abdul Mazid and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Aayush Gupta, Advocate for the petitioner

Mr. A.S. Gill, Advocate for respondent No.1.

Mr. Saurav Khurana, Deputy Advocate General,
Punjab.

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H. S. Madaan, J.

Accused – Abdul Mazid faced trial by Judicial Magistrate Ist Class, Jalandhar, in a case registered vide FIR No. 148 dated 22.7.1988 for offences under Sections 420, 467, 468, 471, 120-B IPC, registered at Police Station Division No.3, Jalandhar and vide judgment dated 21.4.2008, he was acquitted of the charge framed against him.

Briefly stated, facts of the case as per prosecution story are

that the FIR in question was registered on the basis of written complaint submitted by complainant Sudarshan Kumar, addressed to the Superintendent of Police, Jalandhar, wherein he contended that he is a regular employee of Malhotra Book Depot, Jalandhar and holds power of attorney on behalf of the said firm to initiate and defend all the legal proceedings; that the complainant firm i.e. Malhotra Book Depot is engaged in the production and publishing of quality MBD Books (guide as well as text books) for students of school and colleges in various Indian languages and these books are being offered for sale throughout the country. The firm has got registered trade Mark as 'MBD' under the Trade and Merchandise Marks Act, 1958, The guides books published in the Malhotra Book Depot acquired special nomenclature in the market throughout India and those books have come to acquire the status of living with the students of schools and colleges for sure success in the examination. That on 10.6.1988, accused Abdul Mazid came to Jalandhar and contacted Subhash Chander Book Seller, Tanda Road, Jalandhar and offered to sell him in wholesale English Guide Books for XI class for which he had sufficient stock and offered to sell at cheaper rate than the market rate. Subhash Chander purchased one book from him promising to place order to the accused after thinking over the matter. Subhash Chander was known to the Manager of complainant firm and he contacted such Manager showing the book so purchased by him from Abdul Mazid. The Manager was shocked to note that book was not genuine but only spurious mark of MBD Subhash Chander handed over the said book to the Manager of the complainant firm.

Information was received that spurious and fake copies of MBD English Guide books meant for XI and XII classes were being printed and exhibited for sale in Jalandhar and other places of Punjab and Jammu and Kashmir. Complainant was deputed to visit Jammu and Kashmir in that regard. He accordingly, went there and visited several book shops. Accused Abdul Mazid was sitting in his shop. The complainant found huge stock of fake MBD English Guide Books for XI and XII classes lying in his shop. Those books looked similar in appearance to the genuine MBD books.

On receipt of complaint enquiry was conducted. Books were taken into police possession. Formal FIR was registered. Statements of witnesses were recorded.

After completion of investigation and other formalities, challan against accused Abdul Mazid was presented.

On presentation of challan, copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C. and then finding that prima facie case, charge under Sections 469, 468 IPC and 51(b) I, II and III, as well as Section 63 of Copyright Act, was framed against the accused, to which he pleaded not guilty and claimed trial and the case was fixed for evidence of the prosecution.

During the course of evidence of prosecution, the prosecution examined PW-1 Sham Sunder and PW-2 Balwant Rai Manager. Thereafter, since the prosecution failed to conclude its evidence, despite affording several opportunities, the evidence was closed by the Court by order.

Statement of accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against the accused were put to him but to which he pleaded false implication and innocence. The accused did not lead any evidence in defence.

After hearing the arguments, the trial Court had formulated the following points for determination.

- (i) Whether accused Abdul Mazid forged the books of MBD Company and cause damage or injury to MBD company?
- (ii) Whether the accused had himself printed these forged books or not?

After hearing the arguments, the trial Court acquitted the accused of the charge framed against him making the following observations:-

“In the instant case, the prosecution story is that accused Abdul Mazid printed the books of 11th class and 12th class with the trade mark of MBD and he presented that duplicate printed books of MBD mark before Subhash Chander owner of M/s Subash Book Depot Adda Tanda, for sale and Subhash Chander had suspicion that the book is faked and duplicate and he reported the matter to Balwant Rai, Manager of MBD books. The prosecution has examined PW1 Subhash Chander, but he did not deposed that the accused Abdul Mazid printed these duplicate books under the

trade Mark of MBD Books and he did not prove the books which was presented by the accused before him. Rather he deposed that he does not know that from where ASI had collected the books which were produced in the court. So, original book presented by the accused before Subhash Chander has not produced on the file and it is not proved on the file that accused has printed that very book under the trade mark of MBD. More so no comparison was made by the investigating agency with recovered and original books. No direct evidence has come on the file against the accused. From the evidence accused cannot be connected with the offence. In those circumstances, I am of the view that the prosecution has not been able to prove its case by leading cogent and reliable evidence. The Investigating Officer of this case has not been examined by the prosecution. No printing material has recovered from the accused. So, the points of determination are decided in favour of accused and against the prosecution.”

The said judgment of acquittal was challenged by way of filing an appeal. However, the said appeal was dismissed by the Additional Sessions Judge, Fast Track Court, Jalandhar, vide judgment dated 31.8.2010, as such the revision petition before this

Court has been filed, notice of which was given to the State and complainant.

I have heard learned counsel for the petitioner, learned State counsel, learned counsel for the complainant, besides going through the record and I do not find any merit in this petition. The judgment passed by the trial Magistrate is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. Therefore, I do not find any illegality or infirmity with the order under revision which might have called for interference by this Court, while exercising revisional jurisdiction. It is well settled that revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment under challenge. This is not the case here.

The criminal revision petition is found to be without any merit and is dismissed accordingly.

(H.S. Madaan)
Judge

30.1.2018

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No