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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 21846 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No
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JITENDRABHAI MOHANBHAI KRIPLANI
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR PREMAL S RACHH(3297) for the Applicant(s) No. 1
MR. MIHIR JOSHI, SENIOR COUNSEL WITH MR HASIT R VED(13794) for the Respondent(s) No. 2
MR. ROHAN SHAH, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE P. M. RAVAL**

Date : 07/09/2026

ORAL JUDGMENT

1. Petitioner before this Court has invoked provisions of Section 482 of the Code of Criminal Prosecutor, 1973 (for short "Cr.P.C."), praying to quash the set aside the FIR being C.R. No.11191026220492 of 2022, dated 19.10.2022, lodged before the Kalupur Police Station, Ahmedabad City, for the offences punishable under Sections 51, 63 and 64 of the Copyright Act, 1957, alongwith the consequential proceedings arising therefrom.

2. The facts narrated in the FIR qua the present petitioner in nutshell are that the complainant namely Vishalsinh Hirasinh by caste Jadeja, residing at House No.6/B, Madhukanj Society,

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Maninagar, and working as a Manager at Griffin Intellectual Property Service Pvt. Ltd. located at 107, Himalaya House, Palton Road, Mumbai. The company has been empowered by an authorization letter issued by Apple Inc. Corporation to take legal action against the persons who infringe upon copyrights or sell counterfeit iPhone, iPad, MacBooks, Mobiles and Mobile Accessories of Apple Inc. Corporation. On that basis, complainant's company has authorized complainant to take such action. In discharge of his duty, the complainant required to investigate persons who manufacture or sell counterfeit products including iPhone, iPad, MacBook, Mobiles and Mobile Accessories bearing the trademark of Apple Inc. Corporation and to initiate legal action against them.

2.1 The Company received private information that in the Kalupur area on Relief Road, inside the Murtimant Complex, on the second floor, in a shop named "Raj Cover House" as well as in Mangalmurti Complex on the ground floor in shops named "Raj Mobile Accessories", "Ravi Mobile Accessories", "Mangalmurti Cover House & Mobile" and "Ronak Mobile" the respective shop owners were selling counterfeit Apple Inc. iPhone back covers, date cables, toughened glass, desktop charges, and other itemized goods. Based on that information, complainant a preliminary private inquiry to verify the facts, which were confirmed to be true.

2.2. In this regard, the complainant met the D.C.P., explained the

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details regarding his company and the aforementioned shops, and submitted a written application requesting permission to inspect the said shops. The D.C.P. Zone-03, forwarded the application to the Kalupur Police Station. Thereupon, the complainant met the Police Inspector at Kalupur Police Station and informed the matter in details. The Police Inspector then directed the complainant to the Kalupur Chowki Surveillance Squad, the complainant met the officer in charge there, introduced his team members and company representatives, showed the necessary authorization documents, and acquainted him with the situation. The officer called upon other police personnel, including unarmed head constable – Hitenkumar Shankarlal (Buckle No.9087), unarmed police constable – Balvantsinh Sardarsinh (Buckle No.6515), unarmed police constable – Yuvrajsinh Rajendrasinh (Buckle No.12666), unarmed assistant police constable – Jaydevsinh Dashrathsinh (Buckle No.13270) and unarmed police constable – Dhaval Ambaram (Buckle No.6555), as well as representatives from complainant's company namely Pankajbhai Hirabhai Padmshali, Vinaybhai Fulchand Mehta, Balaram Amarsinh Thakor and Bhupendra Dahyabhai Vaghela. After briefing everyone on the facts, he ordered a raid on the said premises.

2.3. The officer then summoned two independent panchas from the vicinity of the police station, briefed them on the facts, and requested them to act as panchas for the raid. The panchas voluntarily agreed. Subsequently, the officer, other police personnel, the panchas, and

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company personnel traveled in private vehicles to the Murtimant complex located on Relief Road, Kalupur. Alighting on the roadside, they proceeded to the second floor of Murtimant Complex and conducted a raid on the shop named "Raj Cover House"

2.4. Inside the shop, one individual was present. Upon being questioned by the officer in the presence of the police team, the company members, and the panchas, he disclosed his identity as Jitendrabhai Mohanbhai by caste Kiplani, aged 39 years, occupation: business, residing at Flat No.1, Samiksha Apartment, near Punjabi Hall, Navrangpura, Ahmedabad City. Keeping that individual present, the officer, police personnel, and team inspected the shop in the presence of the panchas. During the search, goods infringing upon the copyright of Apple Inc. Corporation and bearing the Apple trademark were recovered, as follow:

1. iPhone AirPods-3: 52 units, valued at Rs.4,000/- each, total value: Rs.2,08,000/-

2. iPhone AirPods: 178 units, valued at Rs.2000/- each, total value: Rs.3,56,000/-

3. iPhone AirPods Pro: 179 units, valued at Rs.3000/- each, total value: Rs.5,37,000/-

4. iPhone C-USB Cable: 80 units, valued at Rs.1000/- each, total value: Rs.80,000/-

5. iPhone C+C 35W Power Adapter (Dock): 116 units, valued at Rs.1,500/- each, to value: Rs.1,74,000/-

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6. iPhone C Power Adapter (Dock): 110 units, valued at Rs.1,000/- each, total value Rs.1,10,000/-

7. iPhone Dual C Port Power Adapter: 12 units, valued at Rs.1,000/- each, total value Rs.12,000/-

8. iPhone Smart Watch: 8 units, valued at Rs.4,000/- each, total value: Rs.32,000/-

9. iPhone AirPods Pro Side Cover Sticker: 250 units, valued at Rs.2/- each, total value: Rs.500/-

10. iPhone Apple Mono Sticker: 650 units, valued at Rs.1/- each, total value: Rs.650/-

11. iPhone Apple Side Sticker with Bar code: 500 units, valued at Rs.1/- each, total value: Rs.500/-

12. iPhone Apple M.R.P. Sticker: 380 units, valued at Rs.1/- each, total value: Rs.380/-

13. iPhone Apple M.R.P. Sticker with Bar code: 63 units, valued at Rs.1/- each, total value: Rs.63/-

14. iPhone Apple Side Seal Sticker: 100 units, valued at Rs.1/- each, total value: Rs.100/-

2.5. The total value of these various counterfeit Apple items recovered and seized in the presence of the panchas for inspection amounts to Rs.15,11,193/-.

3. Learned Advocate Mr. Premal S. Rachh for the petitioner would submit that the product alleged to have been recovered from the shop of the present petitioner does not fall within the meaning of work in which copyright subsists, i.e., literary, dramatic, musical or

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artistic as per the provisions of Section 13 of the Copyrights Act, 1957. Thus, when the products seized by the police personnel does not fall within the parameters of Section 13, the invocation of Sections 63 and 64 of the Copyright Act are wrongly invoked against the present petitioner as the ingredients of the offences alleged are not satisfied, hence, argued to quash and set aside the impugned FIR.

3.1. Learned Advocate would further submit that on the plain reading of the entire FIR, neither literary, dramatic, musical or artistic work, cinematographic film, sound recording, program or performance in which the broadcast reproduction right or a performer's right subsists under the Copyright Act are not infringed. More particularly, when the entire case is based upon of selling duplicate products of the complainant company, and therefore, the product which have been seized, more particularly, iPhone Air Pod, iPhone C-USB, iPhone C+C 35W power adapter, iPhone C power adapter, iPhone dual C port power adapter, iPhone smart watch, iPhone Air Pod Pro side cover stickers, iPhone Apple mono sticker, iPhone Apple side cover sticker with bar code, iPhone Apple MRP sticker with bar code, etc., would not fall within the provisions of Section 2(c), namely artistic work nor fall within the definition of term infringing copy as defined under Section 2(m) of the Copyright Act. Learned advocate would further argue that nor does the allegations levelled in the FIR would attract Section 2(o), namely the literary work, since it includes computer program, tables, and

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compilations including computer database, which is not the case on hand, nor present case falls within the definition of 2(h), dramatic work, and is thus argued to quash the present FIR.

3.2. Learned Advocate Mr. Rachh would further submit that, if at all, it is a case of breach of trademark, then under such circumstances also, when there is an allegation of selling of duplicate products without obtaining opinion of the Registrar, which is mandatory, and only a police officer not below the rank of D.C.P. or equivalent can investigate the offence, and in the present case, investigation having been carried by PSI, by an officer below the rank of D.C.P., a case of trademark is also not made out since the complainant has made out a case of breach of trade mark, more particularly, Sections 103 and 104 of the Trademark Act. The said is also not attracted in the case on hand, and has thus, argued to quash the FIR.

3.3. Learned Advocate would further submit that the Copyright Act is concerned with the reproduction of either the painting, sculpture, drawing, engraving or photography or architecture work of art or product of artistic craftsmanship or a literary work of an author from being reproduced, however, is not concerned with the commercial production of commercial articles with the help of ideas borrowed from an artist, since the purpose of Copyright Act is not to prevent rival manufacturers from using the same idea or to prevent competition between them, but the same is to protect the original

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artwork from being reproduced.

3.4. Learned Advocate further submitted that the artwork used by the respondent No.2 - company in the course of business does not fall within the definition of an original literary, dramatic, musical, artistic or cinematographic film or record, but it purely falls within the definition as provided under the Trademarks Act or the Design Act, however, would fall under the Copyright Act. And thus, the FIR lacking the very basic ingredients to attract the penal provisions of the Copyright Act, which deserves to be quashed and set aside.

3.5. Learned Advocate would further submit that from the goods which have been found from the present petitioner's shop is concerned, cannot be said to be reproduction of the artwork/design on the product as manufactured and sold by respondent No.2 within the meaning of Section 13(1) and 14(c) of the Copyright Act. Thus, the use of the artwork/design by the petitioner cannot be said to be infringement of copyright, and therefore, the impugned FIR deserves to be quashed and set aside.

3.6. Learned Advocate drawing attention towards Section 15 of the Copyright Act would argue that in view of what has been provided in Section 15, the moment the artwork/design has been applied to the article more than 50 times by an industrial process, the copyright of the said artwork ceases, and therefore, also the impugned FIR is required to be quashed and set aside.

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3.7. Learned Advocate Mr. Premal Rachh for the petitioner would further submit that on careful examination of Section 63 which is foisted on the petitioner would go on to show that there has been an infringement in the work alleged to have been copied. However, there is no infringement of copyright at all in the case on hand. More particularly, the mobile accessories that the petitioner is selling does not fall within the scope of the ambit of copyright. And thus, Sections 51 and 54 of the Copyright Act are wrongly invoked against the present petitioner and the same does not pertain to any offence but provides for the power of police to seize infringing copies.

3.8. To substantiate his claim, the learned Advocate Mr. Premal Rachh would rely on the following authorities:

1. ***Mihir Surendrabhai Shah vs. State of Gujarat & Ors.***, reported in ***2023 (3) GLH 575.***

2. ***Binita Rahul Shah vs. State of Gujarat***, reported in ***2009 (0) AIJEL-HC 221331***.

3. ***Mayur Kanaiyalal Shah vs. State of Gujarat***, reported in ***2023 (0) AIJEL-HC 247430***.

4. ***Nainesh Chinubhai Patel vs. State of Gujarat***, reported in ***2013 (0) AIJEL-HC 230395***.

5. ***Dagubhai Musabhai Sheikh vs. State of Gujarat***, reported in ***2023 (0) AIJEL-HC 247011***.

6. ***Reckeweg and Co. Gmbh. and Ors. vs. Adven Biotech***

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Pvt. Ltd., reported in ***MANU/DE/0961/2008***.

7. ***Sandip S/o. Ramashankar Dube and Another vs. State of Maharashtra and Another***, decided by Hon'ble High Court of Judicature at Bombay Nagpur Bench, Nagpur, in ***Criminal Application (APL) No.1541 of 2025***.

8. ***Ashok Kumar vs. State of Punjab and Another***, decided by Hon'ble High Court of Punjab and Haryana at Chandigarh, in ***CRM-M-12823-2021 (O&M)***.

9. ***Maya Appliances Private Limited vs. Pigeon Appliances Private Limited***, reported in ***2004(4)CTC334***.

4. Per contra, learned Senior Counsel Mr. Mihir Joshi along with learned Advocate Mr. Hasit R. Ved for the original complainant and learned Additional Public Prosecutor Mr. Rohan Shah for the State would submit that the present complainant is authorized to lodge the complaint inasmuch as the special power of attorney executed on 15.10.2022 for the period of 2 years clearly recites that the constituted attorney or any officer appointed / nominated by M/s. Griffin Intellectual Property Services Pvt. Ltd. shall only carry out the powers hereby granted pursuant to instructions from an authorized representative of the company. Under the circumstances, the present complainant is authorized to lodge the FIR.

4.1. Learned Senior Counsel would further submit that the definition of literary work is an inclusive definition and therefore, the photographs, the packaging, the promotional material, the literature and the product literature found from the shop of the

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petitioner would fall within the meaning of Sections 2(c), 2(o) and 2(s) of the Copyright Act, 1957, and thus, the complainant - company who are the owners of the copyright who are vested with the rights therein and would amount to unauthorized reproduction of the plaintiff's literary and artistic work, which ultimately would amount to infringement of the copyright as per Section 51 of the said Act.

4.2. Learned Senior Counsel would also submit that literary work as provided under Section 13 of the Copyright Act is concerned, would include all works expressed in writing, irrespective whether such work have any literary merit or not. Learned Senior Counsel would also submit that Section 13 of the Act does not talk about originality of ideas, but merely states that the work in question should not be copied from some other work, but should originate in the author, being the product of his labour and skill, and has thus argued that when stickers, MRP with bar code, brochures/user manual which are literary work of the company of complainant, the petitioner has no authority to get it printed, more particularly, having deceptive and similar packing as well as writings which would squarely fall within the provisions of Section 13 of the Copyright Act which subsists in the company. And thus, literary work refer to written or printed matter in which the copyright subsists with the complainant - company would clearly fall within the four corners of the infringement attracting the penal provisions of the Copyright Act and has thus argued to reject the present petition.

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4.3. Lastly, it is submitted that even if the instruction manuals found with the goods sold by the petitioner under the name and style of the company of the complainant would amount to original literary work over which no other person has any right to copy the said work, over which the company has exclusive right only to exploit all the rights flowing from such ownership as set out in Section 14 of the Copyright Act. Under the circumstances, there is clear infringement of Section 51 of the Copyright Act, and petitioner having no license from the owner of the copyright, by selling such product with instruction manual, stickers and packaging which are the primary acts of infringement, has thus, argued to reject the present petition.

4.4. To buttress his arguments, learned Senior Counsel has relied on following citations:

1. ***Agarwala Publishing House, Khurja, District Bulandshahr vs. Board of High School and Intermediate Education U.P. Allahabad***, reported in ***1966 SCC OnLine All 124***.

2. ***Koninlijke Philips N.V. and Ors. vs. Amazestore and Ors.***, reported in ***MANU/DE/1390/2019***.

3. ***Microsoft Corporation vs. Mr. Deepak Raval & Anr.***, reported in ***2006 SCC OnLine Del 1670***.

4.5. Learned Senior Counsel for the complainant would further submit that the presence of duplicate / counterfeit Apple products in the petitioner's store were ascertained prior to conducting the search

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and seizure by the local police at the premises of the petitioner's store, pursuant to which photographs were taken by the complainant which would confirm the presence of duplicate / counterfeit Apple products in the petitioner's store bearing identical trademark used and registered by the Apple Inc Corporation. It is thus argued that these photographs *prima facie* demonstrate that the petitioner is liable for the offence punishable under Section 63 of the Copyright Act 1957, as he has unauthorizedly reproduced / copied / infringed the original literary work belonging to Apple Inc Corporation namely (i) labels and (ii) product literature (including instruction manuals). Thus, it is argued that these photographs would clearly indicate that the proprietary logo / device mark of Apple and various other trademarks of Apple Inc Corporation were illegally used on duplicate and counterfeit copies of Apple products which were being distributed, sold / offered for sale by the petitioner without having any authorization or license from Apple Inc Corporation. Thus, it is argued that the product literature / instruction printed on the packing as well as contained detailed instruction manual provided within the box would certainly qualify as original literary works of Apple Inc Corporation. More particularly, Apple Watch, AirPods and Apple Adapter would clearly indicate as to how separate offences under Trademarks Act, 1999, on one hand and Copyright Act, 1957, on the other hand, have been committed by the petitioner, and has thus, argued to reject the present petition which do not merit any interference by the hands of this Court at the very nascent stage.

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5. Heard learned Advocates for the respective parties. Under Section 13 read with Section 2(c) of the Copyright Act, 1957, copyright protection is strictly confined to original literary, dramatic, musical, or artistic works, sound recordings, and cinematograph films. Hardware components, cables, power adapters, and electronic devices are commercial industrial products. Misusing a brand name or producing duplicate hardware bearing a trademark constitutes falsification of Trade Marks punishable under Sections 103 and 104 of the Trade Marks Act, 1999, rather than an offence under the Copyright Act. As held in the case of ***Binita Rahul Shah*** (Supra) spare parts do not fall under "artistic or literary work." Attempting to prosecute duplicate commercial spare parts under Section 63 of the Copyright Act is an abuse of process. Thus, selling duplicate commercial items bearing a registered trademark cannot attract Section 63 of the Copyright Act unless the FIR explicitly establishes the existence of a copyrightable artistic work. Therefore, mere possession or sale of counterfeit commercial goods / accessories bearing brand labels does not fulfill the ingredients of Section 13/63 of the Copyright Act.

6. As far as counterfeit Stickers, Seals, and Packaging Labels (Apple Mono Stickers, Side Covers, MRP / Barcode Stickers, Seal Stickers - Items 9 to 14 as stated in the FIR), the FIR discloses only that the complainant (Vishalsinh Hirasinh Jadeja, Manager at Griffin Intellectual Property Service Pvt. Ltd.) was authorized by Apple Inc Corporation to take legal action against persons manufacturing or

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selling counterfeit iPhones, iPads, MacBooks, and mobile accessories bearing the trademark of Apple Inc Corporation. The FIR also discloses information regarding the location of shops in Murtimant Complex and Mangalmurti Complex selling counterfeit Apple covers, cables, chargers and toughened glass, followed by details of the police team and private panchas assembled for the raid. The FIR also discloses details of the search at "Raj Cover House" and the identity of the person present (Jitendrabhai Mohanbhai Kiplani). It lists recovered items 1 - 4 (AirPods and C-USB cables) with unit counts and valuations. It also discloses recovered items 5–14 (Power adapters, smartwatches, Mono stickers, side stickers, MRP stickers, and seal stickers) with unit counts and valuations, totaling Rs.15,11,193/-. As a matter of legal analysis, the FIR merely describes the seized items as "goods" infringing upon the copyright of Apple Inc Corporation and bearing the Apple trademark. It does not state that Apple holds copyright in any specific literary work (such as instruction sheets or user manuals) or artistic work (such as a specific graphical layout, original artwork, or visual packaging design). Copyright is purely a statutory right, and an FIR cannot invoke Section 63 without explicitly setting forth how the seized material satisfies the definition of a protected "work" under Section 2 read with Section 13. Without explicit pleadings in the FIR demonstrating infringement of an original literary or artistic work (such as manuals or graphical packaging artwork), the allegations relate solely to trademark misuse. Even the recovery panchnama is

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silent on the aspect of any recovery of user manual or instruction manual and reliance by informant by way of photographs which are not part and parcel of investigation papers but are placed on record by affidavit in reply cannot be relied upon. Consequently, criminal charges under Section 63 of the Copyright Act against hardware and standard stickers are vulnerable to being quashed under Section 482 Cr.P.C. / Section 528 B.N.S.S., leaving the matter to be governed strictly under the Trade Marks Act, 1999.

7. The FIR explicitly lists recovered items – AirPods, USB cables, power adapters, and smartwatches. Commercial hardware and electronic spare parts do not constitute "literary, dramatic, musical, or artistic works" under Section 2(c) or Section 13 of the Copyright Act, 1957. Selling duplicate goods bearing a registered logo or brand name attracts penal provisions for trademark falsification under Sections 103 and 104 of the Trade Marks Act, 1999. Converting a trademark violation into a Copyright Act offence is a misapplication of the statute.

8. It is the complainant's stand that the definition of "literary work" is inclusive, so promotional material, packaging and literature recovered from the shop fall under Sections 2(c), 2(o), and 2(s), making their reproduction a copyright infringement under Section 51. The product packaging, visual layouts, and logos are commercial identifiers governed by Section 2(zb) of the Trade Marks Act, 1999 (which explicitly includes packaging and combination of colors). An

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inclusive definition cannot be expanded to convert every commercial label or container into a literary work. Under Section 2(o), a literary work requires textual/literary authorship. The seizure memo in the FIR lists physical products (AirPods, adapters, cables) and functional stickers (MRP/barcode labels) are not independent literary creations. It is argued by Senior Counsel that Section 13 does not require artistic or literary merit – it only requires that the work originated from the author. Therefore, printing stickers, MRPs with barcodes, or user manuals constitutes copying written/printed matter in which copyright subsists and therefor *prima facie* attracts penal provisions of copy right Act.

9. Under Section 13, copyright subsists only in original literary works. An MRP price tag, a standard barcode, or a technical model sticker contains purely functional and factual data. Factual data or standard numbers cannot originate as an "original literary work" of authorship. Learned Senior Counsel's argument that instruction manuals found with the goods constitute original literary work under Section 14, and selling products with duplicate manuals and packaging infringes copyright under Section 51. However, on examining the actual seizure which this Court has perused from the papers of investigation [also for the case on hand list in the FIR Items 1 to 14], no instruction manuals or user leaflets were ever recovered or seized from the petitioner's shop. Learned Senior Counsel cannot invent a new factual foundation during oral arguments that is absent from the police recovery memo. Basic

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safety or operational instructions printed inside a hardware package are purely ancillary / functional text to a hardware device. The primary offence alleged is the sale of counterfeit Apple hardware (accessories), which falls squarely under Sections 103 & 104 of the Trade Marks Act, 1999. The complainant cannot camouflage a trademark dispute as a copyright offence to bypass procedural safeguards (such as search/seizure rules under Section 115 of the Trade Marks Act).

10. Following judgments are relied upon by learned Senior Counsel for the complainant:

Sr. No.	Case Name	Whether they apply to the facts of the present case or not
1.	Agarwala Publishing House v. Board of High School	**Distinguishable:** Dealt with actual educational question papers and books containing substantial literary authorship. Does not apply to commercial product stickers, MRP tags, or hardware accessories.
2.	Koninklijke Philips N.V. v. Amazestore	**Distinguishable:** Was a civil suit for permanent injunction where specific copyright ownership in product user guides and packaging design was formally proved with evidence. It does not lay down that a criminal FIR under Section 63 can be sustained without pleading or seizing such manuals.
3.	Microsoft Corporation	**Distinguishable:** Involved counterfeit software operating systems

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	v. Deepak Raval	(Windows/Office) and End-User License Agreements (EULA). Software programs are explicitly defined as "literary works" under Section 2(o). Electronic hardware (chargers, cables) does not enjoy this statutory status.

11. Whereas, learned Advocate for the petitioner has relied on following judgments and the crux of judgments are as follows:

Sr. No.	Case Name	Outcome	Reasons for Outcome
1.	Mihir Surendrabhai Shahvs. State of Gujarat & Ors.	Allowed (FIR/Criminal Proceedings Quashed)	• Lack of Locus Standi / Authorization: The complainant claimed to be an officer of "IPR Vigilance India Company," but failed to produce any document, authorization, or contract with Hyundai Motor Company permitting them to conduct searches or file complaints on their behalf. • Breach of Mandatory Proviso to Section 115(4): The investigating authority failed to obtain the mandatory prior opinion from the Registrar of Trade Marks before carrying out search and seizure. • Violation of Officer

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			Rank Requirement: Under Section 115(4) of the Trade Marks Act, 1999, search and seizure must be conducted by an officer not below the rank of Deputy Superintendent of Police (DSP). Here, the search and investigation were conducted by a Sub-Inspector (PSI).
2.	Binita Rahul Shah vs. State of Gujarat	Allowed (FIR/Criminal Proceedings Quashed)	• The dispute was essentially civil and commercial in nature without criminal intent (mens rea). • The complainant failed to establish essential statutory elements of copyright infringement under Sections 63 of the Copyright Act, making continuation of criminal proceedings an abuse of court process.
3.	Mayur Kanaiyalal Shah vs. State of Gujarat	Allowed (FIR Quashed)	• Merely selling duplicate or spurious hardware spare parts does not automatically constitute an offense of copyright infringement under Section 63 of the Copyright Act. • Relied directly on the Binita Rahul Shah principle, holding that civil disputes or

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			trademark issues cannot be improperly masked as criminal copyright offenses.
4.	Nainesh Chinubhai Patel vs. State of Gujarat	Allowed (FIR Quashed)	• The allegations in the FIR, even if accepted at face value, failed to disclose the basic statutory ingredients required to constitute an IP/trademark offense. • Invoked Section 482 CrPC powers to prevent malicious prosecution where no prima facie case was established.
5.	Dagubhai Musabhai Sheikh vs. State of Gujarat	Allowed (FIR Quashed)	• The complainant could not produce evidence of original ownership over a recognized "artistic work" or valid copyright creation. • Without establishing subsisting copyright ownership, criminal charges under Section 63 of the Copyright Act cannot legally stand.
6.	Reckeweg and Co. Gmbh. vs. Adven Biotech Pvt. Ltd.	Rejected (Injunction Application Dismissed)	• Numeric and alpha-numeric series (e.g., R-1 to R-75) used purely to designate homeopathic formulations lack sufficient inherent distinctiveness or artistic originality to claim

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			independent copyright protection. • The court found no prima facie case of passing off or copyright infringement to warrant an interim injunction.
7.	Sandip Ramashankar Dube vs. State of Maharashtra	Allowed (Application under Sec. 482 Allowed; FIR Quashed)	• Misapplication of law: Using a registered trademark on counterfeit goods attracts the Trade Marks Act, 1999, not Section 63 of the Copyright Act. • An FIR registered under the Copyright Act for what is strictly a trademark dispute is legally unsustainable and must be quashed.
8.	Ashok Kumar vs. State of Punjab	Allowed (Petition Allowed; FIR Quashed)	• Non-compliance with mandatory statutory procedure under Section 115(4) of the Trade Marks Act, 1999 (failure to obtain the mandatory prior opinion from the Registrar of Trade Marks and search conducted below the rank of DSP). • Procedural statutory safeguards under the Trade Marks Act are mandatory; non-compliance invalidates the search, seizure, and

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			consequential proceedings.
9.	Maya Appliances Pvt. Ltd. vs. Pigeon Appliances Pvt. Ltd.	Allowed (Interim Injunction Granted in favor of Plaintiff)	• The plaintiff successfully proved prior continuous adoption and extensive use of the trademark/brand, building significant goodwill and reputation. • The defendant's adoption of a deceptively similar mark for identical kitchen appliances created a high likelihood of consumer confusion, establishing a clear case for passing off.

12. Thus, the judgments relied upon by learned Advocate for the petitioner are helpful in the following manner:

A. Mandatory Statutory Non-Compliance (Trade Marks Act): Cases No.1 and No.8 prove that criminal proceedings under the Trade Marks Act are legally void if the investigation was conducted by an officer below the rank of DSP (e.g., a PSI) or carried out without the mandatory prior opinion of the Registrar of Trade Marks under Section 115(4).

B. Misapplication of Copyright Law to Commercial/Spare Parts Disputes: Cases No.2, No.3, No.5, and No.7 establish that selling generic or duplicate commercial spare parts does not constitute criminal copyright infringement under Section 63. Further, trademark counterfeiting disputes cannot be improperly converted into copyright FIRs.

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13. Failure to establish *prima facie* rights & *locus Standi*: Cases No.1, No.4, No.6, and No.9 demonstrate that private agency representatives cannot register FIRs without written authority, nor can parties claim exclusive copyright / trademark protection over generic, functional, or non-distinctive components / part numbers without meeting strict statutory standards. However, these cases are not helpful to the petitioner as far as locus for lodging FIR is concerned, as it would be evident for the recitals of the document relied by learned advocate for the complainant that authority is already given to the Agency and in turn any authorized person of that agency is also equally authorized to lodge FIR. Thus, the contention of complainant having no locus to lodge FIR is not tenable thus, rejected.

14. Having arrived at the finding that the invocation of Section 63 of the Copyright Act, 1957, is wholly impermissible and unsustainable in law *qua* commercial hardware, this Court is now called upon to examine whether the proceedings can be permitted to continue under the penal provisions of the Trade Marks Act, 1999 – specifically Sections 103 and 104. Since the learned Senior Counsel for the complainant / State strongly argued that even if Section 63 of the Copyright Act is dropped, the factual matrix disclosed in the FIR clearly establishes a *prima facie* case of falsifying trademarks and selling goods bearing false trade descriptions under the Trade Marks Act, 1999. It was submitted that a mere wrong labeling of statutory provisions in an FIR would not disentitle the investigating agency

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from proceeding under the appropriate penal law.

15. This Court is unable to accept the aforesaid submission. Where a special statute provides a specific mechanism and attaches mandatory statutory safeguards before an act of search, seizure, and criminal prosecution can be initiated, the investigating agency cannot be permitted to bypass such statutory mandates under the guise of investigating another offense. The prosecution under the Trade Marks Act, 1999, collapses in its entirety on the following statutory and procedural grounds:

> Section 115(4) of the Trade Marks Act, 1999, contains an unambiguous statutory proviso as follows:
>
> > "Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar on facts involved in the offence relating to trade mark and shall abide by the opinion so obtained."

16. A bare perusal of the FIR narrative and the police record reveals that no prior written opinion was ever sought or obtained from the Registrar of Trade Marks regarding the validity, registration, or comparison of the trade marks before executing the raid at Raj Cover House. The Legislatures in its wisdom enacted Section 115(4) as a mandatory guardrail to prevent arbitrary police raids on commercial establishments at the behest of private corporate entities. Obtaining the Registrar's opinion is a statutory condition precedent, not a mere technical formality. Search and seizure

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executed in total defiance of Section 115(4) renders the search void *ab initio*, and any evidence gathered pursuant to such an illegal raid is legally vitiated.

17. Further, Section 115(4) of the Trade Marks Act, 1999 mandates:

> "No police officer below the rank of Deputy Superintendent of Police or equivalent shall search and seize without warrant…"

18. From the explicit recitals in the FIR, it is evident that the initial application was forwarded by the D.C.P. Zone-03 to the Kalupur Police Station. The actual raid, search, and seizure were executed under the command of a Police Inspector along with Head Constables and Police Constables (Buckle Nos.9087, 6515, 12666, 13270, and 6555). A Police Inspector or Head Constable is an officer below the rank of Deputy Superintendent of Police (DSP) / Assistant Commissioner of Police (ACP). Consequently, the entire search and seizure operation was carried out by officers lacking the statutory authority and jurisdiction to act under the Trade Marks Act, 1999. It is a settled canon of criminal jurisprudence that the law does not permit a party to achieve indirectly what it is expressly prohibited from doing directly.

19. The record demonstrates a clear pattern of colourable exercise of power. The complainant-company, fully aware that a raid under the Trade Marks Act, 1999, required prior opinion from the

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Registrar and execution by a DSP rank officer, deliberately dressed up a pure trademark dispute as a "Copyright Infringement" under Section 63 of the Copyright Act, 1957. This subterfuge was employed precisely to bypass the statutory checks of Section 115 of the Trade Marks Act and obtain an immediate raid through local station-level police officers, more so, when it is the case of the complainant that by making prior visit he found such articles being sold remained indolent on the aspect of obtaining prior opinion form the Registrar and the execution by a DSP rank officer for conducting investigation and or raid under such circumstances, Courts of law cannot act as silent spectators to such procedural circumvention. Allowing the Complainant / State to now "convert" or fallback upon Trademark charges would amount to sanctioning a deliberate evasion of statutory mandate. The arguments raised by the learned Senior Counsel attempting to bring commercial packaging, MRP stickers, and hardware items under the umbrella of 'literary work' under Section 2(o) are legally unsustainable. The FIR and seizure memo fails to disclose the recovery of any original literary work or user manuals. The dispute essentially pertains to the alleged falsification of a registered trademark on commercial accessories, which attracts the Trade Marks Act, 1999, and not the Copyright Act, 1957.

20. In light of the above discussion:

(i) The allegations in the FIR do not satisfy the statutory

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ingredients of Sections 13 and 63 of the Copyright Act, 1957, as commercial hardware do not constitute 'artistic or literary works'.

(ii) The penal provisions under Sections 103 and 104 of the Trade Marks Act, 1999, cannot be sustained or substituted, as the search, raid, and seizure were executed in flagrant breach of the mandatory provisions of Section 115(4) of the Trade Marks Act, 1999 (absence of Registrar's opinion and execution by an unauthorized officer below the rank of DSP).

(iii) Permitting the continuation of the criminal proceedings under the impugned FIR would be nothing short of an abuse of the process of Court and would cause grave miscarriage of justice.

21. Accordingly, the present petition is Allowed. FIR being C.R. No.11191026220492 of 2022, dated 19.10.2022, lodged before the Kalupur Police Station, Ahmedabad City and all consequential proceedings arising therefrom *qua* the present petitioner are hereby quashed and set aside.

22. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(P. M. RAVAL, J)

NITIN MAKWANA

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