

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE -I KANNUR	
Present:- Sri Mohammed Ali Shahshad, Judicial First Class Magistrate-I, Kannur	
Dated this the Tuesday the 21 st day of April, 2026 (01 st day of Vaisakha, 1948 S.E)	
<u>CC 1033/17</u>	
Complainant	: State rep. by Sub Inspector of Police, Kannur Town Police Station (in Cr. No. 490/17 of Kannur town P S) (By Sri. Satheesan P, APP Gr-II, Kannur)
Accused	Krishna Kumar.G, aged 36/17 : S/o. Ganeshan, Thekkumbath House, Aramkottam, Azheekode (P.O) (By Adv. Sri. K. Sahadevan)
Offence	: U/s 420 IPC and Sec. 63(A) of Copyright Act, 1957
Pleading	: Not Guilty.
Finding	: Not Guilty.
Sentence or Order	The accused is found not guilty of the offence punishable U/s.420 IPC and Sec. 63(a) of Copyright Act, 1957 and he is acquitted u/s 248 (1) of Cr. P.C. He is set at liberty and his bail bond stands cancelled.

<u>Description of Accused</u>					
Sl. No	Name	Father's Name	Occupation	Residence	Age
1	Krishna Kumar.G	Ganeshan	--	Aramkottam, Azheekode (P.O)	36/17

Date of:-		
Offence	:	29.04.2017
Complaint	:	29.04.2017
Apprehension	:	24.06.2017
Release on bail	:	27.06.2017
Commencement of trial	:	09.05.2018
Close of trial	:	17.04.2026
Sentence/Order	:	21.04.2026
Service copy of judgment	:	

J U D G M E N T

The case is charge sheeted by the Sub Inspector of Police Kannur Town in Crime No. 490/17 for the offences punishable U/s. 420 IPC and Sec. 63(a) of Copyright Act, 1957.

2. **The prosecution case in brief is as follows:** The accused run a shop bearing No. CB-40/2802 by name “Ninakayi” situated at Kannur Railway Station Road. On 29.03.2017, the accused was found to be in possession of selling counterfeit cosmetic products branded as “Baby Lips,” falsely representing them as genuine products of L' Oreal Paris and Maybelline New York, without any authorization or license from the said company. The accused dishonestly induced customers to purchase the same and thereby committed cheating. Further, by reproducing and using the label, packaging, and work associated with the said brands without permission, the accused infringed the

copyright of the said company. Therefore, the accused is alleged to have committed the aforementioned offence.

3. The accused appeared before the Court on receiving summons. He was enlarged on bail. Copies of relevant prosecution records was furnished to him. After hearing both sides and after perusing the materials available before the Court, it is found that there is ground for presuming that the accused had committed the offence. Hence, charge was framed against the accused U/s. 420 IPC and Sec. 63(a) of Copyright Act. When charge was read over to the accused in Malayalam, he pleaded not guilty and claimed to be tried.

4. On the side of the prosecution, PW1 to PW8 were examined and Ext. P1 to P8 and MO1 and MO2 were marked. On closure of prosecution evidence, the accused was questioned under Sec.313(1) (b) Cr.P.C. He denied the incriminating circumstances put to him and maintained innocence. No oral or documentary evidence has been adduced on the side of Defence.

5. Both sides were heard.

6. Now the points that arise for consideration are:-

1) Whether the accused on or before 29.03.2017 at the shop bearing No. CB- 40/2802 by name “ninakayi” situated at Kannur Railway Station Road run by the accused, unauthorizedly sold counterfeit products of ‘baby lips’ which is a branded product of ‘L’ Oreal Paris and Maybelline, Newyork’ Company, and without the permission or authorization of the company in violation of the Copyright Act as alleged?

2) Whether the accused cheated the Government and public by offering those counterfeit products for sale as alleged?

3) If the offence is proved, what is the order or sentence?

7) Point No.1 and 2:- PW1 deposed that she was working as a Senior Investigator at Perfect Intelligence Service Pvt. Ltd., which was handling IPR matters of L'Oréal Paris and Maybelline New York and she was the power of attorney holder of the said company. She further stated that during the relevant period, she had come to Kannur for a market survey, and while doing so, she entered a shop named "Ninakayi," where her assistant purchased a product called "Baby Lips," which was found to be a counterfeit of the products of the company and no bill was issued for the same. She lodged Ext.P1 FI statement and Ext.P2 is the authorization letter issued in her favour. Pursuant to Ext.P1 FIS, the police conducted a search in the shop and seized three boxes containing 12 "Baby Lips" products each. Out of the 38 products, 2 were in liquid form, and all the products bore the inscription "Baby Lips" in a style similar to the artistic work of her company, but without any batch number or expiry date. Further, 36 products were marked as MO1 series and the liquid products as MO2. According to her, MO1 and MO2 series were not genuine products of the company but were made to resemble their artistic work and that selling such counterfeit products amounts to cheating the company and causes loss to both the company and the government.

8. PW7, the detecting officer, deposed that on the basis of Ext.P1 FIS, he registered Ext.P5 FIR. He prepared and forwarded the advance search memorandum to the court and thereafter proceeded to the shop named “Ninakayi” situated on the opposite side of Kannur Railway Station, conducted search and seized counterfeit “Baby Lips” products (MO1 & MO2 series) as per Ext.P3 search list. He produced the same before court as per Ext.P6 property list. Further, he arrested the accused on 24.06.2017 and Ext.P7 series are the arrest and inspection memos and filed Ext.P8 report to incorporate the address of the accused.

9. PW4 and PW6, the then Sub Inspectors, deposed that on 29.04.2017, they accompanied SI Unnikrishnan (PW7) to conduct a search at the shop “Ninakayi” situated on Kannur Railway Station Road. PW4 stated that she witnessed the seizure of 38 such products of Baby Lips (MO1 series), which did not contain batch number, trademark details, or manufacturing date as per Ext.P3 search list.

10. PW2 deposed that he signed Ext.P3 search list at the shop “Ninakayi” situated in Sameer Arcade building complex opposite Kannur Railway Station and witnessed the seizure of MO1 series articles from there. PW8 deposed that he took over the investigation, verified the investigation and filed the final report before the court.

11. The learned counsel for the accused argued that the prosecution failed to establish its case beyond reasonable doubt. It was argued that although PW1

deposed that MO1 and MO2 series were seized and they were similar to the original products of L'Oréal Paris and Maybelline New York, the prosecution has not produced any original products before the Court for comparison, nor was any scientific analysis or expert evidence adduced to prove that the seized items were counterfeit. It was further argued that the prosecution failed to examine the copyright owner or any duly authorized representative to prove ownership of the alleged copyright or alleged infringement. On the other hand, the learned APP submitted that the evidence on record, including the testimonies of the PW1, PW4 and PW5 and the seizure of MO1 and MO2 series would prove the commission of the offence by the accused beyond reasonable doubt.

12. At the outset, let me analyze the evidentiary value of the testimony of PW1. It is pertinent to note that PW1 appeared before the court and her chief examination was recorded and his cross-examination was adjourned for want of time. Though the matter was adjourned for cross-examination, PW1 failed to appear thereafter. It is a trite known that the evidence includes not only the chief examination but also cross-examination and, if necessary, re-examination. In this case, since PW1 neither appeared nor subjected herself to cross-examination, her testimony remains incomplete and untested. In the absence of cross-examination, this Court is of the considered view that the incomplete testimony of PW1 cannot be relied upon or taken into account for the purpose of appreciating the evidence on record.

13. One of the contentions by the defence is that the accused had neither possession of, nor any connection with the shop from which MO1 and MO2 series were allegedly seized. I have analysed the evidence in this regard. The evidence of PW3, the revenue officer along with Ext.P4 certificate only proves the ownership of the building, which stands in the names of Puthiyapurayil Kadar Haji, Palakkeel Fathima and Palakkeel Salim. Though PW3 deposed that the assessment register would reveal the person in possession of the premises, it is evident that PW7 did not make any attempt to collect the said document. PW7, the detecting and investigating officer, candidly admitted that no investigation was conducted to ascertain who was actually in possession of the shop. His evidence shows that he came to know that the accused was running the shop based solely on the alleged confession of the accused, which has no evidentiary value. Further, PW7 admitted that he did not verify the assessment registers to verify the person in possession. It is noteworthy that the IO had not taken any effort to collect any documentary evidence such as licence, rent deed or tenancy records to connect the accused with the shop.

14. The testimony of PW5, one of the co-owners of the building, also reveals that premises had been let out to one Subaida and not to the accused. It is also pertinent to note that the search and seizure were conducted on 29.04.2017, whereas the arrest of the accused, as evidenced by Ext.P7 series, was effected only on 24.06.2017, nearly two months later. Thus, it is clear that the accused was not apprehended from the spot at the relevant time. A

cumulative reading of the entire evidence shows that there is no material to establish that the accused was in possession of or was running the shop from where MO1 and MO2 series were allegedly seized. The prosecution has failed to produce any documentary or reliable oral evidence to bridge this crucial link. Hence, this Court finds that the prosecution has failed to prove that the accused was in control of the shop from where MO1 and MO2 series were allegedly seized.

15. To establish an offence under Section 51 read with Section 63 of the Copyright Act, 1957, the prosecution has to prove: (i) the existence of a copyright-protected work, (ii) ownership or authorship of such copyright, (iii) the subsistence of exclusive rights with the copyright holder and (iv) that the accused, without licence or authorization, infringed such rights. In this case, the prosecution allegation pertains to the manufacture and sale of counterfeit “Baby Lips” cosmetic products purportedly belonging to L'Oréal Paris and Maybelline New York, and thereby infringing the copyright embodied in the packaging and labeling of the said products. However, the prosecution has neither cited nor examined any competent or authorized representative from the above companies to establish the ownership or subsistence of copyright in the alleged product. No material has been produced to show what exactly constitutes the protected artistic work or product nor has any original or certified specimen of the genuine product packaging been placed before the Court for comparison.

16. The law is settled that non ascertaining of the copyright holder or whether the copyright holder had retained any exclusive right or whether license had been granted is fatal to the prosecution. See **OP Asharf Vs. Kerala 2024:KER:76850**. In this case, no effort was made to verify the ownership of copyright or to obtain any records from the concerned companies. Further, although MO1 and MO2 series were seized and alleged to be counterfeit products bearing the mark “Baby Lips,” the prosecution has not conducted any scientific examination, expert comparison or forensic analysis to prove that the seized articles are in fact imitations of a protected artistic work. In view of the above analysis, it is clear that there no evidence showing the existence and ownership of copyright, and the act of infringement by the accused. Hence, this Court is of the considered view that the prosecution has failed to prove the offence under the Copyright Act beyond reasonable doubt.

17. From the entire evidence on record, this Court finds that the prosecution has not succeeded in proving that the accused committed the above offence for the reasons already discussed above. In short, the prosecution could not succeed in proving its case beyond reasonable doubt and therefore the benefit of doubt is given to the accused. Hence, this Court finds that the accused is found not guilty of the offences alleged against him. So, these points are found against the prosecution.

18. **Point No.3:-** In view of finding on point No.1 and 2, the accused is found not guilty of the offence punishable u/s. 420 IPC and Sec. 63(a) of Copyright Act. Hence this point does not arise for consideration.

19. In the result,

The accused is found not guilty of the offences punishable u/s 420 IPC and Sec. 63(a) of Copyright Act and he is acquitted u/s 248 (1) of Cr. P.C. He is set at liberty and his bail bond stands cancelled.

The property received as RP. 244/2017, baby Lips (38 Nos) shall be destroyed after the appeal period is over.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court, this the 21st day of April, 2026).

Sd/-
Judicial First Class Magistrate-I
Kannur

APPENDIX

List of Prosecution/Defence/Court Witnesses

A. Prosecution Witnesses

Rank	Name	Whether Eye witness, Police witness, Expert witness, Medical witness, Other witness
PW1	Nayanthara Demy	Informant/Defacto complainant
PW2	Nafi.A.P	Other witness
PW3	Pradeep.A	Other witness
PW4	Mallika.C	Police witness
PW5	Palakkeel Saleem	Other witness
PW6	Venugopalan	Police witness

PW7	Unnikrishnan	Police witness
PW8	Shaji Patteri	Police witness

B. Defence Witnesses:

NIL

C. Court Witnesses

NIL

List of Prosecution/Defence/Court Exhibits**A. Prosecution Exhibits**

Sl.No.	Exhibit number	Description
1.	Ext.P1/PW1	Complaint dated 29.04.2017
2.	Ext.P2/PW1	Letter of authority from Perfect Intelligence Services Pvt. Ltd dated 18.04.2017
3	Ext.P3/PW2	Search List dated 29.04.2017
4	Ext.P4/ PW3	Ownership Certificate dated 29.5.2017
5	Ext.P5/PW7	First Information Report dated 29.04.2017
6	Ext.P6/PW7	Property List dated 15.05.2017
7	Ext.P7 Series/PW7	Arrest Memo dated 24.06.2017 Inspection Memo dated 24.06.2017
8	Ext.P8/PW7	Report to add the name of the accused dated 30.04.2017

B. Defence Exhibits:

NIL

C. Court Exhibits:

NIL

D. Material Objects

Sl.No.	Material Objects	Description
1.	MO1 Series/PW&	Baby Lips(36 Nos)
2	MO2 Series/PW7	Baby Lips liquid form (2 Nos)

Sd/-

Judicial First Class Magistrate-I
Kannur

//True Copy//

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