**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE A. BADHARUDEEN**

**WEDNESDAY, THE 14TH DAY OF OCTOBER 2026 / 22ND ASWINA, 1948**

**CRL.A NO. 1211 OF 2013**

**AGAINST THE ORDER IN Crl.L.P. NO.45 OF 2013 OF HIGH COURT OF KERALA ARISING OUT OF THE JUDGMENT IN CC NO.923 OF 2006 OF JUDICIAL MAGISTRATE OF FIRST CLASS COURT, TALIPARAMBA**

**APPELLANT/COMPLAINANT:**

**BUREAU OF INDIAN STANDARDS**
**T.C.NO.2/275, NEAR F.C.I., KESAVADASAPURAM, ULLOOR ROAD, THIRUVANANTHAPURAM-695004,**
**REPRESENTED BY A.R.UNNIKRISHNAN, JOINT DIRECTOR.**

**BY ADV SHRI.MANOJ RAMASWAMY**

**RESPONDENTS/ACCUSED:**

1. **M/S.MARS VENEERS AND BOARDS, DOOR NO.AP 8/585K, INDUSTRIAL DEVELOPMENT PLOT, ANDOOR, PARSSINIKADAVU, KANNUR-670563.**

2. **SHRI.C.K.HARRIS, (JOINT MANAGING PARTNER OF M/S.MARS VENEERS AND BOARDS), RESIDING AT : 'DARUSSALAM', MATTOOL P.O., KANNUR DISTRICT, PIN 670302.**

3. **SHRI.P.BASHEER, (JOINT MANAGING PARTNER OF M/S.MARS VENEERS AND BOARDS), RESIDING AT : 'MISBA', KATTAYAM, AROLI P.O., PAPPINISSERI,**

**KANNUR DISTRICT, PIN 670561.**

**4 SHRI.C.ALI MUHAMMED, PARTNER OF M/S.MARS VENEERS AND BOARDS), RESIDING AT : 'EZHOME', PAYANGADI, KANNUR DISTRICT, 67503.**

**5 SRI.C.K.MUSTHAFA, (PARTNER OF M/S.MARS VENEERS AND BOARDS), RESIDING AT : MATTOOL P.O., KANNUR DISTRICT, PIN 670302.**

**6 STATE OF KERALA, REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682031.**

**BY ADVS.**
**SRI.K.MOHANAKANNAN**
**SMT.A.R.PRAVITHA**

**OTHER PRESENT:**

**PP ADV M A SHIHAB**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24.09.2026, THE COURT ON 14.10.2026 DELIVERED THE FOLLOWING:**

***"CR"***

***A. BADHARUDEEN, J.***

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*Crl.Appeal No.1211 of 2013*

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*Dated this the 14th day of October, 2026*

***J U D G M E N T***

This appeal is at the instance of Bureau of Indian Standards, challenging the judgment in C.C.No.923 of 2006 on the files of the Judicial First Class Magistrate Court, Thaliparamba dated 01.01.2010, where the appellant was the complainant and the respondents herein are the accused.

2. Heard the learned counsel for the appellant, the learned counsel appearing for respondents 1 to 5 and also the learned Public Prosecutor appearing for the State of Kerala.

3. Parties in this case will be referred to as "complainant" and "accused persons" hereafter.

4. Tracing the genesis of this case, a complaint had been filed

by the appellant alleging commission of offences punishable under Sections 11(1), 12(b) read with Section 33 of the Bureau of Indian Standards Act, 1986 (hereinafter referred to as 'BIS Act,1986' for short) against the accused persons. The allegation in the complaint, in a nutshell, is that the Joint Director of Bureau of Indian Standards (hereinafter referred to as 'BIS' for short), Thiruvananthapuram along with three other officials when inspected the factory, they found that the first accused was possessing one roller having a spurious ISI mark without having any valid license issued by the BIS to have and hold such a ISI mark. Further, it was noticed by the officials that, a spurious ISI mark was also there on the wall of the factory. Accordingly, a complaint was filed alleging commission of offences by the first accused, who is the partnership firm M/s Mars, Veneers and Boards and also against the partners of the company arraying them as accused Nos.2 to 5 therein. In the complaint, it was alleged

that the Joint Director was authorised to initiate legal proceedings against the accused persons for violation of the BIS Act as per Section 31 of the said Act.

5. Acting on the complaint, the learned Magistrate took cognizance of the said offences and proceeded with trial. During trial, PWs.1 to 3 were examined, Exts.P1 to P6 and MO1 roller also was marked. Thereafter the learned Magistrate evaluated the evidence in the light of the requisite ingredients to find commission of the offences alleged and it was found by the learned Magistrate that the prosecution failed to prove by cogent and believable evidence that the first accused had used a trade mark or ISI mark on any articles so as to attract the offence under Section 11 read with Section 33 of the BIS Act. The learned Magistrate further found that the prosecution also failed to produce any

finished product affixed with the so called fake ISI mark found in the roller as well as on the wall to find use of the same by the accused persons. The learned Magistrate also found that the seizure of MO1 roller also not properly proved beyond reasonable doubt to show the same as one in working condition which would be capable of using the spurious ISI mark therein. Accordingly, the learned Magistrate acquitted all the accused persons.

6. While assailing the judgment of the learned Magistrate, it is submitted by the learned counsel for the appellant that, in order to attract the offences under Section 11 and 12 read with section 33 of the BIS Act, mere possession of a spurious ISI mark would be necessary and therefore, the learned Magistrate went wrong in finding that the prosecution failed to prove the use of the spurious trade mark or ISI mark to attract the said offences.

7. Whereas the learned counsel for accused Nos.1 to 5 submitted that mere possession of a trade mark or ISI mark for

affixing the same in manufactured goods did not attract the offence under Sections 11 and 12 read with Section 33 of the BIS Act,1986.

8. Having analysed the contra submissions, the points arise for consideration are,

1) Whether the learned Magistrate went wrong in finding that the prosecution failed to prove commission of offence under Section 11 read with Section 33 of the BIS Act,1986?

2) Whether the learned Magistrate went wrong in finding that the prosecution failed to prove commission of offence under Section 12 read with Section 33 of the BIS Act,1986?

3) Is it necessary to interfere with the verdict of the learned Magistrate?

4) The order to be passed?

9. In order to address the questions noted, it is necessary to extract Sections 11, 12 and 33 of the BIS Act,1986.

> *"11.* ***Prohibition of improper use of Standard Mark****.-(1) No person shall use, in relation to any article or process, or in the title of any patent,or in any trade mark or design the Standard Mark or any colourable*

*imitation thereof, except under a licence.*

*(2) No person shall, notwithstanding that he has been granted a licence, use in relation to any article or process the Standard Mark or any colourable imitation thereof unless such article or process conforms to the Indian Standard.*

*12.* ***Prohibition of use of certain names, etc****.- No person shall, except in such cases and under such conditions as may be prescribed, use without the previous permission of the Bureau,-*

*(a) any name which so nearly resembles the name of the Bureau as to deceive or likely to deceive the public or which contains the expression "Indian Standard" or any abbreviation thereof; or*

*(b) any mark or trade mark in relation to any article or process containing the expressions "Indian Standard" or "Indian Standard Specification" or any abbreviation of such expression.*

*33.* ***Penalty for improper use of Standard Mark, etc****. (1) Any person who contravenes the provisions of section 11, or section 12 or section 14 or section 15 shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to fifty thousand rupees, or with both.*

*(2) Any court trying a contravention under sub-section (1) may direct that any property in respect of which the*

*contravention has taken place shall be forfeited to the Bureau."*

10. On scanning the ingredients necessary to attract Section 11 of the BIS Act,1986, the statute provides that no persons shall use, in relation to any article processed or in the title of any patent or any trade mark or design, the standard mark or any colourable imitation thereof except under a license. Section 12 provides that except in such cases and under such conditions, as may be prescribed, use without previous permission of the Bureau of matters dealt in A & B is prohibited. In both sections 11 and 12, the legislature vigilantly incorporated the word 'used' and the legislature in its wisdom never intended the word 'possess' to fasten criminal culpability on mere possession of a spurious ISI mark. In this connection it is relevant to note that as found by the learned Magistrate, no manufactured goods, bearing a spurious or

fake ISI mark, were either detected, seized or produced before the court. Instead a roller, alleged to be used for the purpose of mixing, bearing a fake ISI mark was taken into custody as MO1. Apart from that the prosecution case is that a fake ISI mark also was affixed on the wall. On scanning the statutory words in Sections 11 and 12, read with Section 33 of the BIS Act, the 'use' of a spurious ISI mark is punishable under the said provisions and mere possession of an object capable of affixing such a mark, without any evidence to establish its use in the manufacture of goods, does not attract the penal provisions of Sections 11 and 12, read with Section 33 of the BIS Act. In such view of the matter, the learned Magistrate is right in finding that the prosecution failed to prove the use of any standard trade mark or ISI mark in the instant case, to impose penal consequences on the accused persons. In fact, the said finding is only to be justified.

11. Therefore, the challenge against the impugned judgment, at the instance of the complainant, found to be unsustainable and as an aftermath thereof, the judgment impugned is liable to be confirmed.

12. In the result, the appeal fails and is dismissed and the verdict impugned is confirmed.

***Sd/-***

***A. BADHARUDEEN, JUDGE***

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