

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.25123 OF 2022 (GM – RES)

R

BETWEEN:

- 1 . SRI. JAIRAM RAMESH
AGED ABOUT 68 YEARS
S/O C.K.RAMESH
GENERAL SECRETARY OF INDIAN CONGRESS
COMMUNICATION, PUBLICITY
MEDIA INCLUDING SOCIAL AND
DIGITAL COMMITTEE
R/AT. NO.C-19, LODHI GARDEN
NEW DELHI - 110 011.
- 2 . SMT. SUPRIYA SHRINATE
AGED ABOUT 45 YEARS
W/O DHIRENDRA SINGH
CHAIRPERSON OF SOCIAL MEDIA
AND DIGITAL PLATFORMS OF THE
INDIAN NATIONAL CONGRESS
R/AT NO 24, AKBAR ROAD
NEW DELHI – 110 011.
- 3 . SRI. RAHUL GANDHI
S/O LATE RAJIV GANDHI
AGED ABOUT 45 YEARS
MEMBER OF STEERING COMMITTEE
INDIAN NATIONAL CONGRESS
HAVING HIS ADDRESS AT

NO.12, TUGHALAK LANE
NEW DELHI – 110 011.

... PETITIONERS

(BY SRI. VIKRAM HUILGOL, SENIOR ADVOCATE A/W.
SMT. LEELA P.DEVADIGA, ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA
THROUGH YESHWANTHPURA P.S.,
BENGALURU CITY
REPRESENTED BY S.P.P OFFICE
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.
- 2 . SRI.M.NAVEEN KUMAR
AGED ABOUT 40 YEARS
R/AT. M.R.T.MUSIC
A PARTNERSHIP FIRM
OFFICE AT 4TH FLOOR
T.T.M.C., B.M.T.C., BUILDING
YESHWANTHPURA CIRCLE
BENGALURU – 560 022.

... RESPONDENTS

(BY SRI. MAHESH SHETTY, HCGP FOR R-1;
SRI. S.SRIRANGA, SENIOR ADVOCATE A/W.,
SRI. PRANAV KUMAR M., ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF THE CR.P.C., PRAYING TO QUASH THE IMPUGNED FIR DATED 04.07.2022 IN CRIME NO. 0362/2022 AND COMPLAINT DATED 04.07.2022 FOR THE OFFENCES PUNISHABLE UNDER SECTION 34, 120B, 403, 465 OF THE INDIAN PENAL CODE 1860, SECTION 63 OF THE COPYRIGHT ACT, 1957 AND SECTION 66 OF THE INFORMATION TECHNOLOGY ACT, REGISTERED BY THE R1

YASHWANTHAPURA POLICE STATION, PENDING ON THE FILE OF THE 9TH ADDL. CHIEF METROPOLITAN MAGISTRATE (ACMM), BENGALURU CITY, COPY OF WHICH IS HEREIN PRODUCED AS ANNEXURE - A AND B.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.06.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners are before this Court calling in question registration of a crime in Crime No.362 of 2022 for offence punishable under Section 63 of the Copyright Act, 1957 (hereinafter referred to as 'the Act' for short), Section 66 of the Information Technology Act, 2008 and Sections 120B, 403, 465 and 34 of the IPC.

2. Facts adumbrated, as borne out from the pleadings, are as follows:-

Before embarking upon narration of facts, I deem it appropriate to notice the protagonists in the alleged crime. The 1st petitioner is the General Secretary of Indian National Congress, in-charge of Communication, Publicity, Media including Social and Digital Committee of the commerce. Petitioner No.2 is the

Chairperson of the Social Media and Digital Platform of the Indian National Congress. The 3rd petitioner is the Member of the Steering Committee of the Indian National Congress. They are accused 1, 2 and 3. The 2nd respondent is the complainant, a partnership firm owning and broadcasting music in the name and style of "MRT Music". The petitioners claim to be persons in public life and members closely associated with the Indian National Congress. The 1st petitioner is a Member of Parliament elected to the Rajya Sabha; the 2nd petitioner is a former journalist and currently serving as a National Spokesperson of the Indian National Congress and also heads Social Media Cell and the 3rd petitioner is the Member of Parliament elected to the Lok Sabha from Waynad Constituency, Kerala.

3. The issue crops up with Bharat Jodo Yatra (hereinafter referred to as 'the Yatra' for short). The Yatra is claimed to be the brain child of the 3rd petitioner for it to be an ongoing mass movement which envisaged organization and mobilization of general public through a walk from Kanyakumari to Kashmir spanning over 3570 kilometers over a period of 150 days. Insofar

as Karnataka State is concerned Yatra enters the State on 30-09-2022 and ends on 20-10-2022 at Raichur. The issue does not concern any happenings during the Yatra with regard to public peace or otherwise. The petitioners have also their several media handles such as Face book, Twitter etc. and have reached out to millions and millions through social media and claimed to be in the principal opposition at the Centre/Parliament.

4. The 2nd respondent registers a complaint against the petitioners, on 04-11-2022. The allegation in the complaint is that popular songs from the film KGF Chapter-2 were played in the backdrop of the Yatra by violating the copyright, as it was without any agreement/permission from the hands of the assignee, the 2nd respondent. Based upon the said complaint, a crime comes to be registered in Crime No.362 of 2022 for the afore-quoted offences primarily, for violation of copyright, under Section 63 of the Act and Section 66 of the Information and Technology Act. Registration of the crime is what drives the petitioners to this Court in the subject petition. This Court in terms of its order dated 16-12-2022 grants an interim order of stay of investigation in the aforesaid crime,

however reserving liberty to the respondents to seek vacation of the interim order upon filing of statement of objections. The statement of objections along with an application seeking vacation of the interim order is filed by the respondents and the matter is heard. The interim order granted earlier still subsists in the case at hand.

5. Heard Sri Vikram Huilgol, learned senior counsel appearing for the petitioners, Sri Mahesh Shetty, learned High Court Government Pleader appearing for respondent No.1 and Sri S. Sriranga, learned senior counsel appearing for respondent No.2.

CONTENTIONS OF THE PETITIONERS:

6. The learned senior counsel Sri Vikram Huilgol would submit that the petitioners have not violated any of the copyright of the owner of the copyright; the complainant is not the owner of the copyright; he is only a licensee from the copyright holder and, therefore, cannot be seen to complain that his copyright has been violated. It is his further submission that videos uploaded on official

twitter page are of about 30 seconds portraying the 3rd petitioner Sri Rahul Gandhi in one video addressing the public and in another video participating in the forefront of the Yatra with the alleged sound recording in the background. According to the learned senior counsel these do not make out any offence that would become punishable under Section 63 of the Act. It is his further submission that even if it is construed to be true, it will be hit by exceptions under Section 52 of the Act, as the same has been used for non-profit and non-commercial purpose in order to spread awareness of the Yatra which was only aimed at uniting the country. He would contend that insofar as other offences of the IPC are concerned, there are no ingredients in the facts of the case at hand. Therefore, the crime so registered suffers from want of bona fides on the ground of it being unworthy of any merit.

RESPONDENT'S CONTENTIONS:

7. The learned senior counsel Sri. S. Sriranga representing the 2nd respondent/complainant would refute the submissions to contend that the petitioners are guilty of all the offences alleged, particularly, of the violation of the Act. He would clarify that the

complainant is not a licensee, but an assignee under the provisions of the Act, and therefore, he has equal rights to that of a copyright holder. He would further contend that during the Yatra the song to which the complainant has copyright has been freely played and the petitioners have taken benefit of the said recording without seeking permission or entering into an agreement with the complainant.

8. He would take this Court through the statement of objections and the documents appended to the objections, as also certain photographs to demonstrate that the petitioners have altered the source code of the song, played it according to their whim, changed in its entirety and claimed to be the copyright holder of the recordings after having meddled with the source code and changed it. If this cannot be a violation of the Act, it is his submission that nothing else can be a better illustration. For a better understanding, the learned senior counsel submits that he has placed a pen drive of the video that is played along with the photographs that are appended, all of which would show blatant violation of copyright, which is an offence under Section 63 of the Act. He would submit that the petitioners have to come out clean in

an investigation or a trial. The stage to quash the proceedings has not yet arrived.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, the issue that falls for my consideration is, "**whether the acts of the petitioners would become an offence under Section 63 of the Act?**"

10. The afore-narrated facts about the position of the petitioners, the offices that they are holding and conduct of Yatra are a matter of record. They would not require any reiteration. The genesis of the issue happens when the Yatra enters the State of Karnataka on 30-09-2022 till it is terminated on 20-10-2022. During the Yatra, songs of a movie "KGF" were being played in the background when the march of the Yatra was happening in which the 3rd petitioner was the main protagonist. Noticing the fact that songs have been freely played without taking permission from the owners of the music or the 2nd respondent, the 2nd respondent initiates a civil suit before the concerned Court. The concerned

Court grants an injunction against the Yatra accepting the fact that *prima facie* there is violation of copyright. This interim order granted in the civil suit was called in question before the Division Bench of this Court in Commercial Appeal No.460 of 2022. The Division Bench by its order dated 8-11-2022 modifies the order passed by the civil Court permitting the Yatra to move on, but not to play the songs. The order passed by the Division Bench insofar as it is germane reads as follows:

"....

37. In that view of the matter, the order dated 07.11.2022 passed on I.A. Nos.3 to 6 by learned LXXXV Additional City Civil & Sessions Judge, Commercial Division, Bangalore(CCH-86) in Commercial Original Suit No.1594/2022 being bereft of any reasons, much less, cogent or sustainable reasons, we are of the opinion that the appeal deserves to be partly allowed with the exception of concession made by learned Senior Counsels for the parties.

38. Learned Senior Counsel for the appellant Sri. Abhishek Manu Singhvi submitted that without prejudice to the appellant's contention, the appellant shall by noon tomorrow i.e., 09.11.2022, endeavour to remove the allegedly offending material from its Twitter Handle and all other forms of social media and has no intention whatsoever to use the same in future.

39. The learned Senior Counsel for the Caveator further submitted that the appeal could be disposed of and the matter could be remitted back for reconsideration by the trial court in view of the challenge to the nature of order passed which is in the nature of mandatory injunction which in our prima facie opinion virtually

impinges on the fundamental rights guaranteed under the Constitution of India.

40. In view of the statement made by learned Senior Counsel Sri. Abhishek Manu Singhvi for the appellant that he would provide screen shots of their Twitter Handle and also such other media before the offending material is removed, in our considered opinion, the submissions of learned Senior Counsels for the appellant appears to be fair. In response, the learned senior counsel appearing on behalf of the first respondent would fairly submit that concessions be placed on record and matter be remitted back for consideration in accordance with law.

41. Be that as it may, we are not delving deeper into the issues. In view of the submissions recorded by us supra and in view of the nature of the relief we grant. This Court answers all the points for consideration against the first respondent and in favour of the Appellant.

42. Accordingly, we pass the following:-

ORDER

The appeal is allowed-in-part. The impugned order dated 07.11.2022 passed I.A.Nos.3/2022, 4/2022, 5/2022 and 6/2022 by learned LXXXV Additional City Civil & Sessions Judge, Commercial Division, Bangalore(CCH-86) in Commercial Original Suit No.1594/2022 is set-aside, subject to the condition that the appellant and respondent Nos.3 and 4 shall remove the offending content from their social media platform i.e., Twitter, Facebook, YouTube and Instagram. The interlocutory applications I.A.No.3/2022, 4/2022, 5/2022 and 6/2022 are remitted back to the trial Court for consideration afresh.

This order shall not come in the way of plaintiff making any request to the 4th defendant to protect its copyrights.

In view of disposal of the main matter, all pending IA's stand disposed of."

(Emphasis supplied)

The Division Bench allows the appeal in part, sets aside the order passed in Commercial O.S.No.1594 of 2022 subject to the condition that the petitioners herein would remove the offending content from the social media platform i.e., Twitter, Facebook, YouTube and Instagram. The matter was remitted back to the trial Court for consideration afresh apart from what was considered by the Division Bench. The said suit is pending adjudication before the concerned Court.

11. During the pendency of the said suit, the impugned complaint comes to be registered. The complaint was regarding infringement of copyright of the 2nd respondent/complainant. The gist of the complaint is found at paragraphs 5 to 8 and is extracted herein for the purpose of quick reference:

"....

5. *The Complainant states that as per its knowledge all the Accused named above are the active members of a political party called Indian National Congress. The said political party namely Indian National Congress had formed a special committee called as "Steering*

Committee" to take action regarding the functioning of the political party that is Indian National Congress. The Accused no. 1 to 3 along with various other members of the Steering Committee who was appointed to spear head the entire political rally and with an intention to fortify the propaganda, announced all India political rally called "**Bharath Jodo Yatra**" in its meeting in the year 2022. The said yatra march which they have taken up all across the country is for reaping political benefits by influencing the masses at large through various methods and acts by playing sound recordings close to their tastes, sentiments, feelings, likes, inclinations.

6. **The Accused no. 1 and 2 with an intention of propagating Accused no. 3 to gain political mileage, appointed Accused no. 3 to spear head the Bharath Jodo Yatra. Further the Accused no. 1 and 3 under the leadership and guidance of Accused no. 3 appointed various other regional members of Indian National Congress to participate and support Accused no. 3 in the said political rally called Bharath Jodo Yatra. In that pursuit the leaders on the march and particularly the Accused persons herein who are the star participants are putting on different conduct, behavior, indulgences and acts to suit the masses at different places. Taking account of the fact that the propagation through social media platforms a proven effective tool to connect with and influence the masses, the Accused persons and their party have been doing everything possible to get close to the masses. Indian National Congress has its own official handles (web pages, social media accounts) on various popular platforms operated by major companies like Twitter, Google (Youtube). Meta (Facebook, Instagram). Telegram and so on. The Steering Committee has a dedicated social media handling page regarding the Bharat Jodo Yatra and the following handling pages have been created:**

i. [https:// twitter.com INCIndia](https://twitter.com/INCIndia):

ii. <https:// www.youtube.com/c/BharatJodoYatra>

featured:

iii. <https://www.instagram.com/bharatjodo/>;

iv. <https://t.me/bharatjodovatra>;

v. <https://www.facebook.com/Bharajodo/>, and so on.

Under the leadership and guidance of Accused no. 1. the Indian National Congress has its own Social and Media, Committee to operate and maintain the aforementioned social media handles. Accused no. 2 is the Chairperson of Social Media and Digital Platforms of Indian National Congress.

8. Recently, it came to the knowledge of the Complainant that the Accused no. 1 in one of his recent post in "<https://twitter.com/INCIndia>" posted two videos of his rally. The said videos were made for the purpose of mass circulation on the social media platform. The said videos were made using the popular sound recordings owned and held by the Complainant. The said sound recordings are that of the cinematographic film "KGF Chapter 2"(Hindi version) which is popular globally. The screenshot of the said handling page is as follows:



(Emphasis added)

The complaint was specific with regard to copyright violation and two videos of the rally posted on twitter handle of the Congress, and those sound recordings were owned and held by the 2nd respondent. It was a song of a globally popular movie KGF Chapter-2. Paragraphs 10 to 12 of the complaint narrate specific instances

of dilution of intellectual property of the complainant and they read as follows:

“... ..”

9. It is submitted that the Accused No.3 has been spearheading and organizing the political rally namely “Bharath Jodo Yatra”. The entire yatra has been the brainchild of the Accused No.3 who has conceptualized this idea of propagating himself for securing his status and candidature. In order to gain effective momentum on social media platforms, the Accused No.3 has resorted to getting videos created showcasing his heroism and to portray to the general public at large that he is a mass leader. For this reason, the Accused No.3 has portrayed himself in the infringing video particularly considering the fact that the movie and more particularly the songs and the audio visual clippings of the two songs in the movie KGF Chapter 2 (Hindi) has gained a mass appeal and acceptance.

10. It is submitted that the Accused No.2 herein who is in charge of social media handles of Accused no.1 has illegally and unlawfully synchronized the sound recordings and audio video content of the film KGF Chapter 2 which is owned and held by the Complainant. Further, the Accused no.3 having participated consciously along with accused no.1 and 2 with these unlawful actions has been seen in the infringing video(s) showcasing himself and canvassing his candidature to his benefit. Further the Accused no.1 to 3 have infringed sound recording and video clipping by showing that it is owned by them and by removing the logo of the Complainant that is “,  “ and replacing it with the logo “ ” thereby causing confusion and defrauding the public at large. These videos are made by synchronizing the sound recordings and audio visual content of the film KGF Chapter 2 which is owned and held by the Complainant.

11. The Accused no.1 to 3 after unauthorized and illegal synchronizing of the said sound recordings and audio – visual content have placed the logo "BHARAT JODOO YATRA" in the said video thereby claiming that they are the owners of the said video including the sound recording therein.

12. The aforementioned unlawful actions of Accused no.1 to 3 amounts to an offence under section 63 of the Copyrights Act. It is also a serious offence amounting to making a false electronic record with an intention to project the same as genuine and thereby cheating the public at large. The said copy right material belonging to the complainant was not intended to be used for the purposes which the accused have utilized and thereby it also amounts to dishonest misappropriation of movable property of the complainant. The said copy right protected material belonging to the complainant, which the accused and their persons have stolen and misused, could not have been derived from legal or official source and it has been gained also through illegality and thereafter they have tampered with, distorted and used the same, which is a clearly case of an offence under provisions of Information Technology Act too.

13. It is submitted that by such unauthorized uploading and downloading and distribution by the accused, has made the Complainant to suffer huge losses. In fact, the very nature of the illegal activities of the Accused no.1 to 3 has further diluted the valuable Intellectual Property Rights held and enjoyed by the Complainant.

14. It is submitted that as per the knowledge of the Complainant the Accused no.1 to 3 are conducting its illegal operations of infringement of the copyrights owner and held by the Complainant at:

Indian National Congress


#24, Akbar Road, New Delhi 110 011, INDIA
Furthermore, as stated above the Accused no.1 is handling the following social media handles:

- <https://twitter.com/INCIndia>;
- <https://www.youtube.com/c/BharatJodoYatra/featured>;
- <https://www.instagram.com/bharatjodo/>;
- <https://t.me/bharatjodyatra>;
- <https://www.facebook.com/BharatJodo/> and so on

The infringing video is uploaded, hosted and allowed to be downloaded by the public in the aforementioned social media handles. As per the knowledge of the Complainant the following are examples of the infringing video being uploaded in the following links:

- a. https://twitter.com/INCIndia/status/1579838167217188865Ps=20&t=TBueIJ_7NrK/40kNu4ZCsA and
- b. https://twitter.com/INCIndia/status/1581604321996611586Pt=8dkdS4cPfpvpWf4_mxw9hg&s=08

The aforementioned links have to be brought down in accordance with law. It is further submitted that the unauthorized distribution of its copyrighted work by all the Accused no.1 to 3 and the unauthorized use thereof is prejudicial to the exclusive statutory rights to the Complainant as the owner of the copyrights.

15. *It is further submitted that apart from having infringed the aforementioned copyrights, all the Accused no.1 to 3 have blatantly and slavishly used the mark "  " thereby claiming ownership of the video including the sound recording and audio visual content have committed an act of creating false electronic document and distributing the same as a genuine video. Such unauthorized use of our copyrights as well as falsification of the electronic documents not only amounts to infringement of exclusive Intellectual Property Rights but further indicates that the Accused are in some manner associated with the business of the Complainant. Each of the copyrighted content of the Complainant has been illegally stored, hosted, downloaded, sideloaded and uploaded thereby creating infringing copies of the sound recording and audio visual content as per the Copyright Act, 1957 and the same is liable to be handed over and / or destroyed."*

(Emphasis added)

The complaint so registered becomes a crime in Crime No.362 of 2022 and the moment the crime is registered, the subject petition is filed and investigation is interdicted by an order of this Court. The issue now is, whether the petitioners have by their acts made themselves vulnerable to punishment under Section 63 of the Act or the other provisions that are alleged.

12. To consider the submissions made by the learned senior counsel, certain provisions of the Act becomes germane to be noticed. Section 2 is interpretation of the context appearing in the Act. Section 2(f) reads as follows:

"(f) "cinematograph film" means any work of visual recording and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films"

(Emphasis supplied)

Section 2(f) defines a 'cinematograph film' which would mean any work of visual recording and includes a sound recording accompanying such visual recording and such cinematograph shall

be construed to be including any work produced by any process analogous to cinematography. Therefore, a cinematograph film would include both audio and video. Section 14 defines what is copyright. Clause (d) of Section 14 defines what is 'cinematograph film' and clause (e) defines the rights of the owner of the copyright in a 'sound recording'. They read as follows:

"14. Meaning of copyright.—For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

- ...
- ...
- ...
- (d) *in the case of a cinematograph film,—*
- (i) *to make a copy of the film, including—*
 - (A) *a photograph of any image forming part thereof; or*
 - (B) *storing of it in any medium by electronic or other means;*
 - (ii) *to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;*
 - (iii) *to communicate the film to the public;*
- (e) *in the case of a sound recording,—*
- (i) ***to make any other sound recording embodying it including storing of it in any medium by electronic or other means;***
 - (ii) ***to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;***

(iii) to communicate the sound recording to the public.

Explanation.—For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.”

(Emphasis supplied)

Clause (d) defines cinematograph film which would mean storing of it in any medium of electronic or other means. Clause (e) defines sound recording. Sub-clause (i) of clause (e) defines the right of a owner of the copyright of a sound recording to be storing of it in any medium by any electronic or other means. Sub-clause (iii) defines sound recording to be communication of such recording to the public. Therefore, if a sound recording is communicated to the public it would come within the meaning of copyright. Section 18 defines assignment of copyright. Section 18 reads as follows:

"18. Assignment of copyright.—(1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof:

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence:

Provided further that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work:

Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilisation of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void:

Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilisation of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void.

(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

(3) In this section, the expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence."

(Emphasis supplied)

An assignee under Section 18 has equal rights like that of owner of a copyright. Therefore, he has every right to protect his assignment of a copyright as if he is the owner of copyright. Section 51 deals with infringement of copyright and reads as follows:

"51. When copyright infringed.—*Copyright in a work shall be deemed to be infringed—*

- (a) *when any person, without a licence granted by the owner of the Copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act—*
 - (i) ***does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or***
 - (ii) *permits for profit, any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or*
- (b) *when any person—*
 - (i) *makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or*
 - (ii) *distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or*
 - (iii) *by way of trade exhibits in public, or*
 - (iv) *imports into India,*

any infringing copies of the work:

Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

Explanation.—For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy".

(Emphasis supplied)

A copyright is said to be infringed when any person without a licence granted by the owner of the copyright does anything to infringe the exclusive right conferred on the owner of the copyright. Section 52 deals with exceptions to infringement of copyright and it reads as follows:

"52. Certain acts not to be infringement of copyright.—(1) *The following acts shall not constitute an infringement of copyright, namely—*

- (a) a fair dealing with any work, not being a computer programme, for the purposes of—*
 - (i) private or personal use, including research;*
 - (ii) criticism or review, whether of that work or of any other work;*
 - (iii) the reporting of current events and current affairs, including the reporting of a lecture delivered in public.*

Explanation.—The storing of any work in any electronic medium for the purposes mentioned in this clause,

including the incidental storage of any computer programme which is not itself an infringing copy for the said purposes, shall not constitute infringement of copyright.

- (aa) the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy—
 - (i) in order to utilise the computer programme for the purpose for which it was supplied; or*
 - (ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;**
- (ab) the doing of any act necessary to obtain information essential for operating interoperability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available;*
- (ac) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied;*
- (ad) the making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use;*
- (b) the transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public;*
- (c) transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable*

grounds for believing that such storage is of an infringing copy:

Provided that if the person responsible for the storage of the copy has received a written complaint from the owner of copyright in the work, complaining that such transient or incidental storage is an infringement, such person responsible for the storage shall refrain from facilitating such access for a period of twenty-one days or till he receives an order from the competent court refraining from facilitating access and in case no such order is received before the expiry of such period of twenty-one days, he may continue to provide the facility of such access;

- (d) the reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;*
- (e) the reproduction or publication of any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature;*
- (f) the reproduction of any work in a certified copy made or supplied in accordance with any law for the time being in force;*
- (g) the reading or recitation in public of reasonable extracts from a published literary or dramatic work;*
- (h) the publication in a collection, mainly composed of non-copyright matter, bona fide intended for instructional use, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for such use in which copyright subsists:*

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

Explanation.—In the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person;

- (i) *the reproduction of any work—*
 - (i) *by a teacher or a pupil in the course of instruction; or*
 - (ii) *as part of the questions to be answered in an examination; or*
 - (iii) *in answers to such questions;*
- (j) *the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a sound recording if the audience is limited to such staff and students, the parents and guardians of the students and persons connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording;*
- (k) *the causing of a recording to be heard in public by utilising it,—*
 - (i) *in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein; or*
 - (ii) *as part of the activities of a club or similar organisation which is not established or conducted for profit;*
- (l) *the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution;*

- (m) *the reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction;*
- (n) *the storing of a work in any medium by electronic means by a non-commercial public library, for preservation if the library already possesses a non-digital copy of the work;*
- (o) *the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a non-commercial public library for the use of the library if such book is not available for sale in India;*
- (p) *the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access:*

Provided that where the identity of the author of any such work, or, in the case of a work of joint authorship, of any of the authors is known to the library, museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than sixty years from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than one is known from the death of such of those authors who dies last;

- (q) *the reproduction or publication of—*
 - (i) *any matter which has been published in any Official Gazette except an Act of a Legislature;*
 - (ii) *any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter;*

- (iii) *the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of Legislature, unless the reproduction or publication of such report is prohibited by the Government;*
- (iv) *any judgment or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court, the tribunal or other judicial authority, as the case may be;*
- (r) *the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made thereunder—*

 - (i) *if no translation of such Act or rules or orders in that language has previously been produced or published by the Government; or*
 - (ii) *where a translation of such Act or rules or orders in that language has been produced or published by the Government if the translation is not available for sale to the public:*

Provided that such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government;
- (s) *the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture;*
- (t) *the making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work falling under sub-clause (iii) of clause (e) of Section 2, if such work is permanently situate in a public place or any premises to which the public has access;*
- (u) *the inclusion in a cinematograph film of—*

- (i) *any artistic work permanently situate in a public place or any premises to which the public has access; or*
 - (ii) *any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film;*
- (v) *the use by the author of an artistic work where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work:*

Provided that he does not thereby repeat or imitate the main design of the work;

- (w) *the making of a three-dimensional object from a two-dimensional artistic work, such as a technical drawing, for the purposes of industrial application of any purely functional part of a useful device;*
- (x) *the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed:*

Provided that the original construction was made with the consent or licence of the owner of the copyright in such drawings and plans;

- (y) *in relation to a literary, dramatic, artistic or musical work recorded or reproduced in any cinematograph film, the exhibition of such film after the expiration of the term of copyright therein:*

Provided that provisions of sub-clause (ii) of clause (a), sub-clause (i) of clause (b) and clauses (d), (f), (g), (m), and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgment—

- (i) *identifying the work by its title or other description;*
 - and*

- (ii) *unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgment of his name should be made, also identifying the author;*
- (z) *the making of an ephemeral recording, by a broadcasting organisation using its own facilities for its own broadcast by a broadcasting organisation of a work which it has the right to broadcast; and the retention of such recording for archival purposes on the ground of its exceptional documentary character;*
- (za) *the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority.*

Explanation.—For the purpose of this clause, religious ceremony includes a marriage procession and other social festivities associated with a marriage.

- (zb) *the adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format, by—*
 - (i) *any person to facilitate persons with disability to access to works including sharing with any person with disability of such accessible format for private or personal use, educational purpose or research; or*
 - (ii) *any organisation working for the benefit of the persons with disabilities in case the normal format prevents the enjoyment of such works by such persons:*

Provided that the copies of the works in such accessible format are made available to the persons with disabilities on a non-profit basis but to recover only the cost of production:

Provided further that the organisation shall ensure that the copies of works in such accessible format are used only by persons with disabilities and takes reasonable steps to prevent its entry into ordinary channels of business.

Explanation.—For the purposes of this sub-clause, "any organisation" includes and organisation registered under Section 12-A of the Income Tax Act, 1961 (43 of 1961) and working for the benefit of persons with disability or recognised under Chapter X of the Persons with Disabilities (Equal Opportunities, Protection or Rights and full Participation) Act, 1995 (1 of 1996) or receiving grants from the government for facilitating access to persons with disabilities or an educational institution or library or archives recognised by the Government.

(zc) the importation of copies of any literary or artistic work, such as labels, company logos or promotional or explanatory material, that is purely incidental to other goods or products being imported lawfully.

(2) The provisions of sub-section (1) shall apply to the doing of any act in relation to the translation of a literary, dramatic or musical work or the adaptation of a literary, dramatic, musical or artistic work as they apply in relation to the work itself."

Certain circumstances as narrated in Section 52 would mean infringement of copyright. They are self-explanatory. Section 55 deals with civil remedies for infringement of copyright. It reads as follows:

"55. Civil remedies for infringement of copyright.—

(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right:

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical or artistic work, or, subject to the provisions of sub-section (3) of Section 13, a cinematograph film or sound recording, a name purporting to be that of the author, or the publisher, as the case may be, of that work, appears on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is provided, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the court."

(Emphasis supplied)

Section 55 speaks of civil remedies for infringement of copyright. If a copyright has been infringed, the owner of copyright shall, except as otherwise provided under the Act, be entitled to all remedies by

way of injunction and damages *inter aia*. Section 63 makes infringement of copyright an offence and reads as follows:

"63. Offence of infringement of copyright or other rights conferred by this Act.—Any person who knowingly infringes or abets the infringement of—

(a) the copyright in a work, or

(b) any other right conferred by this Act except the right conferred by Section 53-A,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the infringement has not been made for gain in the course of trade or business the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Explanation.—Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section."

Section 69 deals with offences by companies of infringement of copyright. The afore-quoted are the provisions that would become germane to be noticed to be considered in the case at hand.

13. The submission at the threshold of the learned senior counsel for the petitioners that the complainant is not the owner of the copyright; it is someone else and he is only a licensee, is noted only to be rejected. The complainant is not a licensee, but an assignee in terms of Section 18 of the Act. Section 18 makes the assignee to have equal rights over the copyright for its utilization in any form as sub-section (2) of Section 18 (*supra*) mandates that the assignee of the copyright becomes entitled to any right comprised in the copyright and shall be treated as the copyright holder for the purpose of the Act or the owner of the copyright for the purpose of the Act. The complainant has produced documents to demonstrate that he is an assignee of the copyright of the music for the film KGF Chapter-2. Therefore, in terms of Section 18 the complainant has every right to complain infringement of the copyright that is assigned in his favour. Therefore, the threshold submission of the learned senior counsel for the petitioners tumbles down.

14. Learned senior counsel for the petitioners has laid much emphasis on Section 52 of the Act (*supra*) to contend that the

action of the petitioners would come within the explanations/exceptions carved out in Section 52 of the Act. By the very definition, the provision is dealing with exceptions. Any benefit of exception claimed by any accused under any penal law will always have to be a matter of trial, as when the offence is alleged it is said to be coming within the ingredients of a particular provision of law which makes the action an offence, it cannot be quashed on the ground of exceptions. Any exception claimed is always a matter of trial *albeit*, in certain circumstances, as Section 52 has several explanations and exceptions which can be taken note of or benefit of, it would become available only at a later point in time. In the case at hand, even the investigation is yet to commence. The learned senior counsel for the petitioners has not pointed out as to which specific head of Section 52 would bring them out of the web of the crime. There are plethora of heads under Section 52 which carve out exception for a crime under Section 63. In the absence of any specific averment to that effect or even a contention, I decline to consider any such specific exception.

15. The other submission of the learned senior counsel for petitioners is that the complainant has a civil remedy for infringement of copyright and a crime at the outset is not maintainable in terms of Section 55 of the Act. Section 55 of the Act deals with civil remedies for infringement of copyright, but it would be maintainable on a presumption that copyright has been infringed unless the contrary is proved. It is not the law that merely because a civil remedy exists on infringement of copyright, criminal case cannot be registered. It is germane to refer to the judgment rendered by the co-ordinate Bench of this Court in the case of ***M/s MANGALORE NEW SULTAN BEEDI WORKS v. STATE OF KARNATAKA AND OTHERS – W.P.No.10870 of 2023*** decided on ***31-05-2023*** which considered an identical circumstance where a commercial original suit was pending against infringement of a copyright and on that pendency, no crime was registered for offences under Section 63 of the Act. The co-ordinate Bench holds as follows:

“ ”

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter broadly agreeing with the

submission made on behalf of the Petitioner-Firm as under and for the following reasons:

a) Chapter XI of the 1957 Act comprising of Sections 51 to 53A provides for civil remedies by way of injunction, damages, accounts or otherwise in the case of infringement of copy rights. The substantive part of Section 55 being very relevant is reproduced:

"(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right".

For the alleged infraction of registered Copyrights, Petitioner's civil suit is pending and an order of Temporary Injunction has been granted by the Civil Court, is vouched by the material placed on record. Chapter XIII comprising of Sections 63 to 70 mentions about the offences relating to copyright infringements. Section 63 being one of the charging provisions has the following text:

"Any person who knowingly infringes or abets the infringement of:

- (a) the copyright in a work, or*
- (b) any other right conferred by this Act except the right conferred by section 53A, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees".*

(Other parts not being relevant, are not reproduced)

In other words, the Act provides for both civil remedy and criminal prosecution, in the case of such an infringement. The outcome of one does not depend upon the outcome of another, subject to all just exceptions. Petitioner has already filed an FIR which has been duly registered by the jurisdictional police.

b) *The infringement of a copyright gives rise to a cause of action on which a civil proceeding like an Injunctive Suit can be structured; it also can give rise to a cause of action for the institution of a criminal proceeding; in the former, it is preventive, remedial, compensatory or otherwise, whereas, in the latter, it is primarily punitive. The object, nature & outcome of these proceedings, thus are not the same. That is how the statutory scheme is enacted by the Parliament. Merely because a civil dispute is being fought between the parties, the criminal proceedings cannot be halted, per se, on that ground. This view gains support from the Hon'ble Delhi High Court decision in JAY PRAKASH v. STATE, 2008 Cr.L.J.(NOC) 637. Del. In the said case, civil litigation as to use of "V" has pending and there was no agreement between the parties either by way of an interim arrangement nor was there any interim order of the court, held, that mere withholding of mention of such litigation would not preclude Trial Court from framing of charges under Section 63 of the 1957 Act. There may be cases where the processing of one proceeding is kept at a bay, because of the likely adverse consequences that follow on a particular party involved in the other proceeding, both having been structured on the same set of facts. However, this is a different aspect of the matter.*

c) *Learned Sr. Advocate appearing for the Petitioner is right in contending that the same fact matrix may give rise to a cause of action in tort, in contract & in crime; unless, law interdicts a particular action inter alia in criminal law, the police cannot keep the complaint pending on the ground that, parties are fighting a civil proceeding on the same fact matrix. In Kenny's OUTLINES OF CRIMINAL LAW, 18th Edition, 1962, Cambridge University at Page 1 it is said as under:*

"Writers on English legal history have often mentioned that in early law there was no clear distinction between criminal and civil offences. The two have been called a 'viscous intermixture' and it has been explained that the affinity between tort and crime is not in the least surprising when we remember how late in the history of law there emerged any clear conception of a difference between them...."

Similarly, in 'CRIMINAL LAW' by Smith and Hogan, 7th Edition, ELBS at page 19 it is written "...most torts are crimes as

well, though some torts are not crimes and some crimes are not torts. It is not in the nature of act, but in the nature of the proceedings that the distinction consists; and both types of proceeding may follow where an act is both a crime and a tort...." In view of this clarity obtaining in criminal jurisprudence, the reluctance of the police to process the complaint may not be correct.

In the above circumstances, this writ petition succeeds; a Writ of Mandamus issues to the respondent- police to undertake & accomplish the investigation in the subject offence within an outer limit of three months. Delay if brooked may result into an adverse entry being made in the Service Records of the concerned police official."

The co-ordinate Bench interprets Section 63 and civil remedies available under Sections 51 to 53A including Section 55 of the Act which deals with civil remedies in particular and holds that the crime ought to be registered as it cannot be controlled by Section 55. They are remedies altogether independent. In the light of the judgment of the co-ordinate Bench, the submission of the learned senior counsel that since the civil suit is pending, the investigation in the crime should not be permitted, does not hold water. Long before the judgment of the co-ordinate Bench, in an identical circumstance, the High Court of Madras in **SUMEET MACHINES PRIVATE LIMITED NASIK v. SUMEET RESEARCH AND**

HOLDING LIMITED¹ considering the very submission under the Act has held as follows:

"14. *The analagous provisions in the Copyright Act, 1957, may now be referred to Chapter XII, covered by sections 54 to 62, deals with civil remedies for infringement of copyright. Section 54 defines owner of copyright by way of an inclusive definition and section 55 deals. with civil remedies for infringement of copyright. Section 63 prescribed punishment for the offence of infringement of copyright or other rights conferred by the Act, while section 63-A provides for enhanced penalty on second and subsequent convictions.*

15. *However, the single factor to be taken note of here is that no provision had been engrafted in these two Acts interdicting or inhibiting both civil and criminal actions being proceeded simultaneously before competent forums.*

16. *Taking notice of the fact-situation, impelling or compelling the resorting to one course or the other, or both courses simultaneously, as had been done by various Courts of superior jurisdiction and the apex Court in the decisions cited supra, and on an analogy of the various provisions adumbrated under the two Acts, I am of the view that in the instant case, both actions have to proceed simultaneously and if done so, no prejudice is likely to be caused to any of the parties, in as much as both the actions are not mutually exclusive, but clearly co-extensive and quite different in content and consequence. hereby affixing my seal of approval to the bone of contention urged by Mr. U.N.R. Rao, learned Senior Counsel appearing for the respondents.*

17. *The second bone of contention as urged is relatable to the feasibility or otherwise of fastening or mulcting liability upon petitioners 2 to 4/accused 2 to 4 in the facts and circumstances of the case, on the face of the sanguine*

¹ 1992 SCC OnLine Mad 420

provisions adumbrated either under Section 88 of the Trade and Merchandise Marks Act or under Section 69 of the Copyright Act, both provisions being identical in tenor and terms without any variation whatever. There is no manner of doubt that first Petitioner Accused-1 Company would fall within the definition of the term 'Company' as contemplated by either of the aforesaid provisions. The effect of sub-section (1) of these provisions is that when an offence is said to have been committed by a Company, apart from fastening the liability upon the Company, other personnel who are in charge of and responsible for the conduct of the affairs of the company at the time when the offence was committed, are also mulcted with liability for the offences stated to have been committed, by the company. There is also an identical proviso appended to both these sub-sections, according to which, if the person proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence, he shall not be liable for any punishment. Sub-section (2) of the aforesaid provisions stipulates that, notwithstanding anything contained in sub-section (1) where an offence under these Acts has been committed by a Company and is proved that the offence has been committed with the consent or connivance, of, or that the commission of the offence is attributable to any negligence on the part of any director, manager, secretary, or other officer of the company, such officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

(Emphasis supplied)

The High Court of Madras holds that both actions can proceed simultaneously and if done so, no prejudice is likely to be caused to any of the parties. In the light of the judgment of the co-ordinate Bench and that of the High Court of Madras, the submission of the learned senior counsel that the proceedings under Section 63 will have to wait the outcome of the civil suit is rendered unacceptable

and it is unsustainable. Section 63 makes it an offence, if any person who knowingly infringes or abets the infringement of a copyright in a work or any other right conferred under this Act.

16. Now, whether the copyright has been infringed or not is what is to be noticed *albeit, prima facie*. It is not in dispute that the song was being played in the background and those videos have been uploaded on YouTube and when the videos are uploaded there is a declaration in every video be it twitter, instagram, face book or YouTube. The declaration reads as follows:

"This video is an intellectual property belonging to the Indian National Congress. Please seek prior permission before using any part of this video in any form."

(Emphasis added)

This declaration is found in every platform where the video is played. The declaration is as afore-quoted which depicts that the video is an intellectual property belonging to the Indian National Congress and without prior permission using any part of the video in any form would be illegal. It is not the original copyright of the

Indian National Congress who have put it in the manner that they have portrayed. This would be circumstance enough to demonstrate that the Indian National Congress has tampered with the source code and have replaced the song with their song and have portrayed the 3rd petitioner to be a hero of the song. Portraying the 3rd petitioner as a hero in any of the videos cannot become a crime. But, the song that is played in the video, without seeking prior permission/agreement, does amount to violation/infringement of copyright, of the complainant.

17. The Congress reels are found on certain platforms which show at the bottom of the reel, that it is the original audio of the Congress and to the original audio it has a thumb name **“Try it”** which clearly shows that the audio was playable by general public. If the petitioners had not meddled with the source code, they could not have tampered with the audio and replaced it with their own audio. Tampering the source code without permission and freely playing the audio would undoubtedly amount to infringement of copyright of the complainant. The petitioners appears to have taken the copyright of the complainant for granted and have tinkered and

meddled with it. Therefore, *prima facie*, all these factors become a matter of evidence which have to be thrashed out by an investigation in the least.

18. For the aforesaid reasons, finding no merit in the petition, the petition stands rejected. However liberty is reserved to the petitioners to avail of such remedy as is available in law at the appropriate time before the appropriate *fora*.

**Sd/-
JUDGE**

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