
ANALYSING THE CLASH OF TRADITION AND COPYRIGHT IN THE ‘VEERA RAJA VEERA’ DISPUTE

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INTRODUCTION

The interactions between intellectual property law and classical art traditions creates a legal conundrum, especially prominent in a culturally diverse country like India. The case of *Ustad Faiyaz Wasifuddin Dagar vs Mr. A.R. Rahman*¹ discusses the extent to which old musical compositions can enjoy copyright protection under the law. Centred around the alleged unauthorized use of the Shiva Stuti, a Dhrupad composition, the case sheds light on how originality, authorship and moral rights operate when art is inherited as opposed to being invented. It also explores the crucial difference between a raga and a composition based on a raga.

BACKGROUND

Stemming from the alleged misuse of the Shiva Stuti, a Drupad composition, in the song ‘*Veera Raja Veera*’ from the movie *Ponniyin Selvan 2*, the plaintiff, Ustad Faiyaz Wasifuddin Dagar, claimed that the composition was composed by his father and uncle, dubbed the Junior Dagar Brothers, in the 1970s, and was first performed publicly in Amsterdam in 1978. A Padma Shri recipient and accomplished vocalist, he claimed joined authorship and moral rights over the work.

After the movie’s release in 2023, the plaintiff argued that two of his disciples had shared the composition with the defendant, A.R. Rahman, without permission. Even though there was some post-release attribution given to the Dagarvani tradition, the plaintiff argued that proper credit was neither initially provided, nor was it consistently applied. This led to a civil suit in the Delhi High Court, following which an interim order was passed, declaring that the song composed by A.R. Rahman infringed the Dhrupad musical composition created by the Junior Dagar Brothers.

¹ Ustad Faiyaz Wasifuddin Dagar v. A.R. Rahman, 2025 SCC OnLine Del 2666

Historical Background of Hindustani Music

Hindustani Music, like any other music form, comprises various genres including Dhrupad and Khyal. There exists a concept labelled 'Raga', which is a series of patterns within which classical music is composed, which can be replicated by a voice or instrument. Just as how literary works can be created using the same rules of grammar and alphabets, there are various musical compositions can stem from ragas and the eight swaras. These are mere building blocks in a public domain like alphabets, and this should not deny unique, ancient musical compositions of their deserved protection for any distinct creative arrangement.

ISSUES

- (i) Whether the suit composition is an original musical work of the Junior Dagar Brothers?
- (ii) Whether the impugned song infringes copyright of the Plaintiff in the suit composition?
- (iii) Whether the Plaintiff is entitled to any relief?

PLAINTIFF'S CONTENTIONS

- The plaintiff contended that the composition is a unique arrangement of swaras/notes, complemented by the raga. It comprises stylistic choices that make it original and copyrightable. While ragas are public, like most literary works, the expression can be protected.
- 'Veera Raja Veera' reproduces the suit composition's melodic structure and taal, the rhythm, even though the lyrics may vary. Even copying a small part of the original song can be injuncted.
- The plaintiff argued for the attribution for the Junior Dagar Brothers, citing Section 57 of the Copyright Act, proposing that the film credits be updated.

DEFENDANTS' CONTENTIONS (A.R. Rahman, Madras Talkies, Lyca Productions Pvt. Ltd., Tips Industries Ltd., Defendant Nos. 5 &6)

- There is little to no scope for originality, as Dhrupad is an ancient genre/composition bound by specific rules. Therefore, any composition particularly sung in Raga Adana,

fails to meet the requirements to be protected by copyright.

- Defendant No.1 argued that the suit composition has been recorded in different renditions, including the Junior Dagar Brothers and Gundecha Brothers.
- The impugned song was not just based on the Shiva Stuti but was also built off the foundations of multiple ragas, including Jaunpuri and Hameer Kalyani.
- Since there is no previous attribution that has existed in similar renditions, the defendant argued that he was not obligated to seek permission or give credits.
- Defendant No.1 was hired in good faith to make music for a film based on a classic Tamil Novel.
- Defendant No.2 (Madrid Talkies) argued that any injunction provided would cause harm to the film and its stakeholders.
- It was argued that the test for infringement must be different in the case of classical music, where the constraints of ragas hinder creativity.

RATIO DECIDENDI

- To constitute infringement, there must be substantial similarity and not just resemblance.
- Any composition comprising an original and creative arrangement of swaras and ragas can be copyrightable.
- The manner of such arrangements must be examined on a case-by-case basis.
- Even if a small, vital part of the song was copied, it may constitute infringement.
- The recognition of moral rights, as specified in Section 57 of the Copyright Act, is the minimal acknowledgement that is required in respect of a copyrighted work.

ANALYSIS

Originality in the context of Hindustani Music

While the Delhi High Court delivered the correct decision, there is the core argument that the Shiva Stuti is itself a protectable, original musical composition, under Section 13(1)(a) read with Section 2(p) of the Copyright Act, 1957.²

While it is admittedly true that ragas like Adana are in the domain of the public, it must be mentioned that a raga is not a composition or tune.³ It is a structured framework, much like grammar or the alphabets, wherein, the originality stems not from the raga, but from the composers themselves.⁴ It is their creative direction that shapes the originality of a composition. Here, the fact that the notes of the suit composition have been switched and picked from the Aroha and Avaroha, the lower and higher Octaves of the musical scale, reflects on a level of ingenuity that is hard to replicate.

This also satisfies the standard of originality established by *Eastern Book Company v DB. Modak*,⁵ which declared that there must be a minimum level of creativity in order to label any work as original. Here, the way the swaras are arranged, repeated, dragged creates a unique combination only captured by the suit composition, which also differs from the notations for Raga Adani. Reliance can also be placed on *Sulamangalam R. Jayalakshmi And Anr. vs Meta Musicals And Ors*,⁶ which classified the ancient, devotional and classical song of Kandha Guru Kavacha as a literary work within Section 2(o) of the Copyright Act⁷ and is therefore subject to protection. This must set an important precedent for increased recognition in providing copyright protections to even those classical compositions where the raga and tala are classical in nature.

The balance between Fixation and Tradition

The doctrine of fixation requires that creative work be captured in a tangible medium in order to qualify it for copyright protection.⁸ While Section 2(p) of the Copyright Act states that 'musical works' had to be in notation form, the amendments in 1995 made this requirement optional. This not only helps keep India in touch with important oral traditions like Indian

² The Copyright Act, 1957, § 2(p), 13(1)(a)

³ Nettl et al. 1998, p. 67.

⁴ Raga | Classical, Hindustani & Carnatic | Britannica, <https://www.britannica.com/art/raga>

⁵ Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1

⁶ Sulamangalam R. Jayalakshmi v. Meta Musicals, 2000 SCC OnLine Mad 381

⁷ The Copyright Act, 1957, § 2(o)

⁸ Shree Venkatesh Films Pvt. Ltd. v. Vipul Amrutlal Shah, 2009 SCC OnLine Cal 2113

classical music but also stays in line with the best global practices that discuss intellectual property law.

The mere submission of the 1978 Amsterdam recording must count as a form of musical record. In addition to obeying domestic law, it also remains in tandem with Article 2 of the Berne Convention,⁹ which states that ‘literary and artistic works’ shall include musical compositions with or without words.

Heritage is often related to tradition, folklore, arts or things of special importance.¹⁰ It is also engrained in Article 51-A,¹¹ which entails that it is the duty of every citizen of the country to value and preserve the rich heritage of India’s culture.¹² Rejecting such evidence would not only have deprived a part of justice, but would have also risked excluding tradition from protection, an outcome that this country has constitutionally valued for years.

Moral Rights and Attribution

The biggest aspect of this ruling is the fact that the Court ignored any commercial aspect and directed OTT platforms to give specific credits to the Junior Credit Brothers. In *Amar Nath Sehgal v Union of India*,¹³ the Court concluded that the moral right of attribution is important even after the economic rights are transferred. This is in tandem with the standard set by Article 6bis of the Berne Convention,¹⁴ which objects to any distortion or modification which would violate the original creator’s dignity.

Substantial Similarity

While several people have argued over the Court’s supposed ignorance of the common elements of Raga Adana in the suit composition, it misses the important aspect of the distinct arrangement within that framework. This creates a unique expression that qualifies the standard of originality. Instead of ignoring the seemingly ‘common elements’, this decision instead

⁹ Berne Convention for the Protection of Literary and Artistic Works art. 2, Sept.9 1886, as revised at Paris, July 23, 1971, 1161 U.N.T.S. 3

¹⁰ Archaeological Survey of India, In re, 2021 SCC OnLine Mad 2091

¹¹ India Const. Art. 51A

¹² Allahabad Heritage Society v. State of U.P., 2019 SCC OnLine All 3922

¹³ Amar Nath Sehgal v. Union of India, 2005 SCC OnLine Del 209

¹⁴ Berne Convention for the Protection of Literary and Artistic Works art. 6bis, Sept.9 1886, as revised at Paris, July 23, 1971, 1161 U.N.T.S. 3

recognises the unique nature of Indian Classical Music.

The suggestion of using a virtual identity standard does not make sense, as it is applicable only when a work is granted 'thin copyright' protection.¹⁵ The Shiva Stuti clearly is a unique composition with distinct swara sequencing, a unique taal, and variations in the transitions between the lower and higher octave. This meant that it was not a mere deviation of Raga Adana, but an original literary work that qualifies it for full copyright protection.

Therefore, the standard of substantial similarity is correctly applied. Even sampling a small portion of a sound recording can amount to copyright infringement, because the part that is taken is something valuable. The value of a musical work lies in a distinctive sound or passage, which is affirmed by this very fact held in *Bridgeport Music, Inc. v. Dimensions Films*.¹⁶

This also stresses on the important principle that any Raga is not an expression, but a mere framework to follow. It is based on a specific set of rules and the seven swaras, after which multiple combinations and arrangements lead to the existence of unique musical compositions.¹⁷ This means that, just like every literary work, musical compositions are entitled to copyright protection, and even a small portion that is copied implies that the impugned mark is riding on the reputation of the original piece.

CONCLUSION

Ustad Faiyaz Wasifuddin Dagar vs Mr. A.R. Rahman delivers a verdict that represents a balanced approach to copyright law. By maintaining a fine line between unprotectable traditional elements and original creative expressions with a raga, the Court not only used legal principles to correctly arrive at a decision but also emphasized on the cultural significance of music and tradition. It respects the framework from which certain musicians continue to compose music from, while also ensuring that an individual's original contribution is protected.

¹⁵ Michael Skidmore v. Led Zeppelin [952 F.3d 1051 (9th Cir. 2020)]

¹⁶ Bridgeport Music, Inc. v. Dimensions Films, 410 F.3d 792 (6th Cir. 2005)

¹⁷ J.G. LOCHTEFELD, THE ILLUSTRATED ENCYCLOPEDIA OF HINDUISM (2002), <https://books.google.co.in/books?id=5kl0DYIjUPgC>.