

# **K.R.Ravi Rathinam vs The Director General Of Police on 11 December, 2014**

**Author: V.Dhanapalan**

**Bench: V.Dhanapalan, V.M.Velumani**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2014

CORAM

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.A.(MD)No.1443 of 2014

and

M.P(MD)No.1 of 2014

K.R.Ravi Rathinam

... Appellant/  
Writ Petitioner

Vs.

1.The Director General of Police,  
Dr.Kamarajar Salai,  
Mylapore,  
Chennai.

2.The Inspector General of Police,  
South Zone,  
New Natham Road,  
Madurai.

3.The Commissioner of Police,  
Madurai City,  
Madurai.

4.The Secretary,  
Ministry of Information and Broadcasting,  
Union of India,  
New Delhi.

- 5.The Secretary,  
Information and Cinema,  
Fort St. George,  
Chennai.
  - 6.The Chief Producer,  
Government of India Films Division,  
Shastri Bhavan,  
Haddows Road, Egmore,  
Chennai.
  - 7."Rockline" Venkatesh,  
Producer,  
'Linga',  
No.89, Rajkumar Street,  
Bangalore City.
  - 8.B.Ponkumar,  
Kannadam Screenplay and Script Writer,  
'Linga',  
No.961, Mahatma Gandhi Road,  
Bangalore City.
  - 9."Abirami" Ramanathan,  
President,  
Tamil Nadu Theatre Owners Welfare Association,  
Nadigar Sangam Buildings and  
Saligramam Sony Studios,  
Habibullah Road,  
T.Nagar,  
Chennai.
  - 10.K.S.Ravi Kumar,  
Film Director,  
'Linga',  
No.41, Kodambakkam High Road,  
Chennai.
  - 11.Shivaji Rao Gaeakwad @ Rajinikanth,  
Distributor for M.R.T.K and VCKT Areas,  
'Linga',  
No.64, Poes Garden Main Road,  
Chennai.
- ... Respondents/  
Respondents

Prayer

Writ Appeal filed under Clause 15 of the Letter Patent Act, against the order dated 03.12.2014 passed in W.P(MD)No.18210 of 2014.

!For Appellant ... Mr.W.Peter Ramesh Kumar

^For Respondents ... Mr.K.Chellapandian,  
Additional Advocate General  
assisted by Mr.B.Pugalendhi,  
Special Govt. Pleader for R.1 to R.3 & R.5

Mr.G.R.Swaminathan,  
Assistant Solicitor General of India for R.4 & R.6

Mr.Sanjay Ramasamy  
for R.7, R.8, R.10 & R.11  
No appearance for R.9

\* \* \* \* \*

: JUDGMENT

(Judgment of the Court was delivered by V.DHANAPALAN,J.) Heard Mr.W.Peter Ramesh Kumar, learned Counsel for the appellant, Mr.K.Chellapandian, learned Additional Advocate General with Mr.B.Pugalendhi, learned Special Government Pleader for the respondents 1 to 3 and 5, Mr.G.R.Swaminathan, learned Assistant Solicitor General of India for the respondents 4 and 6, Mr.Sanjay Ramasamy, learned Counsel for the respondents 7, 8, 10 and 11. Notice in respect of the 9th respondent was served through online and the proof in this regard has also been filed stating that "Delivery Attempted : Missent".

2. The unsuccessful writ petitioner is the appellant before this Court.

Brief facts:

3. This Writ Appeal has been directed against an order of the learned Single Judge made in W.P.(MD) No.18210 of 2014 dated 03.12.2014, wherein, the learned Single Judge on careful consideration of the respective contentions and in view of the divergent stand taken by the respective parties and taking note of the over all assessment of conspectus of the entire attendant facts and circumstances of the present case in an encircling fashion comes to an inevitable conclusion that the grievance of the appellant that his intellectual property/story 'Mullai Vanam 999' was stolen by the Respondents 7, 8, 10 and 11 from 'You Tube' is a private dispute especially when the Respondents 7 to 11 have stoutly denied the same and therefore the merits of the rival claims made by the parties in the subject matter in issue before this Court could not be investigated in a summary proceedings under Article 226 of the Constitution of India.

4. It is further held that when the appellant claims to be the owner of 'Mullai Vanam 999' an intellectual property/story, then his remedy is not to file the Writ Petition under Article 226 of the Constitution of India against the concerned persons who have alleged to have been infringed his Copy Right/stolen his intellectual property and in this regard, the appropriate remedy for him is to file a Civil Suit before the Competent forum or to avail other remedies available under General Law or in Criminal Law and that too, in the manner known to law and in accordance with Law, if he so desired/advised. In that perspective, the writ petition was dismissed,as against which, the present Writ Appeal has been filed.

5. The appellant has gone before the Writ Court stating that he is a Deputy Director for the Tamil feature film 'Mullai Vanam 999' to be produced by Ranga Pon Solai Films. He was in the serial field and for the first time, he is entering into the Tamil Nadu Tinsel Film Industry as Director through the aforesaid 'Mullai Vanam 999' and further, he is the owner and author of the story, screenplay and direction. According to him, 'Mullai Vanam 999' is a story backgrounding the Mullai Periyar and the construction done by 'Penny Quick' apart from National Unification of Rivers and Rivulets. The entire story was uploaded by him in the 'You Tube' a social website on 24.02.2013 itself. All the film stories are being floated in the social websites to show the ownership of films when the same is not patented at Chennai. Further, a number of new channels like Ottran Seithi, Sun Network, Kalaingar Network, Raj Network, Jaya Network, Mega T.V and Vasanth T.V telecasted the same. Also from 26.02.2013 onwards, 'You Tube' floated the same in the public domain.

6. On 24.02.2013 at 10.00 a.m., pooja for 'Mullai Vanam 999' was celebrated in AVM Studios which was presided over by several VIPs, Dignitaries and the shooting for his new film is to be shot from January 2015 onwards, both indoors and outdoors. Further, pre-shooting initiations were conducted around Theni ? Madurai Districts and Kerala for the past ten months while staying at Theni International Guest House along with the Producers, Artists, Cameramen and other off-screen Technicians.

7. While the matter stood thus, to the appellant's great shock and surprise, on 02.05.2014, while browsing 'You Tube', his story was appearing in the film named 'Lingaa', as if it was produced by the Seventh Respondent and directed by the Tenth Respondent, story by the Eighth Respondent and to be acted and distributed by the 11th Respondent. The aforesaid Respondents had clandestinely stolen his property from 'You Tube' and posted the same on 02.05.2014. Whereas the very same story was floated by him in the name of 'Mullai Vanam 999' as early as on 24.02.2013 itself.

8. His feature film 'Mullai Vanam 999' is to be produced at the cost of Rs.3,31,20,000/- and the same is expected to fetch a commercial revenue of Rs.15 Crores through his dream story and screenplay. Whereas the Respondents 7, 8, 10 and 11 are shooting the feature film 'Lingaa' at a lightening speed in Mysore, Kerala and Tamil Nadu with his stolen story 'Mullai Vanam 999'.

9. The appellant had invested 47 years of his labour in the film industry and for the first time, his story 'Mullai Vanam 999' is to be released during Tamil New Year's day 'Chithirai 2015', whereas his maiden stolen story is to be released during 'Pongal' 2015 by the Respondents 7, 8, 10 and 11, which will bring his entire life and future into the dark gallows for ever. Further, in 'Kungumam' magazine dated 19.05.2014, the stolen story was reproduced through the auspices of the Respondents 7, 8, 10 and 11.

10. When that being the position, the Respondents 7, 8, 10 and 11 have committed the offences under Sections 66 B, 66 E, 72, 72 A r/w. 76 and 77 of the Information Technology Act, 2000 and Sections 109, 379, 403, 420, 468, 470, 471 along with 120 (b) of IPC. The intellectual property from the 'You Tube' was stolen by the Respondents 7, 8, 10 and 11 for illegally gaining and thereby bringing loss to his personal exchequer.

11. In this regard, a complaint was preferred to the Respondents 1 to 6 on 01.11.2014 stating all the offences committed by the Respondents 7, 8, 10 and 11. So far, no First Information Report has been registered by the Cyber Crime or any other authority. Hence, the appellant has moved this Court under Article 226 of the Constitution of India.

12. Also, the appellant has prayed for passing of an order by the Writ Court in directing the Respondents 1 to 3 to take his complaint dated 01.11.2014 for the offences under Sections 66 B, 66 E, 72, 72 A r/w. 76 and 77 of the Information Technology Act, 2000 and Sections 109, 379, 403, 420, 468, 470, 471 along with 120 (b) of IPC, investigate the same and file a final report before the concerned Court.

13. Therefore, he filed a Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the Respondents 1 to 6 to act upon the appellant's representation dated 1/11/2014 by conducting a detailed enquiry after appointing a Fact Finding Committee into the true authorship and ownership of the single story line found in both feature films 'Mullai Vanam 999' and 'Linga' so as to legalize the production and release of both on or before 12/12/2014.

14. Whereas the third respondent has filed a counter stating that the representation dated 01.11.2014 of the appellant was sent by registered post on 05.11.2014 and the same was received in my office on 06.11.2014. The said complaint was forwarded to the Assistant Commissioner, Tallakulam on 08.11.2014 vide C.No.R4/785/57850/2014 and he forwarded the same to the Inspector of Police, Tallakulam for an enquiry. The Inspector of Police, Tallakulam conducted an enquiry on the same, during which, the appellant/complainant Mr.K.R.Ravi Rathinam appeared before the Inspector of Police on 13.11.2014 and sought time till 20.11.2014 due to his urgent work at Chennai. He appeared before the Inspector of Police on 20.11.2014 and gave a statement that he is directing a film in the name 'Mullai Vanam 999' and produced the Invitation and photographs on the opening ceremony of the said film.

15. According to the appellant, his film "Mullai Vanam 999" is based on the Mullai Periyar Dam and Colonel J.Penni Quick and that the pooja for the film was held on 24.02.2013 at A.V.M. Studios and in that function several V.I.Ps have participated. The events of pooja held on 24.02.2013 were telecasted in 'You Tube' and in other channels. He was doing the preparatory work for the film and intended to commence the shooting from January 2014. The appellant had seen an article published in Kumutham weekly dated 06.08.2014 and Kungumam weekly dated 19.05.2014 and in the 'You Tube' and suspected that the story line of the Film 'Lingaa' produced by the seventh respondent is similar to that of his film 'Mullai Vanam 999' and requested to stay the exhibition of film 'Lingaa' in the said petition dated 01.11.2014.

16. The writ petition was filed for conducting a detailed enquiry after appointing a Fact Finding Committee, into the true authorship and ownership of the single story line found in both feature films "Mullai Vanam 999" and "Linga". Even before the Inspector of Police commences his enquiry, the relief claimed by the appellant is not within the limits of the police. The appellant had also prayed for an interim direction as against the respondents 1 to 3 to take his complaint dated

01.11.2014 for the offences U/s 66B, 66E, 72, 72A, r/w 76 and 77 of the Information Technology Act 2000 and Section 109, 379, 403, 420, 468, 470, 471 along with 120(b) of IPC, investigate the same and file a final report before the concerned court. Section 66B of the Information Technology Act deals with the punishment for dishonestly receiving stolen computer resources or communication devices. Whoever dishonestly receives or retains any stolen computer resource or communication device knowing or having reason to believe the same to be stolen computer resource or communication device, shall be punished with imprisonment of either for a term which may extend to three years or with a fine which may extend to Rupees one lakh or both. The averments in the complaint and his statement would not make out an offence u/s 66B of the Information technology Act 2000. Section 66E of the Information technology Act 2000 deals with punishment for violation of privacy. Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both. The words transmit, capture, private area, publishes, are explained for the purpose of this section in the Act itself as follows:

(a) "transmit" means to electronically send a visual image with the intent that it be viewed by a person or persons;

(b) "capture", with respect to an image, means to videotape, photograph, film or record by any means;

(c) "private area" means the naked or undergarment clad genitals, pubic area, buttocks or female breast;

(d) "publishes" means reproduction in the printed or electronic form and making it available for public;

Under circumstances violating privacy means circumstances in which a person can have a reasonable expectation that

(i) he or she could disrobe in privacy, without being concerned that an image of his private area was being captured; or

(ii) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place.

17. The above provision of law refers to the offences with respect to electronically sent visual image with the intention to be viewed by a person or persons of an image videotape, photograph, film or record by any means the naked or undergarment clad genitals, pubic area, buttocks or female breast. The facts and circumstances of the complaint and the statements would not attract an offence under section 66E of the Information technology Act 2000.

18. Section 72 of the Information Technology Act 2000 deals with penalty for breach of confidentiality and privacy. If any person who, in pursuance of any of the powers conferred under the Information technology Act 2000 Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both. Section 72-A of the Information technology Act 2000 deals with punishment for Disclosure of information in breach of lawful contract. Any person including an intermediary who, while providing services under the terms of lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, such material to any other person shall be punished with imprisonment for a term which may extend to three years, or with a fine which may extend to five lakh rupees, or with both. The offences under section 72 & 72-A of the Acts are arising out of a contractual obligation and there is no contractual obligation between the complainant and the respondents 7 to 11 and the averments in the complaint and the statement given by the writ appellant would not make out an offence under the above said provisions.

19. Section 76 of the Information technology Act 2000 deals with Confiscation of the computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, in respect of which any provision of the Information technology Act 2000 rules, orders or regulations made there under has been or is being contravened. Similarly Section 77 of the Information technology Act 2000 deals with penalty if no penalty imposed or confiscation made under the Act. This provision of law is also not applicable in the given circumstances. Similarly the offences u/s 109, 379, 403, 420, 468, 470, 471 along with 120(b) of IPC are also not attracted in the given circumstances. Section 403 relates to dishonest misappropriation of movable property, Section 420 relates to cheating and thereby dishonestly inducing delivery of property, Section 468 relates to forgery for the purpose of cheating, Section 470 relates to using as genuine a forged document which is known to be forged and Section 471 relates to the forged document is a promissory note of the central government. The averments in the complaint and the statement given by the writ appellant would not make out an offence under the above said provisions. Section 109 relates to abetment of any offence and Section 120(B) relates to criminal conspiracy would arise only when an offence is made out.

20. Further, the appellant has not made out any case that his story is similar to that of the story of 8th respondent. The appellant though made a pooja for a film namely "Mullai Vanam 999" the shooting for the film has not been commenced. Even according to him, he is in the preparatory work and likely to commence the shooting from January 2015. He has not produced his story during the enquiry. Similarly the 8th respondent also claims that he has not disclosed the story line anywhere. The complaint as well as the writ petition is filed on the assumption that the story of the film Lingaa is that of his story and the complainant has not proved any commission of offence particularly a cognizable offence. During the enquiry the Inspector of Police, Tallakulam had examined both the parties and recorded their statements. In view of the pendency of writ petition before the Writ

Court, the Inspector of Police has not proceeded further and the respondent police would act in accordance with the orders of the Writ Court in the above writ petition.

21. In the counter affidavit filed by the 10th respondent, it has been averred as follows:

The appellant is basing his entire false claim on a very flimsy thread that the story of the film "Lingaa" and his story are both based on the Mullai Periyar Dam. Except for the official teasers and trailers, nothing about or related to "Lingaa" has been published or caused to be published anywhere by any of the Respondents 7, 8, 10 and 11. Therefore, he stated that it is not clear as to how the appellant came to the conclusion that the story of the film is the same as the story which the appellant claims to have written. According to him, the appellant has also not published his story anywhere till date and in fact, even by his own admission, he has not yet commenced production of his alleged film based on his alleged story. His claim that the entire story was uploaded in 'You Tube' on 24.02.2013 itself is misleading factor, since all that the 'You Tube' clipping reveals that the story of the appellant concerns 'Mullai Periar Dam' and how people of six districts in Tamil Nadu in unison fought for their rights over the said dam. Further, it contained a statement by a certain artiste that the story involves the love affair between a Tamil Boy and a Kerala Girl. Such sketchy reports on the general theme cannot amount to telling a story.

22. In the counter affidavit filed by 11th Respondent, it has been averred as follows:

(i) According to the 11th respondent, the writ petition itself is neither maintainable nor sustainable either in law. From the affidavit, it can be clearly seen that many parties have been arrayed as Respondents, including the 11th respondent, only for the purpose of invoking Article 226 of the Constitution of India and this is a total abuse of process of the Court. The appellant has not come with clean hands and not entitled to any reliefs much less the reliefs sought for in the above Writ Petition. Further, the appellant has made him a party on the wrong assumption that he is a Distributor for M.R.T.K and VCKT Areas. Such an assumption is totally false as the 11th respondent has no other role in the above movie other than being the lead actor. The appellant has clearly made him a party in order to defame him and get undue publicity. Moreover, the appellant has arrayed him as one of the respondents only with ulterior motive and mala fide intention for illegal gain. This can be clearly seen from the fact that while he has chosen to array him as a respondent on the alleged ground that he is a Distributor but he has not chosen to array any of the other Distributors

(ii) Further, the 11th respondent has averred that he has been in the Indian Film industry and in particular the Tamil Film Industry for more than four decades as not only a veteran actor but also as an eminent Producer, Director, Screen Writer, Playback Singer and Story Writer The Government of India, in recognition of his services in the Film Industry as a whole conferred the prestigious Padma Bhushan Award on him. More recently The Government of India, in recognition of his services



in the Film Industry conferred on him "Best Entertainer of the Year" award. The 11th respondent has been conferred with several State Awards including the Kalaimamani Award.

As of now, the schedule for shooting for the film titled "Lingaa", being made in Tamil with a huge star cast under the directorial venture of 10th Respondent on the story written by 8th Respondent and produced by 7th Respondent. The said film is on the verge of wrapping up in all cinematic post production works and is scheduled to be released worldwide. Further, the 11th respondent has categorically denied any knowledge of the appellant's claim that he is a Debutant Director for a Tamil Feature Film "Mullai Vanum 999" produced by One Ranga Pon Solai Films or that he was in the serial field and for the time he is entering into the Tamil Nadu Tinsel Film Industry, as a Director through the above mentioned Mullai Vannum 999 or that he is the owner and author of the story screenplay and Direction.

(iii) As regards Penny Quick, Mullai Periyar and the subject of National Justification of rivers and Rivulets, there are umpteen stories and articles revolving the same and the appellant apparently seems to have erroneously concluded that he has a copy right over such a topic. Therefore, such claims of the appellant are totally untenable, perverse and frivolous. Apart from that, a person claiming that the copyright of a story authored by him has been infringed should show that at least 13 continuous scenes shot in a feature film are similar to the story claimed to have been authored by him. A bear reading of the Affidavit filed by the appellant does not disclose such an allegation that the Movie titled Lingaa under production has such 13 continuous scenes that are similar to the story claimed to have been authored by him. As such, the claims of the appellant that his copyright is stolen or infringed is totally baseless and frivolous and clearly made with mala fide intentions. The allegation that the 11th respondent is a Distributor in para 5 of the Affidavit filed in support of the Writ Petition is a blatant lie and has been made with ulterior motives and mala fide intentions in order to spoil and damage the good reputation apart from trying to make undue gain by such scandalous allegations. This itself would expose the perverse intentions of the appellant. Further, he averred that, the story and screen played in the movie, was written and created by the 10th Respondent herein and he has nothing to do with the appellant's story as claimed by him. It may not be out of place to state that the 8th Respondent had in fact registered his story as early as 2010 itself and strongly denied the allegation of the appellant that the Respondents had clandestinely stolen his story from "You Tube".

(iv) As regards the allegations made by the appellant in Paras 6 and 7 of the Affidavit filed by the him, as pointed out earlier the 11th respondent had no knowledge of the appellant or his activities or claims regarding his budget or expected profits and hence has nothing to comment on the same, as it does not concern him or the others. As regards the purported article in the Kungumam Magazine, no one associated to the film had ever spoken about the film's shooting or even whispered about any of the aspects of the film till date. The newspapers or magazines report news without even verifying the 11th respondent or the other Respondents cannot be held liable for an unverified story published in a magazine. Moreover it is surprising to note that how at all the appellant is comparing the story of the film "Lingaa" with the story claimed to have been written by him as he has absolutely no access to the story or the contents of the film which itself would show that he has merely initiated a

vexatious litigation on assumptions and surmises.

(v) Further the 11th respondent averred that there is no prima facie case or balance of convenience in favour of the appellant and he has approached this Hon'ble Court with unclean hands and the allegations made by him in the affidavit are mischievous and highly false and therefore there is no merit in the above Writ Petition and the same deserves to be dismissed.

23. Whereas the appellant had filed an additional affidavit contending the following:

(i) According to him, in the counter filed by S.Ponkumaran, it is stated that a story titled "KING KHAN" was registered by him on 15.12.2010 itself and the same is the story line of "Lingaa". After receiving notice from the Writ Court, as an afterthought, this stand has been taken to counter the uploading of "Mullai Vanam 999" in the 'You Tube' on 26.02.2013. The film "KING KHAN" was released in Hindi during 2011 itself and it has nothing to do with Mullai Periyar or Colonel John Penny Quick. The contesting respondents had tried to dupe the Writ Court by filing a certificate of another story only to show that it has been registered on 15.12.2010, well before the date of floating "Mullai vanam 999" in the 'You Tube' on 26.02.2013 as a false counter blast.

(ii) Further, the writer says that he is ready to submit his story before this Court, for which the appellant is also ready to file the story of his "Mullai Vanam 999" for perusal and better appreciation by this Hon'ble Court. Further, the counter of Shivaji Rao Gaeakwad @ Rajinikanth is against the counter filed by his own Director K.S.Ravikumar which goes to show that the case of the appellant is proved, in this context itself as this can be construed as a "same sign goal". He also states that, both the script and screenplay for the movie had been authored by the 8th respondent, which goes contrary to the claim made by the stolen film's director K.S.Ravikumar, that it was he who wrote the screenplay, for the basic storyline of the 8th respondent. Further, on the contrary, stolen film Director K.S.Ravikumar, in his counter affidavit, had claimed: "Though the basic story line of the 8th respondent, has been taken for this stolen film "Lingaa" the screenplay has been done by him and several other original elements have been added. It is beyond one's common sense as to how the appellant has come to the conclusion that the story of "Lingaa" is allegedly same as his story "Mullai Vanam 999"

The counter of Shivaji Rao Gaeakwad @ Rajinikanth states, that he is a veteran Actor, Eminent Producer, Director, Screen Writer, Play Back Singer, Matinee idol and story writer in Kollywood, Bollywood and Hollywood for the past 40 years and earned the following awards, for his service to the nation, "PADMABOOSHAN, Best Entertainer of 2014 and "KALAIMAAMANI" award apart from several other awards for his four decade service in the film industry.

(iii) Further, the appellant submits that he belongs to a weaker section of the Society and with great difficulty struggling to enter into the giant screen from the small screen, through the maiden film "Mullai Vanam 999". His entire career and future life is resting upon the stolen story of "Lingaa" and therefore he prayed that this Court may save all 47 years of the appellant's life and endeavor by saving "Mullai Vanam 999" story life, from the hands of the rich, famous and powerful contesting respondents and their stolen feature film "Lingaa".

24. On consideration of the above factual matrix, the learned single Judge, after analysing various provisions and decisions held that the appellant has to work out his remedy before the Civil Court or Criminal Court in the manner known to law, thereby dismissed the writ petition. Aggrieved over the same, the present Writ Appeal has been filled by the petitioner/appellant.

25. Mr.W.Peter Ramesh Kumar, learned Counsel for the appellant vehemently contended that the appellant, being the first generation person and having dreams over the cinema industry hailed from Theni District, besides claiming that he had 47 years of labour and hard work to enter into the cinema field and wrote a story called "Mullaivanam 999" and with an aim to produce as a feature film, he had conducted pooja on 24.02.2013 at 10.00 a.m., in AVM Studios and since then, he started the shooting of the movie and had incurred huge expenses over it. According to the appellant, he planned to produce the said movie at the cost of Rs.3,31,20,000/- and he expected that he may have commercial gain of Rs.15 Crores through his dreams which have been now taken away by the infringement of the respondents 7, 8, 10 and 11. Further, after looking into the information in 'Kungumam' magazine dated 19.05.2014 and in 'Kumudham' magazine dated 06.08.2014, which would clearly reveal that the story of 'Lingaa' is the story of 'Mullaivanam 999', a complaint has been made by the appellant seeking appropriate action. Since no action has been initiated, the appellant has moved before the Writ Court for the above stated relief.

26. It is further contention of the learned Counsel for the appellant that the learned single Judge, without examining the legal injury and the right of the appellant, relegated the appellant to go before the civil Court, when such a remedy would definitely deprive the appellant's valuable rights before this Court and therefore, the learned single Judge is not right in arriving at a finding as to the maintainability of the writ petition as well as relegating the appellant to go before the civil Court.

27. In support of his contentions, he relied on the decision in Babubhai Jamnadas Patel Vs State of Gujarat and Others, reported in (2009) 9 SCC 610, it has been held as follows:-

"49. The various decisions cited by Mr. Dave endorse the view that when required not only could the High Court or this Court direct the Investigating Agencies to conduct the investigation in a fair and unbiased manner, but that in exercise of its powers under Article 142 of the Constitution, the Supreme Court could also issue directions for enforcement of fundamental rights and to ensure that complete justice was done to the parties.

50. In fact, in Kashmere Devi's case (supra), this Court had directed the Magistrate to exercise powers under Section 173(8) Cr.P.C. to direct the C.B.I. to make a proper and thorough investigation in an independent and objective manner and to submit an additional charge-sheet, if circumstances so required, in accordance with law.

51. There is, therefore, no doubt that in appropriate cases, the Courts may monitor an investigation into an offence when it is satisfied that either the investigation is not being proceeded with or is being influenced by interested persons.

52. We are, therefore, not inclined to interfere with the orders of the High Court impugned in these appeals and we direct the Investigating Authorities to proceed in the manner indicated by the High Court in its impugned orders. The appeals are, accordingly, dismissed."

28. Controverting the said submissions, Mr.K.Chellapandian, learned Additional Advocate General for the respondents 1 to 3 and 5, would submit that the complaint/representation of the appellant dated 01.11.2014 was sent by the Registered Post on 05.11.2014 and the same was received in the office of the official respondents on 06.11.2014 and forwarded to the Assistant Commissioner, Tallakulam on 08.11.2014 and he forwarded the same to the Inspector of Police, Tallakulam, for enquiry and accordingly, an enquiry has been conducted and the appellant had appeared before the concerned police on 13.11.2014 and sought time till 20.11.2014 and thereafter, he appeared before the concerned police on 20.11.2014 and gave a statement about the above facts and requested for action. He, therefore, submitted that the official respondents have acted diligently in accordance with law and by following the procedures as contemplated under law and there is no fault on the respondents 1 to 3 in conducting an enquiry on the basis of the complaint.

29. Further, he has pointed out as to the information dated 19.05.2014, a complaint was very belatedly lodged before the official respondents on 01.11.2014 and even then, the respondents 1 to 3 have taken action in accordance with law.

30. The learned Additional Advocate General has relied on a judgment of the Supreme Court reported in (2008) 2 SCC 409, Sakiri Vasu Vs. State of Uttar Pradesh and Others, wherein, it has been held as follows:-

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C.

before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.?

31. Whereas Mr.G.R.Swaminathan, learned Assistant Solicitor General of India for the respondents 4 and 6 would submit that as far as the Union of India is concerned, once the Certification of the Censor Board is over, it is not for them to go into the veracity of the claim of the parties and therefore, they have no role to play about the claim of the appellant in this case.

32. Mr.Sanjay Ramasamy, learned Counsel for the respondents 7, 8, 10 and 11 would vehemently contend that the writ petition is not at all maintainable as the story of 'Lingaa' and the rights created by the private respondents are on their thoughts and ideas as it may differ from the story to story and from person to person. Therefore, the claim of the petitioner that 'Mullaivanam 999' is a story adopted by them is not correct. The copy right infringement is a matter of adjudication before the competent Court of civil jurisdiction and no writ would lie under Article 226 of the Constitution of India to conduct a roving enquiry by taking oral and documentary evidence in order to prove the case. Therefore, the Writ Court has rightly taken a decision in dismissing the Writ Petition and relegating the appellant to go before the civil Court and such perception arrived at by the Writ Court cannot be faulted with.

33. By referring to various judgments, the learned Counsel for the private respondents would contend that the prayer of the appellant seeking to direct the official respondents 1 to 6 to act upon the appellant's representation dated 01.11.2014, to conduct a detailed enquiry after appointing a Fact Finding Committee into the true authorship and ownership of the single story line found in both feature films 'Mullai Vanam 999' and 'Lingaa' so as to legalize the production and release of

both, on or before 12.12.2014, would itself make it clear that the claim of authorship and ownership is a subject matter of civil jurisdiction and it would not attract the Special Original jurisdiction under Article 226 of the Constitution of India.

34. In support of his contentions, the learned Counsel for the respondents 7, 8, 10 and 11, placed reliance on the following decisions:

(i) Aleque Padamsee and others Vs Union of India and others reported in (2007) 3 Supreme Court Cases (Cri) 1, wherein the Honourable Supreme Court held as follows:

"6. "4. When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate, after recording evidence, finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and could issue process to the accused.

These aspects have been highlighted by this Court in All India Institute of Medical Sciences Employees' Union (Regd.) through its President v. Union of India and Others [(1996) 11 SCC 582].

7. Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. The basic question is as to what course is to be adopted if the police does not do it. As was held in All India Institute of Medical Sciences case [(1996) 11 SCC 582 : 1997 SCC (Cri) 303] and reiterated in Gangadhar case [(2004) 7 SCC 768 : 2005 SCC (Cri) 404] the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that there was conflict in the views in All India Institute of Medical Sciences case, Gangadhar case, Hari Singh case [(2006) 5 SCC 733 : (2006) 3 SCC (Cri) 63], Minu Kumari case [(2006) 4 SCC 359 : (2006) 2 SCC (Cri) 310] and Ramesh Kumari case [(2006) 2 SCC 677 : (2006) 1 SCC (Cri) 678 : AIR 2006 SC 1322], we find that the view expressed in Ramesh Kumari case related to the action required to be taken by the police when any cognizable offence is brought to its notice. In Ramesh Kumari case the basic issue did not relate to the methodology to be adopted which was expressly dealt with in All India Institute of Medical Sciences case, Gangadhar case,

Minu Kumari case and Hari Singh case. The view expressed in Ramesh Kumari case was reiterated in Lallan Chaudhary v. State of Bihar [(2006) 12 SCC 229 : (2007) 1 SCC (Cri) 684 : AIR 2006 SC 3376]. The course available, when the police does not carry out the statutory requirements under Sections 154 was directly in issue in All India Institute of Medical Sciences case, Gangadhar case, Minu Kumari case and Hari Singh case.

8.The Writ petitions are finally dispose of with the following directions:-

(1)If any person is aggrieved by the inaction of the police officials in registering the FIR, the modalities contained in Section 190 read with Section 200 of the Code are to be adopted and observed.

(2)It is open to any person aggrieved by the inaction of the police officials to adopt the remedy in terms of the aforesaid provisions. (3)Sofar as non-grant of sanction aspect is concerned, it is for the Government concerned to deal with the prayer. The Government concerned to deal with the prayer. The Government concerned would do well to deal with the matter within three months from the date of receipt of this order. (4)We make it clear that we have expressed any opinion on the merits of the case.?

(ii) In regard to his contention that violation of copy right must be proved by clear and cogent evidence after applying various tests, he relied on the decision of the Honourable Supreme Court in AIIMS Employees' Union v.

Union of India reported in (1996) 11 Supreme Court Cases 582.

(iii) R.G.Anand v. Delux Films and others reported in AIR 1978 SUPREME COURT 1613, wherein the Honourable Supreme Court held as follows:

"It appears from a comparison of the script of the stage play "Hum Hindustani" and the script of the film "New Delhi" that the authors of the film script have been influenced to a degree by the salient features of the plot set forth in the play script. There can be. little doubt from the evidence that the authors of the film script were aware of the scheme of the play. But on the other hand, the story portrayed by the film travels beyond the plot delineated in the play In the play, the theme of provincial parochialism is illustrated only in the opposition to a relationship by marriage between two families hailing from different parts of the country. In the film the theme is also illustrated by the hostile attitude of proprietors of lodging accommodation towards prospective lodgers who do not belong to the same provincial community. The plot then extends to the evils of the dowry system, which is a theme independent of provincial parochialism. There are still other themes embraced within the plot of the film. Nonetheless, the question can arise whether there is an infringement of copyright even though the essential features of the play

can be said to correspond to a part only of the plot of the film. This can arise even where changes are effected while planning the film so that certain immaterial features in the film differ from what is seen in the stage play. The relative position in which the principal actors stand may be exchanged or extended and embellishments may be introduced in the attempt to show that the plot in the film is entirely original and bears no resemblance whatever to the stage play. All such matters fell for consideration in relation to the question whether the relevant part of the plot in the film is merely a colourable imitation of the essential structure of the stage play. If the treatment of the theme in the stage play has been made the basic of one of the themes in the film story and the essential structure of that treatment is clearly and distinctly identifiable in the film story, it is not necessary, it seems to me, for the Court to examine all the several themes embraced within the plot of the film in order to decide whether infringement has been established. In the attempt to show that he is not guilty of infringement of copyright, it is always possible for a person intending to take advantage of the intellectual effort and labours of another to so develop his own product that it covers a wider field than the area included within the scope of the earlier product, and in the common area covered by the two productions to introduce changes in order to disguise the attempt at plagiarism. If a reappraisal of the facts in the present case had been open in this court, I am not sure that I would not have differed from the view taken on the facts by the High Court, but as the matter stands, the trial Court as well as the High Court have concurred in the finding that such similarities as exist between the stage play "Hum Hindustani" and the film "New Delhi" do not make out a case of infringement. The dissimilarities, in their opinion, are so material that it is not possible to say that the appellant's copyright has been infringed. This Court is extremely reluctant to interfere with concurrent findings of fact reached by the Courts below and for that reason I would allow the judgment under appeal to stand. In another, and perhaps a clearer case, it may be necessary for this Court to interfere and remove the impression which may have gained ground that the copyright belonging to an author can be readily infringed by making immaterial changes, introducing insubstantial differences and enlarging the scope of the original theme so that a veil of apparent dissimilarity is thrown around the work now produced. The court will look strictly at not only blatant examples of copying but also at reprehensible attempts at colourable imitation.

The appeal is dismissed, but without any order as to costs."

(iv) He also relied on the unreported judgment of the Division Bench of this Court in S.Senthil Kumar v. Kamalahasan and another [O.S.A.No.126 of 2007, decided on 22.08.2007] and pointed out that the ratio laid down by the Division Bench of this Court is that the balance of convenience in that case was clearly on the side of the respondents therein, whose film was almost complete and having invested a huge amount, if any injunction was granted at that stage, they would have to wait till the determination of the suit, causing financial ruins for them. But, on the other hand, the appellant therein had a right to claim damages, if he succeeded in the suit.



35. Notice was served on the ninth respondent and it was served through online and online proof has been filed before this Court and his name is also printed in the cause list. Before the Writ Court also, he did not enter appearance. Notice was ordered by this Court and it has been sent, but it appears from the proof of service through online that 'Delivery attempted :

Missent". We have taken the service of notice on the ninth respondent at the above position.

36. We have considered the submissions of the learned Counsel for the parties and perused the material documents available on record.

37. A circumspection of the facts would reveal that the appellant, who claims to be in the field of serial production for several years, ultimately decided to direct a Tamil Feature Film, named 'Mullai Vanam 999', produced by Ranga Pon Solai Films so as to achieve his long standing desire of entering into the cine field. For that purpose, he created a new story with the renowned plot, which revolves around the Mullai Periyat Dam and Colonel J.Penni Quick. It was stated that the Pooja for commencement of the said movie was conducted on 24.02.2013 at A.V.M.Studios gathered with several VIPs and in order to popularize the main theme of the movie, the story written by the appellant was published in 'You Tube'. While so, to the shock and surprise, the appellant came to know through magazines, viz., Kungumam dated 19.05.2014 and Kumutham dated 06.08.2014 that the respondents are on their fastest way to release a movie in the name of Lingaa, the story of which resembles as that of the appellant.

38. It is pertinent to mention here that the stand of the appellant that he has the sole right and ownership of the story has no doubt to be dealt with under the Copy Rights Act and the appellant has to invoke the appropriate forum under the Act for his remedy in the manner known to law.

39. A careful analysis of the reply submitted by the respondents in the form affidavit discloses that the respondents 7, 8, 10 and 11 have almost completed the movie 'Lingaa' and the same is ready for release on 12.12.2014. At this juncture, the appellant, without furnishing any piece of material to show that the story of the movie 'Lingaa' is a stolen story, is attempting to curtail its release. Moreover the respondents 7, 8, 10 and 11 have not so far disclosed the real plot of the film 'Lingaa' and it is not known as to how the appellant arrived at a conclusion that it is the story of 'Mullaivanam 999'. Based on the assumption derived by the appellant, it is not possible for any Court, including the Court having Special Jurisdiction, to form an opinion as to the the story of the movie 'Lingaa' and the veracity of the stand of the appellant has to be gone into by way of oral and documentary evidence alone thereby leading evidence and proof before the concerned Court of competent jurisdiction. Therefore, the learned Single Judge has rightly declined to interfere with the subject matter in issue in a summary proceeding under Article 226 of the Constitution of India, stating that the prayer sought for in the writ petition in seeking remedy for appropriate action to act on the complaint / representation and also conduct an enquiry for the proof of authorship and ownership, cannot be decided or determined by the Writ Court and it is for the Court of competent jurisdiction to look in to the matter. Similarly, it was further held that the Writ Court has no device or mechanism to compare or evaluate the story of both movies, namely Mullaivanam 999 and

Lingaa, which are to be released on or before 12.12.2014. Thus, the Writ Court had finally decided to relegate the appellant to go before the Civil Court to avail other remedies under General Law or Criminal Law, which, in our considered opinion, cannot, at any stretch of imagination, be faulted with, except saying that there is no infirmity or perversity with the order of the learned Single Judge, warranting interference by this Court.

40. With regard to the next claim of the appellant in respect of stealing of his intellectual property, the copy right or the alleged infringement from the Information Technology, it is a matter of serious concern and it is needless to point out that there is an effective forum available for adjudication of those rights.

41. While holding so, it is obvious to note that the rights of the appellant has been relegated to the civil Court or criminal jurisdiction and the rights of the parties ultimately have to be determined by the concerned Court. In the event of any such determination by the concerned Court, it is no doubt true that the benefits would be extended to the parties in accordance with law and the same could be made available to them. Now, the question to be decided in this case is that when the Writ Court found that there is no jurisdiction to entertain the writ petition of this nature and relegated the parties to go before the appropriate Court of civil or criminal jurisdiction, the next thing to be taken note of is as to how it should be adjudicated before the forum in the intervening circumstances and what would be the attending factors, namely, the balance of convenience between the parties. If the appellant is able to establish his right before the concerned Court, for which, the respondents 7, 8, 10 and 11 deny the same, ultimately, the competent Court will have to come to a decision on either way so as to compensate the affected party as per law. Therefore, the attending circumstances would give us a clear impression that the rights of the parties in this matter have to be adjudicated by the competent Courts of civil or criminal jurisdiction alone. In the interregnum period, if the movie concerned is allowed to be screened, the rights of the appellant would definitely be defeated. Thus, keeping in mind the claim of the appellant that if his movie titled as 'Mullaivanam 999' is released as scheduled, he may certainly have a commercial gain of Rs.15 Crores and also considering the fact that the private respondents have to release the movie on 12.12.2014, we are of the considered opinion that in order to have the balance of convenience and to render justice, some interim measures have to be arranged till the parties move before the appropriate Court of jurisdiction and obtain an order .

42. In view of the above stated position and considering the peculiar circumstances involved in this case as to the claim of the appellant for authorship and ownership and claimed to have been invested some amount in the project and also taking into account the fact that the seventh respondent having invested a huge amount of several Crores and complete the process of release of the film tomorrow, i.e. 12.12.2014, if the appellant is relegated to go before the civil Court for appropriate relief, the parties have to wait till the determination of the suit and that would cause financial ruins to the private respondents and to meet the ends of justice, by applying the principles, 'Justice, Equity and Good Conscience', we dispose of this writ appeal in the following terms:-

(a) In the light of our finding that the writ remedy is not a proper remedy for the appellant, he shall move before the concerned Court of jurisdiction, within a period of

four weeks from the date of receipt of a copy of this judgment;

(b) The seventh respondent is hereby directed to deposit a sum of Rs.10 Crores (Rupees Ten Crores only), out of which, a sum of Rs.3 Crores (Rupees Three Crores only) to be deposited in the form of cash or Demand Draft on or before 12 noon on 12.12.2014 and the balance sum of Rs.2 Crores (Rupees Two Crores only) in the form of cash or Demand Draft, along with the remaining sum of Rs.5 Crores (Rupees Five Crores only) as bank guarantee, to be deposited on or before 15.12.2014, before the Registrar (Administration), Madurai Bench of Madras High Court, Madurai, who, in turn, shall deposit the same before the Indian Bank, High Court Branch, Madurai Bench of Madras High Court Premises, Madurai, in an interest bearing account;

(c) This order is passed without prejudice to the rights of the parties concerned;

(d) On such initial deposit of a sum of Rs.3 Crores (Rupees Three Crores only), the respondents 7, 8, 10 and 11 are at liberty to release the feature film ?LINGAA? forthwith; and

(e) In case, the parties are moving the concerned Court of jurisdiction, the Court below shall decide the matter on merits and in accordance with law, independently without being influenced by any of the observations made in this judgment.

Consequently, the connected miscellaneous petition is closed. However, considering the facts and circumstances of the case, the parties are directed to bear their own costs.

Index : Yes / No

Internet : Yes / No

rsb/ssm/ar

(V.D.P., J.) (V.M.V., J.)

11.12.2014

To

1.The Director General of Police,  
Dr.Kamarajar Salai,  
Mylapore,  
Chennai.

- 2.The Inspector General of Police,  
South Zone,  
New Natham Road,  
Madurai.
- 3.The Commissioner of Police,  
Madurai City,  
Madurai.
- 4.The Secretary,  
Ministry of Information and Broadcasting,  
Union of India,  
New Delhi.
- 5.The Secretary,  
Information and Cinema,  
Fort St. George,  
Chennai.
- 6.The Chief Producer,  
Government of India Films Division,  
Shastri Bhavan,  
Haddows Road, Egmore,  
Chennai.

V.DHANAPALAN, J.  
AND  
V.M.VELUMANI, J.  
rsb/ssm/ar

and

11.12.2014