

R. Madhavan vs S.K. Nayar on 4 June, 1987

Equivalent citations: AIR1988KER39, AIR 1988 KERALA 39, (1987) 2 KER LT 47, (1987) 13 REPORTS 942, 1987 KER LJ 574, (1988) 1 ARBI LR 178, (1987) KER LJ 942

JUDGMENT

Shamsuddin, J.

1. The plaintiff in O.S.No. 1 of 1978 on the file of the District Court, Tellicherry, is the appellant in this appeal. The above suit was filed for a declaration that the plaintiff was entitled to the exclusive copyright in the literary work of 'Alayazhi' and that the Cinematograph film 'Avalute Ravukal' was an infringement of the plaintiffs copyright, and also for an injunction restraining the defendants from distributing or exhibiting or in any other manner dealing with the above said film and for rendition of account of the profits made by the distribution and exhibition of the film.

2. The facts that give rise to the above suit are as follows :-- The first defendant is the Editor, Printer and Publisher and the 2nd defendant is the Senior Assistant Editor of a weekly 'Malayalanadu' published from Quilon. The plaintiff is a postgraduate and a teacher working in Kanhangad Durga High School. According to him, he is engaged in literary pursuits and is a poet and a writer of repute and his poems and stories have been published in several magazines and journals of standing. The plaintiff used to make regular literary contributions to the weekly 'Malayalanadu' and because of his continued association with the weekly he desired to have 'Alayazhi' published in serials in 'Malayalanadu'. The plaintiff informed the second defendant about the same and on 8-2-1975 delivered the fair manuscript of the novel 'Alayazhi' for the purpose of publishing the same serially in 'Malayalanadu'. The second defendant assured the plaintiff that the novel would be a landmark in Malayalam novel writing and it would secure the plaintiff a permanent and lasting place in the galaxy of Novelists. The second defendant also promised to the plaintiff to place the novel before the editor for approval and publish the same as soon as the publication of the current serials was completed and also to remunerate the plaintiff. Despite this assurance, his novel, 'Alayazhi'; was not published in the weekly 'Malayalanadu'. Though the plaintiff made repeated enquiries there was no fruitful response from the second defendant and he was coming out with excuse that the novels received earlier were being serialised. In the first week of March, 1978 the plaintiff met the 2nd defendant. Then the 2nd defendant told the plaintiff that announcement of the publication would be made in the next issue of the weekly and the publication would be proceeded with thereafter.

3. On 23-3-1978 the plaintiff had occasion to see the Malayalam film, 'Avalute Ravukal', of which the 6th defendant is the distributor. The story and screen play of the film were written by the fourth defendant. The 5th defendant is the Director and the third defendant is the Producer of the above

said film. On seeing the film he realised that the story of 'Avalute Ravukal' as exhibited in the film is an imitation of his novel 'Alayazhi' and contained several striking similarities of situations and incidents in the novel 'Alayazhi' which the plaintiff had entrusted with the second defendant. The plaintiff averred that his novel 'Alayazhi' is the story of a poor but pretty sexy girl who takes to a life of prostitution in defiance of the challenges of the world, her ecstasies and her fulfilment. He also alleged that the attributes of the girl Ammini, (heroine in 'Alayazhi') her captivating charm and her exuberant sexiness are brought out in all its details in the heroine Raji in the film, Ammini in his novel was poor and could not prosecute her studies due to adversities, the heroine Raji is of poor parentage and because of her financial disability she also could not continue her studies. Similarly Ammini was drawn into the life of prostitution by a jeep driver Sreenivasan. The pimp who played the like role in the film is a ricksha puller Damu. The pimp Sreenivasan in the plaintiffs novel and the pimp Damu in the film are both addicted to liquor of the illicit variety. Ammini stays in the hut of Nagamma, a fair old lady who does not find fault with Ammini's way of life. Raji stays in the hut of one Mariya Chetathi, a charader similarly portrayed. Similarly the role assigned to Rajagopalan, a college student and the son of a big landlord in the plaintiff's novel is assigned to Jayan, also an affluent college student. In the plaintiffs novel 'Alayazhi' Rajagopalan obtained the release of Ammini from police while in the film Jayan secured Raji's release from the police. Johny in the plaintiffs novel lives alone in a big house. Likewise Babu in the film lives alone in a big house. The plaintiff alleged that the scenes portrayed by Babu and Raji are deliberately copied from the plaintiff's novel, the scene in the bath room in the film under the shower and in the way in which Raji keeps the house for Babu taken from the same situations and incidents in the plaintiff's novel. The dream of Raji in the film and the dream of Ammini in the novel are of the same kind, the likeness and the situation are totally alike, and Johny in his novel takes delight in watching Ammini moving about in and in front of the house from the upstairs of the office. Similarly Chandran feasts his eyes on Raji moving in and about the hut from the upstairs of his residence. The parents of Johny arranged for Johny's marriage and Johny assents to the proposal. In the film Babu approves the choice of the bride for him. The title of his novel is 'Alayazhi' and several dialogue pieces and situations in the film are all copied from the plaintiffs novel.

4. The plaintiff received the original fair manuscript on 25-3-1978 returned to him by the second defendant by registered post. The plaintiff also alleged that the second defendant had with the knowledge of the first defendant made available to defendants 3 to 6 the fair manuscript of the plaintiffs novel which the plaintiff had entrusted with the 2nd defendant and the fourth defendant in league with the defendants 1 to 3, 5 and 6 copied the story, characters and situations as well as the incidents in the plaintiffs novel in his screen play and dialogue in the film 'Avalute Ravukal'. He also alleged that the third defendant the producer, the 5th defendant the Director and the sixth defendant the distributor knew very well that the material in the film was the material copied from his novel 'Alayazhi'. The 18th defendant had contracted with the fourth defendant to produce the film in other languages like Tamil, Kannada and Hindi, and that also constitutes violation of the copyright of the plaintiff. The 18th defendant is not entitled to produce or exhibit the film because the same is either a copy or remake of the film 'Avalute Ravukal' and it is also an infringement of the copyright of the plaintiffs story 'Alayazhi'. In the circumstances mentioned above, the plaintiff alleged that he is entitled to the reliefs sought for in the suit.

5. Defendants 1 and 2 had filed a joint written statement. Defendants 3, 4 and 6 filed another joint written statement. The fifth and eighteenth defendants filed separate written statements.

6. Defendants 1 and 2 in their written statement contended that the 1st defendant the printer and publisher of the weekly 'Malayalanadu' is not contacting or dealing with the writers or authors of any literary work and that all such dealings are done by the second defendant and therefore the first defendant is an unnecessary party and therefore the plaintiff is not entitled to any relief from him, even if the allegations made in the plaint are proved. It was true that the plaintiff approached the 2nd defendant with his novel 'Alayazhi' and requested him to go through the same and publish the same in the weekly 'Malayalanadu', but the allegation that the second defendant was delighted with the achievement of the plaintiff, and assured him that the novel would be a landmark in Malayalam novels is untrue. There was no assurance given by the 2nd defendant that it would be published as soon as the current series was completed. The second defendant had not informed him that the publication would be made soon. The plaintiff approached the 2nd defendant in March 1978 and requested to publish the novel in the weekly and further stated that if there will be delay in publishing the same it would be sent back to him. Accordingly it was sent back. It is not true that the plaintiff wrote a letter to him about the film 'Avalute Ravukal' after seeing the same. He had not received any such letter. Defendants 1 and 2 had nothing to do with the film 'Avalute Ravukal'. They did not show or hand over or make available to defendants 3 to 6 a copy of the novel of the plaintiff. There was no occasion or necessity for them to do so and that they denied any infringement of the rights of the plaintiff. They are not liable to render any accounts.

7. Defendants 3, 4 and 6 in their written statement contended that the story 'Avalute Ravukal' has nothing in common with the plaintiff's novel 'Alayazhi'. They do not admit that the plaintiff had written Malayalam novel by name Alayazhi. The ideas, situations, incidents and different sequences in the film 'Avalute Ravukal' are those of the fourth defendant. He is the author of several stories and scripts which had been filmed by several producers in Malayalam. The original manuscript, in the form of a novel, titled 'Mukthi' was written in 1967, and the same was offered to Sri P. Bhaskaran, a well known producer and director early in 1972, but he said that since the story portrayed the life of a prostitute it may not be welcomed by the cinema going public. Thereafter in Oct, 1972 the third defendant purchased the novel 'Mukthi' under the deed dt./ 30-10-1972 with liberty to change the name of the story into 'Avalute Ravukal, Pakalukai' or any other name and that thereafter the third defendant filmatised the story in the name 'Avalute Ravuka!' in 1977. Before the cinema was released, the synopsis of the story was published in several reputed cinema magazines and periodicals including Chitra Kaumudi, Nana etc. The film was released on 3-3-1978. The fourth defendant does not know defendants 1 and 2 personally and that he had no occasion to see the novel 'Alayazhi', the 4th defendant has written the story and screen play for more than 25 Malayalam films and has written and published several short stories in Kaumudi, Malayala Rajyam, Vikatakesari, Chandrika, Anweshanam, Kumkumam etc. and has written and published two novels in Malayalam under the caption 'Abhilasham' and 'Nirangalute Sangeetham'. The fourth defendant is the story and screenplay writer of Kalippava, Kavitha, Kattuvithachavan, Vrindavanam, Utsavam, Alinganam and several other Malayalam films. He has also written screenplay for several films including Nathoon, Nirmala, Odakuzhal, Matsaram Anjali, Abhinivesam etc, and he is well known in cinema field. Raji, the heroine in 'Avalute Ravukal' has nothing in common with the girl Ammini who is said to be the

heroine of plaintiffs novel. Raji lost her parents when she was very young and could not prosecute her studies beyond second standard. Even long before Damu, the Rickshawala took Raji she had lost her virginity. She was in the company of street boys at her tender age and sleeping with them. Raji comes to stay with Mariya Chetathi only after Damu takes her there; and the visual presentation of the various scenes are actually planned and executed by the Director using his own individual knowledge and skill. It has nothing to do with the story of the plaintiff. Even if the ideas in both are the same, that does not amount to plagiarism or literary piracy. A reading of the original script would reveal that the dialogue pieces in the film and the different situations in the film are not copied from plaintiffs alleged novel, and if there is any similarity alleged, it can only be accidental or superficial. The 2nd defendant had not made available to defendants 3 to 6 the alleged manuscript of the plaintiffs novel. The plaintiff has not so far written any story or screenplay for any film. The story and screenplay of Avalute Ravukal are the fruits of the unremitting labour and creative genius of the fourth defendant, and his films which had the rare opportunity of celebrating Golden Jubilee and on the eve of this celebration the plaintiff filed the suit with the mala fide intention of extracting money from the defendants. In these circumstances the plaintiff is not entitled to any relief under the Indian Copyright Act.

8. The 5th defendant also in his written statement contended that the suit is not maintainable and that he is an unnecessary party. He was engaged on the basis of a picture contract to direct the film in question by the third defendant and as per the contract he commenced his direction of the film 'Avalute Ravukal' in Nov., 1977 and after Censor certificate was obtained in Feb., 1978, he ceased to function in any further capacity in relation to the film and therefore no relief could be granted against him. He also contended that between 1966 and 1968 he and the 4th defendant were staying together at Nadars Garden, Madras. The story 'Mukthi' was originally written by the fourth defendant as a novel and at that time there was no intention to film the same, and that subsequently the story was offered to Sri P. Bhaskaran a leading producer and director but he did not accept the same and therefore he himself and the fourth defendant persuaded the third defendant to purchase the story 'Mukthi'. The 18th defendant contended that as far as he knew, the story, situation and incidents and characters of the film 'Avalute Ravukal' are all creations of the fourth defendant. The plaintiffs novel 'Alayazhi' was read out and interpreted to him and according to him there was no similarity between story and situations, incidents or characters of the plaintiff's novel and the film 'Avalute Ravukal' and the circumstances the plaintiff is not entitled to any relief.

9. In the nature of the contentions raised by the parties the main question that fell for consideration by the court below was whether the 4th defendant had infringed the copyright of the plaintiff in writing the script of the film 'Avalute Ravukal' and whether the script of Avalute Ravukal and arrangements of the same situations and characters and structure of the theme of the film are colourable imitations, of script, arrangements of scenes situations and characters and structure of the theme in the novel of the plaintiff Alayazhi.

10. The trial court has made a comparison of the characters, scenes, and situations in the novel 'Alayazhi' with the script of film, its scenes, situations and characters, in paras 27 to 40 of its judgment. It also went through Ext. A9 manuscript of the novel Alayazhi and Ext. B3 the original script of Avalute Ravukal and Ext. B4 manuscript of the novel Mukthi on which Ext. B3 script is

based and also Ext. A15 statement submitted by the plaintiff furnishing details of the scenes and situations alleged to have been copied from the novel Alayazhi in the screenplay for the purpose of the film Avalute Ravukal. The other documents produced by both the plaintiff and the defendants also were gone into by the court below besides the oral testimony of the witnesses examined in the case. The learned District Judge also took pain to see the film Avalute Ravukai for the purpose of comparison of the characters, scenes and situations alleged to have been copied from the novel Alayazhi. On comparison of the scenes, situations, characters and other details of the novel Alayazhi with Ext. B3 screenplay of the film Avalute Ravukal and on consideration of the materials referred to above, the learned District Judge came to the conclusion that the treatment of the film and the manner of the presentation of the film is quite different from the one written by the plaintiff. According to the learned District Judge, there is a world of difference between the two. In paras 27 to 40 the learned District Judge discussed these aspects in detail and in para 41 the learned District Judge has given his reasons for coming to the above conclusion. The learned District Judge also found that the 4th defendant belonged to Alleppey and at the relevant time he was residing at Madras and the burden was upon the plaintiff to prove that the 2nd defendant in connivance with the 1st defendant made available Exts. A9 to the 4th defendant and others and in the instant case there was no such evidence. The learned Judge also noticed that Ext. B2 agreement dt. 30-10-1972 would show that the 4th defendant wrote the novel Mukthi on which Ext. B4 film script is based in 1967, but even according to the plaintiff Ext. A9 entrusted to the 2nd defendant only in 1975 and this circumstance would definitely go against the plaintiff's case. In this view of the matter the learned District Judge held that the 4th defendant has not committed any plagiarism or literary piracy, and there is no violation of the copyright of the plaintiff and the plaintiff is not entitled to any relief.

11. In this appeal the learned Counsel for the appellant contended that no registration under the Copyright Act is necessary for availing the relief of injunction restraining the infringement of the plaintiff's right or for claiming damage or accounting for infringement of such rights.

12. Before discussing the controversy raised in the case it would be convenient to briefly deal with the law relating to infringement of copyright.

13. The Copyright Act, 1957 (Act 14 of 1957) hereinafter referred to as 'the Act' for short, has been enacted by the Parliament to deal with the infringement of the copyright of the writers and artists.

14. Section 13 of the Act provides that the copy-right shall subsist throughout India in relation to (a) original literary, dramatic, musical and artistic works; (b) cinematograph films; and (c) records. The meaning of the expression copyright has been defined in Section 14 of the Act. Section 44 of the Act deals with registration of copyright. It lays down that there shall be kept at the copyright office a register in the prescribed form to be called 'the Register of Copyright' in which may be entered the names or titles or works and the names and addresses of authors, publishers and owners of copyright and such other particulars as may be prescribed. Section 45 says that the author or publisher or the owner or other person interested in the copyright in any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights, and on receipt of such application in respect of any work under Sub-section (1), the Registrar of Copyrights may, after holding such

inquiry as he may deem fit, enter the particulars of the work in the Register of Copyrights. Section 48 of the Act lays down that the Register of Copyrights shall be prima facie evidence of the particulars entered therein and documents purporting to be copies of any entries therein, or extracts therefrom certified by the Registrar of Copyrights and sealed with the seal of the Copyrights Office shall be admissible in evidence in all courts without further proof or production of the original. Section 49 enables the Registrar of Copyrights to amend or alter the Register of Copyrights. Section 50 invests the Copyright Board to order for rectification in the Register of Copyrights on application of Registrar or any aggrieved person and Section 50A provides for publication of every entry made in such register of copyrights under Section 45 and correction of any entry made in such register under Section 49 and every rectification ordered under Section 50 of the Act and Section 51 lists various grounds on which copyright in a work shall be deemed to infringe. The Explanation to the said section states that for the purposes of the said section the reproduction of a literary, dramatic, musical artistic work in the form of a cinematograph film shall be deemed to be an 'infringing copy.' Section 63 of the Act provides that any person who infringes or abets infringement of copyright in a work or other rights conferred by the Act 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 lakhs rupees.

15. In the instant case the plaintiff has not registered his copyright under Section 44 of the Act.

16. The question whether registration under the Act is a sine qua non or condition precedent for initiation of action for infringement of copyright has been subject-matter of consideration by various High Courts. The Madras High Court in the decision in *A. Sundaresan v. A. C. Thirulokchandar* (1973) 2 Mad LJ 290 took the view that regardless of registration an author acquires, a copyright in his work and non-registration under the Copyright Act is not a bar for an action for infringement of a copyright. A Division Bench of the Madras High Court again considered the question in *Manojah Cine Productions v. A. Sundaresan* AIR 1976 Mad 22 and held that they did not find any justification for holding that registration is a condition precedent for the subsistence, of copyright or acquisition of ownership thereof. According to the learned Judges, Section 45 is only an enabling provision and the effect of Registration under Section 48 is that it shall be prima facie evidence of the particulars entered in the register.

17. A Division Bench of the Calcutta High Court also considered the effect of nonregistration in the decision in *Satsang v. Kiron Chandra* AIR 1972 Cal 533 Hazra J. held in the said decision as follows :

"A plain reading of several sections of the Copyright Act, 1957 leaves no doubt in my mind that the contention of Mr. Sen is correct. Under the Copyright Act 1957 registration is not compulsory. There is no section in the Copyright Act 1957 to the effect that the author can have no right or remedy unless the work is registered. Section 13 of the Copyright Act provides that copyright shall subsist throughout India in certain classes of works which are enumerated in the section. Section 45 of the Act provides that the author or publisher of, or the owner of or other person interested in the copyright in any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyright for entering

particulars of the work in the Register of Copyrights. This Section does not say that registration is compulsory."

18. In *Nav Sahitya Prakash v. Anand Kumar* AIR 1981 All 200, the Allahabad High Court also had occasion to consider this question. K. C. Agrawal J. laid down the law as follows : --

"16. The object given shows that the intention behind the enactment of Section 44 was not to make registration compulsory or mandatory for the purpose of enforcement of copyright. It provided an option. It was, therefore, (not) obligatory for an author to get the copyright registered under Section 44 of the said Act for the purpose of acquiring rights conferred by it. The registration only raised a presumption that the person shown is the actual author. The presumption was not conclusive but where contrary evidence was not-forthcoming, it was not necessary to render further proof to show that the copyright vested in the person mentioned in the register. Section 48 of the Copyright Act provides that the registration of Copyright shall be prima facie evidence of the particulars entered therein and shall be admissible in evidence in all courts without further proof or production of the original. If the legislature intended to make the requirement of registration mandatory, the language of Section 44 would have been different. It could be on the lines of Section 69 of the Partnership Act. There is no provision in the Act depriving an author of the rights conferred by this Act on account of non-registration of the copyright.

17. The use of word "may" in Section 45 is also helpful for interpreting Sections 44 and 45. In ordinary usage "may" is permissive and is not generally held to be mandatory unless the context requires to the contrary. In determining the meaning of any word, the first question to ask always is what is natural and ordinary meaning of the word. It is only when that meaning leads to someother result which cannot reasonably be supported to have been the intention of the legislature that it is proper to look for some other possible meaning of the word. In the instant case, the context does not require to give a meaning different than the ordinary.

18. At this place reference may also be made to Section 13 of the Copyright Act which deals with "works in which copyright subsists." Section 17 lays down that subject to the provisions of this Act, the author of a work shall be the first owner of the copyright. There is nothing in either of these two sections which provided for the registration of copyright as a condition precedent for acquiring a right in it. The common law right of property in literary or intellectual production exists independently of the statute. It belongs essentially to the owner. He has the sole and exclusive right over it. However, Sections 13 and 17 which confer and recognise the copyright do not lay down any condition for the infringement of which registration is mandatory."

19. A Division Bench of High Court had occasion to consider this question in *Kumari Kanaka v Sundararajan*, 1972 Ker LR 536. In the above decision, this court took the view that registration of the work under the Act is not compulsory and that registration is not a condition precedent for maintaining a suit for damages for infringement of copyright.

20. However, a contrary view has been taken by a Division Bench of the Madhya Pradesh High Court in the decision in *Mishra Bandhu Karyalaya v Section Koshal* AIR 1970 Madh. Pra, 261 in which the learned Judges held that under the Act of 1957 the registration of the work with the Registrar of Copyright is a condition precedent for acquiring copyright in respect of it, and that the author has no right or remedy unless the work is registered.

21. We are in respectful agreement with the view taken and the reasoning contained in the decisions reported in (1973) 2 Mad LJ 290, AIR 1976 Mad 22, AIR 1972 Cal 533, AIR 1981 All 200 and 1972 Ker LR 536.

22. The English Copyright Act of 1862 expressly provided that no proprietor of any such copyright shall be entitled to the benefit of that Act until the same has been registered. This provision was however repealed by the English Copyright Act 1911 and therefore the registration is not a condition precedent for action against infringement even in England now.

23. Sections 44 and 45 of the Act is only an enabling provision and the provisions contained therein do not affect common law right to sue for infringement of the copyright. In the circumstances, we are of the view that AIR 1970 Madh. Pra. 261 has been wrongly decided. We therefore agree with the learned counsel for the appellant that the suit is not bad for non-registration of the copyright by the plaintiff in the instant case.

24. However, the question for consideration in this case is whether an infringement is made or present in the instant case.

25. A similar question of violation of the copyright came up for consideration before the Supreme Court in *R. G. Anand v. Delux Films* AIR 1978 SC 1613. After discussing the law in detail his Lordship Justice Fazal Ali who delivered the main judgment laid down the following propositions in para 46 of the judgment.

"1. There can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations

here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case law discussed above.

7. Where, however, the question is of the violation of the copyright of stage play by a film producer or a Director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader perspective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved."

26. The learned counsel for the appellant however drew our attention to the following observations in the separate judgment delivered by his Lordship Pathak J. (as he then was), at pages 1634 and 1635 :--

"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 fall 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 basis 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 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."

27. We examined the common features found in the plaintiff's work Alayazhi on the one side and the film 'Avalute Ravukal', the script of the film Ext. B3 and also Ext. B4 the manuscript copy of the novel Mukthi on which the screenplay was based on the other in the light of the principles enunciated in the above ruling and we are unable to find any material to hold that there is any infringement of copyright of the plaintiff in the instant case. The general structure of the theme, various situations in the stories and characters depicted in the novel and in the film have been elaborately discussed in paragraphs 27 to 41 of the judgment of the court below. We do not want to repeat those aspects over again in this judgment. Suffice it to say that apart from the fact that both in the novel Alayazhi and the film Avalute Ravukal the story of a prostitute depicted, we could not see any similarity in the general structure of the theme or in the depiction of different characters and situations and scenes in the novel and the film or in the treatment of the film and the manner of its presentation on the screen. We went through several passages in the novel of the plaintiff Alayazhi and also the script Ext. B4 and we are satisfied that no prudent person can get an impression that the film Avalute Ravukal and its theme, situation or scenes are copied from the novel of the plaintiff, Alayazhi. There is nothing to indicate that the film is a substantially or materially a copy of the novel of the plaintiff Alayazhi.

28. We are unable to find any resemblance or similarity in the theme, scenes or situations in the film. Material incidents situations and scenes portrayed in the film are substantially and materially different from the situations incidents and scenes portrayed in the novel Alayazhi of the plaintiff. As a matter of fact we have closely examined Ext. A15 the tabulations of scenes and situations alleged to

have been copied from the novel Alayazhi submitted by the plaintiff and compared the same with reference to the scenes in the original manuscript copy of Avalute Ravukal but we could not find any common feature in the scenes or situations so as to justify a conclusion that the script of Avalute Ravukal is a colourable imitation of the novel of the plaintiff Alayazhi.

29. We are fully alive to the fact that mere introduction of some changes here and there in order to disguise the attempt at plagiarism or interchanges of relative position in which the principal actors stand to create an impression that the story of the film is entirely different is not sufficient to rule out the theory of colourable imitation. The safest test to determine whether or not there has been a violation of copyright is to find out if the reader, spectator or viewer after having read or seen both the works can get an impression that the impugned work or film is an imitation of the other. In our opinion no prudent man who has seen the film and read the novel Alayazhi will come with an impression that the former is an imitation of the latter. In the circumstances we hold that there is no infringement of the copyright of the plaintiff in making film 'Avalute Ravukal'.

In the result, there is no merit in the appeal and it is accordingly dismissed. In the circumstances there will be no order as to costs.