

**ASCENT MOOT COURT PROBLEM – 2012**

SAAZ is a music composer in India, involved with cinema, orator in public causes and sturdy activist against music piracy. Although originally from Kurnool, Andhra Pradesh, he moved out of his house after a fight with his father at the age of twelve over his education and moved to Mumbai, Maharashtra to pursue a career in music and is now settled there. In the month of March, 2010, the Life and Death magazine, a popular magazine with a worldwide circulation ran a feature on him where it was stated, "Through alternate dint of hard work and talent, this ordinary little village boy managed to rise in the field of music composition and is now a globally acclaimed composer with 35 golden jubilee albums and 5 original recordings to his name, 5 Oscar nominations and 2 Oscar wins. SAAZ has composed 100 music albums till date, out of which 80 are for Bollywood, 10 for Hollywood and 10 were independent. He is a regular commentator and an outspoken voice of substantial reforms in the Indian Copyright Act, 1957 in India." SAAZ has been regularly interviewed at various 24x7 TV channels and has debated strongly explaining as to why reforms are required to prevent IP infringement and music piracy other than those provided for in the Indian Copyright Act, 1957 and had recently even published an article in 'Mummirazi News Network' (hereinafter MNN), an international daily on 10<sup>th</sup> January, 2012 on the same.

JAAZ, a famous music composer in Bollywood, based in Greater Noida, with 25 golden jubilee hit albums is among the top ten of more than 100 music composers in a Rs 50 billion music industry in India. He is an outspoken critic of SAAZ and has often cast doubt on the sincerity of the views of SAAZ and believes that SAAZ's interest is mainly in building a global reputation and keeping local market for himself. He had even written an article in reply to SAAZ's article in the MNN contending that SAAZ is merely attempting to create protection for himself and does not actually care about composers in general.

The Wachanoogas are tribal living in the forests of the State of Assam. Despite continued lobbying, the Wachanooga tribe is currently not included in the list of scheduled tribes. They, however, happen to be arguably one of the oldest tribes living in the State of Assam. On 25<sup>th</sup> January, 2012, while watching a popular science based American channel on the television, JAAZ saw a documentary on the Wachanooga tribal people's living, fashion, food, festivals, housing, defence, animals, work, leisure, songs, musical instruments, music compositions etc. Being a composer himself, his sharp ears found the music compositions hauntingly familiar. After repeated viewings of the program thanks to his set top box, he thought the music sounded analogous to some Hindi music. A bit more research on theyeiswatching.com, a popular video uploading and streaming website on the internet led him to discovering the use of instruments, tunes, lyrics and

rhythms to be analogous to three different compositions of SAAZ – two of which had won him the Oscar wins. He downloaded all the material he could find on the tribes and discovered that many more of SAAZ's works were analogous to the use of instruments, tunes, lyrics and rhythms of the Wachanoogas.

JAAZ believed that the event vindicated his assessment of SAAZ. During February, 2012, he composed a documentary named 'Copycat' consisting of only 5 analogies of the base i.e. the music of the Wachanoogas along with music composed by SAAZ. He handed over a copy of the documentary to RAAZ, a now retired music director and JAAZ's mentor, as well as the ACP, Cyber Crime Branch, HauzKhas. On 5<sup>th</sup> March, 2012, RAAZ was inspecting the documentary on his PC at his house, when he temporarily left his desk to attend to some urgent work. At this time, his only daughter NAAZ, a tenth standard student, arrived and opened a popular social networking website on the PC. While uploading her annual day photos inadvertently uploaded the documentary on her account. The video went viral and within the next 24 hours, the documentary got 1 million views and has further shared over ten thousand times. This documentary has shocked the media, the music industry, SAAZ's critics and his fan following all over the world.

SAAZ went on air on 7<sup>th</sup> March, 2012 on all types of media available, to contend that the documentary is mere "hogwash" and "the product of a fertile imagination with too much time and too little work". In the meantime, on 8<sup>th</sup> March, 2012, JAAZ, RAAZ and NAAZ received a notice each from M/s Dewey, Cheatem and Howe, a law firm based in Mumbai, contending that they have committed, inter alia, copyright infringement and defamation of their client, SAAZ and calling upon them to immediately take the video off the air and offer a public apology to their client as well as damages to the tune of Rs 100,00,00,000/-. RAAZ and NAAZ both replied to M/s Dewey, Cheatem and Howe submitting that they had no intention to upload the video and it was mere inadvertence that the video had been uploaded and offered to settle the matter out of court. JAAZ refrained from replying. M/s Dewey, Cheatem and Howe further addressed a notice to MinusOne (India) Limited (hereinafter "MinusOne") – the Indian subsidiary of MinusOne Inc., which owns theeyeiswatching.com, contending that the documentary is in infringement of SAAZ's copyrights and calling upon MinusOne to remove the documentary which has been uploaded to its website. MinusOne replied through its solicitors M/s Haidon, Geeva-Damm that the servers and domain of theeyeiswatching.com is owned by MinusOne Inc., that MinusOne has no control over it.

In the meantime, JAAZ composed a new documentary named 'Copygate' consisting of 50 analogies of the base i.e. the music of the Wachanoogas along with music composed by SAAZ. On 21<sup>st</sup> March, 2012 he handed over a copy of the documentary to BAAZ, a legal journalist employed by the MNN. BAAZ immediately uploads the second documentary on theeyeiwatching.com and embeds the video in a post on his MNN-hosted law blog namely 'Cross Connection', along with a link to SAAZ's MNN article, and a tongue in cheek comment to the effect that if the Government is not persuaded by SAAZ's academic arguments to strengthen its measures for reforming and enforcing strong IPR laws, then perhaps it will be persuaded by the vision of him using copyright-infringing material. Mr. Aajtak Bachchan, a reader of BAAZ's blog posts the further question whether reputable national daily such as the MNN should publish articles by authors with vested commercial interests in the views they espouse.

Meanwhile, on and from 10<sup>th</sup> March 2012, SAAZ and RAAZ & NAAZ enter into "without prejudice" settlement talks regarding the alleged copyright infringement and defamation. M/s Dewey, Cheatem and Howe, who maintained both transcripts of all negotiations they conduct, as a part of their internal procedure and for their internal purpose, also recorded all that transpired during this negotiation. Accordingly, on 12<sup>th</sup> March 2012, it came to be recorded from the mouth of SAAZ as follows:

"...RAAZsaab, you are one of the senior-most composers in Bollywood and an inspiration for many youngsters. I have no qualms in admitting to you that some of my music is indeed inspired by the music of the Wachanoogas. But you know as well as I do that great artists steal – your own music has now been discovered to be very similar to some of the American classics of the 50's and 60's; you just lucked out because you retired and are now like a demi-god to them..."

The claims of SAAZ were eventually settled between him and RAAZ & NAAZ on 20<sup>th</sup> March, 2012 on the agreement that RAAZ will offer a public apology on behalf of himself and NAAZ for having uploaded the video inadvertently. Accordingly, on 21<sup>st</sup> March, 2012, RAAZ went on a popular news channel and tendered his apology.

However, unfortunately for SAAZ, BAAZ's blog entry also went viral, with theeyeiwatching.com getting 50,000 views within an hour of the second documentary being uploaded on it; RAAZ's apology, which was also uploaded on theeyeiwatching.com reached 1,000 views on 10<sup>th</sup> April, 2012 and currently has 1247 views. On 21<sup>st</sup> March, 2012, SAAZ instituted a suit in the original side of the Hon'ble Bombay High Court against JAAZ, BAAZ, MNN and MinusOne, contending inter alia copyright infringement and defamation and seeking the following among other reliefs:

1. Against JAAZ – (a) a declaration that JAAZ has infringed SAAZ’s copyright and has defamed SAAZ; (b) an injunction from distributing / making available to the public any further the two documentaries, (c) damages of Rs. 100,00,00,000/-;
2. Against BAAZ and MNN – (a) a declaration that BAAZ and MNN has infringed SAAZ’s copyright and has defamed SAAZ; (b) an injunction from distributing / making available to the public any further the second documentary, (c) an order to remove the second documentary embedded in the blog; (d) damages of Rs.100,00,00,000/-;
3. Against MinusOne – (a) a declaration that the two documentaries are wrongfully hosted by MinusOne on their servers; (b) an order directing MinusOne to remove the first and the second documentary from the servers of theeyeiswatching.com; (c) an injunction from making available to the public any further the two documentaries.

SAAZ moved the Hon’ble Bombay High Court for urgent ex-parte, ad-interim orders and on 22<sup>nd</sup> March, 2012, the Learned Single Judge of the Hon’ble Bombay High Court passed the following order:

“Heard Learned Senior Counsel appearing on behalf of the Plaintiff. For the reasons mentioned in Paragraph 45 of the Plaint, the matter is heard ex-parte without notice. I am convinced that grave and irreparable injury would be caused to the Plaintiff and his reputation that cannot be adequately compensated in terms of money unless the following order is passed at this stage. Hence, ad-interim relief in terms of prayers 1 (b), 2 (b) and 3 (c) is granted. It is clarified that this order shall be in force and effect upto and including 3 April 2012. It is clarified that any further extensions of this order shall be granted only after forty eight hours’ prior notice to the Defendants.”

Notice of the order dated 22<sup>nd</sup> March, 2012 was given to all the Defendants immediately. On 23<sup>rd</sup> March 2012, MinusOne filed an appeal before the Division Bench of the Hon’ble Bombay High Court seeking a stay of the order dated 22<sup>nd</sup> March, 2012 of the Learned Single Judge. It contended inter alia that it is not the owner of the servers of theeyeiswatching.com and cannot be made liable for the content available thereon. On 26<sup>th</sup> March, 2012, JAAZ filed an appeal from the order dated 22<sup>nd</sup> March, 2012 seeking a stay of the said order. BAAZ and MNN filed their appeal from the order dated 22<sup>nd</sup> March, 2012 on 27<sup>th</sup> March 2012. The Hon’ble Bombay High Court, vide its order dated 28<sup>th</sup>

March, 2012 disposed of with all the appeals together, observing that the Defendants may be given an opportunity to be heard before passing any further interim orders. It set aside the order dated 22<sup>nd</sup> March, 2012 and remanded the matter to the Learned Single Judge to be tried expeditiously. It recorded that the order dated 28<sup>th</sup> March, 2012 shall have no bearing on the final outcome in the suit and left all issues open.

To further the woes of SAAZ, on 30<sup>th</sup> March, 2012, one Mr. Elvich Paaji, an outspoken advocate of the rights of Wachanoogas as well as indigenous people in general filed a representative suit under Order I rule 8 of the Code of Civil Procedure, 1908 ("Code") on behalf of the Wachanoogas in the Hon'ble District Court at Hailakandi, against SAAZ. He contended that SAAZ has infringed the copyright as well as the rights as indigenous people of the Wachanoogas and demanded inter alia damages to the tune of Rs 1000,00,00,000/- on behalf of the Wachanoogas and injunction from SAAZ using any of the music of the Wachanoogas or the works forming a part of the two documentaries or earning any royalties thereon. He further sought to rely upon the statement made by SAAZ during the without prejudice negotiations on 12<sup>th</sup> March, 2012 in support of his case.

Simultaneously on 30<sup>th</sup> March, 2012, MinusOne Inc. filed a declaratory suit in the Hon'ble Delhi High Court against SAAZ seeking inter alia declarations that (i) it cannot be liable for any videos uploaded / shared on its website / server; (ii) it cannot be liable for the two documentaries being uploaded / shared on its website / server; (iii) it cannot be made liable for any infringing content that may be uploaded / shared on its website; (iv) it cannot be held responsible on grounds of negligence for any content uploaded / shared on its website.

On 2<sup>nd</sup> April, 2012 SAAZ filed an Application under Section 25 of the Code before the Hon'ble Supreme Court of India seeking transfer of the proceedings before the District Court at Hailakandi and the Hon'ble Delhi High Court to the Hon'ble Bombay High Court to be tried with his suit thereat, as the issues in the proceedings are substantially similar and interconnected with each other. The Hon'ble Supreme Court of India, by its order dated 5<sup>th</sup> April, 2012 directed that the suits of Mr. Elvich Paaji and MinusOne Inc. be transferred to the Hon'ble Bombay High Court along with the suit filed by SAAZ. The Hon'ble Supreme Court of India clarified that its said order dated 5<sup>th</sup> April, 2012 shall have no bearing on the merits of any of the proceedings and all issues including jurisdictional issues are left open.

The matter was listed on 16<sup>th</sup> April, 2012, when the Hon'ble Bombay High Court passed the following order:

"At the joint request of the parties in the various suit, let the matter be listed on 22<sup>nd</sup> July 2012 for final hearing. Parties to file their Written Submissions on the issues in the matter on or before 30<sup>th</sup> June 2012.

The various Learned Senior Counsels and Counsels appearing for the parties today have confirmed that the following amongst other issues will be raised on the next date of hearing, although not necessarily in this order:

1. SAAZ – (i) that the proceedings initiated by MinusOne Inc. is merely declaratory in nature and hence ought to not be allowed; (ii) that the proceedings initiated by Mr. Elvich Paaji is frivolous, vexatious and based on inadmissible evidence; (iii) that Mr. Elvich Paaji has no locus standi to file the proceedings.
2. JAAZ – (i) that creating the documentaries does not amount to infringement of SAAZ's copyright or to defamation of SAAZ; that the suit ought to be heard in the Hon'ble Delhi High Court as the Hon'ble Bombay High Court is a forum non conveniens.
3. BAAZ and MNN – (i) that neither BAAZ nor MNN can be made liable for copyright infringement or defamation as alleged (ii) that embedding a video cannot amount to copyright infringement.
4. MinusOne will be reiterating its contentions from its appeal.
5. MinusOne Inc. – a mere letter from SAAZ or his advocates does not cast an obligation upon MinusOne Inc. to remove content from its website.
6. Mr. Elvich Paaji – (i) although the statute may not provide for sufficient protection of the rights / knowledge of indigenous people, Equity, especially in light of the constitutional setup of India, demands that they be adequately protected; (ii) the admission by SAAZ on 12<sup>th</sup> March, 2012 is admissible in evidence.

It is clarified that the parties shall be at liberty to raise any additional issues over and above the issues set out hereinabove. It is further clarified that the issue of quantification of damages sought shall not be gone into by this Court on the next date of

hearing. It is also clarified that on the next date of hearing, for the sake of convenience, the counsels appearing for SAAZ shall make their oral submissions on all the matters first and then the counsels appearing for JAAZ, BAAZ, MNN, MinusOne, MinusOne Inc. and Mr. Elvich Paaji shall make their oral submissions in the matter. The counsels appearing for SAAZ will thereafter have a right to rebut.”

**CLARIFICATIONS:**

1. A video, once uploaded on the website theeyeiswatching.com, can only be deleted by the user who uploaded it or the administrators of the website – another user cannot delete it. However, another user can flag it as inappropriate or report it as illegal or infringing.
2. “Sharing” refers to a feature on the website theeyeiswatching.com whereby a video uploaded by one user on their profile can be brought onto the profile of another user without specific leave of the original uploader – but with due credit to the original uploader.
3. A user with reference to the website theeyeiswatching.com is one who not only views videos on the website, but also seeks to and / or uploads videos to the website. A user on the website theeyeiswatching.com will compulsorily have to register, have to be over 18 years of age (21 in some jurisdictions), and have to agree to the terms and conditions of which the relevant terms of use and conditions include:
  - 3.1. Clause 1 sets out that the content uploaded by the user shall remain the property of the user and MinusOne Inc. shall not have any dominion thereon, except to the extent as set out in this agreement.
  - 3.2. Clause 15.5 sets out that the user shall not upload any content that can / may infringe and / or potentially infringe any copyright or any other intellectual property or other similar or analogous rights of another person and / or entity, without the leave of such other person and / or entity.
  - 3.3. Clause 9.3 sets out that the user agrees to let other users share their videos.
  - 3.4. Clause 6.4 sets out that the user agrees to let MinusOne Inc. remove any content from their servers either suo motu or upon a request from a legal officer / court to the effect that the same is in violation of any rights of a third party / in violation of any law.

- 3.5. Clause 7.1 sets out that the user agrees to let MinusOne Inc. use the content uploaded by the user for any legally allowable commercial purpose as it deems fit.
4. A “profile” on the website theyeiswatching.com refers to the web page allotted to each user according to their username [in the format of <http://theyeiswatching.com/username>] where the videos uploaded by the users are set out in a manner preferred by the user. The profile is visible even to non-users who visit the URL of the profile, but is not cached by search engines.
5. “Views” in respect of the website theyeiswatching.com refers to the number of times a particular video is played by a person on the website, regardless of replays by the same person. A video on the website theyeiswatching.com is accessible to both users and non-users.

\*\*\*\*\* **ALL THE BEST** \*\*\*\*\*