

**IN THE HIGH COURT OF JUDICATURE  
AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUIT NO. 2259 OF 2004**

Shri Anand Patwardhan

...Plaintiff

Vs.

The Director General, Directorate General of  
Doordarshan & Ors.

...Defendants

Mr.P.A. Sebastian with Ms. Maharukh Adenwalla for Plaintiff

Mr. S.R.Rajguru for Defendants

**CORAM: SMT.ROSHAN DALVI, J.**

**DATED: 31<sup>ST</sup> MARCH , 2009**

**JUDGMENT:**

1. The Plaintiff is a documentary film maker. The Plaintiff had made inter alia a documentary film “**Waves of Revolution**” (the suit film) in 1975. The Defendant No.4 acting on behalf of Defendants 1 to 3 has made a documentary film “**26<sup>th</sup> June 1975**” (the impugned film) in 2003. The suit film is about the Bihar Movement led by Jay Prakash Narayan, a Freedom Fighter and a Revolutionary depicting the students' revolt in Bihar which led to and is stated to have been repressed by the Declaration of Emergency in 1975. The impugned film shows in a diametrically different perspective the persons and their actions before and at the time of the Declaration of Emergency. The suit film was

telecast in 1977. The impugned film was telecast on 26<sup>th</sup> June 2003, the anniversary of the Declaration of Emergency.

2. The Plaintiff claims that the Plaintiff had copyright in the suit film, which was breached and infringed because various extracts contained in these incidents were lifted from the suit film and inserted in the impugned film without the Plaintiff's permission or without any payment or any credit offered to the Plaintiff and without his knowledge. The Plaintiff learnt about the documentary only when it was broadcast on the Television by the Defendants upon being informed that the said film showed parts of the suit film.
3. It is the Plaintiff's case that the impugned film contained substantial footage from the suit film made in 1974-75 which has been used with a new meaning and entirely different sound track and different view-point and differs radically and fundamentally from the view-point expressed in the suit film. It is the Plaintiff's case that it highlights the role of persons close to the ruling party of India on 26<sup>th</sup> June 2003 and underplays or ignores the roles played by those persons during and before the Declaration of Emergency who found no favour with the ruling party of 2003.
4. It is the Plaintiff's case that the Defendants have

broadcast on the Television channel of Doordarshan the Plaintiff's film upon the lifting of the Emergency after acquiring the telecast rights for a fee of Rs.500/- . The copy of the film so broadcast remained in the archives of the Defendants. It is also the Plaintiff's case that there is no existing equivalent footage of the Bihar Movement other than what was recorded by the Plaintiff. It is the Plaintiff's case that Defendants 1 to 3 colluded with Defendant No.4 to misappropriate the Plaintiff's copyright in the said film and incorporated parts of that film selectively in the impugned film.

5. The Plaintiff follows a secular democratic ideology. The ideology of the persons shown in the impugned film is the "Hindutva" ideology. It is also the Plaintiff's case that the impugned film shows essentially the acts of certain persons who follow an ideology completely different from that of the Plaintiff and accordingly the several shots of the suit film of the Plaintiff being shown in that impugned film constitutes an act to defame the Plaintiff. It is his case that his friends and acquaintances who viewed the impugned film believed that the Plaintiff has renounced his ideology and had sold himself. Accordingly the Plaintiff claims that his status was lowered and his public image was tarnished which resulted in public loss of face and mental trauma.

6. The Plaintiff claims that the suit film was mutilated which was precisely against his contract with Defendants 1 to 3 for acquiring the telecast rights and which resulted in dishonest misappropriation of the suit film by the resultant conversion by incorporation of parts of the film so misappropriated into another film of a different message thus violating his copyright. The Plaintiff has sued for damages of Rs.31 lakhs upon defamation by infringement of copyright as well as for injunction restraining the Defendants from screening and re-screening and circulating the impugned film carrying the footage from the Plaintiff's film and for an issue and publication of an unconditional apology.
7. The Defendants have denied copyright of the Plaintiff in the suit film or its infringement or the resultant defamation. They deny that the suit film is the Plaintiff's original work and any knowledge of the Plaintiff's copyright therein. The Defendants claim that the Defendant No.4, who was the Producer and Director of the impugned film, took the shots of the film from the Doordarshan Kendra (DDK) archives tape and did not know that it was the Plaintiff's documentary film. The Defendants contend that that tape did not mention about the origin of the archive shots or whether its use would entail a liability. Defendant No.4 claims to be an innocent user of

the archive material lying with the DDK. The Defendants have denied that the impugned film contains substantial footage of the suit film. The Defendants also contend that the impugned film relates to a historical event and current events being telecast on the anniversary of the Declaration of Emergency to educate the people in political history with no intention to defame the Plaintiff. Accordingly the Defendants have denied any breach of copyright or defamation arising therefrom and consequently the liability for the reliefs sought.

8. Based upon the respective cases of the parties the following issues have been framed and answered as follows:-

<b><u>ISSUES</u></b>	<b><u>FINDINGS</u></b>
1. Whether the suit is barred by the Law of Limitation.	<b>No</b>
2. Whether the Plaintiff is the Producer/ Author of the documentary film "Waves of Revolution".	<b>Yes</b>
3. Whether the Plaintiff has copyright in respect of the said documentary film and is entitled to invoke the protection under the Copyright Act.	<b>Yes</b>
4. Whether the Defendants have pirated and plagiarised the said film or any part thereof.	<b>Yes</b>

5. Whether Dooradarshan had acquired the telecast rights of the Plaintiff's film for a fee of Rs.500/- .

**Yes – per telecast subject to limitations imposed by the Plaintiff as contained in Exhibit- B.**

6. Whether the Defendants distorted and mutilated the Plaintiff's documentary film and broadcast the same by breach of trust.

**Yes**

7. Whether the Plaintiff suffered trauma and mental anguish upon deriving knowledge of the telecast of the film “26<sup>th</sup> June, 1995” and whether it led to defamation.

**No**

8. What relief, if any, that the Plaintiff is entitled to ?

**As per final order**

9. The Plaintiff has examined himself and one other witness to prove the defamation alleged by the Plaintiff. The Plaintiff's examination-in-chief essentially makes out the case in the plaint. The additional affidavit of examination-in-chief of the Plaintiff shows the films made by him telecast on DD and for which he won certain awards. It further sets out his ideology and the consideration he received under the contract with the Defendants for giving them the right to telecast the suit film. The affidavit further sets out how and to what extent his copyright in the suit film has been infringed by 6 extracts from

his film interspersed at various points in the impugned film. It shows that his film was virtually the only authentic documentary footage of the Jay Prakash Narayan movement. It shows how he came to learn about the telecast of the impugned film and how he obtained the copy thereof as proof of telecast. It further shows the claim of damages made by the Plaintiff. His further affidavit of examination-in-chief shows the certificate obtained by the Plaintiff from the Central Board of Film Censor which is marked **Exhibit-A** in evidence, the contract between the parties shown by the Defendants' letter setting out its terms marked **Exhibit-B** and the fact of the Plaintiff's telecast reported in a newspaper marked **Exhibit-C**. The Plaintiff has shown how his copyright was infringed and his anguish at the defamation caused by piracy and mutilation of the film.

10. Aside from these documents, the parties have tendered a CD of the suit film and the impugned film as exhibits E & F respectively. Upon the parties' request the Court has viewed both the films in their entirety as also again viewed parts of the films specifically sought to be shown by the Plaintiff and Defendant No.4 and heard these parties' comments on both the films. Several shots and stills of the suit film which have been incorporated in the impugned film are interalia Jay Prakash Narayan in a boat crossing a river, a shot of student

protesters upon a train, Jay Prakash Narayan in a jeep, in a rally, people throwing garlands upon him, Plaintiffs handwriting "Bihar, Movement 1974" on a Newspaper.

11. The cross examination of the Plaintiff is essentially on the contents of both the films and the fact that the shots and stills of the suit film incorporated in the impugned film are of a very short length in the entire film by the virtue of the fact that the total length of the copied shots and stills is over a very short duration in the impugned film. The fact that the same frames or images of several shots and stills of the suit film have been taken in the impugned film is not denied. It has been the case of the Defendants that there has been no infringement of copyright. A chunk of the cross examination sets out the description of the entire impugned film to show that it was different from the suit film during a great length of the film. The Plaintiff has also been cross examined upon the contract between the Plaintiff and Defendants 1, 2 and 3 under which it has been the Defendants' case that they were assigned the copyright of the suit film and hence can allow its user as they wished, so that none of the Defendants has infringed the Plaintiff's copyright.

12. The other witness of the Plaintiff one Shashi Mehta who is a social activist has been examined to show that she knew the

Plaintiff's ideology and character and that when she saw the impugned film telecast on DD the Plaintiff went down in her esteem. She, therefore, rang up the Plaintiff to confront him upon the fact that he had “sold away his principles”.

13. Her cross examination shows her membership in various social organisations and her role for social causes. She has been cross examined upon the 5 other documentary films of the Plaintiff, all of which she had seen. Her evidence shows that she had only seen the suit film in 1977 on DD. She deposed about the Bihar Movement as a movement against social and economic injustice for grassroot democracy. She has agreed that the impugned film shows interviews of the political persons who have criticized imposition and continuance of Emergency and that many people from the political party opposed to the Plaintiff and her ideology, were detained in Emergency. She has stated about various characters of the impugned film. She has naturally no knowledge about any telecast rights of the suit film, she having come to know that the DD was not entitled to show excerpts of the suit film under a special agreement of the Plaintiff with Defendants 1,2 and 3 only after she saw parts of the suit film in the impugned film and questioned the Plaintiff.

14. Defendant No.4 has examined himself on behalf of the

Defendants. He is also a documentary film maker. The impugned film was produced and directed by him in 2003. His evidence shows that the entire emphasis of the impugned film was the fight against the Emergency imposed in 1975. He has interviewed leaders of all different political parties having different ideology and background to show their opposition to the Emergency, including Jay Prakash Narayan. He claims to be an innocent user of the archives material lying with the **D.D.K** and claims to fall under the proviso of Section 58 of the Copyright Act. His evidence further shows that he had no intention to defame the Plaintiff in any way. He claims that since DD had paid Plaintiff Rs.500/- for purchase of the film it was the property of the DD and that such contracts cannot be altered or modified by the Plaintiff. He has been extensively cross examined upon the characters in the film and their ideology. He has been cross examined upon the length of the footages by way of stills/shots/ images taken by him. He claims that he did not defame the Plaintiff merely by his usage of the footage from the suit film.

15. The issues require to be considered upon such oral and documentary evidence upon the law of copyright applicable to the case.

**ISSUE NO.1:- Re: Limitation:**

16. The impugned film was telecast on D.D. on 26<sup>th</sup> May 2003. The infringement alleged by the Plaintiff could have taken place on that date. The consequences of the infringement, if any, would be thereafter. This Suit is filed on 11<sup>th</sup> June 2004 within 3 years of the alleged infringement. Hence, it is not barred by the Law of Limitation. **Issue No.1** is answered in the **negative**.

**ISSUE NO.2:- Re: Plaintiff producer of the suit film:**

17. The Plaintiff has stated that he has produced, directed, written, photographed and edited the suit film. The Plaintiff has produced the certificate of the Central Board of Film Censors issued on 29<sup>th</sup> July, 1977 as **Exhibit-A** showing him to be the Producer of the Film. Hence, **issue No.2** is answered in the **affirmative**.

**ISSUE NO.3: Re: Plaintiff's Copyright:-**

18. The legal concepts under the Copyright Act (the Act) would require to be first noted and understood. The Plaintiff claims copyright in a cinematograph film and claims to invoke protection under the Act.

1. Under Section 2(f) of the Act a cinematograph film is a work of visual recording on any medium produced from a process from which a moving image is produced.

2. Under Section 2(y) of the Act “work” is, inter alia, a cinematograph film.
  3. Under Section 13(1)(b) of the Act a copyright subsists in cinematograph films.
  4. Under Section 17 of the Act the first owner of the copyright is the author of the work.
  5. Under Section 2(d)(v) the producer is the author of the cinematograph film.
  6. Under Section 26 copyright in a film subsists for a term of **60** years from the year in which the film was produced. The suit film was produced in about 1977.
19. The Defendants contend that the Plaintiff cannot claim copyright on the ground that the Plaintiff’s copyright is not registered under the Copyright Act. The Defendants rely upon the case of **M/s. Mishra Bandhu Karyalaya & Ors. Vs. Shivratanlal Koshal A.I.R. 1970 MP 261** in which it is held that only after the copyright is registered can it be claimed. It is observed that only once it is registered, the author can acquire property right in it. Aside from the fact that the

legislation relating to the copyright itself does not provide for registration, but only maintenance of the register of copyrights under Section 44 of the Act, the said judgment has been dissented from, in the case of **R.Madhavan Vs. S.K.Nayar A.I.R. 1988 Kerala 39** in which it is observed that Sections 44 and 45 are only enabling positions.

20. The Plaintiff being the producer of the suit film is its author and accordingly its first owner. The Plaintiff, therefore, has copyright in his work, being the suit film, even without its registration. Hence, **Issue No.3** is answered in the **affirmative**.

**ISSUE NO.4: Re: Infringement of Copyright :-**

21. The Plaintiff claims that various shots/stills/images of his film showing the Bihar Movement which led to the Declaration of Emergency were bodily lifted from the suit film and verbatim incorporated in the impugned film constituting infringement of his copyright in the suit film.
22. The Plaintiff has stated that at 6 – 7 places in the impugned film, the shots/stills/images of the suit film photographed and edited by him are reproduced. Such reproduction is identical to the Plaintiff's shots/stills/images.

23. The Defendants contend that the suit film, after its telecast in 1977, remained in the archives of the Doordarshan Kendra (DDK) amongst other tapes. Defendant No.4, whilst researching material from the archives took parts of certain tapes of films without knowing or realising that they were parts of the suit film or that the Plaintiff had copyright therein. Hence Defendant No.4 denies that he is an infringer and claims to be an innocent user of the archives material.

The Defendants also contend that Bihar Movement shown in the impugned film is a part of history and hence carries no copyright.

24. The Defendants further contend that extent of copying is minuscule in the impugned film which extends to a mere 86 seconds of the film which spans about an hour in duration and hence that is no substantial copying and consequently no breach of copyright. The Defendants also contend that the inclusion of the shots of the suit film are only incidental to the main theme of the film shown only by way of background and hence would not constitute infringement.

25. Piracy would involve infringement of the Plaintiff's copyright in the suit film. What is copyright and its infringement must, therefore, be understood.

a) Under Section 14 of the Copyright Act, copyright is an **exclusive right** to do or authorise the doing of certain specified acts in respect of **a work or a substantial part** inter alia of a cinematograph film.

b) Under Sub Section 14 (d)(i) such copyright is the **right to make a copy** of the film **including a photograph of any image** forming a part thereof.

c) Under Section 2 (m)(ii) of the Act an infringing copy of the cinematograph film is a **copy of a film** made on any medium by any means.

d) Under Section 51 of the Act a copyright is taken to be infringed when any person without a licence from the owner of the copyright inter alia **does anything which is in the exclusive right of the owner** of the copyright.

e) The explanation to that Section provides that reproduction inter alia of an **artistic work** in the form of a cinematograph film is an infringing copy.

f) Under Section 2 (c) of the Act artistic work means a painting, sculpture, drawing, engraving or **photograph**, a

work of architecture and artistic craftsmanship.

g) Under Section 52(s) such photograph cannot be of a part of a film.

h) Under Section 52 (u)(ii) of the Act an inclusion of an artistic work only by way of background or which is only incidental to the principal matters in the film would not constitute infringement.

i) Under Section 58 of the Act, the infringing copy of the work is deemed to be the property of the owner of copyright.

j) However under the proviso to that Section, there is no remedy in respect of the conversion of any infringing copies if the infringer was not aware of the subsistence of copyright in the work or reasonably believed that the copies did not involve infringement of the copyright.

26. The seminal contention of the Defendants is that they have not infringed the Plaintiff's copyright, if any, as Defendant No.4 as the Producer and Director of the impugned film, took the shots from the tapes in the archives of the DDK being tape No.80 without realising the origin of the shots or

the liability for copying the shots.

27. An Archive, as defined in Black's Law Dictionary, is a place where public, historical or institutional records are systematically preserved. It also means any systematic compilation of materials, especially writings in physical or electronic form.

28. Mr. Sebastian rightly argued that once it is seen that the film is a work in which copyright subsists, any shot or still from any film cannot be lifted and reused as that would be breach of copyright contained in that film. It is for the person who researched material relating to the Bihar Movement, or for that matter for any of the events that led to Declaration of Emergency from the DDK archives, to ascertain and verify the origin of the shots. The shots and stills as taken are from the suit film.

29. The suit film, has been produced by the Plaintiff as **Exhibit-D** in evidence. The suit film shows the name of the Plaintiff as the Producer, Director, Editor and Photographer. Though Defendant No.4 can research the idea contained in the suit film from the [D.D.K Archives](#), he cannot bodily lift any single shot or image of the film and use it in his new film without infringing the statutory copyright that it carries. The

liability for so dealing with such copyright is the statutory liability to which he exposes himself unless he takes the licence or permission of the author to reproduce the shots in his film or pays consideration as agreed by the author for utilisation of the work in which the author has copyright.

30. The cross examination of Defendant No.4 shows that he took the footage of the suit film from [D.D.K](#) archives. The footage had no soundtrack. He used his own soundtrack in the impugned film. He has stated how he got pieces of footage from [D.D.K](#) archives which were unconnected pieces of a film which turned out to be the suit film. He had no knowledge that it was the suit film or that it was of the Plaintiff. He did not know the Plaintiff. He could not identify the documentary of which the footage was part. He had not heard about the suit film or seen it. He only used the shots from the [D.D.K](#) archives' tapes. The tape library did not make any mention about the particulars of the shots and permitted its unconditional use. He had independently written the impugned film script and edited the visuals. How he has edited the visuals from the suit film is not explained in his evidence. He has also been cross examined on his own position with the DD. He is the contractual employee required to make news reports and documentary films as directed by his superiors. He was assigned the production of the

impugned film by the then Additional Director General of the DDK. The script was provided by the superiors. The decision to interview the people in the film was not his. It was of the then Additional Director General of the DD. However, he did “some research”. He has explained how he accessed the DDK archives and what he claimed from them for making his documentary film. He has deposed that there were no names on the archival types of visuals which he got from the DDK without any soundtrack which he used as his visuals in his documentary film. He did not know or recognise the Plaintiff in the film. He did not know the sources from where the visuals which he used originated. He freely used the footage from the DDK archives without knowing from where it originated, but upon the premise that it was either bought by DDK or shot by its cameramen. Since the visuals in different pieces given to him had no soundtrack or credit titles and the DD maintains no record, he claims that there is no infringement of copyright. His cross examination shows that after the suit was filed DD formed an internal committee to ascertain as to whether any footage of any outsider was used. He deposed that DD does not sell footage, but in National interest provides footage from case to case depending on various factors.

31. A copyright is not contained in an idea. The same idea

can be used by various persons in different forms. Copyright is contained in the original expression of that idea. It is therefore, the expression of thought. It would depend upon the frame of the product. It is, therefore, the thought that is sought to be portrayed or conveyed which carries a copyright and not the original idea. In this case the original idea is the Bihar Movement led by the late Jay Prakash Narayan (J.P.). There is no copyright in that idea. Anyone can portray the said idea in any work, including a cinematograph film. Once it is portrayed, be it by way of a film, the specific cinematograph shots of that film would have a copyright. That frame or image so portrayed of the idea of the Bihar Movement would, therefore, have a copyright. It is that expression of thought which has originated from that author in that particular mode. Consequently, therefore, portraying the Bihar Movement would itself not tantamount to breach of copyright. The idea may be taken from any source, but once that idea, so researched, is meant for use and expression, it would require to be used and expressed in any mode chosen by that author himself. That mode of expression of that idea cannot be verbatim copied by taking shots or stills of the film containing that idea. Hence, whilst the idea is not unique to the author, the image portrayed or the expression made is unique to the author.

32. It has been the Plaintiff's evidence that the only cinematographic expression of the Bihar Movement is contained in the suit film which is the Plaintiff's work. The Defendant No.4 could certainly have shown the idea of the Bihar Movement in the impugned film, but not the precise shots and stills from the suit film. Hence, though the Bihar Movement can certainly have been shown in the impugned film, it could not have been shown from any material which has copyright by way of a reproduction of frames and images of such film. Mere showing by Defendant No.4 the idea of Bihar Movement would not give the Plaintiff a right to complain of infringement of his copyright, but showing the precise stills/shots/images of the suit film would bring the act of Defendants squarely within the mischief of the term infringement which denotes "reproduction" of the work in which copyright exists. To understand this concept better it may be mentioned that upon the mere showing of the Bihar Movement, as has been done by Defendant No.4 in the impugned film, any other author of Bihar Movement who may have written about the movement describing the movement as it transpired or a film maker who may have made a film on the Bihar Movement differently would have no cause of complaint, since the idea of Bihar Movement does not carry copyright. However, the expression of that idea by the specific frames and shots does carry a copyright and hence only the author of

the work whose precise frames and shots are copied, such as the Plaintiff would have a cause of complaint of infringement of his copyright.

33. A viewing of the suit film and the impugned film **Exhibits-D & E** at one sitting one after another has shown several shots of the film bodily lifted from the suit film and reproduced in the impugned film together with the defects in those shots. The Plaintiff who was present at the time of the viewing by the Court showed the Court several shots of his film containing certain defects in a bottom corner of the frame of several shots. The same shots with the same defects are seen in the impugned film. The Defendant No.4, who was also present at the said viewing, brought to the notice of the Court certain green colour defects which he contended were the defects that originated from the **D.D.K** Archives. These shots in black and white in his otherwise colour film show that they were taken from a very old production. Indeed the Plaintiff's production was a quarter of a century older than that of the Defendant No.4. It is unmistakable that these were the shots from the Plaintiff's film and nowhere else. The defects in green colour reflected in the impugned film, aside from showing that they may have been taken from the **D.D.K.** Archives after not having been maintained in a chaste condition for the number of years when the film remained there, shows that they were

in fact taken from the Plaintiff's film which was black and white and made at such length of time.

34. It further shows that Defendants 1 to 3 callously kept and allowed them to be lifted and used indiscriminately by Defendant No.4 without the slightest heed to the copyright of the producer of the film in their archives.

35. Defendant No.4 has, in vain, feigned ignorance of the Plaintiff's copyright. He contends that the tapes in the DDK archives did not show the Plaintiff's name in the credits of the film or the fact that he was the producer of the film and hence the author of the work.

36. Aside from the fact that such a vague, bald statement only deserves rejection for total lack of substantiation of such a gross and callous act leading to infringement of copyright in the material of a public body like the DDK, kept and maintained by the Government, the evidence shows that that statement is incorrect. In answer to Question No.42 about the length of the copied footage of the suit film, Defendant No.4 has deposed that after the suit was filed and the summons served upon the Defendants, DD News formed an internal committee to ascertain as to whether any footage of any outsider was used. This itself shows the knowledge and

understanding that the footage of an outsider cannot be used or allowed to be used by any of the Defendants.

37. Ignorance of the subsistence of copyright in a work contemplated under the proviso to Section 58 of the Act can never apply to a film in which copyright is implicit. It is for the Defendants to ascertain and verify whether copyright is assigned to Defendants 1 to 3 or whether its term had expired.
38. Right from the earliest case of Murray Vs. Bogue judgment dated December 9, 1852 (1) DREWRY,353 at page 487 the nature of copying which would constitute infringement has been considered. That was a case of travel book relating to travel in Switzerland called a “hand-book” initially published in English and translated in German. The German translation was re-translated in English and the re-translation showed parts of the Plaintiff's work in his hand-book which was copied. The printing, binding and the get-up of the copied work was like the initial work of the Plaintiff. It was bound and boarded in red cloth with gilt lettering. It was held that inspection and comparison of the respective works was required. Upon such comparison it was found that certain routes in certain areas of Switzerland were taken from the Plaintiff's work. The Plaintiff showed similarity in errors to show the piracy. The Defendant showed the material

additions made in the later Editions of his work. The Defendant contended that he had obtained his information from other sources. Upon comparison the Court felt that to some extent the Defendant had made use of the Plaintiff's hand-book. The Court observed that the Defendant's book was in many parts a translation of, or an abridgment of the German version. The Court compared the Plaintiff's work and the German translation and thereafter the German translation and the Defendant's work. The Court accepted the Defendant's contention that though the general plan and scheme were of the Plaintiff, it is essentially a framework of the Plaintiff filled up in the German translation by the author in his own way. Hence, the Plaintiff's ground work alone was not sought to be used. The German translation was observed to be substantially the original. Thereafter the Defendant's work was compared with the German translation. The Defendant freely and literally had translated from the German translation. The Defendant's work was observed to be in many parts "a servile copy". The Court had to consider whether making certain use of Plaintiff's work with free use of the German translation as well as other works, the Defendant's work would amount to an extraction of the vital part of the Plaintiff's hand-book thus making an unfair use of the Plaintiff's work. The Court considered that two guide books relating to the same country must of necessity have

much that is similar; the same objects of interest are likely to be noticed by all who visit a particular place. The Court observed that the general scheme of the two books are quite different. The Defendant's work is more limited than that of the Plaintiff or of the German translation. The Court observed that the Defendant differed from the Plaintiff in showing the places on the same road in the country including many places which were not mentioned either by the Plaintiff or in the German translation and omitting places mentioned by them. The Court, therefore, concluded that the Defendant's work was not a unfair use of the Plaintiff's hand-book and hence would not tantamount to piracy or infringement of the Plaintiff's copyright.

This judgment shows the test of determining whether Defendant No.4 actually verbatim copied the frame of the Plaintiff's photographs as they were in the film or whether he, taking the Plaintiff's information and idea about the Bihar Movement, sought to create his own frame in his own way and by his own skill, exertion, labour and art in bringing out the same fact of the Bihar Movement himself.

39. Admittedly in this case Defendant No.4, unlike the Defendant in the case of **Murray Vs. Bogue** (supra), did not do anything of the kind. He bodily lifted several shots and stills

from the Plaintiff's film, together with its defects and mistakes and incorporated them without any further work in the impugned film.

40. The “cut and paste” job therefore, constitutes infringement of copyright, though adoption of an idea upon research is not. If the Defendant No.4 researched the events which led to the Emergency for making of the impugned film in the [D.D.K Archives](#), he could have compiled the material that could be obtained therefrom and could have produced it in his own way, giving it his own image. The [D.D.K Archives](#) had inter alia several films broadcast by the [D.D.K](#). A copy of the tape of the suit film remained with the [D.D.K](#) upon the licence given by the Plaintiff about 25 years ago to the Defendants 1 to 3 which shall be considered presently. It was perfectly legitimate for Defendant No.4 to research it. However, it is illegitimate for Defendant No.4 to cut and paste and accordingly copy such material in his film. This concept has been considered in the case of Macmillan Vs. Suresh Chunder Deb 1890 I.L.R. 17 Calcutta 951 at page 961 thus:-

**“In the case of works not original in the proper sense of the term, but composed of, or compiled or prepared from materials which are open to all, the fact that one man has produced such a work does not take**

away from anyone else the right to produce another work of the same kind, and in doing so to use all the materials open to him. But, as the law is concisely stated by Hall, V.C., in Hogg Vs. Scott 'The true principle in all these cases is, that the defendant is not at liberty to use or avail himself of the labour which the plaintiff has been at for the purpose of producing his work – that is, in fact, merely to take away the result of another man's labour, or, in other words, his property.'

This proceeds upon the fundamental principle of Copyright Law laid down in the case of University of London Press, Ltd. Vs. University Tutorial Press, Ltd. 1916 2 Ch. 610 which has been off quoted:

“ What is worth copying is prima facie worth protecting”

41. What would not be breach of copyright is well illustrated in the case of Franz Hanfstaengl Vs. H.R. Baines & Co. Limited 1895 A C 20 (H.L.) in that case the theme of a young man and young lady dating in the countryside was pictorially represented. Breach of copyright was alleged by the owner of the artistic work who made the initial picture. The further statutes and posters depicting the same idea and theme was challenged as infringement of his copyright. Whilst holding that they were not, it was observed that the artist who made those sketches did not make copies of the original photographs. The faces were different. The countenance of the

persons had no resemblance to those depicted by the artist. Though there was a resemblance in the sketch and the photograph showing a man and a woman standing beside one another close to a stile or fence, with the woman's head shaded by a parasol, with similar dress of the man, the pictorial representation was seen to be of great antiquity. The difference in the faces, the whole style, the dress, the pose, the attitudes, the background and the foreground were noticed. It was held that the sketches were not copies of the photograph because the subjects held in them were neither special nor exceptional. The subject was an idea as old as the world – the theme of dating – upon which none could have monopoly to claim copyright.

42. With regard to infringement of copyright by copying **Halsburys Laws of England, Fourth Edition 2006 Volume 9** (2) in paragraph 314 at page 207 shows:-

**“Copying a film includes making a photograph of the whole or any substantial part of any image forming part of the film”.**

43. Hence, a single shot taken from a film would be sufficient to constitute infringement of copyright. Of course the consequence of the infringement would depend on the facts of each case and upon seeing what kind of shot, under what circumstances and to what end is copied. In this case the

shots/stills/images showing Jay Prakash Narayan crossing river along with the students and large masses of people, the shot of the train also showing the students revolting etc. are shots which the Plaintiff has with his skill, labour and art devised, edited, and cast into his film. The copyright in these shots belong to the Plaintiff and none else. Bodily lifting these shots and incorporating them, as they initially were, in the impugned film, is enough to constitute infringement.

44. In Spelling Goldberg Productions Inc.Vs. B.P.C. Publishing Ltd., 1981 R.P.C. 283 on page 291 (CA) the consequences of publishing a single photograph of a frame in another film was considered. In that case certain details from a certain film were published in a magazine and a wall poster. The Plaintiff contended infringement of their copyright in the film by reproduction of a single frame of the film. The Defendants contended that it was not a substantial part of the film and hence does not amount to infringement. It was held, reversing the trial Court judgment, that making a copy of a frame of a film infringed its copyright. Because a single frame is a part of the film, even if it does not possess the characteristics of a film, it would be infringement of copyright to reproduce a substantial part of a frame of a film. The photographs published by the Defendants in the magazine were derived from individual frames of the film. Considering

the definition of a “copy” defined thus:

**“copy” means any print, negative, tape or other article on which the film or part of it is recorded, or any substantial part of the film, or of that part of the film, is recorded,”**

the Defendants were held to have made a copy of the film. Considering various sections of the Copyright Law in England including the definition of the infringing copy, cinematograph film and photograph it was held by **Buckley L.J.**, at page 296 that a single frame from a film is a part of that film within the meaning of the definition of “copy”.

Similarly it was held at page 298 by **Templeman L.J.**, that copying of a single frame infringed the copyright in the film as cinematograph film as well as photograph are expressly protected under the Copyright Act.

45. Reading Section 14 of the Copyright Act, including Sub-section 14(d)(i) the owner of copyright has the exclusive right to make copy of the film including a photograph of any image forming part thereof.

46. It would be seen that the right is in respect of the work or its substantial part in respect of the cinematograph film extends to a copy of the film or even a photograph of any

image in the film.

47. The copyright under Section 14 which is the exclusive right to do or authorise the doing in respect of a cinematograph film is a copy of the film including a photograph of any image forming part thereof. Hence, a copy of a single photograph/frame/still/shot of a film would constitute infringement.
48. Consequently when we have to see what is substantial part of the film it would include the substantial part of the photograph/frame/still/shot of the film. If that photograph/frame/still/shot is taken and reproduced after bodily lifting it from one film and putting it in another, it would be a copy of the photograph of the image forming the part of the film and would fall squarely within the mischief of Section 14(d)(i) of the Copyright Act, 1957.
49. Hence, a concept of “substantial part of the film' would extend to whether there was reproduction of the substantial part of a still/image/shot/frame of the film and if what is copied of such single image/still/shot/frame is not substantial it would not constitute infringement, but if the entire shot/still/image/frame is copied, be it only one such shot/still/image/frame, it would constitute infringement.

50. An illustration of a single shot of a cinematograph film used in another may be given, as being exceeding popular in India it would, at once, bring home the concept. A shot in film of R.K. Films showing the star Nargis, forlone and dejected, was also used in the same style in another film upon another star therein. The other film was also the production of **R.K.Films**. The shot immediately brought out memories of the earlier film in the viewers. The producer was the same in both the films. He had copyright in the earlier film. Under the provision of Section **14(d)(i)** he alone had the right to make a copy of the earlier film including a photograph of any image forming a part of the earlier film. Had the later film been produced by another film maker, the said shot by itself, singly, would have constituted breach of the copyright of R.K. Films.

51. Every film per se carries a copyright. Copyright is implicit in a film. A copy of a film is an infringing copy. The entire film would never be copied – that would be absurd. Parts of a film may be copied. Those parts would be the stills/shots/images of the film. They would show the frame of the shots copied. It would be copied if no permission is taken from the owner to use such shots or stills just as they are in his film. No one can feign ignorance of the fact that all shots/images/stills of the film are copyright material. Each of

those shots/stills/images is the property of the owner. The producer of the film is the first owner. In this case the Plaintiff is the owner of the suit film. He has copyright in his film or substantial part of his film. He has the exclusive right to make a copy of his film including a photograph of any image forming a part thereof. None other has such right. Hence, copying a single shot/still/image would constitute infringement of the owner's copyright thereunder. Similarly copying a substantial part of each of the shots/stills/images would also constitute infringement. What is substantial part of the film or the images of a film would have to be seen.

52. The Defendants also contend that the Bihar Movement is a **historical event**, which led to the Declaration of Emergency and that such historical event does not carry a copyright. It is meant to educate the people about a fact which happened by way of news and hence, the Plaintiff's copyright, if any, is not infringed.

53. Mr. Rajguru relied upon the case of **A. Balakrishnan Vs. R. Kanagavel Kamaraj & Anr. 2000 PTC 525 (Madras High Court)** in which the grandson of the deceased political leader was held not entitled to prevent making of a film of the leader on the promise that he was not a custodian of history. That judgment, however, does not show a position contrary to the

Copyright Law that any theme of history can be copied by any one from an earlier work. The Bihar Movement, which is a part of history, could certainly be shown by the Defendants in any film. The Plaintiff being not a custodian of history, would have no claim to it, if it is shown otherwise than by the shots/stills/images/frames of his film.

54. The Defendants also contend that even upon copying from the suit film; there is no infringement under Section 52(u)(ii) of the Copyright Act, it being only by way of a background and completely incidental to the principal matter represented in the film.

55. Under Section 52(u)(ii) of the Act an inclusion of an artistic work only by way of background or which is only incidental to the principal matters in the film would not constitute copyright. Artistic work as defined in Section 2( c ) of the Act is painting, sculpture, drawing, engraving or photographs, a work of architecture and artistic craftsmanship.

56. Inclusion of an artistic work in a film would not constitute infringement if the artistic work is by way of a background or incidentally shown. The artistic work is not the film itself. It is also not a part of the film. It is, therefore, not a single

shot/still/image of the film. Only an artistic work is exempted. The exemption does not extend to the film itself or any shot/still/image of the film. Hence though an artistic work can be included in a film, a part of another film cannot be included in a film even if it is merely by way of a background or incidentally shown as a film is not included in the definition of artistic work. Copyright subsists interalia both in artistic works and films.

57. What is artistic work and why is only artistic work exempted from constituting infringement of copyright if it is the background of a film or shown incidentally must be understood. It can be explained best by way of an illustration. If a painting of [M.F.Hussain](#) is to be shown in a shot of a film showing a Hotel or a hall (painting being an artistic work) it would not constitute infringement of the copyright of M.F.Hussain in the painting, but a shot of a film shot exactly as it was in another film is quite different. Copyright exists separately, independently, individually in each shot of the film. The producer of the film, in whom the copyright is vested, has either personally or through another (a director, photographer, editor, cameraman) got a particular shot shot in his own unique way using his labour and skill which gives him the copyright in each such shot. That is not an “artistic work” ; There is no copyright in it as a copyright in artistic

work. He has copyright in such shot as a part of his film - each shot/still/image of the film makes up the whole cinematograph film: Inclusion in a film of a part of another film or a part of any shots/stills/images of author a film is, therefore, not exempted.

58. The Defendants contend that the total shots/stills/images of the suit film taken by Defendant No.4 in the impugned film spans a minuscule 86 seconds in an hour long documentary and hence is not substantial reproduction of the original work of the Plaintiff.

59. Mr. Rajguru on behalf of Defendants would contend that the quantity of the copied material is neither substantial nor material and therefore, constitutes only 'a fair use' made of the publication and consequently any wrong, if done, falls under the maxim "*de minimus non curat lex*".

60. The contention is entirely misconceived. The "substantial part" is the part of the original work. It is not to be judged upon seeing it as a part of the infringing copy.

61. The test of the substantial part of the whole having been copied which may result in infringement is laid down in the case of Ladbroke (Football), Ltd. Vs. William Hill (Football),

**Ltd. 1964 AER 465(HL).** The majority judgment of the House of Lords considered the question of infringement of Copyright in a literary work upon reproduction of a part of the work. That was the case of certain coupons containing lists of matches to be played each week by a firm of Bookmakers. Each list had an appropriate title and contained explanatory notes. One of the lists enumerated the full list of matches. The others were lists of selected matches. The coupons offered 148 different varieties of bets. A great deal of skill, judgment, experience and work was required in designing the coupons. It was held that such work was artistic and hence entitled to copyright. Upon such a situation the House of Lords was called upon to consider whether reproduction of a part of the coupons would infringe the Author's copyright. The majority opinion essentially delivered by Lord Reid, with separate opinions by 4 others assenting thereto, considered the question of "substantial part of the copyright". The copies of the infringer was seen to be adopted in a form closely similar to the Author's coupons. It contained 15 lists whereas the Author's coupon contained 16 lists. They were almost identical. Some of the lists were found in one or more of the other Bookmaker's coupons and some were found in almost all of them. Everything was not copied. The copying was recorded as a single work or a single compilation protected by the Copyright Act. It was observed thus:-

**S.49(1) Broadly, reproduction means copying, and does not include cases where an author or compiler produces a substantially similar result by independent work without copying. If he does copy, the question whether he has copied a substantial part depends much more on the quality than on the quantity of what he has taken. One test may be whether the part which he has taken is novel or striking, or is merely a commonplace arrangement of ordinary words or well-known data. So it may sometimes be a convenient short cut to ask whether the part taken could by itself be the subject of copyright. But, in my view, that is only a short cut, and the more correct approach is first to determine whether the plaintiff's work as a whole is "original" and protected by copyright, and then to inquire whether the part taken by the defendant is substantial"**

Hence it matters not that only 86 seconds of the impugned film is brought within the mischief of the rule against plagiarism. The suit film deals essentially with the Bihar Movement. It shows several significant, identifiable shots of that movement – to cite – the shot of J.P crossing the river with the students, the shot of the train taken over by the students etc. The shots which are copied by Defendant No.4 and incorporated in the impugned film show the Bihar Movement made up of the several shots/stills/images of the suit film constituting its substantial qualitative part.

62. The suit film deals essentially with the Bihar Movement. The impugned film deals essentially with the interviews of various political figures who state about their roles at the time of and before the Emergency. The impugned film is not on the Bihar Movement. It is about how Emergency was declared, who suffered therein and what they did. As Bihar Movement was the necessary and essential catalyst for the Declaration of Emergency it was required to be and was shown as a part of the events leading to Emergency. The entire aspect of the Bihar Movement shown in the impugned film is taken from the suit film. Hence, so far as that part is concerned, which is a material part of the suit film the impugned film showing the cause of Emergency is a copy of substantial part of the suit film. In fact the Plaintiff's evidence in his examination-in-chief itself shows that the suit film is the only cinematograph work showing the Bihar Movement. The Bihar Movement is shown in the impugned film. It may be only a small part of the impugned film. But that part is entirely copied from the suit film. A material part of the suit film so copied is a substantial part of the whole. It would be incorrect to accept the Defendant's contention that because the stills and shots of the Bihar Movement shown in the impugned film extend only to 86 seconds of the suit film, it would not be a substantial reproduction of the whole work containing the copyright in favour of the Plaintiff.

63. Consequently Halsbury's Laws of England, Fourth Edition 2006 Volume 9(2) has explained the concept of reproduction of the copyright work in paragraph 316 at page 209 of the aforesaid volume. It is explained thus :-

**“ 316. Reproduction: ... In order to constitute 'reproduction' there must be sufficient objective similarity between the two works and also some causal connection between them; the existence of both these elements is a question of fact, the first being an objective issue and the second a subjective one. Subconscious copying may constitute an infringement of copyright if familiarity with the work alleged to be copied is shown.”**

64. In this case there is more than sufficient similarity between the Bihar Movement shown in the suit film and the Bihar Movement shown in the impugned film. In fact though the Bihar Movement is the main and fundamental part of the suit film and only shown as a cause of the Declaration of Emergency in the impugned film, the shots/ stills/images of the suit film shown in the impugned film is nothing but an identical reproduction to show the same event/incident. It is not even the case of Defendant No.4 that he took the shots/ stills/images from elsewhere, the incident being a historical event. The source is, therefore, none other than the suit film. The Plaintiff has clearly shown the very shots and stills of suit film being unlawfully used as part of the Defendant's work

appropriating Plaintiff's labour, skill and art without his permission.

65. The precise position of cinematograph film as a subject amenable to copyright under **Section 2(f) of the Copyright Act, 1957** is considered in **T. R Srinivasa Iyengar's The Copyright Act Sixth Edition at page 188** thus :-

**“ A cinematograph film is protected, where the arrangement or acting, forming a combination of incidents represented, give the work an original character. Where it is an original work, it is entitled to copyright, even though made from an earlier work entitled to copyright, if the author has given to his work an original character. Copyright in the film exists in it as a series of photographs”.**

The infringement of the copyright in the series of photographs of Plaintiff by Defendant No.4 from the archives of Defendants 1 to 3 is clear and complete.

66. The infringement is apparent from the reproduction of the Plaintiff's stills/shots/images as quoted by **Halsbury's Law of England** in the paragraph relating to reproduction above. The proper approach is to identify the reproduced work and then to see whether it is the substantial part of the Plaintiff's work. In paragraph 321 at page 214 of the aforesaid volume of

**Halsbury's Laws of England**, the learned Authority shows what is substantial part of the Plaintiff's work ..... "Quantity is not the only consideration".

67. Copyright Act by **Iyengar** in the aforesaid volume at page 502 shows the "principle applicable where Defendant's work is partly an infringement and partly innocent". Again the Author states that what is material is the quality of the respective parts and not their quantity.

68. Putting quality above quantity would therefore, lead this Court to conclude that for depiction of the Bihar Movement in the impugned film, which was shown to be the main cause leading to the Declaration of Emergency is a substantial part of the suit film copied by Defendant No.4. The whole of the said material is copied from the suit film. The ultimate test is as contained in the judgment of **Lord Evershed in the case of Ladbroke** (supra) at page 473 thus:-

**"It will, therefore, depend not merely on the physical amount of the reproduction but on the substantial significance of that which is taken."**

Hence, Lord Hodson in his opinion at page 475 referring to the case of **Cramp & Sons Ltd. Vs. Frank Smythson Ltd.** **1944 2 All E.R 97** held thus :-

**“Whether enough work, labour and skill is involved, and what its value is, must always be a question of degree”.**

69. In the case of **Cherian P. Joseph Vs. Prabhakaran Nair** **A.I.R. 1967 Kerala 234** the Kerala High Court has laid down how substantial use of the original thought or information expressed is to be decided. The Court is required to compare the two works to understand whether or not the substantial part of the original work is copied. In that case certain books were alleged to be translations of the complainant's books. It was held that the expression of thought and information in some concrete form is protected. It is, therefore, held that if the Defendant has made unlawful use of the form in which the thought or information is expressed, he would be liable for infringement of copyright, but not, if he has taken the essential idea, however original, and expressed it in his own form or words.

70. Mr. Rajguru also argued that as held in the case of **Frederick B. Chatterton and Benjamin Webster Vs. Joseph Arnold Cave** much would depend upon **the effect** produced upon the mind by the copied work. He contends that upon viewing the film the Court would see that the basic themes of both the films are different and therefore, even if the Plaintiff's theme is taken and reproduced as a part of the impugned film,

which is not the main theme of the film, it would not fall within the mischief of the infringement of copyright, but would be mainly by way of background otherwise incidental to the principal matters. This argument ignores the fact that the principal matter of the impugned film is the Declaration of Emergency. Hence, the cause that led to the Declaration of Emergency is not merely incidental to the film. It is not merely in the background; of course it cannot be shown throughout the length of the film.

71. Even in the case of Ladbroke (supra) at page 469 it is held that reproduction would tantamount to copying not if the person alleged to be copying produces a substantial result by independent work without copying. It would, of course, not include “pure copying” or “copying per se”.

72. Mr.Rajguru has also sought to show differences in the impugned film. Though there are differences, which are contained essentially in a number of interviews with the number of persons who are stated to have played some part in the Emergency, there are no differences in the treatment of the theme of the Bihar Movement in the film. That essential aspect has been shown at 6 to 7 places by several shots, all taken from the suit film complete with the defects that were in the suit film.

73. Mr. Rajguru relied upon the case of R.G. Anand Vs. M/s. Delux Films (1978) 4 SCC 118 = A.I.R. 1978 SC 1613 in which the law relating to copyright was essentially enunciated as:

- i) The copyright is confined to the form, manner and arrangement and expression of the idea.
- ii) Similarities are required to be a fundamental or substantial aspect of the mode of expression.
- iii) A literal imitation with some variations of the copyright work would amount to violation.
- iv) A copy must be a substantial or material part of the work.
- v) It must lead to an unmistakable impression that it is sought to be copied from the original.
- vi) The dissimilarities in the copies must also be considered.
- vii) If the co-incidences in the work are clearly incidental there would be no infringement.

In that case the Court viewed the play and the film which was alleged to be copied therefrom. Violation of copyright was not seen. It was held that there was no colourable imitation. Several dis-similarities in the two works were noted. It was

held that the effect of the dis-similarities was that they far outweighed the effect of similarities. The similarities were trivial and not substantial. The treatment of the film was different from the play. Considering the case of Frederick (supra) it was held that the alleged copy did not come so near to the original as to give the person seeing a film the idea created by the original play.

74. Quoting from Ball on the Law of copyright and Literary Property page 364 it was observed that the similarities were “too trivial” to amount to appropriation of copyright material. The author was quoted thus :-

**“But since there was no substantial identity between the respective works in the scenes, incidents, or treatment of the common theme, the court held that the plaintiff's copyrights were not infringed by the defendant's photoplays.”**

75. Paragraph 18 of the case of **R.G. Anand** shows reference to the American jurisprudence with regard to infringement of copyright. It inter alia show at page 130:

**“ Infringement exists when a study of two writings indicates plainly that the defendant's work is a transparent rephrasing to produce essentially the story of the other writing, but where there is no textual copying and there are differences in literary style, the fact that there is a sameness in the tricks**

**of spinning out the yarn so as to sustain the reader's suspense, and similarities of the same general nature in a narrative of a long, complicated search for a lost article of fabulous value, does not indicate infringement."**

In this case there is more than a "transparent rephrasing" of the shots in the suit film. There is merely "textual copying" with no differences in literary style, editing etc.

76. A further test considered in the case of **R.G. Anand** (supra) is from the case of **Frederick** (supra) which has been taken from the case of **West Vs. Francis (1822) 5B & Adl. 737, 734: 106 ER 1361:**

**"A copy is that which comes so near to the original as to give to every person seeing it the idea by the original ..."**

**"A copy is that which comes so near to the original as to suggest that original to the mind of every person seeing it".**

77. The Plaintiff's evidence shows that he received a telephone call from his cousin that the impugned film was being telecast on DD by Defendants 1 to 3. The very fact that the Plaintiff received such telephonic message shows that immediately upon seeing a small part of the film his cousin deemed it fit to telephone the Plaintiff to see what was telecast. Hence, even if the copied material extended to a mere 86 seconds comprised

of several shots in at least 6 or 7 parts, the very first viewing by a person known to the Plaintiff gave him a feeling and idea that that copy is just like the Plaintiff's original. In other words it brought to his memory the idea created by the original. Therefore, it suggested the original to his mind. It is of importance to note that the suit film was telecast by DD in 1977 though thereafter admittedly it has not been re-telecast. A quarter of a century after, when the impugned film was telecast the Plaintiff immediately received a telephonic message to view it. Hence, even if it was not verbatim the Plaintiff's film the impression that it created was profound. Even discounting the Plaintiff's further evidence about several persons who viewed the film and questioned him about his ideology or the fact that he has sold himself, the mere fact about how the Plaintiff learnt about the impugned film's telecast shows the impression it created that it was from his film or identical to his film.

78. After considering a number of judgments on whether copying is trifling or substantial, the overall impact has been taken as the test of substantial copying. The test which is laid down in Anand's case upon considering the case of Twentieth Century Fox Film Corporation Vs. Stonesifer (1852) 140 F 2d 579 is :-

**“The two works involved in this appeal should be**

**considered and tested, not hypercritically or with meticulous scrutiny, but by the observations and impressions of the average reasonable reader and spectator...”**

79. Consequently it is held in paragraph 45 of the judgment that where two writers write on the same subject, similarities were bound to occur because the central idea of both are the same, but the similarities or coincidences by themselves cannot lead to an irresistible inference of plagiarism or piracy. The illustrations of words of Shakespeare which have been oft repeated and cited are apt. The treatment of the subject dealt with by Shakespeare would not tantamount to breach, if it is treated additionally or differently. Hence what Mr. Rajguru would call a historical record in which there can be no copyright would be as has been held in paragraph 45 thus:-

**“45. Thus, the position appears to be that an idea, principle, theme, or subject matter or historical or legendary facts being common property cannot be the subject matter of copyright of a particular person.”**

80. It is, therefore, incorrect to state that copying shots of the historical part of the Bihar Movement would not tantamount to breach because the Bihar Movement is a part of history. Indeed the Bihar Movement could be shown additionally or

differently by Defendant No.4 in the impugned film though it was shown by the Plaintiff in the suit film, but it had to be shown additionally or differently.

The Supreme Court considered that both the play and the film which they viewed had the same theme of provincialism and the prejudice of persons belonging to one State against those of the others. However, the treatment was different. They have laid down **18** points of similarities and **6** points of differences. They have considered that the copied version does not only show provincialism, but also under the same theme showed evils of the Society like the dowry system. They have also showed different illustrations for the treatment of the same theme. Watching the film would not lead one to the conclusion that it was copied from the play and hence, it was held that the Defendants cannot be held guilty of piracy.

In this case, there is no difference in projecting the Plaintiff's shots/stills/images in the impugned film. In this case the Plaintiff's subject was the Bihar Movement. That subject has not been dealt with as a common subject known to many and represented in many ways through the years. The stills/shots/images from the suit film are taken verbatim by Defendant No.4 in the impugned film. The Defendant No.4 has not himself shot the film showing the railway shot, the

river shot etc. additionally with his own characters in his film. The Defendant No. 4 has, therefore, simplicitor “copied”. Defendants 1 to 3 have allowed and actually aided such copying by making the archives material open and available to Defendant No.4 for such copying. The Plaintiff's copyright therein is absolute. Copying by the Defendants tantamounts to infringement by all of them. Hence, **issue No.4** is answered in the **Affirmative**.

**ISSUE NO.5:Re: Assignment/Licence of the suit film:-**

81. The Defendants 1 to 3 claim that the suit film was assigned to them by the Plaintiff and hence have become owners thereof. Under Section 18(1) of the Act the owner of a work may assign the copyright to any person. Such assignment may be of the whole or part of the work, either generally or subject to limitations and either for the whole term of the copyright or any part thereof.

Under Section 18(2) of the Act, upon such assignment, the assignee is treated as the owner of the Copyright **to the extent of the assignment**.

Under Section 19(1) of the Act the assignment has to be **in writing** and signed by the assignor.

82. It is for the Defendants who have alleged an assignment of the suit film by the Plaintiff to show the written contract of assignment, including its terms and limitations. The Defendants have produced no such contract. The Defendants have relied upon certain hand-book/manual which allows them to destroy records after 5 years. Hence the assignment in writing, which is mandatorily required, is not shown.

83. The Plaintiff contends that Defendants 1 to 3 were given the telecast rights of the suit film in 1977. The consideration for such rights is shown to be Rs.500/- in the plaint as well as in the affidavit of evidence of the Plaintiff. The Plaintiff has later come upon and fairly produced the original letter dated 27<sup>th</sup> September 1977 of one Manohar Pingale, the then Producer -in-charge of Doordarshan, Bombay addressed to the Plaintiff with a copy to the Directorate General of Doordarshan, Delhi bearing No.12825. The Defendants contend that the assignment is shown in the said letter. The letter shows enclosed therewith the royalty contract of the Plaintiff for the suit film. It shows that the payment of Rs.500/- per telecast has to be made to the Plaintiff under instructions to his office. The letter is marked **Exhibit-B** in evidence. It is relied upon by the Defendants to show what they call an assignment of the Plaintiff's copyright.

84. The letter further shows the specific terms of the contract between the parties thus :-

**“ You will observe that the Producer Shri Patwardhan has desired to scratch off some of the clauses in the royalty contract about which your Kendra may take decision and act accordingly. For your information he has imposed similar conditions at the time of telecast from our Kendra, to which he (should be read as “we”) had agreed. This film is to be shown in full with no attempt either at abridgment, use of excerpts is to be made.**

**The receipt may kindly be acknowledged.”**

(bracket supplied due to typographical error)

85. The Plaintiff contends that that was a licence to telecast the suit film. Under Section 30 of the Copyright Act, the owner of the copyright may grant any interest in his right by licence in writing and signed by him. The aforesaid provision of Section 19, relating to assignments of copyrights applies also to a licensee under Section 30A of the Act.

86. Hence the interest or right in the suit film which the Plaintiff had was permitted (licenced) by the Plaintiff to be used by Defendants 1 to 3 to telecast the suit film as per his contract in writing. The written contract is not produced even by the Plaintiff. However, the terms of the contract can be deciphered from the admitted letter of the officer of

Defendants 1 to 3 in evidence.

87. The production of the aforesaid letter impliedly shows the execution of the written contract of assignment/licence between the Plaintiff and Defendants 1 to 3 as mentioned therein. The second paragraph of the letter extracted above shows the terms in writing which bind both the parties. Hence, it is seen that Defendants 1 to 3 had acquired a telecast rights of the Plaintiff's film for a fee of Rs.500/- per telecast subject to the conditions imposed by the Plaintiff and agreed by Defendants 1 to 3 for showing the film in full with no attempt either abridgment or by use of excerpts.

88. The Plaintiff has not sought to take back the copy of the film from Defendants 1 to 3 after it was admittedly first telecast in 1977. Hence, it continued with the Defendants 1 to 3 in their Archives. It could have been telecast again by Defendants 1 to 3. That, of course, would have been upon the same terms, conditions and limitations reflected in the letter **Exhibit- B.**

89. It can be seen that what was assigned/licenced was the right to telecast the suit film in its entirety only upon the royalty of Rs.500/- per telecast.

90. However, it is sought to be contended by the Defendants that they could use the suit film as that wished since they became the full owners of the copyright in the suit film.
91. Mr.Rajguru relied upon the case of **Message Vs. British Broadcasting Company Ltd. 1929 AC 151 (House of Lords)** in that behalf. The case refers to the distinction between the licence and an assignment and the effect of infringement of copyright thereupon. However, that was the case of an agreement between a Composer and an Opera. The licence was granted to the Opera to represent the play of the Composer in U.K, U.S etc. Copyright was to remain with the Composer and royalty was paid by the Opera. The Opera was assigned the rights in the play. The agreement was held to be an assignment and not mere licence. Hence, the Opera was held entitled to the rights of an owner of the copyright under the assignment. That position in law cannot be disputed.
92. However, whatever could be assigned is subject to the agreement of the Assignor. It would be to the extent of assignment and limited by conditions in the assignment. In the case of **Frisby Vs. British Broadcasting Corporation, 1967 (2) AER 106** it has been held that the licensee of a dramatic work can make alterations in the work except in so far as the licence expressly or impliedly excludes such right.

In that case the BBC was to televise the play of the Plaintiff who held copyright. The agreement between the Plaintiff and BBC provided that the BBC would not make structural alterations of script without prior consent of the author, the Plaintiff. BBC claimed the right to delete or excise two words from one line of the play. The author objected and applied for an injunction against the BBC from televising the play with the alteration by deletion of those two words. The agreement provided that the work should be acceptable "as it stands". The Plaintiff's evidence showed that the line from which the two words were sought to be deleted was of absolute and basic importance and that he was not interested in writing the play at all, if he could not have that line in the production televised. When the play was vetted it was confirmed to be "O.K.". No exception was taken to any line in the script. It was "accepted subject to any necessary minor revisions". It was later realised that as the said line was explicit, it would offend a majority of the T.V. viewers who are family persons. It was held that there was only a licence of the play and the copyright was to remain with the Plaintiff. The agreement did not vest the copyright. It was, therefore, to be considered what right the licensee would have to alter the work of the author. The following paragraph was quoted from the case of **Copinger and Skone James on Copyright (10<sup>th</sup> Edn.), page 258** thus:

“Difficulties sometimes arise by reason of alterations made in the matter communicated by correspondents and others to newspapers. It is necessary to consider two cases. Where the author has assigned his copyright to the newspaper his only cause of action is for the injury to his reputation or possibly malicious falsehood. Where, however, he has only granted a licence to publish, it may be a term of the licence express or implied that no alteration shall be made. If such term is a condition precedent to the licence a publication with alterations would give rise to an action for infringement of copyright, but if not, there would merely be a right of action for breach of contract. Apart from special contract, contributors to newspapers will probably be taken to have accepted the ordinary custom that editors may make alterations in unsigned articles, but the court will readily imply a term that no substantial alteration may be made to a signed article without the author’s consent.”

93. The right to alter assumes significance upon the difference between getting assignment of the copyright, in which case the assignee becomes the absolute owner of the copyright, and only getting a licence to televise the work. Quoting from the case of **Joseph Vs. National Magazine Co. Ltd. 1958 (3) A.E.R. 52 at page 114** it is held that the most important aspect is whether the copyright has vested in the assignee. The question of the “right to alter” is also considered from the judgment in the case of Joseph thus :-

“If a publisher be the absolute owner of the

**copyright, he is entitled, without the consent of the author, to publish successive editions of the work with additions and corrections and, in bringing out new editions, may make such omissions and other changes in the original as will not injure the reputation of the author. Whereas, in the case of a licence, the licence may expressly or by implication only extend to publication in unaltered form, so that the publisher, if he publishes in an altered form, may commit an infringement.”**

Hence, it is concluded that the licence may expressly or impliedly require publication in an unaltered form and no substantial alterations could be made.

On the facts of the case it was held that there was nothing in the contract to preclude the BBC to make alterations though it was observed that there is a prima-facie right of a licensee to make alterations only as granted in the agreement. Hence, it was observed that as per the agreement between the parties no alterations could be made in so far as excluded expressly or by necessary implication.

The distinction between an assignment and a licence is essentially demonstrated in the case of an absolute assignment on the one hand and a licence on the other. But Section 18 of the Copyright Act contemplates an assignment wholly or in part. The relevant part of Section 18 runs thus:

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

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

if an assignment is wholly and generally made of copyright in a work, the assignee as the absolute owner would be entitled to alter the work. If the assignment is made either partially or subject to limitations, the assignee would be taken to be an owner only so far as the Copyright is assigned to him in respect of the right so assigned; the owner would continue to be the owner in respect of all the rights not assigned.

94. In this case the only right granted by the Plaintiff to Defendants 1 to 3 is the right to telecast the suit film upon payment of royalty for each telecast. Further, it is specifically subject to the limitation as regards the right to abridge the

film or use any excerpts therefrom.

95. Consequently even if the grant of telecast rights are taken to be an assignment of the copyright of the Plaintiff in the suit film, it would be only to the extent of the telecast rights, Defendants 1 to 3 would be taken to be the owners of the suit film only so long as they telecast the suit film upon payment of the agreed royalty per telecast. The Plaintiff would not be able to restrain Defendants 1 to 3 to telecast his film.

96. Yet the Plaintiff would continue to have the ownership right in the suit film so far as it relates to the abridgment or use of excerpts. As such owner, only he can abridge the suit film or use any part thereof separately as excerpts.

97. Such partial assignment of copyright, as contemplated under Section 18 of the Act, is not much different from a licence completed under Section 30 of the Act. The relevant part of Section 30 runs thus:

**“30. Licences by owners of copyright. - The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent:**

98. It, therefore, contemplates only an interest in the copyright being granted. Under Section 30A the provisions of Section 19 and 19A of the Act are applicable even to licences. Section 30A runs thus:

**30A. Application of sections 19 and 19A. - The provisions of sections 19 and 19A shall, with any necessary adaptations and modifications, apply in relation to a licence under section 30 as they apply in relation to assignment of copyright in a work.”**

Hence such a licence is analogous to a partial assignment or an assignment with the stipulated limitations.

99. In this case the letter of the Defendants' Project Manager itself shows the exclusion of the right to “alter” by not allowing the telecast at the agreed rate by the DD either by abridgment or by use of excerpts. The assignment/licence to the DD was, therefore, not conditional. There was, therefore, partial assignment/licence to the DD. DD could, therefore, not be the full owner of the copyright in the suit film. It was therefore, only licensee or part assignee of the suit film to telecast it without abridgement or use of excerpts and wholly as produced by the Plaintiff at the rate of Rs.500/- per telecast.

100. It has been contended by Mr. Rajguru that the Plaintiff has not made out a case in the plaint that the Defendants 1 to

3 were licenced the suit film only upon conditions. That aspect has been stated in the further affidavit of examination-in-chief, hence, he contends that there is a variance between pleadings and proof. The contention is incorrect. The pleadings must show only the case of the Plaintiff. The evidence with regard to that case need not form a part of the pleadings. The Plaintiff's case is the case of copyright in the suit film. The Plaintiff has claimed that the Defendants 1 to 3 have pirated and plagiarised the suit film by allowing Defendant No.4 to take excerpts therefrom by way of stills/shots/images and use it in his own production showing the Declaration of Emergency, but with a different slant so as to defame the Plaintiff whose work is given a place in the impugned film. Upon such a case the Plaintiff has produced the evidence to show the licence created in favour of the Defendants 1 to 3 upon the conditions mentioned therein, the letter **Exhibit-B** showing impliedly the contract between the parties. The Defendant's contention that upon payment of Rs.500/- the Defendants became the assignees of the copyright and acquired the telecast rights in perpetuity is not shown by a written assignment. The Defendants have not produced the assignment, which could be only in writing. The Defendants only rely upon the letter **Exhibit-B** produced by the Plaintiff in his evidence to assert ownership rights. The amount of consideration is shown to be per telecast in the

letter **Exhibit-B**. The defendants have not produced any assignment in writing with a one time consideration to constitute an assignment of the Plaintiff's copyright as a whole and without limitations.

101. Hence, **Issue No.5** is answered in the **affirmative** subject to the addition of the words “per telecast” and subject to the limitations imposed by the Plaintiff as set out in paragraph 2 of the letter dated 27<sup>th</sup> September 1977 by the then Producer Incharge of the Doordarshan, Bombay **Exhibit-B** in evidence.

**ISSUE NO.6 : Re: Distortion and mutilation of the suit film:-**

102. The assignment/licence to telecast the suit film was granted under the conditions specifically imposed by the Plaintiff as recited by the then Producer-in-charge of Defendants 1 to 3 themselves. Defendants 1 to 3 cannot abridge the film or only use excerpts of the film. Defendants 1 to 3 could only telecast the film in its entirety.

103. Admittedly a part of the film consisting of at least 86 seconds has been copied and reproduced by way of a part of the footage of the suit film containing several stills/shots/images. These shots have been incorporated into the impugned film by the Defendant No.4, who produced the

impugned film on behalf of Defendants 1 to 3. The parts of the suit film are shown as an important incident of the theme of the impugned film being the reason which led to the Declaration of Emergency but carrying a completely contrary and different message. The Plaintiff's soundtrack is not used upon the images and frames of his shots. A different soundtrack is used. The Plaintiff, therefore, contends that the Defendants have distorted and mutilated the suit film.

104. The Plaintiff has not separately claimed damages for such distortion and mutilation under Section 57(1)(b) of the Copyright Act. Defendants 1 to 3 have admittedly allowed their employee and representative Defendant No.4 to have access to the copy of the suit film and use several stills/shots/images of the suit film in the impugned film.

105. It is the Plaintiff's case that his ideology is secular and democratic. The idea expressed in the suit film by him is a democratic idea showing the revolt of students' in Bihar in what is known as the Bihar Movement led by Jay Prakash Narayan, a Freedom fighter and Revolutionery. The shots of the suit film have been produced in the impugned film by the method of "cut, copy and paste" in a film which shows numerous characters having a completely different ideology i.e., the ideology publicly called "Hindutva" ideology which the

Plaintiff states that he abhors.

106. The admitted fact of taking only a few shots and stills of the film and admittedly using them as a part of the impugned film shows the breach of conditions of the Plaintiff specifically agreed upon by Defendants 1 to 3. Such breach has caused distortion and mutilation of the suit film.

107. Mr. Sebastian on behalf of the Plaintiff drew my attention to the case of Amar Nath Sehgal Vs. Union of India decided by the Delhi High Court on 21<sup>st</sup> February 2005 in this regard. The case relates to a bronze wire mural designed and sculpted by the renowned Sculptor, the Plaintiff in that Suit, placed in a strategic position in the prestigious “Vigyan Bhavan” in Delhi, and holding a place of pride in the Country. It was an imposing sculpture extending from the staircase up to the lifts spanning 140 ft. x 40 ft. on one of the walls of the “Vigyan Bhavan”.

108. The mural was pulled down and consigned to the store room after some years. Upon the Plaintiff’s complaint of such callous, shabby treatment of the cultural heritage of the Country, it was observed that the integrity of the mural was damaged.

In paragraph 28 the right to authorship in a work was held to include a right to object to distortion, mutilation or modification of the work as being prejudicial to the honour or reputation of the author. Upon that premise the Plaintiff's right to claim damages under Section 57 of the Copyright Act came to be considered. This was despite the fact that the Plaintiff was paid the price of the mural and hence, the copyright in the mural vested in the Defendants, who claimed to be the owners of the mural with the consequent right to consign it to the storeroom. The Plaintiff was granted damages of Rs.5 lakhs for violation of the Plaintiff's moral right of integrity.

109. This case is much the same. The Plaintiff has by his own labour, skill, art and knowledge produced the suit film. The defendants claim that they acquired the telecast rights of the film. The telecast rights have been specifically granted subject to the conditions of non-abridgment and non user of excerpts and to telecast the film in full. Though the Defendants 1 to 3 may claim to be owners upon the acquisition of telecast rights / licence to telecast the film, they are subject to the limitations set out by the Plaintiff as stated above, in the letter of their own Producer- in-charge. The Defendants have breached the conditions. The Defendants 1 to 3 have themselves or through their representative, Defendant No.4

allowed the user of parts of the suit film in what the Plaintiff considers bad company. Even otherwise, the user of the part of the suit film, being contrary to the written agreement between the parties, would tantamount to distortion and mutilation of the suit film.

110. The suit film remained in the DDK archives after its first telecast in 1977. The Plaintiff allowed it to be in the custody of Defendants 1 to 3 as the assignment/licence was for telecasting the film upon royalty of Rs.500/- for telecast. While the suit film remained in the Defendants archives it could be used as research material and for dissemination of information contained therein. However, it was misused by copying the parts thereof and telecasting the same as a part of impugned film. The Plaintiff's evidence shows that he learnt of the stills/shots/images of the suit film being incorporated into the impugned film from his cousin who telephoned the Plaintiff as soon as he realised the said act and while the impugned film was being telecast. The Plaintiff immediately switched on his television and saw the film. The Plaintiff then obtained its copy. The fact that the impugned film has been telecast in on 25<sup>th</sup> June 2003 has not been disputed. The Defendants did not even inform the Plaintiff of parts of his film being used in the impugned film.

111. The distortion and mutilation is, therefore, made out. The total lack of reference to the Plaintiff shows breach of trust. Hence, **Issue No.6** is answered in the **Affirmative**.

**ISSUE NO.7:-**

112. It is the case of the Plaintiff that excerpts of his film by shots/stills/images incorporated in the impugned film at 6 or 7 different places by the Defendant No.4 are the various interviews of political persons who are having a diametrically different ideology than that of the Plaintiff. The Plaintiff contends that the overall effect of the production of the impugned film has defamed the Plaintiff and lowered his image of a secular democratic person in the eyes of his relatives, friends and acquaintances and resulted in defamation.

113. The Defendants have denied defamation. The Defendants contend that the shots/stills/images of the suit film are incorporated in a part of the impugned film showing the cause of the Declaration of Emergency. That has nothing to do with the interviews of the persons interviewed. Besides the interviews do not speak about the Plaintiff's film or ideology. The film does not project the ideology of "Hindutva" but shows the heroic roles played by the interviewed persons at the time of the Emergency declared 28 years prior to the making or

telecasting of the film. P.W.2 who stated that she was scandalised at seeing the Plaintiff's shots, seen by her 28 years ago on DD once, has also fairly conceded in her evidence that several interviewees had also opposed and criticized the imposition of Emergency and were detained during Emergency. Besides, Defendant No.4 who produced and directed the impugned film did not even know the Plaintiff and had no intention to malign the Plaintiff, tarnish his image, damage his reputation or lower his status amongst his peers and otherwise. He claims that the impugned film does none of these. No intention of malice has been imputed upon him. Defamation is contended merely upon placing the Plaintiff's shots/stills/images amongst the wrong people at the wrong place.

114. Viewing both the films at one sitting the Court observed that the stills/shots/images of the suit film had nothing to do with whatever any of the interviewees had to say about their role in the Emergency. The truism reflected in the suit film's shots/stills/images was not challenged. No interviewee has stated that he played a part in any of those shots. The Plaintiff's shots, copied as they were from the suit film, were in black and white. They were shown only to show the Bihar Movement and nothing else. They showed the students' agitation led by Jay Prakash Narayan. That aspect was not

disputed anywhere in the impugned film. The message and information exhibited in that aspect was not misrepresented anywhere in the impugned film.

115. The further exception that the Plaintiff has taken is that an interview of the Plaintiff with Jaya Prakash Narayan has been shown. That interview lasts for, but a couple of seconds in the impugned film. The Plaintiff's frontal face is not shown in that shot. It is Jaya Prakash Narayan, who has been interviewed, who alone is sought to be shown in the impugned film. Only a part of the side and back of the Plaintiff is shown in that shot. The Plaintiff was 28 years younger at the time the suit film was telecast. The Plaintiff had greyed since the making of the suit film. The Court was shown the said shot more than once. Both the Plaintiff as well as Defendant No.4 commented upon the shot. Defendant No.4 contended that the Plaintiff looked completely different in that shot. He was almost unrecognizable at the time of the telecast of the impugned film. Aside from the Plaintiff's close friends and relatives, no others can decipher or recognize the Plaintiff as such. This commonsense argument has much substance. Besides, the Plaintiff is shown with none other than Jaya Prakash Narayan whose ideology of secularism and democracy the Plaintiff holds dear. The Plaintiff has not been shown with or even amongst the other political persons whose

ideology the Plaintiff abhors. The Plaintiff has imputed an innuendo constituting defamation.

116. Cases of the kind need be considered. The first of the cases is the case of H.K.Hales M.P. Vs. H.Smiles & Ors. A.I.R. 1937 Rangoon 105. It relates to an innuendo upon a defamation. It has been held that words must be taken in their natural sense and if the words are susceptible to a number of good interpretations the only bad ones cannot be seized by the Court to give a defamatory sense to the document. That was the case of the Plaintiff complaining of a libel action against the Producer of a Newspaper in Burma. The Plaintiff carried on his business. The Plaintiff had prosecuted his employee under the I.P.C. The case was dismissed as false and malicious. The employee prosecuted the Plaintiff under Section 195(1)(a) of the Cr.P.C. The case was reported in the papers. The report was shown to be accurate. Since the Plaintiff was a reputable person in the House of Commons in the U.K, an inquiry was to be conducted. The employee informed the Viceroy in writing that, if the Plaintiff having wealth and position went unpunished, hundreds of citizens would suffer as he had. This was also reported in the newspapers. An innuendo was alleged in the plaint that the Defendant was guilty of filing a malicious and false charge upon his employee because of his

wealth and position. The newspaper, which was sued, published an apology. A point of determination was whether the statement was capable of bearing the meaning defamatory of the Plaintiff and whether surrounding circumstances carried an innuendo which was defamatory to the Plaintiff. The two innuendos were that the Plaintiff prosecuted his employee maliciously and that he secured a favourable decision because of his use of wealth and position. Adopting the test applied in the case of **Stubbs Ltd. Vs. Russel 1913 A C 386 at page 107** it was observed that the test is whether some people would put a particular meaning upon the words however strained or unlikely the construction may be. Such interpretations would vary infinitely. It may be strained or sinister interpretation and thus essentially unjust and may show a wrong which had never been committed. It was not suggested in that case that the Plaintiff had made use of his wealth and position and hence it was observed that it was not easy to follow what dishonest use he could put his position to. It was observed that that may be to corrupt the Calcutta High Court (which was the relevant High Court having jurisdiction in the litigation). It was observed that apart from its absurdity, the article in its natural sense does not bear such a meaning. Either of these suggestions was observed to be scandalous of the Court, but not libellous of the Plaintiff. It was held that there are more meanings than one to which

those words could be put, some unsound and others harmful and hence it was held that it was not permissible to single out and accept the injurious inference in preference to the harmless one.

117. It was further held that for the purpose of detecting the innuendo the defamatory material must be read as a whole. The two innuendos in that case were that the Plaintiff was going unpunished by abusing his wealth and position. Read as a whole, with the eye of an ordinary reasonable man, it was held that no reasonable man would read the statement to mean that the Plaintiff ought to be punished. No malice was found in the statement reported in the newspapers. Besides no evidence of loss of business was given by the Plaintiff. The evidence of a business associate showed that there was no stoppage of business relationship between the parties after the alleged defamation. It was held that the Plaintiff cannot profit from the allegation of defamation.

118. In this case also the interview with the Plaintiff is capable of more than one meaning. It would in fact show the Plaintiff in good light. The Plaintiff was seen in the company of as great as a man as Jay Prakash Narayan whom the Plaintiff holds in high esteem. Merely because his shots were interspersed in the film, they were not intermingled with the

ideology of the interviewees. The innuendo sought to be suggested by the Plaintiff cannot be accepted.

119. Other judgments to the same effect are relied upon by Mr. Rajguru Board of Directors Y.M.C.A. Allahabad Vs. R.H.Niblett (S) A.I.R. 1957 Allahabad 219 ; Habib Bhai Vs. Pyarelal & Ors. A.I.R 1964 Madhya Pradesh 62 go the same way. In the case of Sadasiba Panda Vs. Bansidhar Sahu A.I.R 1962 Orissa 115 relied upon by Mr. Sabestian, which are cases where the Plaintiffs were called **Goondas** or where the statements sought to disparage and injure to the Plaintiffs are not applicable cases.

120. Mr. Sebastian relied upon the case of Indian Express Newspapers (Bombay) Pvt. Ltd. Vs. Dr. Jagmohan Mundhara A.I.R. 1985 Bombay 229, in which an article appeared about the theme of trafficking in women in a newspaper. It came to be taken up as a theme in a film which carried the name of the trafficked character shown in the film and the interview of the filmmaker was published in a magazine. Even another character bore the name of the Editor of the Newspaper. The events in the film were based upon the article in the Newspaper “bodily lifted” with twists and distortions directed against the Editor. Hence though it was concluded that there was no infringement of copyright, it

was held to be defamatory of the Plaintiff as the readers and viewers would know that the Plaintiff alone was meant and pointed to, though there may be no apparent intention to defame and may even know that the pointer is untrue. It was observed that the innuendo was unmistakably directed against the Plaintiff Newspaper and the journalist who wrote the article was also identified as was the trafficked woman. Hence it was held that the Plaintiff was defamed and suffered injury. In this case the pointer to the Plaintiff by his shot interviewing Jay Prakash Narayan, indecipherable and unrecognisable to many after 28 years, cannot be taken to be meant to defame in the absence of any intent whatsoever.

121. Besides, the Plaintiff has not shown the actual damage caused to his reputation except for putting him in bad company. The mere affidavit of P.W.2 showing that she was scandalised seeing the Plaintiff in the film with other persons of a different ideology does not show such damage to the reputation of the Plaintiff as would lower his status. Besides, she has admitted that she had seen the suit film only once in 1977 on DD. Her photographic memory cannot be too outstretched to impute motives upon the Plaintiff as contended by him. What has been projected in the impugned film is admittedly correct. The only exception taken by the Plaintiff is by inclusion of his shots/stills/images/frames in the impugned film. Inclusion of several shots/stills/images in

black and white and showing the Plaintiff with Jay Prakash Narayan cannot constitute defamation.

122. The Plaintiff has, therefore, not succeeded in showing that the infringement of his copyright, by utilising some shots and stills of the suit film in the impugned film, damaged his reputation as would tantamount to defamation. **Issue No.7** is, therefore, answered in the **Negative**.

**ISSUE NO.8:-**

123. The Plaintiff's suit is for damages, injunction, apology and for further reliefs required by the circumstances and nature of this case. The damages claimed are on two counts:

- i) Violating of the Plaintiff's copyright in the suit film.
- ii) For tarnishing the Plaintiff's image in public estimation.

The violation of the Plaintiff's copyright which is implicit in the suit film, is shown. The tarnishing of the Plaintiff's image has not been seen upon an objective analysis of the two films viewed by the Court. Copyright is a proprietary right. Its infringement is accountable without proof of damage. The shots/stills/images used in the impugned film having been seen to be copied from the suit film entitles the Plaintiff to damages upon the infringement being seen per se.

124. The basis of the law of damages for the infringement of copyright can be best extracted from Halsbury's Laws of England, Fourth Edition 2006 Volume 9(2) in paragraph 419 at page 291 runs thus:-

**“419. Damages for infringement. In a claim for infringement of copyright it is not necessary to give proof of actual damage; the damages are at large but, as with any other tort, are restricted to those which flow directly and naturally from the tortious act”.**

125. In the case of Exchange Telegraph Company Limited Vs. Gregory & Co. (1896) 1 Q.B.147 (CA) it was held that the infringement of copyright does not require proof of damage and that where the right of property has been attacked no evidence of damage is necessary. Lord Esher M.R compared the damages for such infringement to a case of trespass to land or assault where the Plaintiff has received no real hurt. Damages in such cases are granted to the Plaintiff though it cannot be measured or established. It is held in that case that it is not necessary to give proof of specific damages and it is enough to shew that the act complained of was done on in a way as to be likely to damage the Plaintiff.

In that case there was a contract between the Plaintiff's Firm and the Committee of the London Stock Exchange for

transmission of valuable information as to the prices of stocks and shares which was collected from time to time each day and supplied to the Plaintiffs upon payment. The Plaintiff printed the information on tapes and sheets of letterpress in its office. The Plaintiff had the sole right of obtaining the quotations. The information was collected by a member of the stock exchange appointed and paid for by the Plaintiff. The information obtained by that person was supplied to a telegraphic operator who by a Morse electric machine transmitted it to the Plaintiff's office. The Plaintiff's office transmitted to its subscribers who can print the information again upon payment to the Plaintiff. The contract between the stock exchange and the Plaintiff as well as the Plaintiff and the subscriber was not to sell and communicate the information to non-subscribers. The information which came to the Plaintiff's office from the stock exchange and which was transmitted to the subscribers was printed and made into a newspaper and sold by the Plaintiff. The newspaper was registered as copyright.

The Defendant was the Plaintiff's subscriber. He was removed as such subscriber. He obtained the company's details from one of the subscribers and pasted it up on boards and other places in his office as soon as it arrived by the transmitting machine.

The Plaintiff sued for injunction. It was contended that the copyright in the newspaper or book subsisted as soon as it was published and circulation of the copies was an infringement. It was contended that the Plaintiff had property in its work which entitled it to prevent its publication by others.

It was observed that the Defendant knew that the Plaintiff had the contract with their subscribers and that the information is very valuable. He got that information from one of the Plaintiff's subscribers surreptitiously. It was held that the information was something which could be sold and was hence the Plaintiff's property and the Defendant, with intention, invaded the right of property of the Plaintiff. Hence, it was observed that the injury to the Plaintiff can be imputed without actual computation of damage upon invasion of the Plaintiff's common law right. By a unanimous decision the injunction granted by the trial Court was confirmed and the Appeal was dismissed.

126. The Plaintiff claims damages of Rs.31 lakhs by way of exemplary damages for the hurt caused to the Plaintiff by the deceiving behaviour of the Defendants in allowing the suit film copy in the archives of Defendants 1 to 3 to be unlawfully

used and appropriated by way of several shots/stills/images by Defendant No.4 and using those shots/stills/images in his own film amongst persons of completely different ideology causing infringement of his copyright and defamation.

127. In the case of Williams Vs. Settle 1960 W.L.R 1072 (CA) exemplary damages have been granted when the infringement of copyright resulted in scandalous conduct of the Defendant. That was a case where the Defendant was commissioned, as a professional photographer to take photograph of the Plaintiff's wedding. The copyright in the photographs vested in the Plaintiff. 2 years later when the Plaintiff's wife was expecting a child, her father was murdered, in circumstances which attracted publicity. The Defendant without authority sold certain photographs to a press showing a wedding group which came to be published prominently in two National newspapers. The conduct of the Defendant was deprecated. The conduct of the newspapers was expressed to be vulgar and offensive. It was observed, relying upon Sedwick on damages, 9<sup>th</sup> Edition (1913) page 347 that actions of tort in which gross fraud, wantonness, malice or oppression appears, the Jury may impose exemplary, punitive or vindictive damages upon the "wounded feeling" and "injured pride" of the Plaintiff .... This was essentially to make a distinction between the willful and an innocent wrong doer. In

that case it was observed that the Defendant's act of handing over the photographs was after “knowing the use to which they were going to be put”. It was observed at page 1082 thus:-

**“ It is a flagrant infringement which calls for heavy damages, because this was a scandalous matter....”**

**“ It was a flagrant infringement of the right of the plaintiff, and it was scandalous conduct and in total disregard not only of the legal rights of the plaintiff regarding copyright but of his feelings and his sense of family dignity and pride. It was an intrusion into his life, deeper and graver than an intrusion into a man's property”.**

128. This is not a case of flagrant and offensive conduct of Defendant No.4. Defendant No.4 was an innocent researcher. He did not mean or intend defaming the Plaintiff. He did not know the ideology of the Plaintiff. He did not also know the sensitivity with which the Plaintiff displays his company or comrades. He was to produce a film on the subject of Emergency, but with a different theme. This film showed, rightly or wrongly, artistically or otherwise, the political figures of the time when the film was made. Even if it was made by way of propaganda, as contended by the Plaintiff, it had no intent to cause harm, hurt or disrepute to the Plaintiff or to any other who chose to belong to a different genre. No such

intent can be imputed upon Defendant No.4.

129. He, of course, must be imputed the knowledge that the Producer of the film would have copyright. Taking shots/stills/images from the film would per se tantamount to infringement of copyright. He can also be imputed the knowledge of who is the owner of the copyright since the credits of the suit film show inter alia the Producer, Director, Photographer, Script Writer etc., to be the Plaintiff. He, of course, did not care to take the permission of the Plaintiff or to make payment to the Plaintiff to obtain a permission or licence to use any shots or stills which he presumably did not find elsewhere. Yet he did not pervert the Plaintiff's film by fraud, wantonness, malice or knowing that it would be used in an offensive manner or in a manner which the Plaintiff might consider scandalous. The distinction required to be made as enumerated in the judgment in the [Williams Vs. Settle 1960 W.L.R 1072 \(CA\)](#) (supra) would show that Defendant No.4 was a wrong doer, though an innocent wrong doer and not a willful wrong doer. Hence, exemplary damages to the extent claimed by the Plaintiff cannot be granted in this case even if the infringement would tantamount to defamation, which it does not.

130. The extent of damages would depend upon the facts and

circumstances of the case. Both the suit film as well as the impugned film are not commercial films. They are not made with the solitary or the prime aim and motive to profit therefrom. Both the Plaintiff as well as Defendant No.4 are artists and have produced their work for their respective cause or occasion. It would, therefore, not be proper and correct to arithmetically calculate the value of the Plaintiff's copyright in the suit film upon his earnings therefrom for determining the extent of damages payable.

131. Similarly, the monetary consideration under the assignment/licence of the suit film to Defendants 1 to 3 or in the C.D, DVD or other electronic equipments used by the Plaintiff to obtain consideration for viewing from different target audiences shown to be Rs.700/- to Rs.1200/- per copy is not the right measure of damages for infringement of the Plaintiff's copyright. Mr. Rajguru contended that the damages would be Rs.500/- as the Defendants acquired the telecast rights of the suit film at that consideration. Even under the Defendant's own letter **Exhibit-B** the consideration fixed was at Rs.500/- per telecast. It is not shown or known how many such telecasts were made. Defendants 1 to 3 could have made as many as they desired, though the Plaintiff has not been paid or informed of any such telecasts. Damages cannot be arithmetically calculated by multiplication of the number of

telecasts made or which could have been made during the years when the suit film remained in the archives of Defendants 1 to 3.

132. It is seen that the Plaintiff has been the only film maker and photographer who has cinematographically captured the Bihar Movement. Aside from stray questions with regard to 2 other films, no material is produced to that end. Neither party has shown any other shots and stills or even press photographs or any other material showing mass scale production and publicity of the Bihar Movement. No clippings of newspapers have also been produced to show any shots of the Movement. So far as the theme of Bihar Movement is concerned, which is one of the causes of the Declaration of Emergency the substantial part of the Plaintiff's skill, labour and art has been appropriated and abrogated by Defendant No.4 callously though not willfully. The Plaintiff must be held entitled to substantial damages upon such infringement of Copyright.

133. The Plaintiff is a talented artist. He is a film maker of repute. The plaint as well as the examination-in-chief of the Plaintiff shows that he has made at least 5 meaningful films, several of which were directed by this Court to be telecast by the defendants in their un-abridged form. He is a recipient of

several National and International awards. The Plaintiff's work has been published in print (though that is not the part of the record of this Suit). The production, editing, photography of the suit film aside from being a work of art is seen to be the only such work of art on a historical topic which is both informative and educative and reflecting character and constitutional ideology worth emulating in the Plaintiff's name rather than plagiarising it.

134. The evidence of Defendant No.4 has shown that he works, albeit as an artist, but as an employee of Defendants 1 to 3. He is not an independent artist. His work is vetted and controlled by his Superiors. He is guided by the policies of Defendants 1 to 3. The work of the impugned film was also supervised and controlled by Defendants 1 to 3. He is, therefore, not solely responsible and liable for his acts including the acts which constitute infringement of the Plaintiff's copyright. Defendant No.4 has personally copied the shots/stills/images from the suit film. Those were provided by Defendants 1 to 3 from their archives. All the Defendants must be held liable and responsible in damages for the infringement of the Plaintiff's copyright.

135. Since no defamation of the Plaintiff is seen by the shots/stills/images of the suit film being incorporated in the

impugned film damages upon defamation alleged by Plaintiff cannot be granted.

136. The relief of injunction from screening and rescreening the impugned film has not been seriously opposed. The Plaintiff objects to the screening of the impugned film containing the shots/stills/images of the suit film as that would harm his reputation and social standing. However, since screening the impugned film would constitute infringement of the Plaintiff's copyright injunction in that behalf and to that extent is required to be granted.

137. The apology sought by the Plaintiff for defaming and scandalising him in the impugned film need not be granted as the Plaintiff is not seen to have been defamed.

138. Hence, the following order:-

### **ORDER**

139. The Defendants shall pay damages for infringement of the Plaintiff's copyright in the suit documentary film **“Waves of Revolution”** computed at Rs.10 lakhs.

140. The Defendants shall not screen or re-screen the

impugned film “26<sup>th</sup> June 1975” showing any stills/shots/images from the suit film “**Waives of Revolution**”.

(SMT. ROSHAN DALVI, J.)