

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16<sup>TH</sup> DAY OF OCTOBER 2015

BEFORE

THE HON'BLE MRS.JUSTICE RATHNAKALA

**CRIMINAL PETITION NO.1886/2015**

**BETWEEN:**

RITU PRIMLANI ALIAS VASU PRIMLANI  
D/O SH. PAMA PRIMLANI  
R/O B-180 PRIYADARSHINI VIHAR,  
LAKSHMI NAGAR,  
EAST DELHI – 110 092.

...PETITIONER

(BY SRI JAYNA PANKAJ KOTHARI, ADV.)

**AND:**

1. THE STATE OF KARNATAKA  
RAMNAGARAM POLICE STATION,  
RAMNAGARAM – 562 159.
2. SMT.THIMMAKKA  
AGED 102 YEARS  
RESIDING AT MALLESHWARA BADAVANE,  
IJOOR, RAMNAGARM – 562 159.

...RESPONDENTS

(BY SRI VIJAYAKUMAR MAJAGE, ADDL.SPP. FOR R1;  
SRI P.PRASANNA KUMAR, ADV. FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION  
482 OF CR.P.C., PRAYING TO QUASH THE COMPLAINT

BEARING PCR NO.128/2014, PENDING BEFORE THE ADDITIONAL CIVIL JUDGE AND JMFC, RAMANAGARAM PRODUCED HEREIN AS ANNEXURE-A AND THE FIR NO.135/2014 REGISTERED AT POLICE STATION IJOOR, RAMANAGARAM, U/S 420, 499, 204, 482, 468 IPC SEC.66 INFORMATION TECHNOLOGY ACT AND SEC.63 OF THE COPYRIGHT ACT 1957 PRODUCED HEREIN AS ANNEXURE-B.

THIS CRL.P. HAVING BEEN HEARD AND RESERVED FOR ORDER ON 06/10/2015 AND COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:-

### **ORDER**

The petitioner herein is alleged to have committed offences punishable under Section 63 of the Copyright Act 1957, Section 66 of the Information Technology Act 2008 and Sections 204, 420, 468, 482 and 499 of IPC, 1860, in the FIR dated 20.05.2014, registered by the respondent Police, on reference by the jurisdictional Magistrate, in pursuance of a private complaint filed by the complainant/2<sup>nd</sup> respondent under Section 190 r/w. Section 200 of Cr.P.C.

2. Uncontroverted portion of petitioner's case is:

The petitioner is a philanthropist, environmentalist, and also an artist of international repute conducting standup comedy shows. She visited India and while she was at Delhi International Airport for her return journey on 19.07.2014, she was apprehended by police on the complaint of the second respondent. Though she was enlarged on bail, since her passport is impounded and taken to the custody of the Court, she is unable to move out of the Country. It is also not in dispute that the second respondent is well known as a Green Activist and an Environmentalist residing in Karnataka. Her popularity is planting 800 trees (200 to 300 Banyan trees) along 4 km. stretch between Hulikal and Kudur Road. She is a recipient of many awards.

3. Allegation against the petitioner in the complaint is, she used the name of the complainant to her likeness and has named the accused Corporation as 'Thimmakka Resources for Environmental Education', registered the same as a Charity Organisation in California, U.S.A., without the written or oral

permission of the complainant. She has collected funds for the organization in Dollars which runs to Crores of rupees. She has started "The Thimmakka Certified Green Business (TCGD) program in San Francisco (California), Miami (Florida) and Vancouver (British Columbia) under which the restaurants meeting the environmental standards are certified and further certain amount is collected from them etc. The petitioner/accused shot to fame by using the name of the complainant and has also become a recipient of various awards. She has violated complainant's celebrity rights under Indian Copy Right Act, Trademark Rights, publicity rights, privacy and personal rights. She has admitted of having collected of Dollar 1 million for her organisation for her Green Certifying Programme. She has defamed complainant by giving her personal information on the website : [www.thimmakka.org](http://www.thimmakka.org) by mentioning about her caste as Dalit and about her infertility. Now she has fraudulently altered the website : [www.thimmakka.org](http://www.thimmakka.org). Complainant came to know about the fraud committed by the accused through her Son a month ago. The

accused has used the complainant's photo on her website without her permission. During 2011, the accused met the complainant with some people and obtained her thumb impression on a blank paper and has taken advantage of the same. She has been raising funds online and also by arranging programmes. The complainant is living with the meager income of Rs.400/- per month while the accused has progressed economically. She has committed offences punishable under Sections 420, 499, 204, 482 and 468 of IPC, 1860, Section 66 of Information Technology Act, 2000, Section 63 of Copyright Act, 1957.

4. Smt. Jayna Pankaj Kothari, learned Counsel for the petitioner submits that, due to her interest in the field of environmental conservation, the petitioner met the complainant in the year 2003 and was inspired, but not with intention of making profit. She started environmental organization in California known as Thimmakka Resources for Environmental Education in the year 2003. She has no commercial interest from the said organization.

The petitioner was not required by any law to seek permission from the complainant to use the name 'Thimmakka' which is the name of her organization. There is no copyright of the complainant over the name 'Thimmakka' and the laws of India or California do not mandate any such requirement or permission. All the grants received by the petitioner's organization is used for charitable and environmental work. No amount could be used by the petitioner or any of the Directors of the Organization as profit or private gain. Finally, the petitioner and the Directors decided to shut down the non-profit organization by name 'Thimmakka Resources for Environmental Education' on 27.10.2010. There were no assets outstanding in the account of the Organization and now, it is shut down and not functioning. As per the agreement entered into between the local government and the organization, all the remaining assets shall be distributed to a non-profit fund / Foundation / Corporation which is working exclusively for charitable, scientific or which is established for tax exemption status under the provisions of Internal Revenue Code. The

complaint is lodged for malafide reasons after delay of ten years with ulterior motive to extract money by intimidating her. The complaint does not disclose any cognizable offence. The learned Magistrate without application of mind as to whether the facts alleged constitute any cognizable offence or not, has taken cognizance and issued warrant against her. She is not running any website in the name [www.thimmakka.org](http://www.thimmakka.org). She is not responsible for any of its contents. The offences alleged will not attract any of the penal provisions under Indian Penal Code, 1860, Trademark Act, or Information Technology Act or Copyright Act. She has not taken the thumb impression of the complainant. Consequent upon registration of the complaint against her, the accused is halted in India and has no avocation, that has cut off her from her routine life and career. The offences alleged to have been committed overseas, she cannot be prosecuted under the laws of the Country. The complainant has falsely alleged that the petitioner started the Company by name 'Thimmakka Resources for Environmental Education' in the year 2010 only. The offences being non-

cognizable in nature, the complaint registered after a period of three years is hit by the provisions of Section 468 of Cr.P.C. On all the above counts, the complaint and the FIR registered against the petitioner may be quashed.

5. In reply, Sri P.Prasanna Kumar, learned Counsel for the second respondent submits, so far as the question of limitation is concerned, the petitioner is an illiterate women and it is only when she was informed about the misuse of her name by the accused she immediately collected the documentary proof and lodged the complaint on 20.05.2014 for the aforesaid offences. Under Section 469(b) of Cr.P.C. the starting point of limitation is from the date of the knowledge and there is no delay on her part in lodging the complaint. Since it is a continuing offence, her case is saved by Section 472 of Cr.P.C. also and fresh period of limitation would run at every moment of the time during which the offence continues. Though the petitioner is a foreigner, since the offence alleged against her is covered by the Information Technology Act,

2000, Trademarks Act, 1999, and Copyright Act, 1957, there is no bar for her prosecution in India. The second respondent has produced sufficient documentary proof at Exs.A.1 to A.5 that she is bestowed with hundreds of awards for her environmental work and the petitioner having established the Thimmakka Resources for Environmental Education has filed its income returns as per Annexure 'C' series. She has raised funds by publishing about complainant's personal matters like she has no children and belongs to lower caste, thereby she has defamed Thimmakka. She made millions of Dollars by exploiting the name of the complainant. The complaint is rightly registered for the alleged offences. Since the matter is at the stage of investigation, Section 482 of Cr.P.C. cannot be invoked to quash the proceedings.

6. Learned Additional State Public Prosecutor submits that the petitioner is not co-operating for investigation. The Investigating Officer is yet to collect evidence about the persons who donated to the Organization and the investigation requires

officers having expertise in cyber crime and a request is made to the Inspector General of Police to transfer the case to CID and the permission is awaited. The request is made on 27.11.2014.

7. It is a fact that [www.thimmakka.org](http://www.thimmakka.org) is a website and the petitioner has produced latest print of the website. This website does not hold any contents pertaining to either the complainant or the accused. The petitioner claims ignorance about this website, disclaims any sort of link with this website. As per the documents produced by the complainant along with complaint, 'Thimmakka Resources for Environmental Education' is a non-profit public benefit Corporation.

8. Displaying the allegations from the complaint:

1. Violating complainant's celebrity right within the meaning of Copyrights Act, Trade Mark Act, Passing off Publicity Rights, Privacy and Personal Right, collecting donations amounting to

crores and misusing the name and fame of the complainant; defaming the complainant by mentioning her caste as Dalit and about her infertility.

2. Altering the website [www.thimmakka.org](http://www.thimmakka.org), misuse of the photographs of the complainant on the website, thereby, cheating the complainant.

9. The offences are alleged to have been committed at U.S.A. The petitioner claims that she is a US national. Even if the petitioner is treated for the purpose of prosecution as an Indian national, by virtue of her holding OCI card (Overseas Citizenship of India Card) then also previous sanction of the Central Government under Section 188 of the Cr.P.C. is required to investigate into the offences allegedly committed overseas by her. Even after more than a year of the registration of the case, no such effort is made to procure sanction. Thimmakka / Saalumarada Thimmakka is not a trademark. Rightly, the Investigating Officer

has not registered the case for any of the offences alleged in the complaint under the Trademark Act, 1999. The case is registered under Section 63 of the Copyright Act, reads thus:

*“Section 63 – Offence of infringement of copyright or other rights conferred by this Act –*

*Any person who knowingly infringes or abets the infringement of –*

- (a) the copyright in a work, or*
- (b) any other right conferred by this Act, except the right conferred by section 53A*

*shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:*

*Provided that where the infringement has not been made for gain in the course of trade or business the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.*

*Explanation – Construction of a building or other structure which infringes or which, if completed, would infringe the*

*copyright in some other work shall not be an offence under this section.”*

Wherefore, it is clear that the infringement of copyright under Section 63 of Copyright Act can happen if there is infringement of any work in which copyright subsists as defined under Section 13(1) of the said Act, reads thus:

*“Section 13 – Works in which copyright subsists –*

*(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say, -*

*(a) original literary, dramatic, musical and artistic works;*

*(b) cinematograph films; and*

*(c) sound recording.*

*(2) .....*

*(3).....*

*(4) .....*”.

Unfortunately for the complainant, she does not lay her claim to any of the above works.

10. Her claim is, performer right is infringed. Section 2(qq) of the Copyright Act defines word 'Performer' as under:

*“Section 2(qq) – “performer” includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.*

*Provided that in a cinematograph film a person whose performance is casual or incidental in nature and, in the normal course of the practice of the industry, is not acknowledged anywhere including in the credits of the film shall not be treated as a performer except for the purpose of clause (b) of section 38B.*

But she does not fall under any of the above category of 'Performer'.

11. She is neither a literary person nor an actor, a musician or an artist, either she is not involved in cinematograph film or sound recording to press into service the provisions of Section 63 of Copyright Act 1957. Her self serving statement that there is violation of her celebrity right and publicity right are not shown to be executable right under the scheme of any of statutory provisions.

12. Section 66 of Information Technology Act pressed into service by the complainant, thus alleging that the accused altered or deleted material from the website [www.thimmakka.org](http://www.thimmakka.org). Complainant not being the owner of the website, the accused nexus to the website as owner or meddler of it's contents not authoritatively shown the allegation under Information Technology Act will not stand.

13. Now, coming to the offences under the provisions of Indian Penal Code in respect of which cognizance is taken, Section

204 of IPC is a non-cognizable offence and the Investigating Officer could not have proceeded for investigation without sanction of the jurisdictional Magistrate under Section 155(2) of Cr.P.C. to investigate. To attract the offence under Section 420 of IPC no where, the complaint allegations would disclose that complainant or any other persons have been induced by the accused with dishonest or fraudulent intention to deliver any of her property. Hence, no case under Section 420 of IPC can be made out from the complaint.

Section 468 of IPC, is a penal provision for committing the offence of forgery as defined under Section 463 of IPC, which reads thus:

*“Section 463 – Forgery:*

*Whoever makes any false documents or false electronic record or part of a document or electronic record, with intend to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent*

*to commit fraud or that fraud may be committed, commits forgery.”*

The complainant is unable to specify as to what are the false electronic records or documents prepared by the accused to deceive the public. In *Ashok Chaturvedi and Others Vs. Shitul H.Chanchani* and another reported in *AIR 1998 SC 2796*, it is held that on complaint containing vague allegations of forgery without any material to complete the offence must not be entertained.

Section 482 of IPC is the penal provision for using the false property mark, since no property mark of the complainant is shown to exist no case is made out under Section 482 of IPC.

Section 499 of IPC is another offence alleged for defaming the complainant. Said provision contemplates *Whoever, by words either spoken or intended to be read or by signs or by visible representations, makes or publishes concerning any imputation concerning any person intending*

*to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except the cases mentioned . . . . . ,*

*Explanation 1 - . . . . .*

*Explanation 2 - . . . . .*

*Explanation 3 - . . . . .*

*Explanation 4 - . . . . .*

*First Exception - Imputation of truth which public good requires to be made or published:*

*It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.”*

*Second Exception - . . . . .*

*Third Exception - . . . . .”*

14. No where in the compliant the complainant claims that her status as published by the accused is false. In ***S. Khushboo Vs. Kanniammal and another*** reported in (2010) 5 SCC 600, it was held that offence of defamation to be made out, there must be an intention to harm the reputation of the person or knowledge that

such statements would harm the reputation of the person concerned when the entire literature published in respect of the complainant is considered, it does not admit any inference that the petitioner was at defaming the complainant. The very fact that she has named her Organization as 'Thimmakka Resources for Environmental Education' reflects her appreciation about complainant. Hence, no offence under Section 499 of IPC is made out.

15. The reference of a complaint for Police investigation is an important stage. Consistently the Apex Court and the High Courts have held that while exercising the power under Section 156(3) of Cr.P.C., the Magistrate is required to apply his mind as to whether the allegations in the complaint are sufficient to order for investigation. An order of investigation without application of mind of the Magistrate is without jurisdiction. (Jamuna Singh and Others –vs- Bhadai Shah – AIR 1964 SC 1541; Gopal Das –vs- State of Assam – AIR 1961 SC 986; P.R.Venugopal –vs- S.M.Krishna, the Chief Minister of Karnataka and others – 2003(6)

KLJ 507; Guruduth Prabhu and Others –vs- M.S.Krishna Bhat – 1999 Cr.L.J. 3909; Maksud Saiyed –vs- State of Gujarat – (2008) 5 SCC 668 and Mrs.Priyanka Srivastava and Another –vs- State of U.P. & others – AIR 2015 SC 1758. The order of reference for police investigation is self explanatory that learned Judge without going through the contents of complaint and as to what cognizable offence are made out from the complaint allegations has mechanically referred the matter for investigation and that vitiates the reference order.

16. Way back in AIR 1992 SC 604, the Apex Court in the matter of *State of Haryana and others Vs. Ch.Bhajan Lal and others* reported in *AIR 1992 SC 604*, certain instances were categorized, in respect of which the Court can exercise its extraordinary jurisdiction either under Article 226 of Constitution of India or Section 482 of Cr.P.C. to prevent abuse of process of the Court or to secure the ends of the justice. The first among them is “*where the allegations made in the first information report or the*

*complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused".* The present case is one of that kind.

17. Reading in between lines of the complaint will manifest that the focus is on big fat money that the petitioner / accused must be making by exploiting the name 'Thimmakka'. In that exercise, it is the life liberty and fundamental rights guaranteed to the ordinary citizen of this country, is taken away from the reach of the accused. She is a career oriented person, now made to idle her time at India, looking for final report of investigation; on the other side, the Investigating Officer has not made effort to seek necessary sanction under Section 188 of Cr.P.C. from the Central Government to prosecute the petitioner. The status report submitted to the Court shows from the date of registration of complaint till now, nothing incriminating against the petitioner has been traced by the prosecution.

18. In the said circumstances, it is sheer abuse of the process of law to allow the investigation to continue on such a meritless complaint.

19. The petition is allowed.

The complaint and the FIR No.135/2014 registered by the first respondent police is quashed.

The passport of the petitioner seized during investigation shall be returned to her forthwith.

**Sd/-  
JUDGE**

nvj