

## **DAGAR V. RAHMAN: REDEFINING ORIGINALITY IN THE AGE OF CULTURAL COMMONS**

### **INTRODUCTION**

The Delhi High Court's recent ruling in *Dagar v. Rahman*<sup>1</sup> probes the boundaries of copyright protection for compositions rooted in India's classical music heritage. Ustad Faiyaz Wasifuddin Dagar, a respected Dhrupad vocalist, accused composer A.R. Rahman aka Allah Rakha Rahman and the makers of the Tamil film *Ponniyin Selvan 2* of using a traditional composition of "Shiva Stuti", originally attributed to the Junior Dagar Brothers, without permission or licence. The case highlights the broader challenge of applying modern copyright frameworks rooted in Western notions of individual authorship to traditional art forms that have evolved collectively over generations.

### **BACKGROUND OF THE DISPUTE**

The Ustad Faiyaz Wasifuddin Dagar, the legal heir of the Junior Dagar Brothers, are one of two generations of singers of the Indian classical music vocal genre dhrupad who composed "Shiva Stuti" as early as in 1970s, which has since become a symbol of the Dhrupad tradition. Ustad Faiyaz Wasifuddin Dagar argued that song 'Veera Raja Veera' closely replicates their original composition, both musically and emotionally. A.R. Rahman and the production companies behind *Ponniyin Selvan 2*, denied the allegations. They argued that their song was inspired by classical traditions and built upon Raga Adana, a raga available in the public domain, thereby excluding it from copyright protection.

### **ORIGINALITY AND TRADITIONAL KNOWLEDGE IN INDIAN COPYRIGHT LAW:**

In Indian copyright law, originality does not require novelty in the sense of something entirely new, but rather the exercise of sufficient skill, labour, and judgment. As per the landmark judgment in *Eastern Book Company v. D.B. Modak*<sup>2</sup>, the "modicum of creativity" test must be satisfied. Applying this test to classical music raises challenging questions where does shared tradition end, and original authorship begin? This case becomes significant in exploring whether an artistic rendition within a traditional raga can qualify as an original composition and, therefore, be protected under copyright law.

### **ISSUES:**

The Court has framed three key legal issues-

1. Whether the composition '*Shiva Stuti*' is an original musical work of the Junior Dagar Brothers?
2. Whether the impugned song '*Veera Raja Veera*' infringes copyright of the Ustad Faiyaz Wasifuddin Dagar of the composition '*Shiva Stuti*'?
3. Whether the Ustad Faiyaz Wasifuddin Dagar is entitled to any relief?

<sup>1</sup> *Ustad Faiyaz Wasifuddin Dagar vs. Mr. A.R. Rahman & Ors.*, CS(COMM) 773/2023 and I.A.21148/2023.

<sup>2</sup> *Eastern Book Company v. D.B. Modak*, AIR 2008 SC 809.

## CONTENTIONS MADE BY THE USTAD FAIYAZ WASIFUDDIN DAGAR: PROTECTION OF AN ORIGINAL RENDITION

- Ustad Faiyaz Wasifuddin Dagar argued that ‘*Shiva Stuti*’ was an original composition by his predecessors and had been performed and distributed internationally. Their specific rendition, characterized by unique note sequences and emotive ornamentation (*such as the dragged “g” swara*), is claimed to be a protectable original work, not merely a repetition of public-domain elements.
- He emphasized that the melody, progression, and overall feel of ‘*Veera Raja Veera*’ closely imitated not just the raga but the precise sequence of notes and the emotive arc of ‘*Shiva Stuti*’, thus constituting unauthorized reproduction.
- He further contended that the lack of credit infringed upon the moral rights of the Junior Dagar Brothers under Section 57 of the Copyright Act, 1957.

## CONTENTIONS MADE BY THE A.R. RAHMAN AND THE PRODUCTION COMPANIES: PUBLIC DOMAIN AND MUSICAL EVOLUTION

- A.R. Rahman and the production companies argued that both works spring from Raga Adana a centuries-old tradition that belongs to the public domain. They maintained that their creation builds on generic classical elements (*such as swara sequences and rhythmic frameworks*) without appropriating a specific, copyrighted rendition. According to them, no copyright infringement occurred because the musical phrases in question were part of a cultural heritage, not protected property.
- They also emphasized that ‘*Veera Raja Veera*’ features novel orchestration, tempo variation, lyrical content, and studio production elements absent in ‘*Shiva Stuti*’. They argue these differences indicate an original composition rather than copying.
- They also challenged the reliance on the “*lay listener*” test, stressing the necessity for expert, musicological analysis to differentiate between shared stylistic elements and actual infringement particularly within the nuanced realm of classical music.
- They also contended that the balance of convenience tilts squarely in their favor. They argued that, since the film has already premiered in theatres and is currently available on OTT platforms along with its songs on various music streaming services granting an injunction at this stage would force them to remove or alter the content across multiple platforms. Moreover, if the Ustad Faiyaz Wasifuddin Dagar later fails to establish ownership or authorship, imposing an injunction now would unfairly deprive the defendants of their rights, leaving them with little chance of full recourse even through monetary compensation.

## THE COURT’S INTERIM DECISION

The Delhi High Court, in an interim ruling, held that the Junior Dagar Brothers’ rendition exhibits sufficient originality to qualify for protection. The Court further observed that, *prima facie*, the two compositions bore remarkable similarities not only in musical notes but also in tone and emotional expression. The court further said that the Junior Dagar Brothers’ rendition could be considered an original work eligible for copyright

protection. The court ordered A.R. Rahman and the production companies to deposit ₹2 crores as security and directed them to issue due credit to the original composers in all broadcasts and publications. Also, ₹2 lakhs were awarded to the plaintiff as interim compensation. However, this ruling was subsequently stayed by a division bench of the same court on May 6, 2025, which temporarily suspended the financial penalty and attribution requirements, pending further hearings.

## LEXPORT'S ANALYSIS

This case touches upon a nuanced intersection of copyright law and classical music. While the court's recognition of originality within a traditional framework is a step forward, it also opens up complex questions about where tradition ends, and individual-authorships begins.

Indian classical music, particularly Dhrupad, relies heavily on ragas. While compositions can be uniquely interpreted, many phrases and motifs are culturally shared. The reliance on a lay listener test is a key consideration in such cases. Indian classical music relies on nuanced ornamentation and emotional portrayal, which may escape untrained ears. In such cases, infringement analysis should involve trained experts and objective musicological analysis, not be based solely on subjective perception.

## Understanding Raga and Composition in Classical Music

Indian classical music is structured around ragas, which are melodic frameworks consisting of specific note sequences and ornamentations. While ragas themselves are in the public domain, individual bandishes (*compositions*) and unique renditions can exhibit originality. In this case, the Junior Dagar Brothers' version of '*Shiva Stuti*' is argued to carry distinct musical identity, particularly through techniques such as meend (*glides*), gamak (*oscillations*), and emotional phrasing. These elements could distinguish it from generic uses of Raga Adana and form the basis for originality.

While the protection of traditional knowledge is crucial, there is also a risk of overreach where claims to originality may inhibit the shared, evolving nature of art forms like Dhrupad. Courts must strike a delicate balance between rewarding artistic labour and safeguarding the commons. This is precedent-setting in Indian jurisprudence, acknowledging the enduring legacy rights of deceased artists.

## CONCLUSION

The case of *Dagar v. Rahman* marks a pivotal moment in Indian copyright law, requiring the courts to navigate the intersection of tradition, authorship, and modern commercial use. By *prima facie* recognizing the originality of a classical composition rooted in shared tradition, the Delhi High Court has acknowledged the intellectual contributions of past generations without ignoring the collaborative nature of classical music. The final verdict will shape how India safeguards its rich cultural expressions while accommodating the demands of modern creativity. It could also lay groundwork for future policies on traditional knowledge and moral rights, ensuring that respect for heritage does not stifle artistic innovation.

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