



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE N S SANJAY GOWDA

CRIMINAL PETITION NO. 3829 OF 2017 (482)

BETWEEN:

1. BENNETTK COLEMAN AND CO LTD
DR D N ROAD, MUMBAI 400 001
REPRESENTED BY ITS AUTHROISED SIGNATORY
MR.R.J.PAKASHAN.
2. MR.JAIDEEP BOSE
EDITORIAL DIRECTOR
AGED ABOUT 48 YEARS,
BENNETT COLEMAN AND CO LTD
DR.D.N.ROAD, MUMBAI-400 001.
3. MS NEELAM RAJ
AGED ABOUT 37 YEARS,
C/O TIMES OF INDIA
SNB TOWERS 40/1
MAHATMA GANDHI ROAD
SHANTALA NAGAR, ASHOK NAGAR
BENGALURU-560 001.
4. MS SWATHI DESHANDE
AGED ABOUT 32 YEARS,
C/O MUMBAI MIRROR
4TH FLOOR, TIMES OF INDIA BUILDING,
OPPOSITE CST STATION
DR.D.N. ROAD, MUMBAI-400 001.
5. MR.SHUBRO NIYOGI
AGED ABOUT 35 YEARS,
C/O TIMES OF INDIA
8 SHANTINIKETAN BUILDING
12TH AND 14TH FLOOR





OPPOSITE BRITISH COUNCIL
CAMAC STREET, CIRCUS AVENUE
KOLKATA-700017.

6. MR.RATNOTTAM SENGUPTA
AGED ABOUT 46 YEARS,
C/O TIMES OF INDIA
8, SHANTINIKETAN BUILDING,
12TH AND 14TH FLOOR,
OPPOSITE BRITISH COUNCIL,
CAMAC STREET, CIRCUS AVENUE,
KOLKATA-700017.
7. MS.NERGISH SUNAVALA
AGED ABOUT 43 YEARS,
SNB BOWERS, 40/1
MAHATMA GANDHI ROAD
SHANTALA NAGAR, ASHOK NAGAR
BENGALURU-560 001.
8. MS.RASHMI MENON, AGED ABOUT 41 YEARS
THE ECONOMIC TIMES-ET PANACHE
BENNET COLEMAN AND CO LTD
DR.D.N.ROAD, MUMBAI-400 001.

...PETITIONERS

(BY SRI. P.N.RAJESWARA., ADVOCATE)

AND:

1. M/S BID AND HAMMER AUCTIONEERS
PRIVATE LIMITED
A PRIVATE LIMITED COMPANY INCORPORATED
UNDER THE PROVISIONS OF COMPANIES ACT 1956
HAVING ITS REGISTERED OFFICE AT
DADHA HOUSE 136
7TH MAIN ROAD, 5TH BLOCK
JAYANAGAR, BENGALURU-560 066
REPRESENTED BY ITS AUTHORISED SIGNATORYES
SRI ANUKUSH DADHA

...RESPONDENT

(BY SRI. VIKRAM HUILGOL, SENIOR COUNSEL FOR
SRI. NIKIT BALA, ADVOCATE)



THIS CRL.P IS FILED UNDER SECTION 482 CR.P.C BY THE ADVOCATE FOR THE PETITIONERS PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO QUASH THE PROCEEDINGS IN PCR NO.13146/2014 AND C.C.NO.18491/2016 ON THE FILE OF II A.C.M.M., BENGALURU.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. This petition is filed challenging the initiation of criminal proceedings against the petitioners for an offence under Sections 499 and 500 of the Indian Penal Code, 1860 (hereinafter for brevity referred to as "the I.P.C.") pertaining to defamation.

The offending article published reads as follows:

"Even as Rabindranath Tagore's pen and ink of three dancing figures lies in the vaults of Visva Bharati in Shantiniketan, an identical-looking work will come up for auction in Delhi on Friday. Nandalal Bose's painting of a woman sitting under a tree hangs on the walls of the National Gallery of Modern Art in Delhi but a similar work has made its way to the auction catalogue.

A copy or two has cropped up in the most respected of auction houses but Bangalore-based Bid & Hammer's forthcoming auction has been assailed by what perhaps is the biggest controversy to come to light in the Indian art market.



Beside the Tagore and Bose works, questions have been raised about the authenticity of several other pieces by celebrated artists like K K Hebbar, Bikash Bhattacharjee, Hemendranath Majumdar and KH Ara.

Rukhsana Pathan Ara, daughter of the famous Progressive artist, calls one of the paintings on sale "an insult to Ara's oeuvre".

"There are a lot of Ara fakes around because people tend to think his style is simple. But that's deceptive, and this one is easy to tell," says Rukhsana, who has a large collection of her father's works.

The Tagore work that is raising eyebrows is titled Nriya and dated 1933. "The work is locked up in our vaults, and it is extremely unlikely that Tagore would have painted two identical works in the same year," says Susobhan Adhikary, curator of the Kala Bhavan museum of Visva Bharati.

Prof R Sivakumar, an art historian who has authored a book on Tagore's works, also points out a discrepancy in dates. "If the book, the cover art of which is in the auction, was published in 1949, how did Tagore do a cover in 1993?" asks Sivakumar.

Another Tagore work that is under a cloud is an untitled portrait of a lady. Jamini Roy was once known as the country's most faked artist but Tagore seems to be quickly catching up.

In 2011, a counterfeit racket was busted at a Kolkata art college, and its principal arrested. But fake factories, which usually use art college students, are still flourishing, says Adhikary, who walked into a show of 40 Tagore works last month and found that most of them were fakes.



The family of Bikash Bhattacharjee, a corner stone of the Bengal school of art, has also doubted the veracity of two works. "The signature does not match," says Balaka Bhattacharjee, the painter's daughter.

TOI made several attempts to contact Bid & Hammer's chairman and managing director M Maher Dadha but there was no response. The auction house was caught in a similar controversy in 2010 over the veracity of a Souza work.

Some prominent art industry representatives have called for the creation of a regulatory authority to address concerns regarding the sale of fake works to unsuspecting consumers. "The recent alarm with regard to the authenticity of works by masters at a forthcoming auction has sent alarm bells ringing once again. We need to look at how we can regulate this," said Ashish Anand, owner of Delhi Art Gallery and one of the signatories.

Rajani Prasanna Hebbar, an art historian and the painter's daughter who authenticates his work, says the work that features in the auction catalogue has not been authenticated by her or her sister. She also adds a cautionary word for collectors. "Don't blindly trust the certificate of authenticity. Unscrupulous people are handing out these for a price so rely on someone who is an expert on the artist," says Rajani, who has taught art history for 20 years".

(underlining by me)

2. It is the contention of the petitioners that the article published is basically the assertion of experts in the field



and would therefore not amount to defamation. It is contended that a newspaper has a right to report a newsworthy article, more so when it is the opinion of experts in the field.

3. A reading of the first and the second paragraphs in the article, however gives a distinct impression that a finding has already been recorded by the author of the article that the original paintings were in the safe custody, while duplicates/fake paintings were sought to be auctioned. A mere reporting of a view of an expert would be different from an article which gives a categorical finding to begin with, and thereafter seek support of experts in the field. In my view, the learned Magistrate was justified in initiating criminal proceedings in respect to the offending article.

4. However, it is noticed that the first accused is a company which owns the newspaper and the complaint does not contain any assertions regarding the participation of the company. It is therefore not justifiable to proceed



against the first accused-company and the proceedings, insofar as the company's concern shall stand quashed.

5. Learned counsel for the petitioners contends that the second petitioner was only an Editorial Director and as required under the Press and Registration of Books Act, 1867, the Director is a person who would be responsible for the publication of an article and an Editorial Director who is only in charge of the policy decisions of the newspaper cannot be proceeded against.

6. In response, Sri.Vikram Huilgol-learned Senior counsel submits that there is a specific allegation in the complaint that the second accused oversaw the contents of newspapers and were responsible for the contents, and it is thus necessary that the second petitioner also be prosecuted. He submits that the complainant would prove the assertion made in the complaint and, therefore, the complaint cannot be dismissed insofar as the second petitioner is concerned.



7. A reading of the complaint does indicate that a specific assertion is made that the second accused oversaw the contents of the newspapers and was responsible of the contents. In light of this specific allegation against the second petitioner, there is no justification for quashing the proceedings as against the second petitioner. Consequently, the Criminal Petition is ***dismissed*** except insofar as relates to the first petitioner. The complaint as against the first petitioner shall, however, stand ***quashed***.

**Sd/-
JUDGE**