

(2018) 02 RAJ CK 0067
In the Rajasthan High Court
Case No : 737 of 2017

Sanjay Leela Bhansali S/o Navin Bhansali & Ors	APPELLANT
Vs	
State of Rajasthan & Ors	RESPONDENT

Date of Decision : 06-02-2018

Acts Referred:

Constitution of India, Article 19(1)(a) -
Protection of certain rights regarding freedom of speech, etc
Code of Criminal Procedure, 1973, Section
482, S

Citation : (2018) 02 RAJ CK 0067

Hon'ble Judges : Sandeep Mehta

Bench : Single Bench

Advocate : Ravi Bhansali, Nishant Bora, Shubham Modi.?S.K. Vyas, K.S.
Rathore, Tejmal Ranka.

Judgement

1. Heard.

2. By way of this misc. petition under Section 482 Cr.P.C., the petitioners herein seek to assail the FIR No.23/2017 registered at the Police

Station Deedwana, District Nagaur for the offences under Sections 153A, 153B and 295A of the IPC and all proceedings sought to be taken in

furtherance thereof.

3. Facts in brief are that, the above mentioned FIR came to be registered on the basis of a complaint submitted by the complainant respondent in

the court having jurisdiction which was forwarded to the Police Station Deedwana for investigation under Section 156(3) of the Cr.P.C. The

substratum of allegations as set out in the FIR is that the complainant, a resident of Deedwana is stated to be a reputed person of the society. He

claims to have come across information from news-channels and newspapers

conveying that the petitioners herein had commenced shooting of a film on "Maharani Padmavati" while twisting and distorting the historical facts and events and thereby, they allegedly hurt the feelings and sentiments of a section of the society to which the complainant belongs. It was further alleged that "Maharani Padmavati" was a pious historical icon whose courageous act of "Jauhar" was registered in the glorious annals of history of Rajasthan as well as the entire country, and thus by depicting the iconic character in songs, love scenes, etc. of the movie, the reputation and honour of "Maharani Padmavati" was maligned and resultantly, feelings and sentiments of the "Rajput Samaj" and the entire Hindu community were hurt because of such portrayal. At para No.5 of the FIR, it was alleged that the petitioners herein, have picturised a totally fictional love scene. Whilst the truth is that "Maharani Padmavati" had taken the courageous step of committing "Jauhar" with 16,000 other females in order to save their honour from the untoward advances of Allauddin Khilji's and his army. On the basis of this report, the above mentioned FIR came to be lodged against the petitioners for the offences under Sections 153A, 153B and 295A of the IPC and investigation was commenced.

4. Being aggrieved by registration of the said FIR, the petitioners herein have approached this Court by way of the instant misc. petition filed under Section 482 Cr.P.C. seeking quashing thereof. While entertaining the petition, this Court passed an interim order dated 08.03.2017 staying further investigation of the impugned FIR.

5. This Court proposes to deal with the entire controversy in two parts; firstly with a consideration of the allegations as set out in the FIR which admittedly was lodged well before the movie in question was released in theaters in context to the offences alleged and secondly, based on the outcome of official release of the movie titled as ""PADMAVAT"" all across the country in states other than Rajasthan, Gujarat, Madhya Pradesh and Haryana and the perusal thereof by this Court.

6. Shri Ravi Bhansali, learned Senior Counsel assisted by Shri Nishant Bora, learned counsel representing the petitioners vehemently urged that the impugned FIR was registered at a premature stage. The allegations levelled therein are conjectural and hypothetical. The songs, which are referred

to in the FIR, were not even picturised by the time, the FIR came to be lodged. As per them, the pride valor and courage of the Rajput rulers and "Maharani Padmavati" in particular and the community as a whole has been glorified and fortified in the movie which was finally released after receiving certification of the Censor Board and that the FIR has been lodged for ulterior motives. Placing reliance on this Court's Judgment in the case of Bhansali Productions Pvt. Ltd. & Ors. vs. State & Ors. (S.B. Criminal Misc. Petition No.3711/2013) decided on 19.11.2013, learned counsel urged that the movie has received a certification from the Censor Board and has been released all over the country. An interim order has been passed by Hon"ble the Apex Court directing the governments concerned to ensure a safe and viewing release of the movie in States of Rajasthan, Gujarat, Madhya Pradesh and Haryana and hence, no person can be allowed to raise any questions there against. They urged that the Censor Board is the only body constituted by law which can examine the contents of the movie to find as to whether same could be allowed for public viewing or not. As per them, once a certificate of the Censor Board has been received in accordance with the Cinematograph Act, 1952, manifestly, it has to be presumed that the contents of the movie satisfy the four corners of law. On these grounds, Shri Bhansali and Shri Bora implored the Court to accept the instant misc. petition and quash the impugned FIR.

7. Per contra, learned Public Prosecutor Shri S.K. Vyas urged that the petition itself is premature. The petitioners can always participate in investigation and submit their defences and the investigating officer can consider these defences and file the appropriate result of investigation in the court concerned.

8. Shri K.S. Rathore, learned counsel representing the respondent complainant vehemently opposed the submissions advanced by the petitioners" counsel. He too urged that the petition filed by the petitioners herein is premature. He further contended that the complainant came across the promotional clippings of the dance, songs and sequences released during production of the movie and finding the same to be offensive and hurting the feelings of the Rajput community as a whole and his own feelings, the FIR in question was lodged in a lawful manner. He further contended that

by depicting a love scene between "Allauddin Khilji", and "Maharani Padmavati", the petitioners have insulted and maligned her glorious character

and thereby, insulted and hurt the feelings of the entire Rajput Community leading to a disruption of public harmony. On these grounds, he urged

that this Court should not exercise its inherent powers so as to quash the FIR at the inception. 8. I have given my thoughtful consideration to the

arguments advanced at the Bar and have gone through the material available on record.

9. The relevant provisions of law necessary to decide the issues raised before this Court are reproduced herein below for ready reference:-

Section 153A IPC:- Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language,

etc., and doing acts prejudicial to maintenance of harmony.-

(1) Whoever-

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on

grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or

feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups

or castes or communities, and which disturbs or is likely to disturb the public tranquility,

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained

to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal

force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be

likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language

or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a

feeling of insecurity amongst members of such religious, racial, language or

regional group or caste or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc.-(2) Whoever commits an offence specified in sub-section (1) in any place of worship or

in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which

may extend to five years and shall also be liable to fine.

295A IPC.- Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious

beliefs.- Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India by words,

either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious

beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine,

or with both.

10. Suffice it to say that for the application of Sections 153A of IPC, the prosecution has to come out with a specific case that by the offending

acts or words, writings, signs, representations or otherwise, the offender should have attempted or endeavoured to promote enmity between

different groups on ground of religion, race, place of birth, residence, language, etc. and for having performed such acts which are prejudicial to

maintenance of public harmony. Manifestly, there is no allegation of the complainant in the FIR that by the so-called offending acts (which were not

in public domain when the FIR was lodged), feelings of any community other than the Rajputs or Hindu community were hurt or that a feeling of

enmity was promoted between these two sections of the society. Further, as the movie had not even been released, there was no question of

public harmony being disturbed

11. Section 153B IPC deals with the acts, imputations and assertions which are considered to be prejudicial to national integration. Manifestly, the

complainant's allegations are no more near to bringing the acts alleged within the purview of framework of the said offence.

12. Thus, ex-facie, ingredients of the offences under Sections 153A and 153B are

not made out from the admitted allegations levelled in the impugned FIR.

13. The offence under Section 295A IPC falls within Chapter XV IPC which deals with offences relating to religion. On a pertinent query being

made from Shri Rathore, he candidly conceded that "Maharani Padmavati" was a historical icon and was never considered to be a religious figure

by either Rajput or any other community. This historical icon is quoted with reverence when the valor and courage of women folk in the country is

being referred to. Section 295A IPC deals with deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its

religion or religious beliefs. Since admittedly "Maharani Padmavati" was never considered to be a religious figure, manifestly, the offence under

Section 295A IPC cannot be invoked by any stretch of imagination so as to apply to the admitted facts as set out in the impugned FIR.

14. Having dealt with these factual and legal aspects of the matter, this Court now comes to the issue, as to whether registration of the FIR was at

all warranted at the stage when the same came to be lodged by the complainant.

15. Ex-facie, the issue of hurting the feelings of any person or community; either religious or communal would arise when, the offending depiction is

published or brought in public domain. Admittedly, the movie in question had not been completed by the time the FIR came to be lodged. It was in

the process of being produced. The Cinematograph Act, 1952 provides a specific mode for certification of movies with a complete and fool-proof

mechanism to ensure that the depictions made therein are not found offending feelings of anyone and in reference to the freedom of expression

guaranteed by Article 19(1)(a) of the Constitution of India. Section 5A of the Act, which deals with certification of films, is reproduced

hereinbelow for the sake of ready reference:

5A. Certification of films.-(1) If, after examining a film or having it examined in the prescribed manner, the Board considers that-

(a) the film is suitable for unrestricted public exhibition, or, as the case may be, for unrestricted public exhibition with an endorsement

of the nature mentioned in the proviso to clause (i) of sub-section (1) of section 4, it shall grant to the person applying for a certificate

in respect of the film a ""U"" certificate or, as the case may be, a ""UA""

certificate; or

(b) the film is not suitable for unrestricted public exhibition, but is suitable for public exhibition restricted to adults or, as the case may

be, is suitable for public exhibition restricted to members of any profession or any class of persons, it shall grant to the person

applying for a certificate in respect of the film an "A" certificate or, as the case may be, a "S" certificate,

and cause the film to be so marked in the prescribed manner:

Provided that the applicant for the certificate, any distributor or exhibitor or any other person to whom the rights in the film have

passed shall not be liable for punishment under any law relating to obscenity in respect of any matter contained in the film for which

certificate has been granted under clause (a) or clause (b).

(2) A certificate granted or an order refusing to grant a certificate in respect of any film shall be published in the Gazette of India.

(3) Subject to the other provisions contained in this Act, a certificate granted by the Board under this section shall be valid throughout

India for a period of ten years.

16. Only the Board of Film Certification (Censor Board) constituted under Section 3 of the Act has the jurisdiction, after examining a film or having

it examined in a prescribed manner to certify the same as fit for being displayed. A certificate issued by the Censor Board is a guarantee under law

that the movie in question satisfies the requirements of law and is fit to be exhibited in public. Remedy of appeal or judicial review are available to

any person, aggrieved by the certificate issued by the Censor Board. Once the Censor Board has issued the certificate of exhibition of a movie,

manifestly, putting any fetters thereupon by lodging an FIR or otherwise, would amount to clear violation of fundamental right of expression

guaranteed under Article 19(1)(a) of the Constitution of India. Looking to the unrest created and the threats given by a particular section of society

in anticipation of exhibition of the film "PADMAVAT", the Rajasthan State issued a letter dated 17.1.2018 banning exhibition of the film in

question. Hon"ble the Supreme Court entertained a Writ Petition (Civil) No.36/2018 filed by Viacom 18 Media Private Limited & Ors. Vs. Union

of India & Ors. against the said gag order and passed an interim order dated

18.1.2018 observing:-

15. For the present, we are considering the prayer for grant of interim relief, i.e., whether the notifications/orders prohibiting the

exhibition of the film should be stayed or not. The creative content is an insegregable aspect of Article 19(1) of the Constitution.

Needless to emphasise, this right is not absolute. There can be regulatory measures. Regulatory measures are reflectible from the

language employed under Section 5B of the Act and the guidelines issued by the Central Government. Once the parliamentary

legislation confers the responsibility and the power on a statutory Board and the Board grants certification, nonexhibition of the film

by the States would be contrary to the statutory provisions and infringe the fundamental right of the petitioners. That apart, as we

understand at present from paragraph 27 of the judgment in the case of Prakash Jha (supra), it is the duty and obligation of the State

to maintain law and order in the State. We may also note here with profit that the guidelines are to be kept in mind by CBFC. For the

sake of completeness, we reproduce the relevant part of the guidelines :

2. In pursuance of the above objectives, the Board of Film Certification shall ensure that-

... ..

(vii) human sensibilities are not offended by vulgarity, obscenity or depravity;

... ..

(ix) scenes degrading or denigrating women in any manner are not presented;

... ..

(xii) visuals or words contemptuous of racial, religious or other groups are not presented;

(xiii) visuals or words which promote communal, obscurantist, anti-scientific and anti-national attitudes are not presented;

... ..

(xvii) public order is not endangered;

It has to be borne in mind, expression of an idea by any one through the medium of cinema which is a public medium has its own

status under the Constitution and the Statute. There is a Censor Board under the

Act which allows grant of certificate for screening of the movies. As we scan the language of the Act and the guidelines framed thereunder it prohibits use and presentation of visuals or words contemptuous of racial, religious or other groups. Be that as it may. As advised at present once the Certificate has been issued, there is prima facie a presumption that the concerned authority has taken into account all the guidelines including public order.

17. Concluding parts of the above referred observations made by Hon''ble the Supreme Court clearly convey that once a certificate has been

issued by the Censor Board, there is prima-facie, a presumption that the concerned authority has taken into account all the guidelines including the possibility of any disruption of public order. The Hon''ble Supreme Court also noted the following observations made in an earlier judgment

rendered in the case of Nachiketa Walhekar Vs. Central Board of Film Certification & Anr. passed on 16.11.2017 in W.P.(C) No.1119/2017:

Be it noted, a film or a drama or a novel or a book is a creation of art. An artist has his own freedom to express himself in a manner which is not

prohibited in law and such prohibitions are not read by implication to crucify the rights of expressive mind. The human history records that there are

many authors who express their thoughts according to the choice of their words, phrases, expressions and also create characters who may look

absolutely different than an ordinary man would conceive of. A thought provoking film should never mean that it has to be didactic or in any way

puritanical. It can be expressive and provoking the conscious or the sub-conscious thoughts of the viewer. If there has to be any limitation, that has

to be as per the prescription in law.

18. The Hon''ble Supreme Court issued a clear direction that it is the duty of the State to maintain law and order situation whenever the film is

exhibited, which would also include providing Police protection to the persons, who are involved in the film or in the exhibition of the film and the

audience watching the film, whenever sought for or necessary. Manifestly thus, the film has not only received a stamp of certification from the

Censor Board but from the Hon''ble Supreme Court as well. Any attempt to thwart or oppose the display of the film or to prosecute the persons

involved in the creation thereof, would manifestly amount to a gross contempt of

the Hon"ble Supreme Court"s directions.

19. Now coming to the second part of the matter that whether by any stretch of imagination, the allegations as set out in the FIR are true or are

motivated with an ulterior design. For satisfying the test of the legal idiom ""not only the justice should be done but it should appear to have been

done"", this Court directed the petitioners and the District Police and Administration to arrange for a discreet screening of the film which is the

primary evidence required to be perused for testing the veracity of the complainant"s allegations. Pursuant to such directions and with appropriate

security provided by the District Police and Administration, the film was screened discreetly on 05.02.2018 for the perusal of the Court so as to

appreciate the primary evidence around which the entire controversy revolves. On having perused the film, it is apparent that the disclaimer made

therein should take care of the unfounded and baseless apprehensions of the complainant and the community. It reads as below:

The Film "Padmavat" is inspired from the epic poem Padmavat, written by Malik Muhammad Jayasi, which is considered a work of fiction. This

Film does not infer or claim historical authenticity or accuracy in terms of the names of the places, characters, sequence of events, locations,

spoken languages, dance forms, costumes and/or such other details. We do not intend to disrespect, impair or disparage the beliefs, feelings,

sentiments of any person(s), community(ies) and their culture(s), custom(s), practice(s) and tradition(s).

20. Having viewed the movie so as to appreciate the primary evidence of the subject matter, from all possible angles, this Court is of the firm

opinion that portrayal of the characters of "Maharani Padmavati" and the King of Chittorgarh as depicted therein would fill the heart of every

citizen of this country more particularly those of Rajasthan and Mewar with pride rather than creating a feeling of hatred or abhorrence. The

manner in which, the King of Mewar has been characterized by displaying his valor, courage, pride, compassion to the subjects and the respect

shown to the enemy who arrives as a guest, give a deep insight into the highest standards and morals of the Ruler and virtually glorifies the grand

traditions of the Rajputana Empire. The manner which, the character of "Maharani Padmavati" is portrayed highlighting her courage, poise, charm,

grace, intellect and deep knowledge of military strategy should swell the heart of everyone concerned with pride rather than prejudice. The

portrayal of the manner in which, "Maharani Padmavati" and all the women folk irrespective of caste and creed in the fort decided to end their lives

to save their dignity and honour from the evil advances of Khilji's invaders, is indeed a tribute to their courage. The women realized that all citadels

of defence had fallen and thus, rather than falling in the hands of the lecherous invaders, they proudly chose death over defilement. The portrayal of

these incidents in the movie can, in no manner, be considered to be acts likely to create a feeling of hurt to anyone nor are the same aimed at

promoting enmity between any sections of society.

21. Manifestly, viewed in light of the observations made by Hon"ble the Supreme Court and having viewed and adjudged the movie objectively,

this Court is of the firm opinion that the same totally and wholly justifies the artistic licence granted by the Censor Board.

22. Having objectively considered the movie in its entirety, this Court is of the firm opinion that there is not even a single scene therein which can be

considered as amounting to one which can hurt the feelings of any one the count of race, caste, creed or religion. No character in the movie has

been picturised in any manner which can cause disruption of public order or create enmity or hatred between any two communities. On the

contrary, the grace and poise with which, the character of "Maharani Padmavati" has been picturised and the respect which has been duly offered

to the historical icon is nothing short of a glorious tribute and adulation.

23. Art is the most creative and beautiful form of expression conferred upon human beings. George Washington, while expressing his views on

cinema as an art, wrote:

Cinema is an artistic expression of ideas, stories and often opinions, sometimes inspired by reality occasionally set to music, designed to enthrall,

enchant, or simply to entertain. There are hardly any other mediums of expression that can actually claim foe levels of insidious influence and

presence in our daily lives.

It has been one of the most potent tools or expression since its inception years back. It has been seen as a medium through which a larger picture

of the society is depicted on the screen. It has been a source of introspection

where in it has brought or tended to bring a positive change in the society.

24. Hon"ble the Supreme Court took up an untoward challenge to the exhibition of the movie in a writ petition filed by Advocate Manohar Lal

Sharma being Writ Petition (Criminal) 191/2017 (Manohar Lal Sharma vs. Sanjay Leela Bhansali & Ors.). While dismissing the writ petition by

judgment dated 28.11.2017, Hon"ble Supreme Court observed at para No.10 of its order as below:

10. Another aspect needs to be highlighted. A story told on celluloid or a play enacted on a stage or a novel articulated in a broad and large

canvas or epic spoken with eloquence or a poem sung with passion or recited with rhythm has many a layer of freedom of expression of thought

that requires innovation, skill, craftsmanship and, above all, individual originality founded on the gift of imagination or reality transformed into

imagination or vice versa. The platform can be different and that is why, the creative instinct is respected and has the inherent protective right from

within which is called artistic licence. In this regard, we may profitably reproduce a passage from Devidas Ramachandra Tuljapurkar v. State of

Maharashtra 9 and others :-

As far as the words ""poetic licence"", are concerned, it can never remotely mean a licence as used or understood in the language of law. There is

no authority who gives a licence to a poet. These are words from the realm of literature. The poet assumes his own freedom which is allowed to

him by the fundamental concept of poetry. He is free to depart from reality; fly away from grammar; walk in glory by not following systematic

metres; coin words at his own will; use archaic words to convey thoughts or attribute meanings; hide ideas beyond myths which can be absolutely

unrealistic; totally pave a path where neither rhyme nor rhythm prevail; can put serious ideas in satires, ifferisms, notorious repartees; take aid of

analogies, metaphors, similes in his own style, compare like ""life with sandwiches that is consumed everyday"" or ""life is like peeling of an onion"", or

society is like a stew""; define ideas that can balloon into the sky never to come down; cause violence to logic at his own fancy; escape to the

sphere of figurative truism; get engrossed in the ""universal eye for resemblance"", and one can do nothing except writing a critical appreciation in his

own manner and according to his understanding. When a poet says "'I saw eternity yesterday night'", no reader would understand the term "'eternity

in its prosaic sense. The Hamletian question has many a layer; each is free to confer a meaning; be it traditional or modern or individualistic. No

one can stop a dramatist or a poet or a writer to write freely expressing his thoughts, and similarly none can stop the critics to give their comments

whatever its worth. One may concentrate on Classical facets and one may think at a metaphysical level or concentrate on Romanticism as is

understood in the poems of Keats, Byron or Shelley or one may dwell on Nature and write poems like William Wordsworth whose poems, say

some, are didactic. One may also venture to compose like Alexander Pope or Dryden or get into individual modernism like Ezra Pound, T.S. Eliot

or Pablo Neruda. That is fundamentally what is meant by poetic licence.

We may categorically state that the artistic licence should be put on a high pedestal but the same has to be judged objectively on case to case

basis.

25. Thus, it is manifest that persons with ulterior motives have acted in a totally irresponsible manner on basis of totally halfbaked and concocted

information, while planning to disrupt the screening of the movie without any justification in total disregard to the Censor Board certification and

while defying the Hon''ble Supreme Court's directions and have thereby deprived the people of this State from viewing a glorious spectacle which

gives a deep insight into the proud history of the State of Rajasthan. What should have been a cause of celebration by viewing a magnificent display

of the glorious history of Rajputana culture, has been turned into an unsavory dispute arising from an unlawful and obliquely motivated step taken in

utter haste.

26. Be that as it may. Since the Hon''ble Supreme Court has already stayed the gag order issued by the State Government and directed it to take

appropriate steps for providing security to the persons interested in screening and viewing the movie, this Court directs that appropriate steps shall

be taken in this regard forthwith to ensure full compliance of the said direction. The complainant and the like-minded persons who are carrying

unjustified prejudice against the movie would be better advised to realise the folly of their acts.

27. In view of the above discussion, this Court is of the firm opinion that allowing investigation of the impugned FIR is nothing short of a gross abuse of process of law.

28. Hence, the instant misc. petition deserves to be and is hereby allowed. The impugned FIR No.23/2017 registered at the Police Station

Deedwana, District Nagaur and all subsequent proceedings sought to be taken thereunder are hereby quashed.

29. Stay petition is disposed of.