

(2004) 01 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 303 of 1999

Virbhadra Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-01-2004

Acts Referred:

Cinematograph Act, 1952 — Section 5A, 5A(2)
Constitution of India, 1950 — Article 19, 19(1), 19(2), 226, 227

Citation : (2004) 1 ShimLC 176

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : Shrawan Dogra, for the Appellant; N.K. Thakur, Sr. CGSC, for the Respondents 1 and 2, Ajay Kumar, M.S. Chandel, General and P.M. Negi, Dy. A.G., for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Goel, J.—This writ petition has been filed by the Petitioner claiming following reliefs:

It is, therefore, submitted that the Movie "Kohram" as shown in Annexure PA may be ordered to be (a) seized; (b) be prohibited from being exhibited in any form whatsoever, in the State of Himachal Pradesh or any other part of the country; (c) the certificate granted u/s 5A of the Act may be cancelled/revoked; (d) Writ of Certiorari, or any other writ or order may be issued, the records of the case may be called for; (e) the Respondent No. 4 be ordered to stop the screening of the film "Kohram"; and (f) appropriate costs may be imposed on the Respondents, especially Respondent No. 3 for his act and conduct as aforesaid.

It is, therefore, respectfully prayed that for the reasons stated here in above the writ petition may be allowed, in the interest of justice.

2. As per averments made in the writ petition, Petitioner was the Heir apparent to the "Gadi" of Princely State of Rampur Bushahr State which is now a part of

State of Himachal Pradesh, after its merger in the Union of India in the year 1948. He further claims that he remained a Member of House of People from 1962 to 1983, except for a short break in 1977. After 1983, he remained as a Member of the H.P. Legislative Assembly from September, 1983. Not only this, he was also unanimously elected as Leader of the Congress Legislature Party in the State of H.P. in April, 1983 and became Chief Minister of the State.

3. Prior to becoming Chief Minister, Petitioner was Deputy Minister, Tourism and Civil Aviation in the Union Government in 1976-77. Thereafter, he became Minister of State for Industries from 1982 till he became the Chief Minister of Himachal Pradesh. Again after elections, which were held in 1985 to the H.P. Legislative Assembly, he was also elected as Leader of the Congress Legislative Party. Then he became Chief Minister of H.P. He continued to be Chief Minister till 5th March, 1990.

4. Again, after the elections held in November, 1993, Petitioner was elected Leader of the Congress Legislative Party and again he became the Chief Minister of the State.

5. Because of the above, Petitioner claims that he is a public man, who has his own image in the public and is held in high esteem and respect by the public at large. Per him, he has made a name for himself as a public man.

6. On 16.8.1999, it was brought to the notice of the Petitioner that a film titled as "Kohram" is being exhibited for public viewing in the State of H.P. and elsewhere in the Cinema Halls. It was also being shown/televised by the cable operators not only in Shimla but elsewhere also for public viewing. After having come to know of this position, Petitioner alleges that keeping in view the above facts, the film projected him, (the Petitioner) in extremely bad taste. Reason being that in this film the Petitioner, his actions as well as his character in public life were being adversely commented upon. Per him, what was being projected in the film was basically false, untrue, scandalous besides being defamatory. It also affected the security, sovereignty and integrity of the State, as also such action was opposed to public order, decency and morality. Thus by producing this film, Respondent No. 3 has acted in a most irresponsible manner by projecting the Petitioner as a villain. According to the Petitioner, the film having been produced in Himachal Pradesh directly impinges upon his personal character. Name of the villain in the film is that of the Petitioner. According to Petitioner, it is a matter of common knowledge that being the Heir apparent to the "Gadi" of Princely State of Rampur Bushahr State till its merger, he is popularly known as Raja Sahib, in as well as outside the State. Villain in the film has also been shown not only the namesake of the Petitioner, but also is addressed as Raja Sahib in the film. The sum and substance of the averments made by the Petitioner is, that the cumulative effect of what is described in the film is to tarnish his image. Thus, certificate issued for its exhibition u/s 5A(2) of Cinematograph Act, 1952 by Board of Film Certification should not have been issued.

7. In the aforesaid background and on a number of other grounds, Petitioner claimed that his namesake alias Raja Sahib, villain in the film is shown to be epitome of corruption and criminalisation of politics, practising double standards and befooling the public with a different image. So much so that the villain has been shown to have shot dead his daughter and a major, who were discouraging terrorist activities. His namesake in the film has also been projected to be a person endangering national security to gain power being an immoral and unscrupulous person.

8. Further case set up by the Petitioner is that this entire exercise has been undertaken by the Respondents keeping an eye on the Parliamentary elections which are to take place on 25.9.1999. By showing the film, the image of the Petitioner as well as of his party will be tarnished in these elections. All what has been shown attributable to the character of "Virbhadr Singh alias Raja Sahib" in the film is factually incorrect and untrue and is in fact in the nature of character assassination of the Petitioner. This compelled the Petitioner in filing this writ petition.

9. When the matter came up before the Court on 25.8.1999, following order was passed by a Division Bench of this Court:

Present : M/s. Indar Singh and Shrawan Dogra for the petitioner.

Mr. Rahul Mahajan, Additional CGSC for Respondent No. 1.

Mr. Sanjay Karol, A.G. for Respondent No. 4.

C.M.P. No. 574 of 1999 Allowed.

C.W.P. No. 303 of 1999

Notice to the Respondents to show cause why the writ petition be not admitted.

Mr. Rahul Mahajan, Additional C.G.S.C. takes notice on behalf of Respondent No. 1 and the learned Advocate General accepts notice on behalf of Respondent No. 4. Notice to the other Respondents returnable within four weeks. The name of Mr. Rahul Mahajan be shown in the cause list for the Union of India.

CM.P. No. 575 of 1999

Notice as above. Interim order restraining the film 'Kohram' being exhibited or televised in any form by any one within the State of Himachal Pradesh for the time being pending further orders. The Petitioner will have the contents of the interim order got published in the Indian Express (English Daily) and Punjab Kesari (Hindi Daily) at his cost. Dasti copy on usual terms.

10. Writ Petition was finally admitted for hearing on 5.9.2000 and ad interim relief granted on 25.8.1999 (supra), was made absolute.

11. Respondents, when put to notice, have filed their replies. Respondent No. 3, i.e. Producer of the film, in his reply has tried to justify his action of producing

the film "Kohram" by stating that the writ petition was not maintainable. According to him, disputed and contentious questions of fact involved in the writ petition cannot be gone into under Article 226/227 of the Constitution of India. According to him, no right of the Petitioner has been violated by this Respondent, so as to maintain the present writ petition. Per him, there is no nexus or relevance between the Petitioner and/or the film in question. He categorically stated that he has not released the said film in the State of H.P. till date i.e. 23.11.1999 (when the affidavit was sworn). Respondent No. 3 pleaded that Petitioner be called upon to name the cable operator who is exhibiting the film. Film was not made in the State of H.P. and by referring to the beginning of the film, he tried to justify his action in producing the same by mentioning that all the characters and incidents in this film were fictitious and any resemblance to any person living or dead, was purely coincidental. Further, as per Respondent No. 3, film in question is a work of fiction and nothing more. According to him, this film does not deal with the State of H.P. at all. There was no motive so far Respondent No. 3 is concerned in either naming and/or showing of the film in question. In case film is being exhibited by any cable operator, he is violating the law. With a view to support his case further, Respondent No. 3 claimed that his action is protected under the Freedom of Speech and Expression, enshrined under Article 19(1)(a) of the Constitution of India, and with a view to further support this plea, he placed reliance on a decision of Supreme Court in *S. Rangarajan Vs. P. Jagjevan Ram and Others*, He thus prayed dismissal of the writ petition.

12. So far Respondent No. 4 is concerned, its stand is that stray incident of ransacking a Cable operators' office was reported in various newspapers and Respondent No. 4 had issued necessary instructions to all the District Magistrates to give effect to the orders passed by this Court and that the film "Kohram" be not exhibited or televised in any form, by anyone whatsoever, within their respective Districts. This order has been issued to ensure maintenance of public order and peace in the State and action having not been taken by Respondent No. 4 was denied.

13. So far Central Board of Film Certification i.e. Respondent No. 2 is concerned, it has justified its action in issuing the necessary certificate as per provisions of Cinematograph (Certification) Rules, 1983 and the guidelines issued u/s 5A(2) of the Cinematograph Act, 1952. According to this Respondent, film depicts a fictitious story with the character of the villain doing all kinds of villainy which villains in films are supposed to do. This film is fictional and Virbhadr Singh depicted in it is from Kashmir and not from Shimla. Thus, they have prayed for dismissal of the writ petition.

14. Rejoinder has been filed to the reply of Respondent No. 3 where the facts contrary to the pleadings in the writ petition have been denied. It is reiterated by the Petitioner that it was for the said Respondent (No. 3), to see while making the film that no provision of law is violated. Plea that the film being defamatory

and intended to malign the Petitioner was reiterated. Regarding plea based on Article 19 of the Constitution of India by Respondent No. 3 in his reply, it is stated that there is no question of suppression of freedom of expression as alleged by this Respondent. Freedom of expression as per Petitioner was/is always subject to Article 19(2) of the Constitution of India.

15. After having heard the learned Counsel for the parties, so far semblance part of the film "Kohram" name-wise as well as being addressed as 'Raja Sahib', with Petitioner is concerned, there is more than the complete resemblance. It was incumbent upon Respondent No. 3 to have looked into this aspect of the matter and then identified his character in the film. Reason being that freedom of speech and expression under Article 19(1)(a) (*supra*) is not absolute, but is always subject to the rider, as contained in Article 19(2) of the Constitution of India. When a reference is made to the extracted portion from the film "Kohram" in Hindi in the writ petition as Annexure PB, it clearly projects the namesake of the Petitioner, who is also addressed as 'Raja Sahib' like Petitioner in an extremely bad taste. It directly affects the public order, decency as well as morality. If the Petitioner had not approached this Court and interim order as extracted hereinabove had not been passed, it could have led to inciting his supporters, friends and well-wishers for commission of offences. And admittedly offices of some Cable Operators were ransacked, which position is supported from Annexures PC and PD. So far as the stand of Respondent No. 3 based on the decision of Supreme Court in *S. Rangarajan v. P. Jagjivan Ram and Ors.* (*supra*) is concerned, it is not tenable in the peculiar facts and circumstances of this case. While applying the test of an ordinary man of common sense and prudence, I feel that Respondent No. 2 did not use circumspection while certifying the film "Kohram" as it is bound to effect the public order if not elsewhere, at least in the State of H.P. The danger because of semblance of the Petitioner given to the character of villain in the film "Kohram" in this case is real and has proximate, as well as has direct nexus with the character of the villain as projected and highlighted in the film. By allowing the exhibition of the film in any form either in a cinema hall and/or by cable operators and/or its being televised, in any form will result in creating the community interest being endangered.

16. In this behalf, it may also be appropriate to observe that freedom of expression is constitutionally protected under law and, therefore, simply to satisfy the whims and fancy of the Petitioner, it cannot be put in jeopardy. However, there has always to be reasonable and justified restriction on expression of such right as in the present case. And keeping in view the above facts, this film cannot be permitted to be exhibited in the State of H.P. in any form anywhere.

17. Another reason to take this view is that it is neither the stand of the State Government nor of Respondents 1 and 2, that Petitioner was not Heir apparent to the 'Gadi' of Princely State of Rampur Bushahr before its merger to the Union of India in 1948, and now being part of the State of H.P. Regarding Petitioner

having remained Member of Parliament except for a short period during 1977, till he became the Chief Minister of H.P. in 1983, is also not controverted by any of the Respondents. His having remained Chief Minister of H.P. from 1983 to 1990 as well as from 1993 to 1998 of the State of H.P. after having been unanimously elected as Leader of the Congress Legislative Party is also not disputed. What was and is his public image, what is his standing as a public man, is a question, again not expressly controverted by any of the Respondents. In these circumstances, no benefit can be taken from the decision of the Supreme Court referred to hereinabove.

18. Besides this, in the case before Hon^{ble} Supreme Court, the film was a National Award winner. That is a major distinguishing feature, which separates the facts of this case from those which were before the Supreme Court. At the time of hearing of this writ petition, learned Counsel for the parties were not at variance that even in the year 2003, when State of H.P., went to polls for electing Members to its Legislative Assembly, Petitioner spearheaded the campaign on behalf of his party. Its members in majority were elected. And the Petitioner was again unanimously elected as Leader of the Congress Legislative Party and then Chief Minister of the State of H.P. which office he is holding even now. This further reinforces stand of the Petitioner that not only as a scion of the erstwhile princely state of Rampur Bushahr, but also as a public figure, of his having following throughout the length and breadth of the State.

19. Taking an overall view of the whole case, as briefly noted hereinabove, it is felt that freedom of expression, though a Constitutional guarantee available to a person like Respondent No. 3, is always subject to Article 19(2) of the Constitution of India. Said Respondent as well as Respondents 1 and 2 have failed to ensure that the semblance given to the villain of the film "Kohram" projecting him in an extremely bad and poor taste, as well as a threat to the Security of State in my view, directly affects the image of the Petitioner, as also his reputation as a public man of long standing, repute and stature, besides as a politician. Thus, he is entitled to the relief prayed for.

20. Accordingly, this writ petition is allowed. As a consequence of it, it is ordered that Respondent Nos. 3 and 4 be and are hereby restrained and prohibited from in any manner exhibiting the film "Kohram" anywhere, i.e. in cinema halls and/or by televising it for public viewing as well as for private viewing, and/or through cable operators in the State of H.P. Respondent No. 4 is directed to ensure that this film is not at all exhibited and/or televised/or shown by any cable operator, anywhere in the State of H.P. as aforesaid. Parties are left to bear their own costs.