
no help to the complainant respondent, inasmuch as in the reported case it was held that every person who was incharge and was responsible to the company for the conduct of the business would be liable for the offence under Section 138 of the Act. In the present case, as referred to above, the accused petitioner being sleeping partner of the firm could not be said to be a person incharge of and responsible to the company for the conduct of its business.

(9) For the reasons recorded above, in my opinion, the criminal complaint and the summoning order passed by the learned Magistrate and all other subsequent proceedings taken against Smt. Shakti Bhakoo would be an abuse of the process of the court, especially when she is only a sleeping partner of the firm and could not be said to be incharge of and responsible to the company for the conduct for the business of the company. Accordingly, both the petitions are allowed and the criminal complaint and the summoning order and all subsequent proceedings taken thereon against the accused petitioner are hereby quashed.

R.N.R.

Before Jawahar Lal Gupta and Ashutosh Mohunta, JJ

SANT ESHAR SINGH—*Petitioner*

versus

UNION OF INDIA AND OTHERS—*Respondents*

C.W.P. No. 11279 of 2001

21st August, 2001

Constitution of India, 1950—Arts. 25, 26, 29(1) & 226—Cinematograph Act, 1952—S. 5(b)—Allegations of objectionable scenes and dialogues in a film showing the Sikhs, their religion, culture and traditions in a very bad light thereby defaming the Sikhs and hurting the religious susceptibilities of the Sikhs—Constitution ensures the freedom of speech and expression to every citizen and also reasonable restrictions on the rights in public interest—Everyone has the right to profess and also the duty to tolerate—Film depicts the acts of a mob

and not those of the Sikh Community—Petitioner failing to prove that the scenes go beyond the limits of reasonable exercise of the right of freedom of expression and are an attempt to hurt the religious sentiments—Petitioner also failing to show that the film goes against the Sovereignty and integrity of India and it affects the security of State or its friendly relations with any country—No illegality in issuing Censor Certificate by the Censor Board certifying the film suitable for unrestricted public exhibition.

Held, that the preacher of a faith and the producer of the film have to respect each other's sensitivities. The diversities have to be accepted. The society has to recognise that the artist has the right to articulate. The painter can have his own perception. A film maker is entitled to his freedom. In the same measure as the religious man is entitled to his religiosity. (Para 14)

Further held, that the pictures produced by the petitioner indicate that in all probability, the film depicts the acts of a mob. Not those of the Sikh community as such. On the basis of the pictures, the petitioner should have no cause to complain.

(Para 25)

Further held, that nothing has been pointed out to show that the film goes against the Sovereignty and integrity of India. Nor has it been suggested that it affects the security of the State or its friendly relations with any foreign country. It has not been suggested that it affects public order, decency or morality. It is not the petitioner's case that it involves "contempt of court". In any case, the producer has shown certain characters in a particular light. According to his own perception. The Censor Board has considered the matter. There is nothing that may warrant the intervention of this Court.

(Para 32)

Dr. M.S. Rahi, Advocate for the petitioner

JUDGMENT

JAWAHAR LAL GUPTA, J.

(1) Does the film 'Gadar' give the petitioner a cause to complain? Should the screening of this film be stopped because a section of the society is alleged to have 'reacted strongly against certain scenes'? This is the core of the controversy in this case. First, the facts.

(2) The petitioner is a young Sikh scholar. He claims to be aware of the history, scriptures and religious tenets of the Sikhs. He alleges that the film "Gadar" has scenes, which offend the religious susceptibilities of the Sikhs. It depicts the horrors of partition of 1947. The story as given in the film is "the figment of the imagination of the story writer of the film and the director". It "maligns the religious symbol of the Sikh faith, tradition" and defames the Amritdhari Sikhs and Nihang Singhs. The 'Nishan Sahib,' a holy symbol, has been "misused for an ignoble purpose". It has been used "for the purpose of looting, plundering and rape which is against the Sikh traditions" and history. The film depicts the 'Amritdhari Sikhs' and the 'Nihang Singhs' going with the mob "to forcibly abduct the Muslim girl from her captor..." It shows that the Amritdhari Sikh was arguing with the hero of the film that he would rape "the Muslim girl first." The fight with a Nihang Singh in his traditional uniform is uncalled for.

(3) The petitioner alleges that the Nihangs "constitute a distinct order among the Sikhs and are readily recognized by their dark blue loose apparel and their ample peaked turbans, festooned with insignia of the Khalsa, made of steel. To make such a Sikh or Singh to fight for abducting a helpless Muslim girl and later made to run is really an anti-Sikh character. It is defaming the whole sect of the Nihang Singhs. The Sikh characters in the film are really (an) anti-thesis of Sikh character throughout the history". The film "gives the impression that there is a deliberate attempt to show that there is no difference between Sikhism and Hinduism. The culture and tradition of both the religions are the same". However, this is not correct. Sikhism has its own traditions and culture. The Sikh women do not put vermilion mark on their forehead or in the hair. Despite this, the hero of the film by putting "blood on that spot of the Muslim girl" says that now she become a 'Sikhni' (a Sikh lady). Similarly, the Sikh women do not wear 'Mangal Sutra' but in the film, it has been shown like that.

(4) The petitioner alleges that despite the above, the Censor Board had certified the film and allowed its exhibition. The film violates the provisions of Articles 25, 26 and 29(1) of the Constitution. The petitioner approached the respondents with a complaint dated March 14th 2001. A copy of the representation has been produced as Annexure P.7 with the writ petition. Since no action has been taken, he has approached this court through the present writ petition. He prays that the respondents be restrained from allowing the screening

of the film and directed to revoke the Censor Certificate. The objectionable scenes and dialogues should be removed from the film. It should be reviewed under Rule 32 of the Cinematograph Certification Rules, 1983.

(5) We have heard Dr. M.S. Rahi, learned counsel for the petitioner. He submitted that a Sikh has been shown with a trimmed beard. The holy symbol of 'Nishan Sahib' has been misused by the mob. It has been suggested that Sikh wanted to rape a Muslim girl. The hero puts a blood mark on the forehead and in the hair of a Muslim girl. She is called a "Sikhni" and yet shown wearing a Mangal Sutra. The Nihang Singhs and the Amritdhari Sikhs have been shown in a bad light. Thus, the Sikhs have been defamed. The action of the Censor Board in certifying the film is illegal. Since the film hurts the religious susceptibilities of the Sikhs, its screening should be banned.

(6) Firstly, a word about the law and the problem that confronts the human society.

(7) The people of the world live on one earth. But they profess different religions. Thus, we have Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism and Sikhism. All religions teach us benevolence. Charity. Compassion. Forgiveness. Return good for evil. Show mercy. Above all, every religion teaches us to be tolerant.

(8) Sikhism recognizes these principles. It is known that the Khalsa was raised "to defy religious intolerance, religious persecution and political inequality....Those who groveled in the dust rose proud, defiant and invincible in the form of Khalsa. They bore all sufferings and un-nameable tortures cheerfully and unflinchingly." It affirms—"Every person is precious to God. The langar is open to every one regardless of caste, creed, colour or sex." Equality and service to society are the known tenets of Sikh religion.

(9) Despite the abiding human faith in religious principles, we have a world that has crucified Christ, assassinated Abraham Lincoln, killed Kennedy and murdered Mahatma Gandhi. This is so because the society has its share of the deviant and the devout. There is always a conflict between the two. but it has to be tolerated. This is the reason for the acceptance of religion. Everyone has the right to profess. Also the duty to tolerate.

(10) The need to synthesise right with duty has been historically recognized. The French Convention of 1793 records that "common happiness" is the aim of society. The basic purpose of law is to ensure "the greatest happiness of the greatest number." In this context, W. Friedmann in 'Legal Theory' (5th Ed.) has said that :—

"The relation of the rights of the individual to those of his fellow individuals in the community has gradually led to a profound modification of the legal values of the modern democracy. It has increasingly tempered individual right by social duty...Democratic communities have universally, though with varying speed and intensity, accepted the principle of social obligation as limiting individual right."

(11) Thus, every right rests upon some degree of control. This position was recognized by our founding fathers while drafting the Constitution. It postulates a Secular Democratic Republic. It guarantees freedom to profess, practice and propagate religion. It provides for the protection of interests of minorities. A person's right to profess a particular faith, practice ceremonies and rituals is recognised. At the same time, the Constitution also ensures the freedom of speech and expression to every citizen. It also provides for reasonable restrictions on the rights in public interest.

(12) In the present era of reform and resistance, absolute freedom is impossible. So is the freedom to profess, practise and propagate religion. It must be remembered that we cannot carry our religious beliefs on the palm of the hand. We cannot complain that every blow of the breeze bruises our religious susceptibilities. Tolerance being one of the basic tenets of every religion, we have to share and accept the diversities of opinion.

(13) The Constitution also embodies "Fundamental Duties" in Part IV-A. It postulates that it shall be the duty of every citizen to "promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities."

(14) Thus, the duties and rights have to be read together. The preacher of a faith and the producer of the film have respect each other's sensitivities. The diversities have to be accepted. The society has to recognize that the artist has the right to articulate. The painter can have his own perception. A filmmaker is entitled to his freedom. In the same measure as the religious man is entitled to his religiosity.

(15) This is not to say that the religious sentiments of every section of the society have not to be respected. In fact, the human sensitivity and psyche have always to be kept in view. And we must not see a devilish design in every deed. Only then we can achieve the ultimate goal of a Secular and cohesive community.

(16) Let us examine the case with these parameters. What is the position ?

(17) Mr. Rahi has pointed out that the film depicts a Sikh with a trimmed beard. The holy symbol of 'Nishan Sahib' has been misused. The community has been depicted in a bad light.

(18) The evidence produced by the petitioner basically consists of five pictures. What do these pictures show ? The first of these is at Annexure P-I. It shows, in the petitioner's words—"Nishan Sahib being carried by a mob."

(19) It has been said that, "A mob is a monster, with heads enough, but no heart, and little brains." The producer is projecting, according to his own perception, the deed or misdeed of a mob. The act of a group of people who may be in frenzy. The photo shows that they are carrying certain flags. These may be similar to the flag used by the Sikhs. But there is nothing to show that the religious symbol is being shown. That too with any ill intent. Should it still hurt the feelings ?

(20) At annexure P-2 is a picture showing a number of people. Some may be angry. The petitioner alleges that it shows a "Sikh with a trimmed beard as Amritdhari Sikh." How ? Why ? Because, he is wearing a kirpan. The Sikhs may be wearing a Kirpan. But no law

says that a non-Sikh shall not carry a small Kirpan on his person. The picture does not in any way show that it depicts only an Amritdhari Sikh. Similar is the position in respect of the third picture.

(21) There are two pictures at annexure P-3. The petitioner has described these pictures as—"Trimmed beard Nihang Singh as shown in the Film." The first of the two pictures appears to be of a person who is wearing a blue shirt. One sees nothing more that may tally with the petitioner's description of a Nihang Singh. No festooned turban. No steel frames. In the second picture, there is none who may look like a Nihang Singh. What is the truth regarding the beard ? It is difficult to say anything either way.

(22) On an examination of the pictures, we are unable to uphold the petitioner's claim.

(23) Let us assume, for the sake of argument, that the petitioner's allegation has some basis. Does the act of the film maker go beyond the reasonable limits of freedom of expression ?

(24) Every section of society has its share of deviants. Who can claim perfection ? Is there a sect or section of society, which can claim that none amongst them has violated a religious tenet ? If not, what sin has the producer of the film committed ? Has he shown on the screen more than what the society might see in the streets ? We think not.

(25) The pictures produced by the petitioner indicate that in all probability, the film depicts the act of a mob. Not those of the Sikh community as such. On the basis of the pictures, the petitioner should have no cause to complain.

(26) Mr. Rahi contends that the picture shows the Muslim girl wearing a vermilion mark and being called a 'Sikhni.' Thus, the Sikhs have been defamed.

(27) The counsel admitted that the boy is shown to be in love with the girl. He puts a mark on her forehead with his blood. She

wears a 'Mangal Sutra.' Is this an evidence of broadmindedness of the Sikhs or an effort to defame them ? Is the producer not portrying the magnificence of pure love that transcends the narrow bounds of caste and creed ? And then, am I defamed merely because I am shown wearing a turban ? Or with a steel 'Kara' (a bangle) around the wrist ? I think not.

(28) Mr. Rahi submitted that the press and the Sikh Gurudawara Prabandhak Committee have protest. The copies of the reports etc. have been produced on record as Annexures P-4 to P-7. The resolution of the "Dharam Prachar Committee" of the SGPC is at Annexure P-9. Yes. It is so. But the documents do not prove anything. The press reports relate to the statements of certain people. Certain views have been expressed. These have been reported. At annexure P-7 is the petitioner's representation. His grievance has to be seen in the light of the averments in the petition.

(29) The resolution of the Committee is at Annexure P-9. It says—"In the film the facts have been exaggerated and distorted regarding the partition of the country in 1947. The scenes have been shown in this film, which hurt the mind of the Sikh very seriously and there is resentment among the Sikh Sangat. This body in its meeting feel that all this is the result of deep-rooted conspiracy." The resolution does not even suggest defamation or any infringement of the fundamental rights.

(30) The documents and the resolution do not prove defamation or an effort at interfering with the freedom of religion of the Sikhs or their rights as a minority.

(31) Do the scenes go beyond the limits of reasonable exercise of the right of freedom of expression ? Is there an attempt to hurt the religious sentiment ? There is nothing on record to prove the petitioner's complaint. In any case, these were matters to be considered under Section 5(b) of the Cinematograph Act, 1952, by the Censor Board. The film has been certified as suitable for unrestricted public exhibition. In the absnece of evidence, we find no illegality.

(32) Still further, nothing has been pointed out to show that the film goes against the Sovereignty and integrity of India. Nor has it been suggested that it affects the security of the State or its friendly relations with any foreign country. It has not been suggested that it affects public order, decency or morality. It is not the petitioner's case that it involves "contempt of court". In any case, the producer has shown certain characters in a particular light. According to his own perception. The Censor Board has considered the matter. There is nothing that may warrant the intervention of this court.

(33) Mr. Rahi referred to the decision of this Court in *Master Aman Preet Singh and others versus Government of India and others* (1), to contend that reasonable restrictions can be imposed on the freedom of speech and expression.

(34) There is no quarrel with the proposition. This was a case wherein certain derogatory remarks regarding Guru Gobind Singh the 10th Guru had been made in a Book—Modern India—a History Text Book for Class XII, published by the National Council of Educational Research and Training. It was prescribed in certain schools. The remarks were found to be unwarranted. Thus, it was ordered that these shall be deemed to have been omitted for purposes of teaching and examination in so far as the States of Punjab, Haryana and the Union Territory of Chandigarh are concerned.

(35) Learned counsel also referred to the decision of a Division Bench of the Madras High Court in *P. Jagajeevan Ram and others versus Government of India and others* (2). The film advocated revocation of reservation in favour of Scheduled Castes, Scheduled Tribes and Backward Classes. After examination of the matter, the claim of the petitioners was upheld. This was a decision on the facts of the case.

(36) Learned counsel then placed reliance on the decision of Hon'ble the Supreme Court in *M/s Doypack Systems Pvt. Ltd. versus Union of India and others*, (3). While dealing with Articles 25 and

(1) AIR 1996 Pb & Hy 284

(2) AIR 1989 Madras 149

(3) AIR 1988 SC 782

26 of the Constitution, their lordships were pleased to hold that Secularism is a basic feature of our system. It was further held that the freedom of religion was not absolute.

(37) The Counsel also referred to the decision of the Delhi High Court in *Suresh Chandra Chiman Lal Shah versus Union of India and others*, (4). In this case, there was an objection to the programme for the celebration of the 2500th anniversary of Bhagwan Mahavir's Nirvan. It was held that the celebration could not be construed to mean interference by the State in the matters of religion. Such is not the position in the present case.

(38) No other point was raised.

(39) In view of the above, we hold that :—

1. India is an instance of unity in diversity. We have an acute diversity of caste, creed, faith and religion. Of custom and usage. Of language. The dialect changes every few miles. A filmmaker has a tough job. He has to cater to the needs of all sections of the society. In such cases, a narrow and pedantic approach cannot be adopted.
2. The Constitution postulates in the Preamble that India shall be a Secular Republic. The rights as embodied in Arts. 19, 25, 26 & 29 have to be harmonized to ensure that we achieve the goal of a cohesive community. the duty to transcend religious diversities is fundamental and has to be kept in view.
3. The right of the artist to articulate, of the painter to paint according to his own perception or of the film Producer to project an event on the screen as he sees it is also recognized under the Constitution. To the same extent and in the same measure as that of a fundamentalist to his faith. While ensuring freedom of faith, we cannot kill creativity.

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4. We cannot carry religion on the palm of our hand. We cannot complain that every blow of the breeze bruises our religious susceptibilities.
 5. In the present case, we are satisfied that 'Gadar' gives no ground to the petitioner to grumble. He has no cause for complaint.

(40) Thus, we find no merit in the petition. It is, consequently dismissed in limine.

R.N.R.