Adarsh Cooperative Housing Society Ltd vs Union Of India on 16 February, 2018

Equivalent citations: AIR 2018 SUPREME COURT 1430, (2018) 3 ALL WC 2538, (2018) 2 CURCC 94, (2019) 1 ICC 616, 2018 (3) KCCR SN 329 (SC), 2019 (132) ALR SOC 27 (SC), AIRONLINE 2018 SC 2

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Bench: Sanjay Kishan Kaul, Dipak Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 129 OF 2018

Adarsh Cooperative Housing Society Ltd. …Petitioner(s)

Versus

Union of India & Ors. …Respondent(s)

JUDGMENT

Dipak Misra, CJI The petitioner, a registered society, has preferred this petition under Article 32 of the Constitution of India seeking appropriate directions for prohibiting the respondent Nos. 4 to 7 from releasing/screening/publishing feature film, namely, „Aiyaary with direct or indirect references to the petitioner society's land/building/membership, for such an action is bound to affect the Right to Life under Articles 14 and 21 of the Constitution. It is also prayed that the said respondents should be commanded to delete all those parts in the ensuing feature film which has direct or indirect references to the society in question.

2. It is contended by Mr. Sanjay R. Hegde, learned senior counsel for the petitioner, that the film, which is going to be released, has projected the society in an unacceptable manner and that is likely to have some impact on the litigations which are pending apart from affecting the reputation of the members of the society. A newspaper article has been brought on record to highlight how the script has been written and how the dialogues have the innuendos to reflect on the image of the society as well as its members. Learned senior counsel has highlighted that the members of the society have built a reputation which is very dear to their life and if the film is allowed to be released, the same shall destroy the established reputation and the posterity will remember the image projected in the film but not the real image which the members have. According to Mr. Hegde, the “reel reflection” will garner the mindset of the people rather than the “real life lived”.

3. It is not in dispute that the film „Aiyaary has already been given the requisite certificate by the Central Board of Film Certification (for short „CBFC) under the Cinematograph Act, 1952 (for brevity, „the Act) and the said Board has also taken the suggestions from the competent authorities of the Army as a measure of caution. There can be no shadow of doubt that the Censor Board can grant a certificate and in the said decision making process, it can also consult the persons who can assist it to arrive at the condign conclusion. We do not intend to name the number of authorities which have been referred to in the pleadings.

4. Learned counsel had laid emphasis on R.K. Anand v. Registrar, Delhi High Court1 and the paragraph that has been commended to us is extracted below:-

> "The impact of television and newspaper coverage on a person s reputation by creating a widespread perception of guilt regardless of any verdict in a court of law. During high publicity cases, the media are often accused of provoking an atmosphere of public hysteria akin to a lynch mob which not only makes a fair trial impossible but means that regardless of the result of the trial, in public perception the accused is already held guilty and would not be able to live the rest of their life without intense public scrutiny."

5. A passage has also been referred to from the decision in (2009) 8 SCC 106 State of Maharashtra v. Rajendra Jawanmal Gandhi2 which states thus:-

> "There is procedure established by law governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice."

6. Our attention has been drawn to a few passages from the judgment of the Bombay High Court in Mushtaq Moosa Tarain v. Government of India3. As Mr. Hegde has laid immense stress on the paragraphs from the said judgment, we think it appropriate to reproduce the same:-

> "56. The Censor Board has framed guidelines. These guidelines are framed under section 5b(2) of the cinematography act. One of the guiding factors is that visuals or words "involving defamation of an Individual or Body of Individual or contempt of court are not presented. These guidelines ensure that nothing should be permitted which amounts to interfering with the administration of justice. It is not as if the Censor Board has to be satisfied that visuals or scenes have in fact interfered with or obstructed the course of justice or have adverse effect thereon. In other words, it is not as if the matter has to be decided by the Censor Board on the touch stone of Law of Contempt. Similarly, "defamation" as contemplated by the guidelines should not be construed as committing of tort of defamation as understood in law. Broadly, these (1997) 8 SCC 386 (2005) SCC Online Bom. 385 guidelines are for the purposes of giving effect to the well settled principle that every right has a corresponding duty or obligation.

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64. In the case of Hutchison, Ex parte McMAHON, reported in (1936) ALL ENGLAND LAW REPORTS ANNOTATED (VOL. 2) 1514, the King's Bench has observed thus:-

"Proprietors of cinemas and distributors of films must realise that, if they want to produce these sensational films, they must take care in describing them not to use any language likely to bring about any derangement in the carriage of justice."

65. Grant of injunction or restraint order is not a gagging writ in the facts of this case. The Petitioner has made out a strong prima-facie case inasmuch as fair trial, which is part of Rule of Law and Administration of Justice, is an aspect which must prevail over individual's right of free speech and expression. People's right to know cannot be stretched to such an extent as would make mockery of Rule of Law. Petitioner's right to fair and impartial trial must outweigh all such previleges and expectations. The balance of convenience is definitely in favour of an injunction inasmuch as the restraint against exhibition is for limited duration and the Petitioner's right as above as well as public interest is in favour of such restraint. The Respondents have a commercial and business interest which is secondary. The loss to the Petitioner's dignity and reputation is enormous. It would be irreparable as the viewers may form an opinion about his guilt.

66. Before we conclude, we cannot but observe that this trial is one of those important trials even in terms of history and in terms of reconciliation of people. If the people have to have a belief in truth and justice as abiding values having a primacy over force and violence, it is just and necessary that justice must not merely be done but must also appear to have been done. If a society wants to do justice and thereby have peace and stability, then the stream of justice has got to be maintained clean to the extent possible. It is equally essential that the dignity of any individual, even though he may be an accused, has to be maintained as far as it could be.

Looking at it from this point of view as well, we cannot but hold that the release of the film will have a prejudicial effect on fair administration of justice as well as on the image of the accused. We, therefore, hold that the Petitioner has made out a case for the injunction that he has sought on the ground that the release of the film would constitute contempt of court and his defamation."

7. Relying on the said judgment, it is contended by Mr. Hegde that as the matter is sub-judice, the release of the movie is likely to affect the stream of justice and order of stay of the release of the movie is called for. With all the humility at his command, Mr. Hegde has relied upon the decision of the Bombay High Court which we have referred to hereinabove. We do not intend to comment on the said decision of the Bombay High Court because we are not aware whether the lis travelled to this Court or not and in any case, the principle stated therein cannot always be a guiding factor. Suffice it to say, the said case has to rest on its own facts.

8. As it seems to us, a film with regard to a particular situation does not affect the trial or the exercise of „error jurisdiction by the appellate court. The courts of law decide the lis on the basis of the materials brought on record and not on the basis of imagination as is projected in the language of the theatre or a script on the celluloid. In this regard, we may reproduce a paragraph from the order passed in Viacom 18 Media Private Limited & Ors. v. Union of India & Ors.4 which deals with the release of the film, namely, „Padmaavat . It reads as follows:-

> "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."

9. In Nachiketa Walhekar v. Central Board of Film 2018 (1) SCALE 382 Certification & Anr.5, this Court stated that a film or a drama or a novel or a book is a creation of art and that an artist has his own freedom to express himself in a manner which is not prohibited in law. The Court also stated that prohibitions should not by implication crucify the rights of expressive minds.

10. The Court noted that in human history, there have been many authors who expressed their thoughts in their own words, phrases, expressions and also created whimsical characters which no ordinary man would conceive of. Further, the Court stated that a thought provoking film should never mean that it has to be didactic or in any way puritanical, rather it can be expressive and provoking the conscious or the subconscious thoughts of the viewer and if there has to be any limitation on it, such a limitation has to be as per the prescribed law.

11. Elaborating the same, we may add that there can be multitudinous modes, manners and methods to express a concept. One may choose the mode of silence to be visually (2018) 1 SCC 778 eloquent and another may use the method of semi- melodramatic approach that will have impact. It is the individual thought and approach which cannot be curbed.

12. Mr. Hegde, learned senior counsel, has also suggested that though the freedom of speech and expression should not be curtailed, yet this Court, on certain occasions, has protected the image and reputation of the individuals by giving priority to the image of the person in society.

13. In this regard, he has drawn inspiration from Devidas Ramachandra Tuljapurkar v. State of Maharashtra & Ors.6. It is necessary to clarify here that in the said case, the question was with regard to poetic license wherein the Court observed that as far as the words "poetic license" are concerned, it can never remotely mean a license as understood in the language of law as there is no authority which gives a license to a poet; for the words of the poet come from the realm of literature. Further elaborating, the Court stated that the poet assumes his own freedom which is allowed to him by the fundamental concept of poetry and he is free to depart (2015) 6 SCC 1 from the reality;

hide ideas beyond myths which can be absolutely unrealistic or put serious ideas in satires, ifferisms, notorious repartees; take aid of analogies, metaphors, similes in his own style, compare life with sandwiches that is consumed everyday or convey 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 and cause violence to logic at his own fancy.

14. In this backdrop, the Court opined that a „poetic license can have individual features, deviate from norms, or other collective characteristics or it may have a linguistic freedom wider than what a syntax sentence would encompass. We may note with profit that the controversy travelled to this Court as the trial court had framed charges under Section 292 IPC against the appellants and the High Court had declined to interfere. This Court observed that the language employed in the poem "I met Gandhi" was prima facie obscene because of the language employed relating to Mahatma Gandhi, the father of the Nation. Though the Court quoted some stanzas of the poem, yet it thought it wise not to reproduce the said stanzas in entirety because of the words used. The Court did not adjudicate upon the entire controversy as the author of the poem had not challenged the order. The concept of obscenity was judged in the background of "contemporary community standards test" and the Court ruled that when the name of Mahatma Gandhi is alluded or used as a symbol and obscene words are used, the concept of "degree test" in addition to contemporary community standards test is invokable. The Court further elaborated by stating that the "contemporary community standards test" becomes applicable with more vigour, in a greater degree and in an accentuated manner. The Court was of the view that what can otherwise pass the contemporary community standards test would not be able to do so if the name of Mahatma Gandhi is used as a symbol or allusion or surrealistic voice to put words or to show him doing such acts which are obscene.

15. While so stating, the Court concluded by leaving it to the poet to put his defense at the trial explaining the manner and the context in which he has used the words. In this context, the Court further opined that the view of the High Court pertaining to the framing of charge under Section 292 IPC cannot be said to be flawed.

16. In our considered opinion, the reliance placed on the above-mentioned judgment by Mr. Hegde, learned senior counsel, does not render any assistance. The law laid down in the said case rests on the facts depicted therein.

17. At this juncture, we may also state that the doctrine of sub-judice may not be elevated to such an extent that some kind of reference or allusion to a member of a society would warrant the negation of the right to freedom of speech and expression which is an extremely cherished right enshrined under the Constitution. The moment the right to freedom of speech and expression is atrophied, not only the right but also the person having the right gets into a semi coma. We may hasten to add that the said right is not absolute but any restriction imposed thereon has to be extremely narrow and within reasonable parameters. In the case at hand, we are obligated to think that the grant of certificate by the CBFC, after consulting with the authorities of the Army, should dispel any apprehension of the members or the society.

18. In this context, we may appositely reflect on an eloquent passage from Kingsley International Pictures Corporation v. Regents of the University of the State of New York7 wherein Potter Stewart stated:-

> "It is contended that the State s action was justified because the motion picture attractively portrays a relationship which is contrary to the moral standards, the religious precepts, and the legal code of its citizenry. This argument misconceives what it is that the Constitution protects. Its guarantee is not confined to the expression of ideas that are conventional or shared by a majority. It protects advocacy of the opinion that adultery may sometimes be proper, no less than advocacy of socialism or the single tax. And in the realm of ideas it protects expression which is eloquent no less than that which is unconvincing."

19. The nature of the present matter compels us to recapitulate that the human history is replete with struggles to get freedom, be it physical or mental or spiritual. The creativity of a person impels him not to be tied down or chained to the established ideals or get enslaved to the past virtues and choose to walk on the trodden path. He aspires to rejoice with the new ideas and exerts himself to achieve the complete 360 U.S. 684, 688-89 (1959) fruition. That is the determination for moving from being to becoming, from existence to belonging and from ordinary assumption to sublime conception. The creative intelligence kicks his thinking process to live without a fixed target but toying with many a target.

20. We would be failing in our duty if we do not note the last plank of submission of Mr. Hegde. He would suggest that this Court may direct the producer and director of the film to add a disclaimer so that no member of the society would ultimately be affected by the film. The aforesaid submission on a first blush may seem quite attractive but on a slightly further scrutiny, if we allow ourselves to say so, has to melt into oblivion. Whether there is the necessity of "disclaimer" or not has to be decided by the Censor Board which is the statutory authority that grants the certificate. In fact, when a disclaimer is sought to be added, the principle of natural justice is also attracted. To elaborate, the producer or director is to be afforded an opportunity of hearing. The Court should not add any disclaimer for the asking. Addition of a disclaimer is a different concept altogether. It is within the domain of the authority to grant certificate and to ask the director to add a disclaimer in the beginning of the movie to avoid any kind of infraction of guidelines. Though the suggestion is made in right earnest by Mr. Sanjay Hegde, yet we are impelled not to accept the same.

21. Consequently, the writ petition, sans merit, stands dismissed.

.....CJI.

[Dipak Misra] .....J. [Sanjay Kishan Kaul] New Delhi;

February 16, 2018.