

MANOHAR LAL SHARMA

A

v.

SANJAY LEELA BHANSALI & ORS.

(Writ Petition (Criminal) No. 191 of 2017)

NOVEMBER 28, 2017

B

[DIPAK MISRA, CJI, A. M. KHANWILKAR AND  
DR. D.Y. CHANDRACHUD, JJ.]

*Constitution of India:*

*Art.32 – Writ petition (PIL) – Seeking direction of the court not to exhibit a film “Padmavati” in other countries without obtaining the requisite certificate from Central Board of Film Certification (CBFC) and further to direct CBI to register an FIR u/s.7 of Cinematograph Act r/w. ss.153A, 295, 295A, 499 and 500 IPC r/w. s 4 of Indecent Representation of Women (Prohibition) Act, 1986 – Held: The petition is liable to be dismissed – As the scrutiny of the film is pending before CBFC, the prayers made by the petitioner have no foundation – As regards registration of FIR by CBI is concerned, police has no role in respect of ss. 499 and 500 IPC – So far as other offences are concerned, no offence is made out – Thus, there is no basis to direct registration of an FIR.*

C

D

E

*Art.19(1)(a) – Freedom of Speech and Expression – No right is absolute, but the fetters for enjoying the rights should be reasonable – The court has to see what kinds of fetters are being imposed and the impact of the same – 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 required innovation, skill craftsmanship and individual originality – The creative instinct is respected and has the inherent protective right i.e. artistic licence – Artistic licence has to be put on high pedestal, but the same has to be judged objectively on case to case basis.*

F

G

*Public Interest Litigation:*

*The hunger for publicity or some other hidden motive should not propel one to file a PIL – They sully the temple of justice and*

H

A *intend to create dents in justice dispensation system – Such petition should not be filed to abuse others – The present case is abuse of Public Interest Litigation.*

*Pleadings:*

B *Constituents of pleadings – Held: When a writ petition mentions dates of events, they constitute part of the pleadings.*

*Nature of pleadings – Held: Neither laxity nor lack of sobriety in pleadings is countenanced in law – Rambling of irrelevant facts indicates uncontrolled and imprecise thinking, and on certain occasions reflects a maladroit design to state certain things which are meant to sensationalize the matter – It is the duty of the Court to take strong exception to such aspects in a pleading – The pleadings in the present case are absolutely scurrilous, vexatious and untenable in law.*

C *are meant to sensationalize the matter – It is the duty of the Court to take strong exception to such aspects in a pleading – The pleadings in the present case are absolutely scurrilous, vexatious and untenable in law.*

**Dismissing the petition, the Court**

D **HELD:** 1. Writ petitions are being filed even before the Central Board of Film Certification (CBFC), which is the statutory authority, takes a decision. This is a most unfortunate situation showing how public interest litigation can be abused. The hunger for publicity or some other hidden motive should not propel one to file such petitions. They sully the temple of justice and intend to create dents in justice dispensation system. That apart, a petition is not to be filed to abuse others. [Para 8][117-G]

F 2.1 When a matter is pending or going to be dealt with by the CBFC, no one who is holding any post of public responsibility should comment on how the application for certification is to be processed. That tantamounts to creating a sense of prejudice in the mind of the CBFC. The CBFC is expected to take decisions with utmost objectivity as per the provisions contained in the Cinematograph Act, 1952, the rules framed thereunder and the guidelines. If the Court cannot pre-judge the matter before the CBFC takes a decision, how anyone in public office can pre-judge the issue and make public utterances. [Para 9][117-H; 118-A-B]

G 2.2 The Court is governed by the basic tenets of the rule of law. When the matter is pending for grant of certification, if

responsible people in power or public offices comment on the issue of certification pending consideration before the statutory authority, that is a violation of the rule of law. All concerned shall be guided by the basic premise of the rule of law and ought not to venture into violating the same. [Para 9][118-C-D] A

3.1 The pleadings in the present petition are absolutely scurrilous, vexatious and untenable in law, and accordingly, they are struck off the record. The nature of pleadings in the present petition have the effect of potentiality that can erode the fundamental conception of pleadings in a Court of Law. Neither laxity nor lack of sobriety in pleadings is countenanced in law. The assertions in a petition cannot show carelessness throwing all sense of propriety to the winds. Rambling of irrelevant facts only indicates uncontrolled and imprecise thinking and exposes the inability of the counsel. On certain occasions, it reflects a maladroit design to state certain things which are meant to sensationalize the matter which has the roots in keen appetite for publicity. When these aspects are portrayed in a nonchalant manner in a petition, it is the duty of the Court to take strong exception to the same and deal it with iron hands. [Paras 2, 8][115-G-H; 116-A] B

3.2 When a writ petition is filed and the dates of events are mentioned, they definitely constitute a part of the pleadings. It cannot be said that they do not form part of the pleadings. Therefore, keeping in view the nature of the pleadings, the narrations made in pages B to E (marked as 'X' in the paper books) are struck off and further directed that such pleadings shall not be included anywhere in future, and shall not be mentioned anywhere else. [Para 4][116-E-F] C

4. Respondent No. 1 has submitted that for the present, the first respondent has no intention to exhibit the film in question, in certain countries having an international market, pending consideration of the application by the CBFC under the Act. Respondent No. 2, has taken strong exception to the approach of the petitioner, in making scurrilous allegations in the petition which defames the respondent. The concern expressed by the respondents are valid because the scrutiny of the film is still pending for consideration before the CBFC. D

E

F

G

H

A Succinctly put, the prayer made in the petition in this regard has no foundation and it is bound to flounder and thus, the prayer loses its foundation. [Para 6][117-C-D]

5. Prayer is for issuance of direction to respondent No. 5 – CBI to register an FIR against respondent Nos. 1 and 2 and their B team members for offence punishable under Section 7 of the Act read with Sections 153A, 295, 295A, 499 and 500 of the Penal Code read with Section 4 of the Indecent Representation of Women (Prohibition) Act, 1986. As far as Sections 499 and 500 of the IPC are concerned, police has no role. As far as the other C offences are concerned, it is unfathomable how any offence is made out. There is no basis for this Court to direct registration of an FIR and the prayer is absolutely misconceived. [Para 7][117-D-F]

6.1 A story told on celluloid or a play enacted on a stage or D 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 E that is why, the creative instinct is respected and has the inherent protective right from within which is called artistic licence. The artistic licence should be put on a high pedestal but the same has to be judged objectively on case to case basis. [Para 10][118-E-F; 119-F]

F *Devidas Ramachandra Tuljapurkar v. State of Maharashtra and others* (2015) 6 SCC 1 : [2015] 7 SCR 853; *Sudhir Kumar Saha v. Commissioner of Police and another* (1970) 1 SCC 149 : [1970] 3 SCR 360; *State of U.P. v. Lalai Singh Yadav* (1976) 4 SCC 213 : [1977] 1 SCR 616 – relied on.

G 6.2 It is settled in law that no right is absolute but the fetters for enjoying the rights should be absolutely reasonable more so when it relates to the right to freedom of speech and expression and right to liberty. The Court has to see what kinds of fetters are being imposed and the impact of the same. [Para 16][121-C]

H

Case Law Reference

A

[2015] 7 SCR 853	relied on	Para 10
[1970] 3 SCR 360	relied on	Para 12
[1977] 1 SCR 616	relied on	Para 13

CRIMINAL ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 191 of 2017.

B

Under Article 32 of the Constitution of India.

Petitioner-in-Person

C

Maninder Singh, P. S. Narasimha, ASGs, Harish N. Salve, Shyam Divan, Sr. Advs., Ms. Suman, Mahesh Agarwal, Akshay Patil, Vivek Jain, Rajesh Kumar, Ms. Aastha Mehta, E. C. Agrawala, Abhishek Malhotra, Ms. Liz Mathew, Angad Duggal, Ms. Deepa Trigunayat, Advs. for the appearing parties.

The Judgment of the Court was delivered by

D

**DIPAK MISRA, CJI** 1. The instant writ petition has been preferred under Article 32 of the Constitution of India giving it the nomenclature of public interest litigation basically with twin prayers that a film titled "Padmavati" should not be exhibited in other countries without obtaining the requisite certificate from the Central Board of Film Certification (CBFC) under the Cinematograph Act, 1952 (for brevity, 'the Act') and the Rules and guidelines framed thereunder and further to issue a writ of mandamus to the Central Bureau of Investigation (CBI), respondent No. 5 herein, to register an FIR against the respondent Nos. 1 and 2 and their team members for offence punishable under Section 7 of the Act read with Sections 153A, 295, 295A, 499 and 500 of the Indian Penal Code read with Section 4 of the Indecent Representation of Women (Prohibition) Act, 1986 and to investigate and prosecute them in accordance with law.

E

2. It needs to be stated at the outset that the reliefs sought are not only extremely ambitious but also the nature of pleadings in the petition have the effect of potentiality that can erode the fundamental conception of pleadings in a Court of Law. It needs to be stated that neither laxity nor lack of sobriety in pleadings is countenanced in law. The assertions in a petition cannot show carelessness throwing all sense of propriety to the winds. Rambling of irrelevant facts only indicates uncontrolled and imprecise thinking and exposes the inability of the counsel. On certain occasions, it reflects a maladroit design to state certain things which are

F

G

H

A meant to sensationalize the matter which has the roots in keen appetite for publicity. When these aspects are portrayed in a nonchalant manner in a petition, it is the duty of the Court to take strong exception to the same and deal it with iron hands.

3. We have heard Mr. Manohar Lal Sharma, petitioner-in-person,

B Mr. Harish N. Salve, learned senior counsel assisted by Mr. Mahesh Agarwal, learned counsel, appearing for the respondent no. 1, and Mr. Shyam Divan, learned senior counsel for the respondent no. 2. We have also taken assistance of Mr. Maninder Singh and Mr. P.S. Narasimha, learned Additional Solicitor General for the Union of India.

C 4. Having stated so, we may now turn to the controversy. When the matter was called, Mr. Salve, learned senior counsel, who has entered appearance for the respondent No. 1, drew our attention to the dates of events as contained in pages B to E of the petition. Be it noted, a similar matter was filed in a different manner by the same petitioner, forming the subject matter of Writ Petition (Criminal) No. 186/2017 wherein this

D Court has directed that such pleadings are unwarranted. Resultantly, in that case, a substantial portion of the pleadings was struck off. Despite this, the same have been reiterated in the present petition. Mr. Manohar Lal Sharma, petitioner-in-person, would submit that they are not a part of the pleadings. We are absolutely shocked by such an approach and

E submission. When a writ petition is filed and the dates of events are mentioned, they definitely constitute a part of the pleadings. It cannot be said that they do not form part of the pleadings. This contention is absolutely untenable. Therefore, keeping in view the nature of the pleadings, we strike off the narrations made in pages B to E (marked as 'X' in the paper book), and further direct that such pleadings shall not be

F included anywhere in future, and shall not be mentioned anywhere else.

G 5. On the last occasion, while dealing with the writ petition filed by the petitioner, we had clearly stated that when the grant of certificate is pending before the CBFC, any kind of comment or adjudication by this Court would be pre-judging the matter. We may fruitfully reproduce a passage from the order dated 20.11.2017 passed in Writ Petition (Criminal) No. 186/2017:-

“In the course of hearing, we have been apprised that the film in question, i.e., ‘Padmavati’ has not yet received the Certificate from the Central Board of Film Certification.

In view of the aforesaid, our interference in the writ petition will A tantamount to pre-judging the matter which we are not inclined to do. The writ petition is accordingly disposed of."

6. What is submitted by Mr. Manohar Lal Sharma at this juncture is that the first respondent is planning to exhibit the film in question in certain countries which have an international market. Mr. Salve has submitted that for the present, the first respondent has no intention to do any such thing, pending consideration of the application by the CBFC under the Act. Mr. Divan, learned senior counsel appearing for the respondent No. 2, has taken strong exception to the approach of the petitioner, in making scurrilous allegations in the petition which defames the respondent. We appreciate the concern expressed by the learned counsel for the respondents because the scrutiny of the film is still pending for consideration before the CBFC. Succinctly put, the prayer made in the petition in this regard has no foundation and it is bound to flounder and we so hold. Thus, the prayer loses its foundation.

7. The controversy does not end there. As stated earlier, the further prayer is for issuance of direction to the respondent no. 5 – CBI to register an FIR against respondent Nos. 1 and 2 and their team members for offence punishable under Section 7 of the Act read with Sections 153A, 295, 295A, 499 and 500 of the Indian Penal Code read with Section 4 of the Indecent Representation of Women (Prohibition) Act, 1986. As far as Sections 499 and 500 of the IPC is concerned, police has no role. As far as the other offences are concerned, it is unfathomable how any offence is made out. There is no basis for this Court to direct registration of an FIR and we have no hesitation in stating that the prayer is absolutely misconceived.

8. At this stage, we are obligated to state that writ petitions are being filed even before the CBFC, which is the statutory authority, takes a decision. This is a most unfortunate situation showing how public interest litigation can be abused. The hunger for publicity or some other hidden motive should not propel one to file such petitions. They sully the temple of justice and intend to create dents in justice dispensation system. That apart, a petition is not to be filed to abuse others. The pleadings, as we have stated earlier, are absolutely scurrilous, vexatious and untenable in law, and we, accordingly, strike them off the record.

9. We must say in quite promptitude that when a matter is pending or going to be dealt with by the CBFC, no one who is holding any post of H

- A public responsibility should comment on how the application for certification is to be processed. That tantamounts to creating a sense of prejudice in the mind of the CBFC. The CBFC is expected to take decisions with utmost objectivity as per the provisions contained in the Act, the rules framed thereunder and the guidelines. If the Court cannot pre-judge the matter before the CBFC takes a decision, we fail to comprehend how anyone in public office can pre-judge the issue and make public utterances. They are not supposed to do so, and this position in law is accepted and acceded to by Mr. Maninder Singh and Mr. P.S. Narasimha, learned Additional Solicitors General, whose assistance we have sought. It should be borne in mind that we are governed by the basic tenets of the rule of law. When the matter is pending for grant of certification, if responsible people in power or public offices comment on the issue of certification pending consideration before the statutory authority, that is a violation of the rule of law. All concerned shall be guided by the basic premise of the rule of law and ought not to venture into violating the same. We say nothing more and nothing less, for the present.

- 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 and others*<sup>1</sup>:-

- G “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.

11. In a Grammar of Politics, Harold J. Laski has stated:

“... My freedoms are avenues of choice through which I may, as I deem fit, construct for myself my own course of conduct. And the freedoms I must possess to enjoy a general liberty are those which, in their sum, will constitute the path through which my best self is capable of attainment. That is not to say it will be attained. It is to say only that I alone can make that best self, and that without those freedoms I have not the means of manufacture at my disposal.”

A

B

C

D

E

F

G

H

A 12. In *Sudhir Kumar Saha v. Commissioner of Police and another*<sup>2</sup>, the Court has observed:-

“The freedom of the individual is of utmost importance in any civilized society. It is a human right. Under our Constitution it is a guaranteed right. It can be deprived of only by due process of law. The power to detain is an exceptional power to be used under exceptional circumstances.”

B 13. In *State of U.P. v. Lalai Singh Yadav*<sup>3</sup>, Krishna Iyer, J opined:-

C “Rights and responsibilities are a complex system and the framers of our Constitution, aware of the grammar of anarchy, wrote down reasonable restrictions on libertarian exercise of freedoms.”

D 14. Recently, in *Nachiketa Walhekar v. Central Board of Film Certification & Anr*<sup>4</sup>, the Court has held:-

E “The thrust of the matter is whether this Court should entertain the writ petition and pass an order of injunction directing the CBFC to delete the clip and further not to get the movie released in theaters on 17<sup>th</sup> November, 2017. It is worthy to mention that freedom of speech and expression is sacrosanct and the said right should not be ordinarily interfered with. That apart, when the respondent No.1, CBFC, has granted the certificate and only something with regard to the petitioner, which was shown in the media, is being reflected in the film, this Court should restrain itself in not entertaining the writ petition or granting injunction.”

F And again:-

G “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

<sup>2</sup>(1970) 1 SCC 149

<sup>3</sup>(1976) 4 SCC 213

<sup>4</sup>W.P. (C) No. 1119 of 2017

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.”

15. When we say so, we are also reminded of the line spoken by Benjamin Cardozo<sup>5</sup>.which is to the following effect:-

“Complete freedom – unfettered and undirected – there never is.”

16. It is settled in law that no right is absolute but the fetters for enjoying the rights should be absolutely reasonable more so when it relates to the right to freedom of speech and expression and right to liberty. The Court has to see what kinds of fetters are being imposed and the impact of the same.

17. Ordinarily, we would have imposed costs. As the petitioner-in-person is a practising counsel in this Court, we refrain from doing so. However, we caution him to be careful in future.

18. In view of the aforesaid analysis, the writ petition is dismissed with no order as to costs.

Kalpana K. Tripathy

Petition dismissed.

<sup>5</sup>CARDOZO, Benjamin N., *The Growth of the Law* (New Haven: Yale University Press, 1924), p.61