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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 1188/2009 & CRL.M.A. 9918/2009**

RAKEYSH OMPRAKASH MEHRA & ANR. Petitioners

Through: Ms. Indu Malhotra, Senior Advocate
with Mr. Madhukar Pandey,
Mr. Vivek Jain & Mr. Anirudh
Mishra, Advocates.

versus

GOVT OF NCT OF DELHI & ANR. Respondents

Through: Mr. Dayan Krishnan, ASC with
Ms. Manvi Priya and Ms. Tejaswi
Shety, Advocates and ACP Ved
Prakash, DSF, New Delhi for
R-1/State.
Dr. Chaudhary Shamshuddin Khan,
Advocate for R-2.

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Reserved on: 27th November, 2012

Date of Decision: 2nd January, 2013

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

1. Present writ petition has been filed under Article 226 of the Constitution read with Section 482 Cr.P.C. seeking quashing of FIR No.40/2009 dated 07th March, 2009 registered with Police Station Mandir Marg, New Delhi under Section 3(1)(x) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with Section 7(d) of The Protection of Civil Rights Act, 1955.

2. The relevant facts of the present case are that the petitioners produced and directed the Hindi motion picture titled “Delhi-6” (hereinafter referred to as “the film”). The film was viewed and cleared by the Central Board of Film Certification (in short “CBFC”), Ministry of Information and Broadcasting with a ‘U/A’ Certificate bearing CBFC No. C-II/2/17/09 dated 09th February, 2009.

3. Upon commercial release of the film on 20th February, 2009 the aforesaid FIR was registered on 07th March, 2009 by respondent No.2-complainant. It was alleged in the complaint that for the last five/six days, the aforesaid film had been shown in Delhi cinema halls in which the character enacting the role of a lady sweeper had been insulted and thereby the entire Balmiki Samaj had been insulted. The FIR lodged by respondent No.2-complainant is reproduced hereinbelow:-

“Copy of report No.17A, dated 01.03.09 P.S. Mandir Marg, New Delhi, Shri Jai Kishan S/o Shri Shankar Lal R/o Rajpal, Near Sultanpuri Age 50 years, MLA Sultanpur Mazra, time of information 6.25 O Clock evening, reported that at this time Shri Jai Kishan MLA Sultanpur Mazra along with Dr. O.P. Shukla S/o Lt. Shri Banwari Lal R/o AG-4, Peswa Road Apartment, Gole Market, New Delhi, Pandit Durga Prasad S/o Chaudhary Kude Pahalwan R/o 29, Bhairon Road, Minto Road, New Delhi and Suka Pradhan R/o 1916/11, Chuna Mandi, Pahar Ganj, Shri Kishan Lal Ghilode, S/o Sh. Ghasi Ram R/o 4521, UEA Karol Bagh, New Delhi, Ram Lal, Laxman Balmiki, S/o Late Shri Shyam Lal R/o Gali no. 51 Sector 8, Rohini, New Delhi, Pradeep Bangali, S/o Kartar Singh, R/o 1887, Gurdwara Road, Chuna Mandi Paharganj, New Delhi, Sunil Balmiki S/o Late Shri Pyare Lal, R/o Balmiki Basti Mandir Marg, New Delhi got a complaint filed that since last 5-6 days, a film by the name of Delhi 6 is being shown in the Delhi Cinema Halls in which the character enacting role of lady sweeper is being insulted and Balmiki Samaj is insulted thereby. Not only this,

the lady sweeper who is called again and again “Bhangan” is beaten by the character enacting the role of Police and she is referred to as “Saali” and she is hit on the front part with stick, whereas calling Bhangi is an legal offence, even two small children are shown saying that “Jalebi (who is enacting the role of Bhangan) make us Mard. We have information that you make Mard. At one place police people tell Jalebi that “our thanedar is calling you”. When she declines then one Head Constable is seen hitting her with stick. In the meantime, character playing the role of Thanedar comes and says “Saali Bhangan” I will show you how you will not come and hits her on the leg with the sticks. On this the character Jalebi says that Saale when you open string in the night then you do not see that I am a Bhangan. Harami Lehange Ke Pissu, you do not feel shame in hitting a women and she is beaten away. In one scene she is stopped from entering the temple and she said by a character that “we do not want to go to hell” and she is stopped. In one scene it is shown that when Abhishek Bachhan touches that woman, then his grandmother says that “you have become un-pious and today I will get you bathed. She washes Abhishek Bachhan’s hand with gobar and puts on Sandal (Chandan) and perform his Sudhikaran. Please take legal action against Director of the movie and those responsible for passing the film and against Vijay Ram, Pawan Malhotra, Devander, Prem Chopra, Wahida Rahman, Director Rakesh Om Prakash Mehra, UTI Company and other and against Censor Board Chairman Sharmila Tagore as their acts are not only illegal but also unconstitutional.....”

4. Upon the present writ petition being filed, this Court on 27th August, 2009 stayed further investigation in the aforesaid FIR.

PETITIONERS' SUBMISSIONS

5. Ms. Indu Malhotra, learned senior counsel for petitioners submitted that CBFC was the statutory authority for the purpose of sanctioning films for public exhibition, constituted under Section 3 of The Cinematograph

Act, 1952 (hereinafter referred to as 'The Cinematograph Act'). She stated that The Cinematograph Act provided for a detailed examination of the films, right to take assistance of the Advisory Board and the Guidelines for certification of films. According to her, Sections 5A and 5B of The Cinematograph Act provided the guidelines for certifying the film to be fit for being viewed by the public. She stated that after the film was duly certified vide Certificate dated 09th February, 2009, without any objections and cuts, by the CBFC, the film was released.

6. She pointed out that the petitioner No.1, Rakeysh Omprakash Mehra, had even attended a meeting on 05th March, 2009 in New Delhi with key representatives of the National Commission for Scheduled Castes and Scheduled Tribes, the Ministry of Information and Broadcasting and the CBFC, in which the film was screened. According to her, after the screening, the representatives had appreciated the petitioners for portraying the social evils prevalent in society, including the caste system, and also for affirming the message that there is unity in Indian society despite diversity in the form of caste, religion etc.

7. Ms. Indu Malhotra contended that the film conveyed a strong message to the public at large and was not intended to hurt the sentiments of any section or society at large. She stated that the petitioners ensured that the film used no derogatory language and the film portrayed the social evils that existed in our society today especially with reference to the Scheduled Castes and Scheduled Tribes. According to her, the film sent a powerful message that these practices must be curbed in present times when all men and women are equal and this message was very apparent from the ultimate relationship that develops between Jalebi (the Scheduled Castes character in

the movie) and Gobar (the Brahmin Character in the movie).

8. She submitted that the impugned FIR had been lodged by Mr. Jai Prakash, MLA Sultanpur Majra (hereinafter referred to as “the respondent no.2-complainant”) only to gain cheap popularity and thus the FIR had been filed out of malice and had been instituted with an ulterior motive for wreaking vengeance on the petitioners, who were attempting to create awareness about the condition of the Scheduled Castes community.

9. She submitted that there was no specific accusation against any of the accused in the complaint and an omnibus statement that all the accused persons uttered allegedly humiliating words was not sufficient. Section 3 of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 being a penal provision had to be given a strict interpretation. She repeatedly emphasised that there was no averment in the complaint to attract the ingredients of Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 7(d) of the Protection of Civil Rights Act, 1955 as against petitioners.

10. In support of her submissions, Ms. Indu Malhotra, learned senior counsel relied upon the following judgments of the Supreme Court and Madras High Court:-

A. *Bobby Art International & Ors. Vs. Om Pal Singh Hoon & Ors. (1996)4 SCC 1* wherein the Supreme Court held as under:

“20. In The State of Bihar v. Shailabala Devi Mahajan, J. said that a writing had to be considered as a whole and in a fair and free and liberal spirit, not dwelling too much upon isolated passages or upon a strong word here and there, and an endeavour had to be made to gather the general effect which the whole composition would have on the mind of the public.....”

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22. They require the authorities concerned with film certification to be responsive to the values and standards of society and take note of social change. They are required to ensure that artistic expression and creative freedom are not unduly curbed". The film must be "judged in its entirety from the point of view of its overall impact".....

23. Where the theme is of social relevance, it must be allowed to prevail. Such a theme does not offend human sensibilities nor extol the degradation or denigration of women. It is to this end that Sub-clause (ix) of Clause 2 permits scenes of sexual violence against women, reduced to a minimum and without details, if relevant to the theme. What that minimum and lack of details should be is left to the good sense of the certification authorities, to be determined in the light of the relevance of the social theme of the film.

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29. Too much need not, we think, be made of a few swear words the like of which can be heard every day in every city, town and village street. No adult would be tempted to use them because they are used in this film.

30. In sum, we should recognise the message of a serious film and apply this test to the individual scenes thereof : do they advance the message ? If they do they should be left alone, with only the caution of an 'A' certificate, Adult Indian citizens as a whole may be relied upon to comprehend intelligently the message and react to it, not to the possible titillation of some particular scene.

31. A film that illustrates the consequences of a social evil necessarily must show that social evil. The guidelines must be interpreted in that light. No film that extols the social evil or encourages it is permissible, but a film that carries the message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil. At the same time, the

depiction must be just sufficient for the purpose of the film. The drawing of the line is best left to the sensibilities of the expert Tribunal. The Tribunal is a multi-member body. It is comprised of persons who gauge public reactions to films and, except in cases of stark breach of guidelines, should be permitted to go about its task.

B. Director General, Directorate General of Doordarshan & Ors. Vs. Anand Patwardhan & Anr., (2006) 8 SCC 433, wherein the Supreme Court held as under:-

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“35. This film so far as our opinion goes does not violate any constitutional provision nor will create any law and order problems as Doordarshan fears. This movie falls well within the limits prescribed by our Constitution and does not appeal to the prurient interests in an average person, applying contemporary community standards while taking the work as a whole, the work is not patently offensive and does not proceed to deprave and corrupt any average Indian citizen’s mind.

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38. Hence, in our view, the correct approach to be taken here is to look at the documentary film as a whole and not in bits, as any message that is purported to be conveyed by way of a film cannot be conveyed just by watching certain bits of the film. In the present situation the documentary film is seeking to portray certain evils prevalent in our society and is not seeking to cater to the prurient interests in any person. Therefore, we have no hesitation in saying that this documentary film if judged in its entirety has a theme and message to convey and the view taken by the appellants that the film is not suitable for telecast is erroneous.

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40. *It was held in Bobby Art International v. Om Pal Singh Hoon and K.A. Abbas that a film was required to be viewed as a whole, and in the context of the message that the filmmaker desired to communicate.*

41. *In this film too, scenes must be seen in the context of the message of exploitation of women through insecurities created in men and the film must be evaluated in its entirety."*

C. T. Kannan Vs. Liberty Creations Ltd., rep. by its Producer cum Director Gnanarajasekaran & Ors., W.P.(C) No.8780/2007 decided on 24th March, 2007, wherein the Madras High Court held as under:-

"1. The petitioner has filed this writ petition in public interest, for a mandamus directing the first respondent to delete the song, "Bhagwan Oru Naal Aagyam Padaichar featuring in the Tamil film "PERRIYAR" before releasing the film and for a further direction to the fifth respondent/Censor Board to re-consider the censor certificate issued to the said film.

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3. *The petitioner takes exception to the son "Bhagwan Oru Naal Aagayam Padichar....."featuring in the film "PERRIYAR" on the ground that it contains vulgar criticism of Goddess Sita. The petitioner has alleged that the song comments on her chastity and modesty and ridicules the mythological characters of Lord Rama and Goddess Sita. According to him Lord Rama and Goddess Sita are worshipped by millions of Hindus not only in India, but also around the world. Further according to him the Hindu way of life is mainly based on the epic, "Ramayana", and each and every event and character of "Ramayana" is holistic to Hindus.*

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13. *Applying the basic principles laid down in the cases referred to above, we are of the view that the Censor Board, which is a multi-member body and is comprised of persons who gauge public reactions to films and, except in cases of stark breach of guidelines, should be permitted to go about its task. The Censor Board has viewed the film in question in its true perspective and had, in compliance with the requirements of the guidelines, granted the Certificate to the film.....”*

RESPONDENT NO. 2-COMPLAINANT'S SUBMISSIONS

11. On the other hand, Dr. Chaudhary Shamshuddin Khan, learned counsel for respondent No.2-complainant submitted that the present petition was liable to be dismissed at this stage on the sole ground that an FIR under investigation could not be quashed. In support of his submissions, he relied upon the following judgments:

A. ***James Sebastian & Anr. vs. State of Assam & Anr., 2008 Crl.L.J. 3634***, wherein the Gauhati High Court held as under:-

“48. Whether the allegations made in the ‘complaint’, in question, which has already been registered as FIR are true or not are questions, which can be determined only by way of investigation and not otherwise. In such circumstances, the ‘complaint’ in question, cannot be quashed. See State of Haryana and others v. Bhajanlal and others, reported in 1992 Supp (1) SCC 335: (1992 Crl.LJ 527) and R.P. Kapoor v. State of Punjab, AIR 1960 SC 866 : (1960 Crl LJ 1239). Quashing of a ‘complaint’ or FIR is possible only in rarest of rare cases and the present one is not one of such cases. (See State of Bihar and another v. Mohd. Khalique and another, reported in (2002) (1) SCC 652 : 2002 Crl LJ 553.”

B. **Rajiv Kumar Sadh & Ors. vs. Govt. of NCT Delhi & Anr., 89 (2001)**
DLT 419, wherein this Court held as under:-

*"5. After the accused summoned, he is entitled to place before the Court relevant material and pray that the process ought not to have been issued; the Court is entitled to drop the proceedings if on re-consideration of the complaint and the material he finds that no case is made out for which the accused is to be tried. The order of issuing process is interim order and is not a judgment. It can be varied and recalled at any stage. Reference in this regard can be made to the law laid down by the Supreme Court in **K.M. Mathew v. State of Kerala**, AIR 1992 SC 2207=I(1992) CCR 316 SC wherein it was held:*

"It is open to the accused be plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. No specific provision is required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint or the very fact of it does not disclose any offence against the accused."

6. The apprehension of the petitioner is misplaced; firstly, there is nothing on the record to presume that the investigating officer, who is public servant acting in discharge of duties would not act fairly or would not take into consideration earlier settlement between the parties, or the earlier report of Crime Branch on the complaint of the respondent No. 2 particularly after the orders of the Court in Cr. Misc. (M) No. 106/97. Secondly, the trial court is not bound to accept the report and is required under the law to find out independently whether there is sufficient material to proceed in the matter or not. Lastly if the petitioners are summoned and they are not satisfied they

would be well within their right to approach the trial court for recalling the order; they have already been granted anticipatory bail, therefore, is no question of harassment. The petition at this stage is not maintainable.”

12. According to Dr. Chaudhary, the scenes and expressions mentioned in the FIR clearly showed that the film depicted social evils like '*sudhikaran*'. Consequently, according to him, the ingredients of offences under Section 3(1)(x) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with Section 7(d) of the Prevention of Civil Rights Act, 1955 stood satisfied. He also stated that as the lady sweeper was referred to as '*Bhangan*', it amounted to preaching and practicing untouchability within the meaning of Section 7 of Prevention of Civil Rights Act, 1955.

13. Since Dr. Chaudhary, learned counsel for respondent No.2-complainant laid considerable emphasis on the aforesaid Sections, the same are reproduced hereinbelow:-

A) Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

“3. Punishments for offences of atrocities.—(1)Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

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(x) Intentionally insults or intimidates with intent to humiliate a member of a Schedule Caste or Scheduled Tribe in any place within public view.”

B) **Section 7(d) of the Protection of Civil Rights Act, 1955**

“7. Punishment for other offences arising out of “untouchability”—(1) Whoever—

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(d) *insults or attempts to insult, on the ground of “untouchability”, a member of a Scheduled Caste.*
[shall be punishable with imprisonment for a term of not less than one month and not more than six months, and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees]

14. Mr. Chaudhary, learned counsel for respondent No.2-complainant reiterated that the petitioners by depicting social evils like the caste system had subjected the members of the Scheduled Castes and Scheduled Tribes to indignity, humiliation and harassment all over Delhi and had acted against the objects and reasons of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 whose purpose was to improve the socio-economic conditions of Scheduled Castes and Scheduled Tribes community. According to him, the acts of the petitioners had intentionally hurt the self respect and honour of women belonging to Scheduled Castes and Scheduled Tribes which was in violation of the Statement of Objects and Reasons of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989.

15. Accordingly, he submitted that in the present case the impugned FIR could not be quashed. In this connection, he also relied upon the following judgments:-

A. ***Bidyut Saha v. State of W.B., 2003 Crl.L.J. 2678***, wherein the Calcutta High Court held as under:-

“7. I find some materials are there against the present petitioner to justify further proceeding in the matter against him. The prosecution should be given an opportunity to prove its case by adducing evidence during trial. In my considered view it will not be proper for this Court to quash the proceeding against the petitioner of this initial stage only on the grounds as agitated by the petitioner in the present application.”

B. ***Rosamma Thomas & Anr. v. Circle Inspector of Police, Tripunithura & Ors., 1999 Crl.L.J. 1666***, wherein the Kerala High Court held as under:-

“10. Likewise in the north eastern States people professing Christianity in certain regions are included in the list of scheduled tribes in the list published under Article 342 of the Constitution with respect to those States. These facts clearly establish that the status of scheduled tribes is conferred upon the people not on the basis of the religion they profess but on the basis of the community to which they belong and the region they are inhabiting.

11. The Government of India has recognised the fact that scheduled tribes are not scheduled on the basis of the religion they profess and when a person belonging to a tribe, notified as scheduled tribe changes his religion will not deprive the privileges and facilities extended to him as a member of the scheduled tribe and G.O.Ms. 624/ Revenue dated 19-7-1962 is issued to that effect. Accordingly, the Government of Kerala by notification has ordered that the members of scheduled tribes even after conversion to some other religion will continue to enjoy the benefits admissible to scheduled tribes. These facts clearly go to show that the status of scheduled tribe is not conferred on the basis of the religion they profess and change of religion by members of scheduled tribes unlike in the case of

the members of a scheduled caste will not deprive their status as the members of a scheduled tribe. It also follows that the descendants of a scheduled tribe converted to some other religion also will be entitled to the status of scheduled tribe. Therefore, the fact that the third respondent is a Christian and a descendant of a member of a scheduled tribe, Mala Araya who had converted to Christianity will not deprive his status as a member of scheduled tribe, Mala Araya in this case. Hence, the contention of the petitioners that the third respondent, being a convert to Christianity which does not recognise the caste system, is not a member of scheduled tribe and as such the provisions of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act are not applicable to him, is not sustainable.

12. The petitioners have contended that the allegation made by the third respondent in the F.I. statement copy of which is marked as Annexure C to this petition that no ingredients of the offence punishable under S. 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act disclosed is not sustainable. Under S. 3(1)(x) of the Act if a person not being a member of a scheduled caste or a scheduled tribe intentionally insults or intimidates with intent to humiliate a member of a scheduled caste or a scheduled tribe in any place within public view is liable for punishment provided under that clause. It is clear from Annexure C, F.I. statement that the third respondent has alleged that the petitioners used to abuse him and call his tribe name Mala Arayan audible to others and on 11-3-1995 by about 6 p.m. while he was returning from his work the first petitioner called (Vernacular matter omitted Ed.) which is heard by the neighbours mentioned in the F.I. statement. Therefore, the allegations made in Annexure C, F.I. statement are sufficient, prima facie to constitute an offence punishable under S. 3(1)(x) of the Act. The question whether the petitioners are guilty of the offence is a matter to be decided by the trial Court after adducing evidence and that fact cannot be considered by this Court in the above petition filed under Section 482 of the Code of Criminal Procedure.”

PETITIONERS' REJOINDER

16. In rejoinder, Ms. Indu Malhotra, learned senior counsel pointed out that the film had been awarded The Nargis Dutt Award for best feature film on national integration at the 57th National Film Awards held in the year 2009. She pointed out that though the jury for the award was appointed by the Directorate of Film Festivals in India, yet neither the Government nor the Directorate had influence over which films were selected for consideration and which films ultimately won the awards.

ARTICLE 19(1)(A) OF THE CONSTITUTION GUARANTEES NOT ONLY FREEDOM OF SPEECH BUT ALSO FREEDOM AFTER SPEECH

17. Having heard the learned counsel for parties, this Court would like to emphasise that the Constitution of India guarantees every citizen the right to freedom of speech and expression. In fact, a film is an expression of an idea which is protected by Article 19(1)(a) of the Constitution of India. Article 19(2) sets out the heads under which restrictions can be imposed under this right. Articles 19(1)(a) and 19(2) of the Constitution of India read as under:-

“19. Protection of certain rights regarding freedom of speech, etc.—(1) All citizens shall have the right—

(a) to freedom of speech and expression;

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(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [the sovereignty and integrity of India,] the security of the State, friendly relations with Foreign States,

public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.]”

18. India is also a party to the International Covenant on Civil and Political Rights and, therefore, bound to respect the right to freedom of expression. The relevant portion of the International Covenant on Civil and Political Rights is reproduced hereinbelow:-

“Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.....”

19. Even Article 10 of the European Convention of Human Rights and Fundamental Freedom states as under:-

"ARTICLE 10

Freedom of Expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises..

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the

prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

20. At first blush, it may appear that Article 19(2) and second paragraph of Article 10 virtually take away the right guaranteed by Article 19(1)(a) and the first paragraph of Article 10. However, the Supreme Court in **S. Rangarajan Vs. P. Jagjivan Ram & Ors., (1989) 2 SCC 574** quoted with approval the following passage from the judgment of the European Court in **Handyside v. United Kingdom, 1976 EHRR 737** wherein it was held as under:-

"The court's supervisory functions oblige it to pay the utmost attention to the principles characterizing a 'democratic society'. Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to Article 10(2), it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. This means, amongst other things that every 'formality', 'condition', 'restriction' or 'penalty' imposed in this sphere must be proportionate to the legitimate aim pursued.

21. Our written Constitution guarantees not only freedom of speech but also freedom after speech. Mario Cuomo, former Governor of New York while speaking about press freedom in conjunction with the First Amendment stated that Founding Fathers despite knowing the dangers of a

free press, had chosen to gamble on liberty. According to Mario, the said gamble had in the long run made the society "rich and happy". [See Article titled '*Media under siege: Do journalists need regulators?*' published in *The Indian Advocate*, Volume XXXVII, 2010-2011]

22. The Supreme Court in ***S. Rangarajan*** (*supra*) also laid emphasis on a purposive, wide and expansive interpretation to be placed on Article 19(1)(a) of the Constitution. In the said judgment, it observed as under:-

“53. We end here as we began on this topic. Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself. ”

23. Recently, the Supreme Court in ***S. Khushboo vs. Kanniammal & Anr. (2010) 5 SCC 600*** highlighted the approach to be adopted by courts while interpreting Article 19(1)(a) vis a vis Article 19(2) of the Constitution of India. The Supreme Court in ***S. Khushboo*** (*supra*) observed as under:-

“ 44. The threshold for placing reasonable restrictions on the freedom of speech and expression" is indeed a very high one and there should be a presumption in favour of the accused in such cases.....

45. Even though the constitutional freedom of speech and expression is not absolute and can be subjected to reasonable restrictions on grounds such as "decency and morality" among others, we must lay stress on the need to tolerate unpopular

views in the sociocultural space. The Framers of our Constitution recognized the importance of safeguarding this right since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a precondition for meaningful governance in the political sense, we must also promote a culture of open dialogue when it comes to societal attitudes.”

24. In the opinion of this Court, freedom of expression is of inestimable value in a democratic society based on the rule of law. While it is true that many competing values like right to reputation, national integrity, sovereignty, decency and morality are equally important but as Charles Bradlaugh, famously observed: “*Better a thousandfold abuse of free speech than denial of free speech. The abuse dies in a day, but the denial slays the life of the people and entombs the hopes of the race.*”[See Article titled ‘Freedom of Expression and the Indian Constitution’ published in *Constitutional Perspectives - Essays in Honour and Memory of H.M. Seervai*.]

THOUGH CENSORSHIP OF FILMS CONSTITUTING PRIOR RESTRAINT IS JUSTIFIED UNDER THE INDIAN CONSTITUTION, YET THE CENSORS HAVE TO MAKE A SUBSTANTIAL ALLOWANCE IN FAVOUR OF FREEDOM, THEREBY LEAVING A VAST AREA FOR CREATIVE ART TO INTERPRET LIFE

25. In ***K.A. Abbas Vs. The Union of India & Anr., 1970 (2) SCC 780***, the Supreme Court after holding that the censorship of films constituting prior restraint was justified under the Indian Constitution held that the censors have to make a substantial allowance in favour of freedom, thereby leaving a vast area for creative art. The relevant observations of the Supreme Court in the aforesaid judgment are as under:-

“49. We may now illustrate our meaning how even the items mentioned in the directions may figure in films subject either to their artistic merit or their social value over-weighing their offending character. The task of the censor is extremely delicate and his duties cannot be the subject of an exhaustive set of commands established by prior ratiocination. But direction is necessary to him so that he does not sweep within the terms of the directions vast areas of thought, speech and expression of artistic quality and social purpose and interest. Our standards must be so framed that we are not reduced to a level where the protection of the least capable and the most depraved amongst us determines what the morally healthy cannot view or read. The standards that we set for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good, We must not look upon such human relationships as banned in toto and forever from human thought and must give scope for talent to put them before society. The requirements of art and literature include within themselves a comprehensive view of social life and not only in its ideal form and the line is to be drawn where the average moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value. If the depraved begins to see in these things more than what an average person would, in much the same way, as it is wrongly said, a Frenchman sees a woman's legs in everything, it cannot be helped. In our scheme of things ideas having redeeming social or artistic value must also have importance and protection for their growth. Sex and obscenity are not always synonymous and it is wrong to classify sex as essentially obscene or even indecent or immoral. It should be our concern, however, to prevent the use of sex designed to play a commercial role by making its own appeal. This draws in the censors scissors. Thus audiences in India can be expected to view with equanimity the story of Oedipus son of Latius who committed patricide and incest with his mother. When the seer Tiresias exposed him, his sister Jocasta committed suicide by hanging herself and Oedipus put out his own eyes. No one after

viewing these episodes would think that patricide or incest with one's own mother is permissible or suicide in such circumstances or tearing out one's own eyes is a natural consequence. And yet if one goes by the letter of the directions the film cannot be shown. Similarly, scenes depicting leprosy as a theme in a story or in a documentary are not necessarily outside the protection. If that were so Verrier Elwyn's Phulmat of the Hills or the same episode in Henryson's Testament of Cresseid (from where Verrier Elwyn borrowed the idea) would never see the light of the day. Again carnage and bloodshed may have historical value and the depiction of such scenes as the sack of Delhi by Nadirshah may be permissible, if handled delicately and as part of an artistic portrayal of the confrontation with Mohammad Shah Rangila. If Nadir Shah made golgothas of skulls, must we leave them out of the story because people must be made to view a historical theme without true history? Rape in all its nakedness may be objectionable but Voltaire's Candide would be meaningless without Cunegonde's episode with the soldier and the story of Lucrece could never be depicted on the screen.

50. Therefore it is not the elements of rape, leprosy, sexual immorality which should attract the censor's scissors but how the theme is handled by the producer. It must, however, be remembered that the cinematograph is a powerful medium and its appeal is different. The horrors of war as depicted in the famous etchings of Goya do not horrify one so much as the same scenes rendered in colour and with sound and movement, would do. We may view a documentary on the erotic tableaux from our ancient temples with equanimity or read the Kamasutra but a documentary from them as a practical sexual guide would be abhorrent."

RESPONDENT NO. 2-COMPLAINANT'S SUBMISSION THAT AN FIR UNDER INVESTIGATION CANNOT BE QUASHED IS UNTENABLE IN LAW

26. The respondent no. 2-complainant's submission that an FIR under investigation cannot be quashed is untenable in law. In ***State of Haryana &***

Ors. vs. Bhajan Lal & Ors., AIR 1992 SC 604, the Supreme Court has held as under:-

“108. In the backdrop of the interpretation of the various relevant provisions off the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

- 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- 4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- 5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no*

prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

27. Undoubtedly, the power vested in this Court to quash FIRs under Articles 226 and 227 of the Constitution of India and Section 482 Cr.P.C. is to be used sparingly and for rare and compelling circumstances as mentioned in ***Bhajan Lal & Ors.*** (supra), but it does not mean that if an FIR falls within one of the 'pigeonholes' mentioned in the said judgment, it shall not be quashed.

28. The judgments relied upon by the learned counsel for respondent no. 2-complainant being of the different High Courts cannot and do not depart from the principle laid down by the Supreme Court in ***Bhajan Lal & Ors.***(supra). In fact, the judgment of this Court in ***Rajiv Kumar Sadh vs. Govt. of NCT Delhi*** (supra) is based upon the judgment of the Supreme Court in ***K.M. Mathew v. State of Kerala, AIR 1992 SC 2207*** which itself has been over-ruled in ***Adalat Prasad vs. Rooplal Jindal & Ors., (2004) 7 SCC 338.***

29. The Supreme Court while quashing an FIR in ***State of U.P. v. R.K. Srivastava, (1989) 4 SCC 59*** has held as under:-

"4. It is now a well-settled principle of law that if the allegations made in the FIR are taken at their face value and accepted in their entirety do not constitute an offence, the criminal proceedings instituted on the basis of such FIR should be quashed. In the instant case, on the basis of the said FIR the respondent and the said P.C. Saxena and Shri Sarwant Singh were charged under Sections 120-B, 420, 468 and 471 IPC and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. According to the appellant, as no prima facie case was made out against Smt Rajwant Kaur, wife of Shri Sarwant Singh, she has been dropped from the array of the accused persons.

5. The question is whether the facts disclosed in the FIR constitute the offences with which the accused have been charged. It is manifestly clear from the allegations in the FIR that the respondent or the other accused had no intention whatsoever to make any wrongful gain or to make any wrongful loss to the Bank. They had accepted the said three cheques amounting to Rs 54,600 and sent the same for clearance after debiting the LOC account. The said cheques have been encashed and the money was received by State Bank of India. It may be that there was some delay in crediting the LOC account or that the money against the three cheques were credited in the accounts of the said Shri Sarwant Singh and his wife, but the allegations made either in the FIR or in the charge-sheet do not show that the respondent and the said P.C. Saxena had acted dishonestly, that is to say, acted with a deliberate intention to cause wrongful gain or wrongful loss. In our opinion, the High Court has rightly held that the allegations made in the FIR do not constitute any offence of cheating, nor do they constitute any offence of forgery. It is true that it has been alleged that the said sum of Rs 54,600 was withdrawn on the basis of false credit entries made in the books of accounts of the Bank and connected credit and debit vouchers were also prepared and passed by the respondent and the other accused. When the said sum of Rs 54,600 had been allowed to be withdrawn by the said Shri Sarwant Singh and his wife, necessary entries had to be

made in the books of accounts, but it is not understandable how these entries can be characterised as false entries. No document has been referred to in the FIR as the outcome of forgery.

6. The High Court has rightly held that as the criminal proceedings have been started against the respondent on the basis of an FIR which does not contain any definite accusation, it amounts to an abuse of process of the court and, as such, is liable to be quashed. We entirely agree with the view expressed by the High Court."

30. Consequently, this Court has the power to quash an FIR under investigation at the initial stage itself.

THE TEST TO DETERMINE WHETHER A MOVIE FALLS FOUL OF FREEDOM OF EXPRESSION

31. In the present case, this Court finds that the impugned FIR is based on a few expressions and scenes in the film taken in isolation. But the test to determine whether a movie falls foul of freedom of expression guaranteed by the Constitution is to view the film in its entirety and examine its overall impact. In fact, this Court is of the view that it has to take into consideration what effect the movie is likely to produce on the minds of its viewers for whom the movie was intended.

32. Also, the effect of the words and scenes have to be judged from the standards of a reasonable, strong minded, firm and courageous man and not from that of a weak and vacillating mind. [See ***Bhagwati Charan Shukla Vs. Provincial Government, AIR 1947 Nagpur 1.***]

A FILM THAT CARRIES A MESSAGE THAT THE SOCIAL EVIL IS EVIL CANNOT BE MADE IMPERMISSIBLE ON THE GROUND THAT IT DEPICTS THE SOCIAL EVIL

33. Certainly, no film that extols the social evil or encourages it is permissible, but a film that carries a message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil. [See ***Bobby Art International & Ors. Vs. Om Pal Singh Hoon & Ors.*** (supra)].

34. This Court is of the opinion that the respondent no.2-complainant has committed a fundamental error in not appreciating that a film that carries a message that a social evil is evil, cannot be banned on the ground that it depicts the social evil. It has to be borne in mind that a film that illustrate consequences of social evil, must necessarily show that evil. It is in this context that the expressions '*Bhangan*', '*Saali*' and '*Sudhikaran*' have been referred to in the film.

EFFECT OF CERTIFICATE ISSUED BY CBFC : SECTION 5-A OF THE CINEMATOGRAPH ACT AND SECTION 79 IPC CONSTITUTE AN EXPRESS LEGAL BAR TO THE INSTITUTION AND CONTINUANCE OF CRIMINAL PROCEEDINGS

35. The present film was released in theatres after it was issued a valid certificate by CBFC. Sections 5-A and 5-B(2) of The Cinematograph Act and the Guidelines framed thereunder read as under:-

a) **Section 5-A**

"5-A. 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) **Section 5-B**

"5-B. Principles for guidance in certifying films. –

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(2) Subject to the provisions contained in sub-section (1) the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition.

c) **Guidelines**

"Under section 5B(2) the Central Government has issued the following guidelines.

A film is judged in its entirety from the point of view of its overall impact and is examined in the light of the period depicted in the film and the contemporary standards of the country and the people to whom the film relates, provided that the film does not deprave the morality of the audience. Guidelines are applied to the titles of the films also.

1. Objectives of Film Certification

i) the medium of film remains responsible and sensitive to the values and standards of society;

ii) artistic expression and creative freedom are not unduly curbed;

iii) certification is responsible to social changes;

iv) the medium of film provides clean and healthy entertainment; and

v) as far as possible, the film is of aesthetic value and cinematically of a good standard.

2. In pursuance of the above objectives, the CBFC shall ensure that

i) anti social activities such as violence are not glorified or justified

ii) the modus operandi of criminals, other visuals or words likely to incite the commission of any offence are not depicted;

iii) scenes -

a. showing involvement of children in violence as victims or perpetrators or as forced witnesses to violence, or showing children as being subjected to any form of child abuse.

b. showing abuse or ridicule of physically and mentally handicapped persons; and

c. showing cruelty to, or abuse of animals, are not presented needlessly

iv) pointless or avoidable scenes of violence, cruelty and horror, scenes of violence primarily intended to provide entertainment and such scenes as may have the effect of de-sensitising or de-humanising people are not shown;

v) scenes which have the effect of justifying or glorifying drinking are not shown;

vi) scenes tending to encourage, justify or glamorise drug addiction are not shown;

a. scenes tending to encourage, justify or glamorise consumption of tobacco or smoking are not shown;

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

viii) such dual meaning words as obviously cater to baser instincts are not allowed;

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

x) scenes involving sexual violence against women like attempt to rape, rape or any form of molestation or scenes of a similar nature are avoided, and if any such incidence is germane to the theme, they shall be reduced to the minimum and no details are shown

xi) scenes showing sexual perversions shall be avoided and if such matters are germane to the theme they shall be reduced to the minimum and no details are shown

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 attitude are not presented

xiv) the sovereignty and integrity of India is not called in question;

xv) the security of the State is not jeopardized or endangered

xvi) friendly relations with foreign States are not strained;

xvii) public order is not endangered

xviii) visuals or words involving defamation of an individual or a body of individuals, or contempt of court are not presented

EXPLANATION: *Scenes that tend to create scorn, disgrace or disregard of rules or undermine the dignity of court will come under the term "Contempt of Court" : and*

xix) national symbols and emblems are not shown except in accordance with the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950)

3. *The Board of Film Certification shall also ensure that the film*

- i) Is judged in its entirety from the point of view of its overall impact; and*
- ii) Is examined in the light of the period depicted in the films and the contemporary standards of the country and the people to which the film relates provided that the film does not deprave the morality of the audience.*

4. *Films that meet the above – mentioned criteria but are considered unsuitable for exhibition to non-adults shall be certified for exhibition to adult audiences only.*

5.

- i) While certifying films for unrestricted public exhibition, the Board shall ensure that the film is suitable for family viewing, that is to say, the film shall be such that all the members of the family including children can view it together.*
- ii) If the Board, having regard to the nature, content and theme of the film is of the opinion that it is necessary to caution the parents / guardian to consider as to whether any child below the age of twelve years maybe allowed to see such a film, the film shall be certified for unrestricted public exhibition with an endorsement to that effect.*
- iii) If the Board having regard to the nature, content and theme of the film, is of the opinion that the exhibition of the film should be restricted to members of any profession or any class of persons,*

the film shall be certified for public exhibition restricted to the specialized audiences to be specified by the Board in this behalf.

6. *The Board shall scrutinize the titles of the films carefully and ensure that they are not provocative, vulgar, offensive or violative of any of the above-mentioned guidelines."*

36. The Certificate issued by CBFC to the petitioners states "*After examination of the film by the members of the Examining Committee mentioned below and on the recommendations of the said Examining Committee, the Board hereby certifies that the film is fit for public exhibition with an endorsement of caution that the question as to whether any child below the age of 12 years may be allowed to see the film should be considered by the parents or guardian of such child.....*" This Court is of the view that the decision whether a film violates the restrictions embodied in Article 19(2) of the Constitution of India, is best left to the sensibility of a multi-member expert tribunal - the CBFC. In ***T. Kannan Vs. Liberty Creations Ltd.*** (supra), the Madras High Court held that the Censor Board which is a multi member body constituted to gauge public reactions to films should be permitted to go about their task except in cases of stark breach of guidelines. Consequently, this Court is of the view that once a film has obtained a clearance from CBFC, there is no reason why the Film should be considered as hurting any community or caste's sentiments.

37. In ***Raj Kapoor v. Laxman***, (1980) 2 SCC 175 the Supreme Court held that Section 5-A of The Cinematograph Act and Section 79 IPC constitute an express legal bar to the institution and continuance of criminal proceedings. The relevant extract of the aforesaid judgment is as under:-

"3. The sole point for decision is the legal effect of the combined operation of Section 5-A of the Act and Section 79 IPC. But we will assume for purposes of argument that the facts stated in the complaint prima facie attract the offence under Section 292 IPC. Supposing such a film has been certified by the Central Board of Film Censors, acting within their jurisdiction under the Act, thereby sanctioning the public exhibition of the film, does it furnish a justification in law in doing the act which, in the absence of such certification, may constitute an offence under Section 292 IPC?"

4. Section 79, IPC runs thus:

"79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it."

The argument is irresistible that if the performance of the act which constitutes the offence is justified by law, i.e. by some other provision, then Section 79 exonerates the doer because the act ceases to be an offence. Likewise, if the act were done by one "who by reason of a mistake of fact in good faith believes himself to be justified by law in doing it" then also, the exception operates and the bona fide belief, although mistaken, eliminates the culpability. The resolution of the problem raised in this case thus becomes simplified. If the offender can irrefutably establish that he is actually justified by law in doing the act or, alternatively, that he entertained a mistake of fact and in good faith believed that he was justified by law in committing the act, then, the weapon of Section 79 demolishes the prosecution.

5. Does a certificate issued under Section 5-A (1A) of the Act amount to justification in law for public exhibition of the film, be it obscene or not or, at any rate, does it generate a belief induced by a mistake of fact, namely, the issuance of the

certificate and its effect that the certificate-holder is justified by law in exhibiting the film?

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7. So it is that a special legislation viz. the Act of 1952, sets-up a Board of Censors of high calibre and expertise, provides hearings, appeals and ultimate judicial review, pre-censorship and conditional exhibitions and wealth of other policing strategies. In short, a special machinery and processual justice and a host of wholesome restrictions to protect State and society are woven into the fabric of the Act. After having elaborately enacted such a legislation can it be said that a certificate granted under it by expert authority can be stultified by a simple prosecution or a shower of prosecutions for an offence under Section 292 IPC, driving the producer to satisfy a “lay” Magistrate that the certificate of the Board of Censors notwithstanding, the film was offensive? The Board under Section 5-B has to consider, before certification, all the points Section 292 IPC prescribes.....

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9. The position that emerges is this. Jurisprudentially viewed, an act may be an offence, definitionally speaking; but a forbidden act may not spell inevitable guilt if the law itself declares that in certain special circumstances it is not to be regarded as an offence. The chapter on General Exceptions operates in this province. Section 79 makes an offence a non-offence. When? Only when the offending act is actually justified by law or is bona fide believed by mistake of fact to be so justified. If, as here, the Board of Censors, acting within their jurisdiction and on an application made and pursued in good faith, sanctions the public exhibition, the producer and connected agencies do enter the statutory harbour and are protected because Section 79 exonerates them at least in view of their bona fide belief that the certificate is justificatory. Thus the trial court when it hears the case may be appropriately apprised of the certificate under the Act and, in the light of our observations, it fills the bill under Section 79 it is right for the

court to discharge the accused as the charge is groundless. In the present case, the prosecution is unsustainable because Section 79 is exculpatory when read with Section 5-A of the Act and the certificate issued thereunder. We quash the prosecution."

THE PRESENT FILM SEEN IN ITS ENTIRETY, GENERATES EMPATHY FOR SCHEDULED CASTES AND SCHEDULED TRIBES. PRESENT FILM IN NO MANNER SUPPORTS THE PRACTICE OF UNTOUCHABILITY

38. Upon the insistence of both the counsel, this Court has also viewed the entire film. In fact, the film starts with a disclaimer that *"All names, characters and incidents portrayed in this film are fictitious. Any resemblance to any person living or dead, is purely coincidental."*

39. This Court further finds that the essence of the present movie is in the initial verse that it quotes, namely, *"Zarre zarre mein usi ka noor hai...jhaank khud mein woh na tujhse door hai..... ishq hai usase to sab se ishq kar..... iss ibaadat ka yehi dustoor hai.* The message of the film is unambiguous as it clearly shows the main protagonist strongly opposes any discrimination on the basis of caste, creed, race, religion etc.

40. The film seeks to portray certain evils prevalent in our society, but it does not cater to the prurient interest in any person. The film sends out an unequivocal message that discriminatory practices must be curbed in the present times, when all men and women are equal, regardless of their caste, creed etc. The film further sends out a message that all these prejudices referred to as 'the Kala Bandar' (Black Monkey) are all in our mind and they must be eliminated.

41. In order to create social consciousness about the issues plaguing the Scheduled Caste community, the film maker by illustration has shown atrocities that are committed against the said community. The film attempts to expose the motives of persons who operate behind the scene to foment conflicts and emphasizes the need for the society to rise above religious barriers and treat one another with kindness, sympathy and affection. The picture viewed in its entirety, is capable of creating a lasting impression of message of peace and co-existence. In the opinion of this Court, the viewers are not likely to be overwhelmed or carried away by the few stray scenes referred to by the respondent no. 2-complainant in the FIR. In fact, the film seen in its entirety, generates empathy for Scheduled Castes and Scheduled Tribes.

42. Section 3 of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 is applicable when a person intentionally insults or intimidates with an intent to humiliate a member of Scheduled Castes or Scheduled Tribes. There is no intention to insult the members of Scheduled Castes/Scheduled Tribes community in any manner in the present case.

43. The film by no stretch of imagination preaches or approves the practice of untouchability in any manner. The film in no manner supports the practice of untouchability in any manner. The acts attributed to the petitioners do not amount to preaching and practicing untouchability, within the meaning of Section 7 of the Protection of Civil Rights Act, 1955.

CONCLUSION

44. In view of the aforesaid discussion, this Court concludes as under:-

- i) Freedom of expression is of inestimable value in a democratic society based on the rule of law. Our written Constitution guarantees not only freedom of speech but also freedom after speech.
- ii) Though censorship of films constituting prior restraint is justified under the Indian Constitution, yet the censors have to make a substantial allowance in favour of freedom, thereby leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good. Consequently, the film Delhi-6 being a piece of art, is entitled to protection of Article 19(1)(a) of the Constitution of India.
- iii) The test to determine whether a movie falls foul of freedom of expression guaranteed by the Constitution is to view the film in its entirety and not to examine a few expressions and scenes of the film in isolation - as sought to be done by the petitioners in the present FIR. The court will have to take into consideration what effect the film will produce on the mind of the viewer for whom the film is intended. The effect of the words and scenes will have to be judged from the standards of a reasonable, strong minded, firm and courageous man and not from that of a weak and vacillating mind.
- iv) A film that carries a message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil. It has to be borne in mind that a film that illustrate consequences of social evil, must necessarily show that evil.
- v) The present film seen in its entirety, generates empathy for Scheduled Castes and Scheduled Tribes. No intention to insult the members of Scheduled Castes/Scheduled Tribes community can be attributed to the

petitioners in the present case. The present film in no manner supports the practice of untouchability in any manner. The acts attributed to the petitioners do not amount to preaching and practicing untouchability, within the meaning of Section 7 of the Protection of Civil Rights Act, 1955.

vi) Section 5-A of The Cinematograph Act and Section 79 IPC constitute an express legal bar to the institution and continuance of the proceedings initiated by the respondent no. 2-complainant. In fact, the certificate issued by CBFC furnishes a complete legal justification to the petitioner for public exhibition of the film and exonerates them from offences under IPC, The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well as The Protection of Civil Rights Act, 1955.

vii) This Court has the power to quash an FIR under investigation at the initial stage itself.

45. Consequently, the present petition is allowed and FIR No.40/2009 dated 07th March, 2009 registered with Police Station Mandir Marg, New Delhi under Section 3(1)(x) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with Section 7(d) of the Protection of Civil Rights Act, 1955 is quashed, but without any order as to costs. With the aforesaid observations, the present petition and application stand disposed of.

MANMOHAN, J

JANUARY 02, 2013

js/rn