

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

Pronounced on: March 31st, 2017

+ **LPA 788/2015 & CM No.25836/2015 (stay)**

PREM MARDI

..... Appellant

Through: Mr.Ashok Agrawal and Mr.Anuj
Kapoor, Advocates

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Sanjay Jain, ASC with
Mr.Jasmeet Singh, CGSC, Ms.Astha
Sharma, Mr.Akash Nagar, Ms.Bani
Dikshit, Ms.Astha Jain, Mr.Srivats
Kaushal and Ms.Ruchi Jain, Advs. for
UOI.

Mr.Gautam Narayan, ASC with
Mr.Shatrajit Banerji, Advocate for
GNCTD.

Mr.Mohit Kathur, Sr.Adv. with
Mr.Sanjay Katyal, Mr.Mukesh Kumar
Sharma and Mr.Bhaskar Bhardwaj,
Advocates for R-5.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

: **Ms.G.ROHINI, CHIEF JUSTICE**

1. The unsuccessful petitioner in W.P.(C) No.8883/2015 is the appellant before us.

2. The said writ petition was filed with a prayer to quash the certificate granted to the movie “MSG 2-The Messenger” and further to direct the Union of India, Ministry of Information & Broadcasting to issue appropriate orders to "You Tube" to take down the trailer of the said film from the website. The petitioner also sought a direction to the Union of India, Ministry of Information & Broadcasting to issue appropriate orders to the cable and television networks prohibiting them from broadcasting the film “MSG 2-The Messenger” and to restrain the respondent No.5/producer of the said film from circulating, distributing, exhibiting the said film or its trailer in any manner whatsoever.

3. The contention of the petitioner/appellant herein was that the film had shown the protagonist Saint Gurmeet Ram Rahim Singh Ji Insaan as a *masiha* who has undertaken the task of civilizing the Adivasis by using violence and that it incites the public at large to behave violently with the Adivasis, who are described as *Shaitans*.

4. By the order under appeal dated 16.09.2015, the writ petition was dismissed by the learned Single Judge observing:

“14. I am unable to find anything in the trailer of the film which in the opinion of a reasonable person can be said to be inciting the people to indulge in violence against the tribal people in India. The portrayal of the people whom the protagonist of the film is shown to be fighting or taming, are described in the trailer as an evolutionary stage leading to human beings. The film describes the “adivasis” as, neither animals nor humans. Moreover, the film shows its protagonist as possessing super natural powers who is able to single-handedly and without any weapon fight a large number of adversaries and who is not only able to stop large stone boulders thrown at him but also crush them into small pieces. He is also shown as taking flights in the

air, across a fleet of at least a dozen cars and throwing full grown elephants in the air and stopping ferocious charging bulls with his hand. The dialogues in the trailer of the film are sprinkled with reference to human beings of all religions capable of acting as devils. No person in his right senses can, on watching of the said trailer of the film, believe as to what is depicted therein to be a reality or possible in real life. The film is a work of fiction intended to show its protagonist who in his real life form also proclaims to be a spiritual leader, in a superhuman form. In fact the counsel for the petitioner himself admitted that nobody knows how the actual adivasis live and what are shown in the film as adivasi practices are but a work of imagination.”

5. It was also observed by the learned Single Judge that from the trailer the film in question was found to be depicting a fantasy to the viewers and that the same has to be understood in the said light only. The learned Single Judge was also of the view that the reference in the film to *Adivasi* is not found to be relatable in any manner to Scheduled Tribes so as to attract the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which makes any act insulting or intimidating with an intention to humiliate a particular Scheduled Cast or a Scheduled Tribe in any place within the public view, an offence punishable with imprisonment for a term which shall not be less than six months.

6. Assailing the above said order of the learned Single Judge, it is vehemently contended by the learned counsel for the appellant that the conclusion of the learned Single that the word “adivasi” used in the film is not relatable in any manner to the Scheduled Tribes is erroneous. While placing reliance upon *Banwasi Seva Ashram v. State of U.P. and Others; (1986) 4 SCC 753*, it is submitted by the learned counsel that the word "Adivasi" is interchangeable with tribal people.

7. Placing reliance upon *Bobby Art International and Others vs. Om Pal Singh Hoon and Others*; (1996) 4 SCC 130, it is further contended by the learned counsel that the expression “decency” and “morality” have to be judged from the context of their placement under Article 19(2) of the Constitution of India. The further contention is that the Cinematograph Act, 1952 does not distinguish between the works of fiction which depict fantasy or the works which depict reality and therefore, the fact that the film is an attempt at fantasy is completely irrelevant for deciding the question whether there is a violation of Section 5-B of the Cinematograph Act, 1952 and the guidelines issued thereunder.

8. We have also heard Sh.Sanjay Jain, the learned ASG appearing for the respondent Nos.1 & 2 and Sh.Mohit Mathur, the learned Senior Counsel appearing for the respondent No.5/producer.

9. We may at the outset refer to the following observations made by the Supreme Court in *S.Rangarajan vs. P.Jagjivan Ram*; (1989) 2 SCC 574:

"40. Movie is the legitimate and the most important medium in which issues of general concern can be treated. The producer may project his own message which the others may not approve of. But he has a right to "think out" and put the counter appeals to reason. It is a part of a democratic give-and-take to which no one could complain. The State cannot prevent open discussion and open expression, however hateful to its policies....

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45. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is

endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a “spark in a power keg”.

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53. ...Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom by an LPA No.474/2015 Page 8 of 8 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."

10. The principle of law has also been summed up in ***Bobby Art International & Ors. v. Om Pal Singh Hoon & Ors.*** (supra) as under:

"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."

11. It may also be stated that the guidelines made under the Cinematograph Act, 1952 require the Central Board of Film Certification (CBFC) to ensure that the 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 films and the contemporary standards of the country.

12. On request, the learned counsel for the respondent No.5 has produced the CD of the film in question i.e. "MSG 2-The Messenger" and we have viewed the same. It is observed that the movie at the outset contains a disclaimer that "none of the character therein is based on any living or dead person and the resemblance if any is unintentional". We have also observed that it does not make out a case to hold that the certificate issued by the CBFC is in violation of the guidelines. As rightly held by the learned Single Judge, the film cannot be said to have the propensity of inculcating hatred, ill-will and violence towards a person or group of persons. It also appears to us that the film to the average viewers' understanding does not depict the life as such, but on the other hand, it is a pure work of fiction.

13. It is relevant to note that the case of ***Banwasi Seva Ashram*** (supra) was taken up by the Supreme Court under Article 32 of the Constitution of India on the basis of a letter received from Banwasi Seva Ashram operating in Mirzapur District raising issues relating to the claim of the Adivasis living in the said District to land and related rights. The observations made by the Supreme Court in that context with regard to the people living with the

forest area as their habitat, in our considered opinion are not applicable to the facts of the case on hand. Similarly, the observations made by the Supreme Court in *Kailas v. State of Maharashtra*; (2011) 1 SCC 793 referring the term "Adivasi" interchangeably as tribal people have also no relevance whatsoever to the facts of the present case.

14. The reliance placed upon *Bobby Art International & Ors.* (supra) by the learned counsel for the appellant also is misplaced and in our considered opinion the same is of no assistance to substantiate the contentions advanced by him.

15. Moreover, the movie was released on 18.09.2015 and it is not a case of the appellant that any incidence of violence or atrocity has been reported from any corner. The law is well settled that the test is not of a sensitive person, but it has to be judged from the perception of a reasonable prudent man. In our considered opinion, no reasonable prudent man will perceive the movie in the way in which the appellant/petitioner sought to project.

16. Hence, we do not find any justifiable reason to interfere with the order under appeal and accordingly the appeal is dismissed.

CHIEF JUSTICE

JAYANT NATH, J.

MARCH 31st, 2017

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