

TRIUMPH OF FREEDOM OF SPEECH AND EXPRESSION IN THE 'PK' SAGA: A CASE COMMENT ON AJAY GAUTAM V. UNION OF INDIA

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Censorship, Censor Board and the incessant litigation with regard to abuse of freedom of speech and expression through the medium of cinema have all been cynosure for all eyes in the recent times. One such case was filed in the Division Bench of Delhi high court (hereinafter referred as High Court) against a movie which pertained to allegations of hurting religious sentiments of all communities and also imputed an error by censor board in granting 'U/A' certificate for the same movie. This case becomes significant since the court while dismissing the petition, took into consideration various aspects such as the prior grant of a Censor Board certificate to the movie and giving emphasis to the nature of the movie, which is satirical parody, and hence deciding in its favor. Lastly, it can be jubilantly said that artistic merit and freedom of speech and expression were appreciated by the High Court by virtue of this case.

Facts

The case of *Ajay Gautam v. Union of India*¹ is pertaining to and deals with the various imputations against the recent Hindi movie 'PK' (herein after referred to as film or movie) produced by Vidhu Vinod Chopra and directed and Co-produced by Rajkumar Hirani. This was a writ petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL), which sought to restrain the exhibition of this Hindi feature film, both in movie theaters or on the television. The main contention of the petitioner was that the movie was violating the rights of Hindus under Articles 19(2) and 25 of the Constitution of India. Hence the High Court examined the contents of the movie PK, which the petitioner complained that it mocked the Hindu religion and hence should be banned from exhibition.

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¹ W.P.(C) No.112/2015.

Analysis of the Judgment

This judgment by the Division bench of G. Rohini, CJ and R.S. Endlaw, J. is pertinent since it vividly discusses the various important principles which can be helpful in applying them to various cases dealing with almost similar facts and circumstances by the high court of Delhi as precedence or may have persuasive value in other respected High Court. In this order by the High court, a detailed analysis was made in furtherance of justice wherefore High Court declared that one of the social-evil today faced by the society are Self-styled Godman who for their ill motives and personal gains are befooling their followers. Just because they preach Hindu religion does not mean that making mockery of such god man would be in anyway showing Hindu religion in bad light. Accordingly to the courts finding, the movie is projecting the social evil which persists in society in the form of such false self-styled Godman and to show the same and to justify the message it tries to put-forth to the society, filmmakers have to necessarily show a variety of the ways adopted by such 'Bogus Godman' since depicting social evil is not wrong but encouraging the same could be.

The finding of the Court, in quest of justice, also suggests that Neither the CBFC nor Guidelines for Certification of Films for Public Exhibition put restriction in relation to religion and even if Guideline 2(xvii) which requires the CBFC to ensure that "public order is not endangered" is interpreted then it would mean that protection under the Guidelines is afforded to religion and not to the so-called self-styled Godmen.²

The High Court availed the settled principle in this regard to come to clarification that is that the effect of the allegedly offending words / visuals is to be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view.³ The High court took aid of various recent judgments like of *Nandini Tewari v. Union of India*⁴ which explained that our society is matured and restriction on creative work of film maker is in violation of his constitutional right. Accepting that the censor must set standards in favour of freedom of speech and expression to create

² ¶ 6, W.P.(C) No.112/2015.

³ ¶ 7, W.P.(C) No.112/2015.

⁴ MANU/DE/2157/2014.

vast ambit for creativity and art⁵ and if a film that illustrates consequences of a social evil necessarily must show that social evil.⁶

(a) Application of the ‘Clear and Imminent Danger’ Test

Justice Holmes in *Schenck v. United States*⁷, enunciated the ‘clear and present danger test’ and the same test has been widely used by Indian courts too in cases involving freedom of speech and expression.⁸ The present case was considered in the range of constitutional guarantee to the freedom of speech and expression and mediums for manifestation of these rights. The present judgment has a due reflection of the use of the test of “clear and present danger” by the respective judges in analyzing the issues raised in by the petitioner. Interestingly, the petitioner had raised an averment with regard to the law and order situation which would prevail by virtue of exhibition of the said movie, ‘PK’. Placing reliance on the *Prakash Jha Productions v. Union of India*,⁹ court maintained that:

“It is responsibility of State to maintain law and order effectively and potentially and that in the garb of such a plea screening of the film which has been cleared by CBFC for screening, cannot be prohibited and hence such an argument was rejected by further stating that a mischievous creation of law and order situation cannot be a ground for interfering with the certification of a film, if otherwise found to be in order.”

Hence petitioner does not satisfy the test of “clear and imminent danger” also.

(b) The Recognition of the Importance of CBFC

This emerges as a vital point in the judgment that the grant of certificate by the censor board itself says a lot about the legality of the exhibition of the movie. However, there is nothing that bars the

⁵ K.A. Abbas v. Union of India, (1970) 2 SCC 780.

⁶ Bobby Art International v. Om Pal Singh Hoon, (1996) 4 SCC 1.

⁷ *Schenck v. United States*, 63 L. Ed. 470, In the present Judgment Holmes, J. states, “Free speech cannot be suppressed on the ground either that its audience will form harmful beliefs or may commit harmful acts as a result of such beliefs, unless the commission of harmful acts is a real close and imminent consequence of the speech in question. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression.”

⁸ See *S. Rangarajan v. P. Jagjivan & Ors.*, (1989) 2 SCC 574 and also discussed in *Nandini Tewari & Anr. V. Union of India & Ors.*, W.P.(C) No.6053/2014 and *Shreya Singhal v. Union Of India*, Writ Petition (Criminal) No.167 OF 2012.

⁹ (2011) 8 SCC 372.

courts from looking into the merits of the case whereby certificate itself questioned. The contention of the petitioner that the certificate was not granted by censor board on merit or was a biased move by the board, was considered to be a vague allegation. The court recognized the sanctity and powers of CBFC which is an expert statutory tribunal placing reliance on what was held by Supreme Court in *Raj Kapoor v. State*:¹⁰

“A certificate is relevant material, important in its impact, though not infallible in its verdict. It was held that though the Courts are not barred from trying the case because the certificate is not conclusive but the same is to be not brushed aside.”

The Cinematograph Act, 1952 confers wide range of powers and responsibility on the CBFC, which also includes the power to screen movies before giving them a final approval for public viewing and others such related powers. After such screening approval is given to exhibit movies by providing them with grades or sometimes asking to edit the objectionable content of the movie before the release.

Besides this point, High Court mentioned that neither the petitioner nor anyone else could be a forced spectator of the film and if offended by the content or theme may avoid watching it. It is certainly one's own discretion and volition to watch a film. Furthermore court states that, it is the petitioner who construes wrongly, religion to be only the 'rituals' of which alleged fun is made in the subject film.¹¹

Obiter Dicta

In its obiter the court observes the overlapping of humour and religion. The court advanced to draw an analogy between both, saying that, 'Religion relies on faith and humour on fantasy, with each performing important function for society.' In the present case the court did not restrict 'humour' on the things which are contextual and the movie in present matter is a 'parody' in the nature of satire on certain Hindu customs and practices. The court went a step ahead to mention that humour could be well found in the roots of Hindu

¹⁰ (1980) 1 SCC 43.

¹¹ ¶ 20, excerpt taken from Para 20 where it is explained that religion has different connotation as per Ramaswamy, J. in *S.R. Bommai v. Union of India* (1994) 3 SCC 1). It is what binds a man to the moral and basic principles regulating his life. It is quite distinct from freedom to perform external acts in pursuance to faith.

religion too and hence there must be acceptance of contextual humour and satire.

Venturing into the importance of 'tolerance' in a plural society, High Court took a note that country having a plural community of man must practice 'tolerance'. The court equated high degree of religious beliefs to be directly proportional to level of tolerance. For the matter of freedom of speech and expression, this approach serves as succour and tolerance is postulated as a key in such circumstances.

Further asserting that real grievance of the petitioner which can be deduced from the argument of the petitioner is not the storyline of the film being offensive to Hindu religion but of being in the context of Hindu rather than any other religion.

Evaluation of the Judgment

The parody or satirical work of art and creativity must not be challenged as far as it does not fall under reasonable restrictions with respect to Freedom of Speech and Expression.

What comes out to be protuberant point from this case is that the Court recognized and given substantial weight to the legality of the movies on the basis of the grant of certificate for exhibition by the Censor Board. This judgment by the Division bench adds to the list of jurisprudence in support of this stance. This would definitely be a considerable appreciation of the credentials of the Censor Board, courts can do.

But the test of 'clear and Imminent danger' used by the High Court in the case in hand has already been criticized on few points by scholars, one being that this test is based on assumption that speech would lead to an act at that moment the speech becomes punishable. And according to Professor Dow suggests that the clear and present danger test protects too little speech.¹² In this way we reject that the listener or the viewer has will of his or her own and hence commission of an act must be attributed to the listener or viewer, till

¹² David R. Dow & R. Scott Shieldes, Rethinking the Clear and Present Danger Test, *Indiana Law Journal* (Vol. 73:1217), http://ilj.law.indiana.edu/articles/73/73_4_Dow.pdf, last visited on 9 April, 2015, also He posts that speech should be protected unless the following three conditions are met: (1) the speaker's specific intent in uttering the words was to cause an unlawful injury, (2) the injury in fact occurred as a proximate result of the speech, and (3) the speaker, through his or her speech, overwhelmed the will of the listener. Professor Dow's proposed test is based upon the belief that the listener has a will of his or her own and thus may choose whether to act on the words he or she heard.

the time the speech or expression has overwhelmed the will of the listener or viewer.¹³

The Division Bench of Delhi High must have taken into consideration the loopholes in the “clear and imminent danger’ test and how it lacks to protect Freedom of speech and expression to wider range. By devising and then using a more liberal test as an alternative to the ‘clear and imminent test’, Resultant of the judgment could have been the same but its impact (as a precedence or a judicial stand) could have been different and more favorable towards the freedom of speech and expression jurisprudence.

Conclusion

This case illustrates vividly that what contemplates, under few circumstances, emerge out of collision of exercise of the right of freedom of speech and expression and right of professing religion. The High Court has profoundly established that the movies committed to display social-political themes within the reasonable limits must not be hindered due to intolerance of few in the society and valued the certification by the censor board (a statutory authority) issued for exhibition of a movie, all of which the court puts astutely.



¹³ *Ibid*, p. 1246.