

Peggy Fen., vs Central Board of Film Certification,

Peggy Fen., vs Central Board of Film Certification,

SooperKanoon Citation : sooperkanoon.com/1556856

Court : Kerala

Decided On : Feb-10-2022

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : WP(C)/28288/2021

Appellant : Peggy Fen.,

Respondent : Central Board of Film Certification,

Judgement :

C.R

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
THURSDAY, THE 10TH DAY OF FEBRUARY 2022 / 21ST MAGHA,
WP(C) NO. 28288 OF 2021 PETITIONER: PEGGY FEN., AGED 50
YEARS D/O. P.K. CYRIAC, PAZHAYATH (H), KOLAZHY, THRISSUR
680 010. BY ADV C.A.ANOOP RESPONDENTS:

1 CENTRAL BOARD OF FILM CERTIFICATION, IIS, REGIONAL
OFFICER, IST FLOOR, CHITRANJALI STUDIO COMPLEX,
TIRUVALLUM, THIRUVANANTHAPURAM-695 027. 2 MANAGING

DIRECTOR, SONY PICTURES NETWORK INDIA PRIVATE LIMITED, 4TH FLOOR, INTERFACE BUILDING NO. 7, OFF MALAD LINK ROAD, MALAD WEST, MUMBAI 400 064. 3 LIJO JOSE PELLISSERY, AGED 43 YEARS FILM DIRECTOR, S/O. LATE JOSE PELLISSERY, PELLISSERY HOUSE, CHALAKKUDY, THRISSUR 680 307. 4 CHEMBAN VINOD JOSE, (CO- PRODUCER), MALIACKAL CHAMBAN HOUSE, NEAR BASILICA CHURCH, ANGAMALY, ERNAKULAM 683 572. 5 JOJU GEORGE, AGED 44 YEARS (ACTO), PARECATPIL HOUSE, KUZHUR, MALA, THRISSUR 680 732. 6 JAFFOR IDUKKI AMMAKUNNEL HOUSE, MANIYARANKUDI P.O., CHERUTHONI, IDUKKI 685 602. -2-

7 ADDL.R7. THE STATE POLICE CHIEF, GOVERNMENT OF KERALA, (IS SUO MOTU IMPEADED AS PER ORDER DATED 07-01-2022 BY ADVS. S.MANU SHAJI THOMAS R4 BY ADV.JIJO PAUL KALLOOKKARAN R5 BY ADV.SMT.SANGEETHA LAKSHMANA JEN JAISON R2 BY ADV.GRASHIOUS KURIAKOSE (SR.) SMT.DEEPA NARAYANAN, SR.GP THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31.01.2022, THE COURT ON 10.2.2022 DELIVERED THE FOLLOWING: -3- C.R

P.V.KUNHIKRISHNAN, J.

===== W.P. (C) No.
28288 of 2021
=====

Dated this the 10th day of February, 2022

JUDGMENT

This writ petition is filed by an advocate with a prayer to issue a writ in the nature of mandamus directing the respondents to remove the Malayalam movie "Churuli" from the 'Over The Top Platform' (for short 'OTT Platform') as expeditiously as possible. The second prayer is to issue such other writ, order, and direction

directing the respondents as this Hon'ble Court deems fit in the interest of justice.
Pleadings of the parties

2. The petitioner is an advocate by profession and is

having an office at Ayyanthole, Thrissur. 'Churuli' is a Malayalam language movie directed and co-produced by -4- renowned director Lijo Jose Pellisseri and written by S.Harish. The movie was released on the OTT Platform in Sony LIV on 19.11.2021. According to the petitioner, even though the movie 'Churuli' is capable of invoking a sense of curiosity and mystery in the minds of the audience, there is an overdose of foul language used in the movie. It is pleaded that the movie contains obscene and filthy languages which are opposed to public morality and tranquility. According to the petitioner, every character in the movie uses at least a single offensive word in every dialogue they deliver. The filthy languages are used lavishly and without any curtain. It is the case of the petitioner that the words and language used in the film are not one that can be used publicly and openly. It is the case of the petitioner that, a person of common parlance will not use such languages even privately at home. According to the petitioner, the filmmaker had used such language deliberately with the intention to get more attention to the movie. Apart from using -5- filthy words, the petitioner submitted that there are a lot of usages which is totally against the morality of ladies and objectionable to all ladies' common conduct. The words used in the movie outrages the modesty of ladies and children and a person who is watching this movie will feel irritated and disgusted, the petitioner submits. It is pleaded that since a movie which is supposed to be a form of art, it influences common people of the society and it is common among people to imitate the dialogues of the Malayalam movies and if this similar situation happens with the movie Churuli, it will affect the public morality and tranquility. It is contended that the censor board has violated the rules and regulations by giving permission to release this movie. According to the petitioner, releasing a movie of this kind on a public platform will attract the offences under the Indian Penal Code. According to the petitioner, during the pandemic season, the children and the teenagers are staying at home as their schools are shut down and -6- they are more prone to this OTT platform and this uncensored content. The parents seem it very difficult to monitor the children all

the time, especially teenagers, who cannot be kept away from the phone or any other like gadgets as these devices are necessary for schools and colleges works. According to the petitioner, in January 2019 eight video streaming platforms had signed a self-regulatory code that stated a set of guiding principles for the contents which can be displayed online. There were five terms and conditions which had to be mandatorily followed and the same is extracted in the grounds of the writ petition and the same is extracted hereunder also:

a) No such content shall be added on these platforms which would cause any disrespect to the national emblem or national flag.

b) Display of content which can hurt religious sentiments could not be streamed. c) Visuals promoting child pornography to be strictly -7- prohibited. d) Content which is banned by the law or order of the country could not be streamed. e) Terrorism of any kind cannot be promoted. It is the case of the petitioner that there is violation of the above terms and conditions also. Hence, this writ petition.

3. The 1st respondent in this writ petition is the Central

Board of Film Certification (for short 'CBFC') and a statement is filed by the Assistant Solicitor General of India on behalf of the 1st respondent. In the statement, it is stated that an application of the Malayalam feature film titled "Churuli" was received in the regional office, Central Board of Film Certification, Thiruvananthapuram on 23.10.2021 along with all other documents. After scrutiny of the application, the film was screened on 29.10.2021 before the Examining Committee with Regional Officer, CBFC, Thiruvananthapuram as Examining -8- Officer, and four advisory committee members, which included a total of three women including the Examining Officer. It is stated that on examination, the Examining Committee unanimously recommended Adult Certificate ('A') to the film subject to certain excisions and modifications. This was conveyed to the applicant at the time of the hearing, which was

held on the same day after screening. It is submitted that the

producer of the film submitted the excisions and modifications suggested by the CBFC at 12.11.2021 and after verification by the CBFC on 18.11.2021 the film was given 'Adult Certificate' with No.DIL/3/6/2021-THI on 18.11.2021. It is specifically stated in the writ petition that the Malayalam feature film 'Churuli' which is being exhibited through OTT platform by the Sony LIV is not the certified version of the film. It is submitted that the Regional Officer, CBFC, Thiruvananthapuram, by an official statement dated 22.11.2021 had informed the general public that the Malayalam feature film 'Churuli' which is being -9- exhibited through OTT platform SonyLiv is not the certified version of the film. It is also stated that the Central Board of Film Certification has no role with regard to the films in the OTT platform. It is submitted that the contents on the internet cannot be governed by the Cinematograph Act, 1952.

4. The 2nd respondent filed a counter affidavit in the writ

petition. The 2nd respondent submitted that the Cinematograph Act, 1952 has no application in the OTT Platform. The exhibition of content on the OTT platform, which is the subject matter of the present petition, is governed by a separate set of regulations, i.e., the Information Technology Act, 2000 r/w Information Technology (Intermediary Guidelines and Digital Media Ethics Code), Rules 2021 (for short 'the Rules, 2021'). According to the 2nd respondent, the Rules 2021 impose reasonable restrictions on the exercise of their right of freedom of speech and expression. It is submitted that the transmission -10- or streaming of films through the medium of the internet will not come within the purview of clause (c) of Section 2 of the Cinematograph Act, 1952. The OTT platforms are not public platforms like TV channels or cinema theaters, where content is broadcast simultaneously to all viewers. According to the 2nd respondent, the contents displayed on the 2nd respondent's OTT platform are classified in accordance with the provisions of the Rules, 2021, depending on the nature and theme of the movie. Any person intending to watch a film or a serial on the OTT platform as a subscriber has to first take a subscription for which the person has to be above 18 years of age. Part III of the Rules, 2021 sets about the code of ethics and procedure and safeguards in relation to digital media and applies, inter alia, to publishers of online curated content. The 2nd respondent submits that they will fall within the definition of

publisher of online curated content in Rule 2(1)(u) of the Rules, 2021. According to the 2nd respondent, the film Churuli is classified, which is restricted to -11- viewing by Adults and hence, given 'A' rating. This rating, according to the 2nd respondent has been given, on the basis of the language used and violence depicted in the film. A true copy of the screenshot depicting the said rating and classification is produced as Ext.R2(a) along with the counter. It is also contended by the 2nd respondent that the present petition is premature as the petitioner has failed to exercise the alternative remedy prescribed by the IT Rules. According to the 2nd respondent, any person, who is aggrieved by the contents being made available on the respondent's platform has the right to approach the grievance cell and the platform has the obligation to provide a grievance redressal officer. The details of the grievance redressal officer appointed by the second respondent are also mentioned in the counter affidavit. According to the 2nd respondent, while the use of language in the film is strong, the respondent has adhered to the guidance provided in the Appendix to the IT Rules. With this guidance in mind, it is -12- submitted that the highest level of classification that can be given to the used strong language is 'A' rating which means that the contents are restricted to be viewed by adults only. Hence, it is contended that the 2nd respondent has discharged the obligation imposed as per Rules, 2021. According to the 2nd respondent, the language used in the film is in the context of the movie's underlying theme and storyline. It is stated that all the dialogues in the movie are contextual and used in a particular context of the storyline. It is the specific case of the 2nd respondent that the 2nd respondent has not violated any of the provisions of Rules, 2021, and the petitioner is not entitled to any reliefs in this writ petition.

5. A statement is filed on behalf of the additional 7th

respondent as directed by this Court on 07.01.2022 in which the report submitted by the Special Team constituted by the State Police Chief, Kerala, as per the directions of this Court is also -13- produced as Ext.R7(b). The Interim Order and the consequential actions from the respondents.

6. When the above writ petition came up for admission,

this Court admitted the writ petition and issued notice to the respondents. Thereafter, when the matter came up for consideration on 07.01.2022, this Court passed the following

order:

Churuli is a Malayalam movie directed by the 3rd respondent and co-produced by the 4th respondent. The 4th respondent is also acting in this film. Respondents 5 and 6 are the other actors. The prayer in this writ petition is to remove the film from the Over The Top (OTT) platform.

2. The story of this film is like this: "Churuli" is an imaginary village of the filmmaker situated in a forest area. The inmates of "Churuli" -14-

have no connection with the outside world and all of them are absconded criminals. The language used by the inmates are colloquial containing obscene and filthy language. Two cops reached Churuli to apprehend a born criminal. The cops reached Churuli in disguise and tried to mingle with the villagers to find out the criminal they are searching. Cops also used the same obscene and filthy language to find out the wanted criminal. At last they apprehend the criminal. This is the sum and substance of the admitted story of the film "Churuli".

3. According to the petitioner, the language used by

the characters in this film are obscene and filthy and hence, opposed to public order, decency and morality. It is also contended that the releasing of these types of movies in OTT platform will attract criminal offences and is also a violation of statutory provisions of law in this field.

4. A cinema is a creation of a film maker. Artistic freedom generally means a freedom to imagine, create and distribute cultural expressions. Article -15-

19(1)(a) of the Constitution of India envisages a fundamental right to freedom of speech and expression to all citizens, but of course with an exception mentioned

in Article 19(2) of the Constitution. Article 19(2) of the Constitution of India is extracted hereunder:

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.

5. The film Churuli is exhibiting in OTT platform. Those who want to watch it, they can pay and watch -16- it. There is no compelled viewing of this movie. The OTT platform cannot be treated as captive audience who are forced to watch the movie.

6. According to film makers, the inmates of

Churuli are using a colloquial language which contains filthy and obscene language. This Court, invoking the powers under Article 226 of the Constitution of India, cannot dictate the film maker to use only Valluvanadan slang Malayalam or Kannur slang Malayalam or Trivandrum slang Malayalam by the characters in the movie. This Court can only verify whether the exhibition of Churuli film violates any existing law enacted to ensure public order, decency or morality. While deciding the same, the artistic freedom of a film maker should be in mind. Before deciding this issue, it will be beneficial to get the opinion of State Police Department. Therefore the following interim orders are passed:

1. The State Police Chief, Government of Kerala, is suo motu impleaded as additional 7th respondent. -17- Registry will carry out necessary amendment in the cause title. The Government Pleader takes notice for the additional 7th respondent.

2. The State Police Chief will constitute a team to watch the movie Churuli which is available in OTT platform. The team should be constituted within three days from the date of receipt of this order.

3. The team should watch the film and verify

whether there is any statutory violation or any criminal offence is made out. The team, after watching the film, will prepare a report, and the 7th respondent, based on the same, will file a statement within two weeks from the date of constituting the team mentioned above. The report of the team also should be produced before this Court. The respondents are free to file counter affidavit in the meanwhile. Issue a copy of this order to the Government Pleader today itself.

Post along with the counter affidavit/statement, if any, on 31.01.2022. -18-

7. Based on the above direction, the State Police Chief

constituted a special team headed by the Additional Director General of Police, in which four other officers are also included. The team after watching the movie submitted a report which is produced as Annexure.R7(b). The relevant portion of the report is extracted hereunder: The Committee conducted sittings and Committee members watched the movie on the OTT Platform on SONYLIV. The Committee reports as follows:

1) The plot of the movie "Churuli" is life of a group of Fugitives from Law residing in deep forests which is highly inaccessible to the outside world. The inmates of film "Churuli" has little connection with outside world. The Inmates of the imaginary world are rough and tough in character who are braving the odds of nature and are in constant dread of apprehension by Law. Their living conditions are meagre and life is an everyday struggle for existence for them. They face danger from wild life and other -19-

perils of forest life. It is a daily struggle for existence for the characters in the movie. The centre of action in the movie is an Illegal Arrack brewing centre deep

inside the forest. 2) The characters in the movie due to their living conditions and circumstances are forced to speak in rough and tough language replete with expletives and cuss words in their day to day interactions.

3) For the plot and circumstance of the Movie, "Churuli" to be believable to the audience the characters in the movie has to speak in such a language which reflects their circumstances and living conditions. In order to make the Movie believable and for the audience to fully appreciate the life and culture of the characters such language is unavoidable. The language spoken by the characters In the movie is intrinsic to the roles played. Persons living in such living conditions cannot be expected to speak in a decent language used by people residing in a normal area.

4) Cinema is a work of art and film maker is an -20-

Artist. Article (19) of the Constitution bestows Artistic Freedom to the Artists. Law cannot direct an Artist to use his artistic talents in a particular manner or direct the characters to use a particular language in a particular manner. Artists have full artistic freedom provided that the existing Laws of the Country are not violated.

5) Given the above, the question to be answered is whether the film "Churuli" violates any Statutory Offence or any Criminal Offence.

a) Section 294 of IPC is the Penal Section dealing with "Obscenity". Section 294 clearly says an act become punishable under "Obscenity" only if it is committed in a PUBLIC PLACE. Subsequent Interpretations of the Hon'ble Supreme Court (Pawan Kumar V State of Haryana (1996) 4 SCC 17: 1997 SCC (Cri) 583) also affirms this fact.

6) The movie "Churuli" is shown on the OTT Platform. OTT is not a Public Place. A Place becomes Public when a person Irrespective of -21- age/gender or Socio-

economic status has free entry and exit without any barrier or restrictions. Going by this definition OTT (Over The Top) Platform is not a Public Place. OTT cannot be accessed by anyone. Entry to an OTT Platform is not free. To have an access to an OTT Platform, a person a) has to possess a Smart Device (Smart TV, Smart Phone with internet access). b) The particular App has to be downloaded. c) Monthly subscriptions has to be paid in advance to download the Application. Hence, offence under Section 294 IPC is not made out in the film "Churuli". 7) The alleged presence of obscene matter In the language used by the characters of the film 'Churuli' is outweighed by the preponderance of artistic value and social purpose of the said film. It will be relevant

to quote from the following passage in the judgment

of the Hon'ble Supreme Court in a case where the Apex Court has upheld the freedom of Speech and -22- Expression under Article 19(1) through cinematograph and refused the restrictions on the exhibition of the film on grounds of obscenity. The Quote is as follows:

"We find that the judgment under appeal does not take due note of the theme of the film and the fact that it condemns rape and the degradation of and violence upon women by showing their effect upon a village child, transforming her to a cruel dacoit obsessed with wreaking vengeance upon a society that has caused her so much psychological and physical hurt, and that the scenes of nudity and rape and the use of expletives, so far as the Tribunal had permitted them, were in aid of the theme and intended not to arouse prurient or lascivious thoughts but revulsion against the perpetrators and pity for the victim"

(Bobby Art International Vs Om Pal Singh Hoon [MANU/SC/0466/1996] popularly known as the Bandit Queen Case). 8) Through the above judgment it is clear that the -23- Hon'ble Supreme Court has ruled that a film cannot be restricted simply because the content is obscene, indecent or immoral. The abusive language or nudity in the movie has to further the cause regarding the depiction of the reality of the story of the Movie concerned. 10) The film "Churuli" released in Over the Top

(OTT) platform, through Sony LIV, a social media

intermediary, complies with the Guidelines specified under Rules 3 and 4 of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, issued by the Central Government under the Information Technology Act, 2000.

11) Sony LIV is displaying the Content Classification of the film "Churuli" as "A" (18+) (restricted to adults) in accordance with the Code of Ethics of the above mentioned Rules. As per the Rules, cited above content may be classified on the basis of of.-i) Themes and messages; ii) Violence; iii) Nudity; iv) Sex; v) Language; vi) Drug and substance abuse; and -24-

(vii) Horror. As regards display of classification,

"Churuli displays prominently the warning - Strong Language, Violence, Threat Visuals is prominently displayed as directed in Central Rules. This content classification Rules are seen complied with by Sony LIV, with respect to movie "Churuli".

12) Section 67 of the IT Act 2000 provides punishment for publishing or transmitting or transmitting obscene material in electronic form. The said provision is not attracted in the case as its content is already certified as 'A' (Restricted to Adults) under the Central Government Rules. The Petitioner in the Writ Petition is free to invoke the Grievance Redressal Mechanism under Part III of the said Rules if he/she is dissatisfied with the 'A' (restricted to adults) certification of the film.

This Grievance Redressal Mechanism is enumerated in detail in Part III of the Rules. 13) The movie "Churuli" does not contain any dialogue or action or suggestion instigating Violence against State or any matter adversely affecting - 25- Sovereignty, Integrity of the State, Friendly relations with other Nations or any matter provoking or promoting hatred among communities/religions or affecting

Communal harmony.

In view of the above discussion, the Committee has come to the conclusion that the film "Churuli" has not made any statutory violation or any criminal offences. It is in full compliance with Rules and Laws in this regard. The depiction of characters in the movie, their language, dialogues etc falls under the freedom of artistic expression which is the exclusive realm of the creative freedom of artists, and Police has no objections to the Movie, its characters or their language used in the Movie.

Analysis of the facts and resolution

8. Heard Advocate C A Anoop for the petitioner, ASGI

for the 1st respondent, Senior Counsel Grashious Kuriakose instructed by Shaji Thomas For the 2nd respondent, Advocate Sangeetha Lakshmana for the 5th respondent, and the -26- Government Pleader for the 7th respondent.

9. The main grievance of the petitioner is that 'Churuli',

which is a Malayalam feature film contains obscene and filthy language which opposes public morality and tranquility. In the pleading in the writ petition also, it is only stated that the film contains obscene and filthy languages, which opposes public morality and tranquility. According to the petitioner, a person of common parlance will not use such languages even privately at home. It is also stated that the release of a movie of this kind on a public platform will attract the offences under the Indian Penal Code. According to the petitioner, if this movie is allowed to watch by children and teenagers, there is a chance to imitate the language in the film by them. Except stating that the film contains obscene and filthy languages, there are no other averments in the writ petition regarding the rules based on which the OTT platform is functioning and whether there is any -27- mechanism to check about the allegations raised in the writ petition. Simply stating in the writ petition that a movie contains an overdose of foul, filthy, and obscene language, this Court cannot direct the authority to remove the movie from the OTT platform.

Moreover, the prayer in the writ petition is to issue a writ of mandamus directing the respondents to remove the movie Churuli from the OTT platform. The prayer is so vague. The 1st respondent is the Central Board of Film Certification. Admittedly, the 1st respondent has no role in uploading films to OTT platform. Respondent No.3 is the director of the film. Respondents 4 to 6 are actors in the film. It is also stated that the fourth respondent is a Co-producer. The petitioner prays to issue directions to the Central Board of Film Certification and to the Director and other artists of the film to remove the film from the OTT platform. There is indeed a prayer to issue direction to the 2nd respondent also. The relevant provision which is applicable to OTT platform movies is also not mentioned in the writ -28- petition. It is only mentioned that the exhibition of the movie amount to the commission of criminal offences under the Indian Penal Code. When a writ petition is filed with a serious allegation that a feature film violates certain provisions of the Indian Penal Code, at least the prayers in the writ petition should be clear and specific. An actor or the director or the producer of a film cannot remove the movie from the OTT platform. Therefore, according to me, the writ petition lacks sufficient pleadings and the prayers in the writ petition itself are vague.

10. As far as the exhibition of films in the OTT platform

is concerned, the Ministry of Electronics and Information Technology framed the Rules, 2021 in the exercise of the powers conferred by Section 87 of the Information Technology Act, 2000. It was framed in supersession of the Information Technology (Intermediary Guidelines) Rules, 2011. Part II of the Rules 2021 deals with due diligence by intermediaries and -29- the grievance redressal mechanism. Part III of the Rules, 2021 deals with the Code of Ethics and Procedure and Safeguards in relation to digital media. This part applies to the publishers of the news and current affairs content and publishers of online curated content. The publisher is defined in Rule 2 (s) of Rules, 2021, which says that publisher means a publisher of news and current affairs content or the publisher of online curated content. Online curated content is defined in Rule 2(q) as any curated catalogue of audio visual-content, other than news and current affairs content, which is owned by, licensed to, or contracted to be transmitted by a

publisher of online curated content and made available on demand, including but not limited through subscription, over the internet or computer network, and includes films, audio visual programmes, documentaries, television programmes, serials, podcasts and other such contents. Rule 9 of Part III of Rules, 2021 says about the observance and adherence of the code. Rule 9(3) says that for -30- ensuring observance and adherence to the code of ethics by publishers operating in the territory of India and for addressing the grievance made in relation to publisher under Part III, there shall be a three tier structure as Level I-self regulation by publishers, Level II-self regulation by self-regulating bodies of the publishers and Level III- oversight mechanism by the Central Government. Chapter I in Part III deals with the grievance redressal mechanism. Chapter II deals with self- regulating mechanism - Level I. Chapter III deals with self-regulating mechanism - Level II. Chapter IV deals with the oversight mechanism - Level III.

11. Therefore, it is clear from the Rules, 2021 that if the

petitioner has got any grievance against the movie Churulim there is a grievance redressal mechanism as per Rules, 2021. Admittedly, the petitioner has not availed of such alternative remedies. Therefore, prima facie, according to me, the writ -31- petition is not maintainable, because the petitioner has not availed the alternative remedy, that is available as per Rules, 2021.

12. Moreover, I considered the grievance raised by the

petitioner in the writ petition. According to the petitioner, the Churuli movie contains an overdose of foul, obscene, and filthy languages which are opposed to public morality and tranquility. Article 19 (1) (a) of the Constitution of India envisages a fundamental right to freedom of speech and expression. The only restriction for the freedom of speech and expression is mentioned in Article 19(2) of the Constitution. As per Article 19

(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 exercises of the right conferred by the said sub-clause in the interest of the sovereignty and integrity of India, the security of -32- the State, friendly relations with foreign State, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. The only point to be decided is whether there is anything to restrict the freedom available to a film maker as per Article 19(1) of the Constitution of India.

13. A film is a creation of an artist. Artistic freedom

generally means a freedom to imagine, create and distribute cultural expressions. Article 19(1)(a) of the Constitution of India envisages a fundamental right to freedom of speech and expression to all citizens, but of course with an exception mentioned in Article 19(2) of the Constitution. It is a settled position that artistic freedom is covered by Article 19(1) (a) of the Constitution. The writer and the director of a film are the masters of that film. Whether the exhibition of Churuli film violates any existing law enacted to ensure public order, decency -33- or morality is the question to be decided. This Court while considering this writ petition decided to get the opinion of the State Police Department regarding the alleged violation of the law enacted to ensure public order, decency, and morality. A special team constituted by the State Police Chief, (which include three women members) after watching the movie reported before this Court that there is absolutely no statutory violation of any law and it is also stated in the report, which is produced as Annexure R2(b) that no criminal offence is made out as alleged in the writ petition. Therefore, even according to the State Police Department, there is no violation of any existing statutory rule in the film, and no criminal offence is made out in exhibiting the above film in the OTT platform.

14. A film is to be assessed after watching the film in

full. Without watching a movie in full, it is not proper to comment based on some isolated dialogues in the film. Whether -34- those dialogues are necessary for the facts and circumstances of the story in the movie is a matter to be decided by the filmmaker and this Court also can look into the same to find out whether the filmmaker exceeds his right of freedom of speech and expression. In State of Bihar

v. Smt.Shailabala Devi [AIR 1952 SC 329], a constitutional bench of the Apex Court considered the contents of a pamphlet to find out the objectionable matters in it. The apex court observed that the writing in the pamphlet has to be considered as a whole. The court observed that, in a fair, free, and liberal spirit, not dwelling too much upon isolated passages or a strong word here and there, an endeavour should be made to gather the general effect which the whole composition would have on the mind of the public. K.A. Abbas v. Union of India and another [AIR 1971 SC 481], the Apex Court observed that treatment of motion pictures must be different from that of other forms of art and expression. The Apex Court observed that motion pictures can -35- stir up emotions more deeply than any other product of art. Its effect particularly on children and adolescents is very great since their immaturity makes them more willingly suspend their disbelief than mature men and women. Therefore, the Apex Court observed that the classification of films into two categories of 'U' films and 'A' films is a reasonable classification. Moreover, in K.Abbas case (supra), the Apex Court considered artistic freedom in detail. It will be better to extract paragraphs 50, 51 and 52 of the above judgment:

50. But what appears to us to be the real flaw in the scheme of the directions is a total absence of any direction which would tend to preserve art and promote it. The artistic appeal or presentation of an episode robs it of its vulgarity and harm and this appears to be completely forgotten. Artistic as well as inartistic presentations are treated alike and also what may be socially good and useful and what may not. In Ranjit D. Udeshis case,

(1965) 1 SCR 65 = (AIR 1965 SC 88# I), this Court laid down certain principles on which the obscenity of a book was to be considered with a view to deciding whether the book -36-

should be allowed to circulate or withdrawn. Those principles apply mutatis mutandis to films and also other areas besides obscenity. The Khosla Committee also adopted them and recommended them for the

guidance of the film censors. We may reproduce them here as summarized by the Khosla Committee: "The Supreme Court laid down the following principles which must be carefully studied and applied by our censors when they have to deal with a film said to be objectionable on the ground of indecency or immorality:

(1) Treating with sex and nudity in art and literature cannot be regarded as evidence of obscenity without something more.

(2) Comparison of one book with another to find the extent of permissible action is not necessary.

(3) The delicate task of deciding what

is artistic and what is obscene has to be performed by Courts and in the last resort, by the Supreme Court and so, oral evidence of men of literature or others on the question of obscenity is not relevant.

(4) An overall view of the obscene

matter in the setting of the whole work would of course be necessary but the obscene matter must be considered by itself and separately to find out whether it is so gross and its obscenity is so decided that it is likely to deprave or corrupt those whose minds are open to influence of this sort and -37- into whose hands the book is likely to fall.

(5) The interests of contemporary society and particularly the influence of the book etc., on it must not be overlooked.

(6) Where obscenity and art are mixed,

art must be so preponderating as to throw obscenity into shadow or render the obscenity so trivial and insignificant that it can have no effect and can be overlooked.

(7) Treating with sex in a manner

offensive to public decency or morality which are the words of our Fundamental Law judged by our national standards and considered likely to pander to lascivious prurient or sexually precocious minds must determine the result.

(8) When there is propagation of ideas,

opinions and information's or public interest or profits, the interests of society may tilt the scales in favour of free speech and expression. Thus books on medical science with intimate illustrations and, photographs though in a sense immodest, are not to be considered obscene, but the same illustrations and photographs collected in a book from without the medical text would certainly be considered to be obscene.

(9) Obscenity without a preponderating

social purpose or profit cannot have the constitutional protection of free speech or expression. Obscenity is treating with sex in a manner appealing to the carnal side of human nature or having that tendency. Such -38- a treating with sex is offensive to modesty and decency.

(10) Knowledge is not a part of the

guilty act. The offenders knowledge of the obscenity of the book is not required under the law and it is a case of strict liability". Application of these principles does not seek to whittle down the fundamental right of free speech and expression beyond the limits permissible under our Constitution for however high or cherished that right it does not go to pervert or harm society and the line has to be drawn somewhere As was observed in the same case: "..... The test which we evolve must obviously be of a general character but it must admit of a just application from case to case by indicating a line of demarcation not necessarily sharp but sufficiently distinct to distinguish between that which is obscene and that which is not".-----"

A similar line has to be drawn in the case of every topic in films considered unsuitable for public exhibition or specially to children.

51. 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 -39-

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 for ever 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 man or 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 -40-

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 Qedipus 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 ones own mother is permissible or suicide in such circumstances or tearing out ones 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 Veerier Elwyns Phulmat of the Hills or the same episode in Henrysons Testament of Cressaid (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 Nardirshah may be permissible, it handled delicately and as part

-41-

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 Voltaires Candide would be meaningless without Cunegondes episode with the soldier and the story of Lucrece could never be depicted on the screen.

52. Therefore it is not the elements of rape

leprosy, sexual immorality which should attract the censors 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. (Underlines supplied)

15. In *Ranjit D Udeshi v. State of Maharashtra* [AIR

1965 SC 881], the Apex Court considered artistic freedom in -42- connection to a book 'Lady Chatterley's Lover'. It will be better to extract paragraphs 23 and 29 of the above judgment.

23. It now remains to consider the book

Lady Chatterley's Lover. The story is simple. A baronet, wounded in the war is paralysed from the waist downwards. He married Constance (Lady Chatterley) a little before he joined up and they had a very brief honeymoon. Sensing the sexual frustration of his wife and their failure to have an heir he leaves his wife free to associate with other men. She first experiences with one Michaelis and later with a game-keeper Mellors in charge of the grounds. The first over was selfish sexually, the other was something of an artist. He explains to Constance the entire mystery of eroticism and they put it into practice. These are over a dozen descriptions of their sexual intimacies. The game-keepers speech and vocabulary were not genteel. He knew no Latin (which could be used to appease the censors) and the human 'pudenda' and other erogenous parts are freely discussed by him and also named by the author in the descriptions. The sexual congress each time is described with great candidness and in prose as tense as it is intense and of which Lawrence was always a consummate master. The rest of the story is a mundane one. There is some criticism of the modern -43-

machine civilization and its enervating effects and the production of sexually inefficient men and women and this, according to Lawrence, is the cause of maladjustment of sexes and their unhappiness.

29. We have dealt with the question at

some length because this is the first case before this Court invoking the constitutional guarantee against the operation of the law regarding obscenity and the book is one from an author of repute and the centre of many controversies. The book is probably an unfolding of his philosophy of life and of the urges of the Unconscious but these are unfolded in his other books also and have been fully set out in his Psychoanalysis and the- Unconscious and finally in the Fantasia of the Unconscious. There is no loss to society if there was a message in the book. The divagations with sex are not a legitimate embroidery but they are the only attractions to the common man. When everything said in its favour we find that in treating with sex the impugned portions viewed separately and also in the setting of the whole book pass the permissible limits judged of from our community standards and as there is no social gain to us which can be said to preponderate, we must hold the book to satisfy the test we have indicated above. (Underlines supplied) -44-

16. In Raj Kapoor and others v. State (Delhi

Administration) and others [AIR 1980 SC 258], the Apex Court observed that social scientists and spiritual scientists will broadly agree that man lives not alone by mystic squints, ascetic chants, and austere abnegation but by luscious love of Beauty, sensuous joy of companionship and moderate non-denial of normal demands of the flush. It will be better to extract paragraphs 15 to 17 of the above judgment.

15. I am not persuaded that once a certificate under the Cinematograph Act is issued the Penal Code, pro tanto, will hang limp. The Court will examine the film and judge whether its public display, in the given time

and crime, so breaches public morals or depraves basic decency as to offend the penal provisions. Statutory expressions are not petrified by time but must be up-dated by changing ethos even as popular ethics are not absolutes but abide and evolve as community consciousness enlivens and escalates. Surely, the satwa of society must rise progressively if mankind is to move towards its timeless destiny and this can be guaranteed only if the ultimate value-vision is rooted in the unchanging basics, Truth- -45-

Goodness-Beauty, Satyam, Shivam, Sundaram. The relation between Reality and Relativity must haunt the court's evaluation of obscenity, expressed in society's pervasive humanity, not law's penal prescriptions. Social scientists and spiritual scientists will broadly agree that man lives not alone by mystic, squints, ascetic chants and austere abnegation but by luscious love of Beauty, sensuous joy of companionship and moderate non-denial of normal demands of the flesh. Extremes and excesses boomerang although some crazy artists and film directors do practise Oscar Wilde's observation: "Moderation is a fatal thing. Nothing succeeds like excess".

16. All these add up to one conclusion that

finality and infallibility are beyond courts which must interpret and administer the law with pragmatic realism, rather than romantic idealism or recluse extremism.

17. After all, Cohen's words, in Reason and Law, are good counsel: "The law is not a homeless, wandering ghost. It is a phase of human life located in time and space."

(1) M.R. Cohen. Reason and Law 4(1950).

17. In Samresh Bose and another v. Amal Mitra and -46- another [AIR 1986 SC 967], the Apex Court was considering obscenity in books. It will be better to extract paragraph 34 of the above judgment:

34) We have read with great care. It is to be remembered that Sarodiya Desh is a very popular journal and is read by a large number of Bengalis of both sexes and almost of all ages all over India. This book is read by teenagers, young boys, adolescents, grown- up youngmen and elderly people. We are not satisfied on reading the book that it could be considered to be obscene. Reference to kissing, description of the body and the figures of the female characters in the book and suggestions of acts of sex by themselves may not have the effect of depraving, debasing and encouraging the readers of any age to lasciviousness and the novel on these counts, may not be considered to be obscene. It is true that slang and various unconventional words have been used in the book. Though there is no description of any overt act of sex, there can be no doubt that there are suggestions of sex acts and that a great deal of emphasis on the aspect of sex in the lives of persons in various spheres of society and amongst various classes of people, is to be found in the novel. Because of the language used, the episodes in relation to sex life narrated in the novel, appear -47-

vulgar and may create a feeling of disgust and revulsion. The mere fact that the various affairs and episodes with emphasis on sex have been narrated in slang and vulgar language may shock a reader who may feel disgusted by the book does not resolve the question of obscenity. It has to be remembered that the author has chosen to use such kind of words and language in expressing the feelings, thoughts and actions of Sukhen as men like Sukhen could indulge in to make the whole thing realistic. It appears that the vulgar and slang language used have greatly influenced the decision of the Chief Presidency Magistrate and also of the learned Judge of the High Court. The observations made by them and recorded earlier go to indicate that in their thinking there has been kind of confusion between vulgarity and obscenity. A vulgar writing is not necessarily obscene. Vulgarity arouses a feeling of disgust and revulsion and also boredom but does not have the effect of depraving, debasing

and corrupting the morals of any reader of the novel, whereas obscenity has the tendency to deprave and corrupt those whose minds are open to such immoral influences. We may observe that characters like Sukhen, Shikha, the father and the brothers of Sukhen, the business executives and others portrayed in the book are not just figments of the author's imagination. Such characters are often to be -48-

seen in real life in the society. The author who is a powerful writer has used his skill in focusing the attention of the readers on such characters in society and to describe the situation more eloquently he has used unconventional and slang words so that in the light of the author's understanding, the appropriate emphasis is there on the problems. If we place ourselves in the position of the author and judge the novel from his point of view, we find that the author intends to expose various evils and ills pervading the society and to pose with particular emphasis the problems which ail and afflict the society in various spheres. He has used his own technique, skill and choice of words which may in his opinion, serve properly the purpose of the novel. If we place ourselves in the position of readers, who are likely to read this book, and we must not forget that in this class of readers there will probably be readers of both sexes and of all ages between teenagers and the aged, we feel that the readers as a class will read the book with a sense of shock, and disgust and we do not think that any reader on reading this book would become depraved, debased and encouraged to lasciviousness. It is quite possible that they come across such characters and such situations in life and have faced them or may have to face them in life. On a very anxious consideration and after carefully applying our judicial mind in -49-

making an objective assessment of the novel we do not think that it can be said with any assurance that the novel is obscene merely because slang and unconventional words have been used in the book in which there have been emphasis on sex and description of female bodies and there are the narrations of feelings, thoughts and actions in vulgar

language. Some portions of the book may appear to be vulgar and readers of cultured and refined taste may feel shocked and disgusted. Equally in some portions, the words used and description given may not appear to be in proper taste. In some places there may have been an exhibition of bad taste leaving it to the readers of experience and maturity to draw the necessary inference but certainly not sufficient to bring home to the adolescents any suggestion which is depraving or lascivious. We have to bear in mind that the author has written this novel which came to be published in the Sarodiya Desh for all classes of readers and it cannot be right to insist that the standard should always be for the writer to see that the adolescent may not be brought into contact with sex. If a reference to sex by itself in any novel is considered to be obscene and not fit to be read by adolescents, adolescents will not be in a position to read any novel and will have to read books which are purely religious. We are, therefore, of the opinion that the Courts -50-

below went wrong in considering this novel to be obscene. We may observe that as on our own appreciation of the novel, we are inclined to take a view different from the view taken by the Courts below, we have taken the benefit of also considering the evidence given in this case by two eminent personalities in the literary field for proper appreciation and assessment by us. It has already been held by this Court in two earlier decisions which we have already noted that the question whether a particular book is obscene or not, does not altogether depend on oral evidence because it is duty of the Court to ascertain whether the book offends the provisions of S. 292 I.P.C. but it may be necessary if it is at all required, to rely to a certain extent on the evidence and views of leading litterateurs on that aspect particularly when the book is in a language with which the court is not conversant. It is indeed a matter of satisfaction for us that the views expressed in course of their evidence by the two eminent persons in the literary field are in accord with the views taken by us. (Underlines and emphasis supplied).

18. The Apex Court observed that vulgar writing is not

necessarily obscene. Vulgarly arouses a feeling of disgust and revulsion and also boredom but does not have the effect of -51- depraving, debasing and corrupting the morals of any reader of a novel.

19. In *Odyssey Communications Pvt. Ltd. v. Lokvidayan Sanghatana and others* [AIR 1988 SC 1642], the Apex Court considered the exhibition of a serial 'Honi AnHoni', and observed like this:

7. It was not the case of the petitioners in the Writ Petition that the exhibition of serial 'Honi-Anhoni' was in contravention of any specific law or direction issued by the Government. They had not alleged that the Doordarshan had shown any undue favour to the appellant and the sponsoring institutions resulting in any financial loss to the public exchequer. The objection to the exhibition of the film had, however, been raised by them on the basis that it was likely to spread false or blind beliefs amongst the members of the public. They had not asserted any right conferred on them by any statute or acquired by them under a contract which entitled them to secure an order of temporary injunction against which this appeal is filed. The appellant had denied that the exhibition of the serial was likely to affect prejudicially the well-being of the people. The Union of -52-

India and the Doordarshan have pleaded that the serial was being telecast after following the prescribed procedure and taking necessary precaution. In such a situation, the High Court should not have immediately proceeded to pass the interim order of injunction. It was no doubt true that the 12th episode was to be telecast on 14th April, 1988 and the 13th episode was to be telecast on 21st April, 1988. If the petitioners in the writ petition had felt, as they had alleged in the course of the petition, that all the episodes in the serial were offensive they could have approached the High Court as early as possible within the first two

or three weeks after the commencement of the exhibition of the serial. But they waited till the exhibition of the 11th episode of the serial was over and filed the petition only in the second week of April, 1988. They had not produced any material apart from their own statements to show that the exhibition of the serial was prima facie prejudicial to the community. The High Court overlooked that the issue of an order of interim injunction in this case would infringe a fundamental right of the producer of the serial. In the absence of any prima facie evidence of grave prejudice that was likely to be caused to the public generally by the exhibition of the serial it was not just and proper to issue an order of temporary injunction. We are not satisfied that the -53-

exhibition of the serial in question was likely to endanger public morality. In the circumstances of the case the balance of convenience lay in favour of the rejection of the prayer for interim injunction. What we have stated here is sufficient to dispose of this appeal. The other questions of law which may arise in a case of this nature will have to be dealt with in an appropriate case. We express no opinion on those questions in this case. We are, however, of the opinion that the High Court was in error in the present case in issuing the interim order of injunction against which this appeal is filed. We, therefore, allow this appeal and set aside the interim order of injunction passed by the High Court on the 13th of April, 1988. There is, however, no order as to costs.

20. In Bobby Art International v. Om Pal Singh Hoon

and others [AIR 1996 SC 1846], the Apex Court considered a film named 'Bandit queen'. The case was filed to quash the certificate of the exhibition of the said film and restrain its vision in India. The Apex Court after considering almost all the judgments, till then, observed that the artistic expressions and creative freedom are not to be unduly curbed, the film must be -54- judged in its entirety from a point of view of its overall impact. It must also be judged in the light of the period depicted and the contemporary standards of the people to whom it relates. But it must not deprive the morality of the audience. It will be beneficial to extract

paragraph 20 to 27 of the above judgment.

20. The Guidelines aforementioned have been carefully drawn. They required 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 over- all impact". It must also be judged in the light of the period depicted and the contemporary standards of the people to whom it relates, but it must not deprave the morality of the audience. Clause 2 requires that human sensibilities are not offered by vulgarity, obscenity or depravity, that scenes degrading or denigrating women are not presented and scenes of sexual violence against women are avoided, but if such scenes are germane to the theme, they be reduced to a minimum and not particularised.

21. The guidelines are broad standards. -55-

They cannot be read as one would read a statute. Within the breadth of the their parameters the certification authorities have discretion. The specific sub-clauses of Clause (2) of the guidelines cannot overweigh the sweep of clauses 1 and 3 and, indeed, of sub clause (xi) of Clause (2). 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.

22. 'Bandit Queen' is the story of a

village child exposed from an early age to the brutality and lust of man. Married off of a man old enough to be her father she is beaten and raped. The village boys make advances which she repulses; but the village panchayat finds her guilty of the enticement of a village boy because he is of high caste and she has to leave the village. She is arrested and, in the police station, filthily abused. Those stand bail for her do so to satisfy their lust. She is kidnapped and raped. During an act of brutality the rapist is shot dead and she finds -56-

an ally in her rescuer. With his assistance she beats up her husband, violently. Her rescuer is shot dead by one whose advance she has spurned. She is gang-raped by the rescuer's assailant and his accomplice and they humiliate her in the sight of the village; a hundred men stand in a circle around the village well and watch the humiliation, her being stripped naked and walked around the circle and then made to draw water. And not one of the villagers helps her. She burns with anger, shame and the urge for vengeance. She gets it, and kills many Thakurs too.

23. It is not a pretty story. There are no

syrupy songs or pirouetting round trees. It is the serious and sad story of a woman turning: a village born female child becoming a dreaded dacoit. An innocent who turns into a vicious criminal because lust and brutality have affected her psyche so. The film levels an accusing finger at members of society who had tormented Phoolan Devi and driven her to become a dreaded dacoit filled with the desire to revenge.

24. It is in this light that the individual

scenes have to be viewed. First, the scene where she is humiliated, stripped naked, paraded, made to draw water from the well, within the circle of a hundred men. The exposure of her breasts and genitals to those men is intended by those -

who strip her to demean her. The effect of so doing upon her could hardly have been better conveyed than by explicitly showing the scene. The object of doing so was not to titillate the cinemagoer's lust but to arouse in him sympathy for the victim and disgust for the perpetrators. The revulsion that the Tribunal referred to was not at Phoolan Devi's nudity but at the sadism and heartlessness of those who had stripped her naked to rob her of every shred of dignity. Nakedness does not always arouse the baser instinct. The reference by the Tribunal to the film 'Schindler's List' was apt. There is a scene in it of rows of naked men and women, shown frontally, being led into the gas chambers of a Nazi concentration camp. Not only are they about to die but they have been stripped in their last moments of the basic dignity of human beings. Tears are a likely reaction; pity, horror and a fellow feeling of shame are certain, except in the pervert who might be aroused. We do not censor to protect the pervert or to assuage the susceptibilities of the over-sensitive. 'Bandit Queen' tells a powerful human story and to that story the scene of Phoolan Devi's enforced naked parade is central. It helps to explain why Phoolan Devi became what she did: her rage and vendetta against the society that had heaped indignities upon her. 24A. The rape scene also helps to -58-

explain why Phoolan Devi became what she did. Rape is crude and its crudity is what the rapist's bouncing bare posterior is meant to illustrate. Rape and sex are not being glorified in the film. Quite the contrary. It shows what a terrible, and terrifying, effect rape and lust can have upon the victim. It focuses on the trauma and emotional turmoil of the victim to evoke sympathy for her and disgust for the rapist.

25. 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.

26. 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.

27. 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 -59-

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. [Underline and emphasis supplied]

21. In the light of the above decisions of the apex court,

it is clear that a film is to be assessed based on its entirety. Whether the dialogues of a film correlate to the story in the film is the point to be decided. The film is to be considered as a whole in a fair, free and liberal spirit without dwelling too much upon isolated dialogues or strong words used in the film here and there. The film is a creation of an artist. The filmmaker is trying to depict a story and the only point to

be looked into is whether the dialogues in the film are within the four corners of the story and whether the dialogues in the movie are relevant in -60- the facts and circumstances of that story. If this Court starts to interfere with the exhibition of films, saying that some dialogues in a movie are obscene or some dialogues are foul language, there will be no end to it. A film is an exhibition of a story by the filmmaker. He is entitled to use his artistic freedom. There is no compulsion to view this film by each and every citizen of this country. Moreover, the film in question was uploaded to OTT platforms. In OTT platform, the view is restricted to the subscribers of the 2nd respondent. The only Rule that gives some

guidelines in the OTT platform movies is Rule 2021. The

authorities have no case that there is any violation of the provisions of Rule 2021 in this case. In such circumstances, this Court can not direct the 2nd respondent to remove the movie from the OTT platform. The Apex Court in K.A. Abbas's case (supra) observed that 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. The Apex Court -61- observed that the task of the censor is extremely delicate and his duty cannot be subject to an exhaustive set of commands established by the prior ratiocination. But the direction is necessary to him so that he does not sweep within the terms of the directions vast areas of thought, speech, and expressions of artistic quality and social purpose and interest. In Ranjit's case (supra), the Apex Court considered the book 'Lady Chatterley's Lover'. The story is narrated in paragraph 23 of that judgment. A baronet, wounded in the war is paralysed from the waist downwards. He married Constance (Lady Chatterley) a little before he joined up and they had a very brief honeymoon. Sensing the sexual frustration of his wife and their failure to have an heir he leaves his wife free to associate with other men. She first experiences with one Michaelis and later with a game- keeper Mellors in charge of the grounds. The first lover was selfish sexually, the other was something of an artist. He explains to Constance the entire mystery of eroticism and they -62- put it into practice. These are over a dozen descriptions of their sexual intimacies. The game-keeper's speech and vocabulary were not genteel. He knows no Latin and the human 'pudenda' and other erogenous parts are freely discussed by him and also named

by the author in the descriptions. The sexual congress each time is described with great candidness and in prose as tense as it is intense and of which Lawrence was always a consummate master. The rest of the story is a mundane one. The Apex Court after narrating the story as stated above observed that '...we find that in treating with sex the impugned portions viewed separately and also in the setting of the whole book pass the permissible limits judged of from our community standards and as there is no social gain to us which can be said to preponderate, we must hold the book to satisfy the test we have indicated above'. Similarly in Raj Kpoor's case (supra) also, the Apex Court observed that, social scientists and spiritual scientists will broadly agree that man lives not alone by mystic, -63- squints, ascetic chants, and austere abnegation but by luscious love of Beauty, sensuous joy of companionship and moderate non-denial of normal demands of the flesh. The Apex Court quoted Cohen's words, in Reason and Law, are good counsel: "The law is not a homeless, wandering ghost. It is a phase of human life located in time and space." In Samaresh Bose's case (supra), the Apex Court observed that the responsibility to decide the question of obscenity rest essentially on the Court. The Apex Court was considering a novel named 'Prajapati' which according to the aggrieved party in that case, contains obscene matters. The Apex Court after considering the contents of the book observed that the book is read by teenagers, young boys, adolescents, grown-up young men, and elderly people. After going through the book, the Apex Court observed that 'we are not satisfied on reading the book that it could be considered to be obscene. The Apex Court observed that reference to kissing, description of the body and the figures of the female -64- characters in the book, and suggestions of acts of sex by themselves may not have the effect of depraving, debasing, and encouraging the readers of any age to lasciviousness and the novel on these counts, may not be considered to be obscene. The Apex Court also observed that 'it is true that slang and various unconventional words have been used in the book. But though there is no description of any over act of sex, there can be no doubt that there are suggestions of sex acts and that a great deal of emphasis on the aspect of sex in the lives of persons in various spheres of society and amongst various classes of people is to be found in the novel. But the Apex Court observed that because of the language used, the episodes in relation to sex life narrated in the novel,

appear vulgar and may create a feeling of disgust and revulsion. But the Apex Court again observed that the mere fact that the various affairs and episodes with emphasis on sex have been narrated in slang and vulgar language may shock a reader who may feel disgusted by the book does not -65- resolve the question of obscenity. The Apex Court held that a vulgar writing is not necessarily obscene. Vulgarly arouses a feeling of disgust and revulsion and also boredom but does not have the effect of depraving, debasing and corrupting the morals of any reader of the novel, whereas obscenity the tendency to deprave and corrupt those whose minds are open to such immoral observe that characters.

22. In *Boby Art International's case* (supra), the Apex

Court was considering a film *Bandit Queen* and the prayer to restrain its exhibition in India. After narrating the story in the film in detail, the Apex Court observed that artistic expression and creative freedom should not be unduly curbed. The Apex Court observed that the film must be judged in its entirety from the point of view of its overall impact. "*Bandit Queen*" is a story of a village child exposed from an early age to the brutality and lust of man. She married a man old enough to be her father. She was beaten and raped. The village boys make advances which -66- she repulses: but the village panchayat finds her guilty of the enticement of a village boy because he is of high caste and she has to leave the village. She was arrested and, in the police station, filthily abused. She was kidnapped and raped. During an act of brutality, the rapist is shot dead and she finds an ally in her rescuer. With his assistance, she beats up her husband violently. Her rescuer is shot dead by one whose advance she has spurned. She is gang raped by the rescuers assailant and his accomplice and they humiliate her in the sight of the village. A hundred men stand in a circle around the village well and watch the humiliation, her being stripped naked and walked around the circle and then made to draw water. No one of the villagers helped her. She burns with anger, shame, and the urge for vengeance. She gets it, and kills many Thakurs too. This is the crux of the story of *Bandit Queen* narrated in the judgment. After narrating the story, the Apex Court observed that too much need not, we think, be made of a few swear words the like -67- 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 the film. The Apex Court said that, we should recognise the message of a serious film and apply this test to the individual scenes thereof.

23. In the light of the above principle, this Court has to

consider the film "Churuli". As narrated in the report submitted by the Special Team constituted by the additional 7th respondent, which includes three women members, the plot of the movie "Churuli" is the life of a group of Fugitives from law residing in deep forests which is highly inaccessible to the outside world. The inmates of the imaginary world are rough and tough in the character who are braving the odds of nature and are in constant dread of apprehension by law. Their living conditions are meagre and life is an everyday struggle for existence. They face danger from wildlife and other perils of forest life. The Special Team observed that it is a daily struggle for existence for the -68- characters in the movie. The centre of action in the movie is an illegal Arrack brewing centre deep inside the forest. The characters in the movie due to their living conditions and circumstances are forced to speak in rough and tough language with expletives and cuss words in their day to day interactions. The filmmaker used a language, which, according to his artistic view, is used by the people in Churuli. In order to make the movie believable and for the audience to fully appreciate the life and culture of the character, the filmmakers use such languages. The persons living in such conditions cannot be expected to speak in a decent language used by people residing in a normal area. Nobody can dictate a filmmaker to use only decent language in his film and it is his artistic discretion to choose the language but of course with reasonable restriction mentioned in Article 19(2) of the constitution. The additional 7th respondent clearly stated in his statement that there is no statutory violation of any rules and no criminal offence is made out in exhibiting - 69- the movie Churuli. In such circumstances, this Court cannot direct any of the respondents to remove the movie Churuli from OTT platform. Moreover, there is no proper pleading in the writ petition. The prayers in the writ petition are vague. A reading of the writ petition itself will show that the intention of the petitioner is only publicity. Even the relevant rule which is applicable in an OTT platform movie is not referred to in the writ petition. Simply making an observation that the movie contains foul language or obscene language, this Court cannot direct to remove

the movie from OTT platform. I have a strong doubt that the petitioner herself has not seen the movie in full with patience before filing this writ petition. Therefore, according to me, no relief can be granted in this writ petition.

24. Before parting with this case, I am constrained to

make certain observations. Social media is now popular among the citizens. Anybody can make any comments on social media because freedom of speech and expression is a fundamental -70- right. But people are making comments on social media without properly understanding the facts. I am sure that most of the people who are making comments against this film namely "Churuli" have not seen the movie in full. Probably they may be relying on certain video clips received on Whatsapp, Facebook, Twitter, etc. to make comments. There is indeed freedom of speech and expression to every citizen as per Article 19 (1)(a) of the Constitution of India. But the above types of critics will be doing an injustice to a filmmaker by making comment about a film and make it an unpopular one without watching his movie in full. I can understand a criticism about a movie after watching the movie in full. But, without watching the movie, making comments alleging that it is a bad film, will hurt the filmmakers and artists. They are also human beings. Their work may be a good artistic creation or sometimes it may not be a good work. But before making comments against it or in favour of it, it is the duty of the citizens to watch their creation. I am told that -71- now there is a phrase in social media about a new language called Churuli language. I am sure that the people who created this "Churuli language" have not seen the film "churuli with patience and with the understanding that it is a creation of an artist. The artists are also part of our society. They create their work spending days and months. Making wrong comments on social media about an artistic creation, even without watching the creation is to be deprecated. It is the duty of the 7th respondent and his subordinates to protect the artistic freedom of a filmmaker by initiating appropriate proceedings including criminal cases, if any criminal offence is made out in such situation. The 7th respondent will give strict directions to his subordinates to take appropriate action in accordance to law, if such complaints are received.

25. Another trend is about interpreting orders of a court

of law. When this Court passed an order on 07.01.2022 which is extracted in paragraph-6 of this judgment, the same was -72- published in almost all print and visual media correctly. But I am told that the social media interpreted the said order in such a way that this Court directed the Police to find out whether there is foul language in Churuli film! If this is correct, it is clear that the same is even without reading the order passed by this Court. This Court only observed that, before deciding this issue it will be beneficial to get the opinion of the State Police Department about the pleadings in the writ petition regarding the alleged statutory violation of laws enacted to ensure public order, decency or morality. This court also directed to find out whether there is any criminal offence made as alleged in the writ petition. This Court never directed the Police to find out whether foul or obscene language is used in "Churuli" film. The contents is correctly published in print and visual media. But I am told that social media started to create a story that High Court directed the Police to find out whether there is foul language in "Churuli" film. This is how social media forum is misused by a -73- section of society. I am not blaming the entire community who are using social media and most of them are using the social media forum in a useful manner. But a minority is misusing the same.

26. Similarly when a Court delivers a judgment in a case,

even before the judgment reaches the public, the criticism starts. It is surprising to see that, few lawyers are making comments about judgments of court of law even without reading the judgments. Some of the lawyers will start to comment about a

judgment delivered by a court at 10.15 am or at 11 am

immediately after the judgment is pronounced. The Bench and Bar are two sides of a coin. The lawyers should be the mouthpiece of the judiciary. A fair criticism about a judgment is always acceptable. But the criticism can be started only after reading the judgment. Such a culture is to be developed for which the lawyer community has got pivotal role. It is now a trend for a minority of the lawyers' community to make -74- comments about a judgment even without reading the judgments. If media people ask a lawyer at 11.05 am about a

judgment delivered at 11 am, the lawyer will say that I have not

read the judgment, but from the available news I can make certain comments. How can a lawyer make such comments without reading the judgment? He can simply say that I will read the judgment and will come back for making comments if necessary. If such a stand is taken, no media people will say that he should make comments even without reading the judgment. The lawyers should show the path to the society about the manner in which a judgment of a court is to be dealt with and how a judgment is to be criticized if it deserves such criticism. They can read the judgment and criticize the judgment if they want and of course not the judges who wrote the judgment. If the lawyers take a stand that they will make comments about a

judgment of a court of law only after reading the judgment, that

will go a long way because society will accept the stand of -75- lawyers because they are respectable people in the society. If the lawyers started to comment about a judgment without reading a judgment, nobody can blame the poor citizens who make comments about judgment and judges on social media. I make it clear that such immature comments are not made by all the lawyers. But it is being done only by a handful of lawyers. At least hereafter, the lawyers should take an oath that they will make comments in print media, visual media, and social media about a judgment of a court of law only after reading the judgment. As I said earlier, the Bench and bar are two sides of a coin. The lawyers should be the mouthpiece of the judiciary. They should protect the interest of the judiciary. The judges may come and go. But Judiciary should stand. The lawyers are part and parcel of the judiciary. Anyway I leave it to the conscience of all lawyers.

27. In the light of the facts narrated in the earlier

paragraphs, no relief can be granted to the petitioner in this case. -76- The petitioner is a lawyer. The petitioner is coming before this Court with a writ petition without proper pleadings and even without a proper prayer. The prayer in the writ petition itself is vague. The statutory provisions applicable in this situation are not dealt with in this writ petition. It is a case to be dismissed with cost. But, taking a

lenient view, I refrain myself. Therefore the writ petition is dismissed. Sd/-
P.V.KUNHIKRISHNAN JUDGE das/DM/jv -77- APPENDIX PETITIONERS EXTS :
NIL RESPONDENTS EXTs: EXT R2(A): COPY OF SCREENSHOT DEPICTING
THE RATING AND CLASSIFICATION OF MOVIE. EXT R2(B): COPY OF
SCREENSHOT OF STANDARD DISCLAIMER, STATUTORY WARNING
AGAINST SMOKING AND THE CONTENT DESCRIPTOR.

EXT R2(C): COPY OF THE SCREENSHOT OF THE DETAILS OF
APPOINTMENT OF GRIEVANCE REDRESSAL OFFICER PUBLISHED BY R2.
/TRUE COPY/ P.A.TO JUDGE das/DM/jv

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com