

**BEFORE THE FILM CERTIFICATION APPELLATE TRIBUNAL**

Saturday, 3<sup>rd</sup> June, 2017

**Present: CHIEF JUSTICE(RETD.) MANMOHAN SARIN, CHAIRPERSON, FCAT**  
**MS. BINA GUPTA, MEMBER, FCAT**  
**SHRI SHEKHAR IYER, MEMBER, FCAT**  
**MS. SHAZIA ILMI, MEMBER, FCAT**  
**MS. POONAM DHILLON, MEMBER, FCAT**

**FOR THE APPELLANT: MR. HARSHVARDHAN JHA, ADVOCATE**  
**MR. DAKXINKUMAR BAJRANGE, APPELLANT**

**IN THE MATTER OF:**

**SHRI DAKXINKUMAR BAJRANGE ..... APPELLANT**  
**VERSUS**  
**CENTRAL BOARD OF FILM ..... RESPONDENT**  
**CERTIFICATION(CBFC), MUMBAI (NEMO)**

APPEAL UNDER SECTION 5C OF THE CINEMATOGRAPH ACT, 1952 (37 OF 1952)  
AGAINST THE DECISION OF CENTRAL BOARD OF FILM CERTIFICATION (CBFC)  
IN RESPECT OF HINDI FEATURE FILM "SAMEER"

**ORDER**

The appellant has preferred this appeal against the order dated 16.03.2017 passed by the Central Board of Film Certification granting 'A' certificate (with cuts) to the film 'Sameer'. The appeal was filed in the Tribunal on 17<sup>th</sup> April, 2017. It has been preferred within time considering that 14<sup>th</sup> April, 2017 was a gazetted holiday and 15<sup>th</sup> & 16<sup>th</sup> April, 2017 were weekend when the FCAT office is not open. It is the appellant's case that the movie is a fictionalised suspense thriller. It revolves around investigation of series of bomb blasts in Hyderabad and the sustained effort of the investigating agencies to prevent similar series of bomb blasts in Gujarat and its aftermath in the year

MS.

2015. It also endeavours to picturize the Gandhian ideas of non-violence and forgiveness. The central plot includes planting of a mole in the terrorist organisation and the other counter insurgency measures. It also deals with the producers perception of the perspectives and factors of different stakeholders i.e. the law enforcement agencies, police and the Government and State functionaries. The appellant is aggrieved by the grant of 'A' certification and seeks 'U/UA' certification under Section 5-A of the Cinematograph Act, 1952. The Examining Committee of the CBFC found theme, treatment and presentation suitable for Adults only. It granted 'A' certificate subject to the following cuts:-

Cut No.	Location	Cut Description	Guidelines
1.	08 to 09	Reduce to flash of third degree torture scene	2(iv)
2.		Delete the words 'Bhosdi ke', 'chutiya', 'Moot Piyega', 'Pichwade me', 'Teri Maa Ka Iski Maa Ka', 'Ma Chudane Wale', 'Madar Wala', 'haramzaade', 'bahanchod', 'Gand Me bam', 'Gandu & Madarchod' wherever they occur	2(vii)
3.	00:18	Delete the dialogue 'Musalman Hai Kya?'	2(xii)
4.	00:54	Remove the BJP Flag from background scene	2(xviii)
5.	16:20	Delete the word 'Al-Jazeera'(twice)	2(xii)
6.	1:52	Reduce to post blast scene to 50% especially remove the scene of nails and pieces of glass face and skin	2(iv)
7.	2:06	Delete the dialogue 'Man Ki Baat'	2(xviii)

2. The appeal was heard on 17<sup>th</sup> May, 2017 and the film was viewed. Vide an order passed on 17<sup>th</sup> May, 2017 apart from the objections raised in the impugned order, the concerns of the Tribunal with regard to the last 12 minutes of the movie were made known to the appellant. The appellant and his Counsel had desired to revisit the same and revert.

2.1 Appellant filed an affidavit dated 24<sup>th</sup> May, 2017 on 26<sup>th</sup> May, 2017 wherein it sought to justify the last 12 minutes of the film contending that

MS.

modifications or excisions would adversely impact the film and prayed for the grant of 'UA' certification.

3. Appeal was, therefore, listed for further hearing on 2<sup>nd</sup> June, 2017 when Mr. Harshvardhan Jha, Advocate appeared for the appellant and sought leave to withdraw the affidavit filed. He made a statement and tendered a signed disclaimer which are annexed to the appeal as Annexure A1 (Colly).

4. We have heard the Learned Counsel for the appellant at length and viewed the film. Learned Counsel of the appellant refers to Sections 5A, 5B and 5C as well as to the guidelines for certification of films to urge that the cuts imposed are arbitrary and unreasonable. The grant of 'A' certification has a consequence of disabling the appellant from fully exploiting the theatrical rights. The appellant contends that the cuts imposed are unreasoned and mechanical in nature and the guidelines have been mentioned without elaborating how the particular scene or dialogue offends the same.

5. Let us consider the appellant's submission with regard to the cuts directed as per the impugned order.

5.1. With regard to Cut No 1, considering the theme and context in which 'Sameer' is being tortured for the purpose of obtaining information regarding terrorist organization and also ATS grooming him to act as a mole. Hence, the violence and torture cannot be said to be disproportionate to the requirement of the story and plot. We accordingly dispense with the requirement of reducing the torture scene to a flash. Appellant has also referred to similar tortures or rather more being shown in the films such as Chakravyuh (2012), Talwar (2015), Visaranai (2015) and Sarabjit (2016)

5.2 Coming next to Cut No. 2 and the expletives and abusive words, Learned Counsel submitted that the 'Ma Chudanewala' and 'Madar Wala' are nowhere used in the movie and the mentioning of the same in the impugned order is a mistake. In view of the submission of the appellant the said words can be deleted, if appearing. The appellant has also consented to deletion/muting of the words 'bhosdi ke', 'Chutiya', 'Teri Maa aka Iski Maa Ka', 'Bahanchod', 'Haramzada' and 'Madarchod' wherever they appear in the movie.

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5.3 Learned Counsel of the appellant had next submitted that the remaining words 'Moot Peyega', 'Pichwade main' and 'Gand me Bum' ought not have been objected by the Board as these were not covered by the Guideline 2(vii) nor by the list of these words issued by the CBFC.

5.4 This Tribunal has earlier taken the view that certain expletives and cuss words which may have been allowed in earlier films is no ground to similarly allow them in a film being considered for certification, as a binding precedent. The High Court of Bombay in Writ Petition No. 1529 of 2006 titled Phantom Films Pvt. Ltd. & Another Vs. Central Board of Film Certification popularly known as the judgement in the case of 'Udta Punjab' had allowed the use of cuss words finding the same to be portraying the reality of the characters. The court however held "It is, therefore, not proper to hold that merely because in some films such words or abuses, expletives have not been deleted and permitted to be retained, that course must be followed". This Tribunal held in the case of the film 'Lipstick Under My Burkha' that it is the story, it's theme, backdrop and the setting in which it is made, the message it seeks to convey and the entertainment value which are the factors to be considered. This is done by being judged by applying the parameters of Section 5B of the Act and the guidelines. Therefore, decision to hold, retain or delete such expressions ought to be taken, applying the above criteria. We are of the view that in the context the words 'Gand me Bum' be deleted while 'Moot Piyega' and 'Pichwade main' considering the ground realities and the context may be retained.

5.5 With regard to Cut No. 3, we are also of the view that deletion of the words 'Musalman hai kya' appearing in Cut No. 3 need not be insisted upon. This is in the context in which the query was routinely made.

5.6 As for Cut No. 4, the appellant has consented to the removal of the BJP Flag which it claimed had inadvertently appeared in the background scene.

5.7 With regard to Cut No. 5, we are of the view that considering the context and the usage, Cut No. 5 need not be insisted upon.


5.8 Cut No. 6 is justified. The appellant shall not only reduce the scene by 50% but ensure that the scenes relating to the child shown grievously injured with face and hand splattered with blood and as also blood flowing on the road are deleted for the UA certification being sought.

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6. Before parting with the appeal, we may notice that certain dialogues and scenes could be taken as casting insinuation and attributing wrong doings to living persona. This needs to be corrected since the appellant has already filed on record a signed disclaimer Annexure A1 (colly) that the film is purely fictional and not portraying any real-life situation. The disclaimer needs to be prominently displayed and additionally given voiceover. In this regard, the appellant has volunteered to delete, modify and mute the following:

- i. 02:03:46:14 – 02:03:49:09 should be deleted.  
"Ab Action Kareng, Ok, Right Sir"
- ii. 02:05:10:11 – 02:05:55:16 should be deleted.  
"Lekin Sir, Shahid ki gaadi main bomb nahi the, this is an order, just do it right away, main aur kuch sunana nahi chahata."
- iii. 02:05:45:15 – 02:05:55:16 should be deleted.  
"Y Dange, Ye bomb blast bonus hai bonus"
- iv. 02:06:46:02 – 02:06:52:12 should be deleted.  
"Par Sach to ye hai ki Chai se leke Chutiya banana sab app se sikha hai"
- v. Maan ki baat would either be deleted or replaced by Ek baat kahoon.
- vi. Delete Delhi ka rasta UP se hokar jaata hai.

8. We are of the view that the film be granted 'UA' certificate with parental caution with the aforesaid cuts and the appeal is partly allowed to the aforesaid extent. Copy of the order is furnished to both the parties forthwith.

  
(BINA GUPTA)  
MEMBER, FCAT

  
(SHAZIA ILMI)  
MEMBER, FCAT

  
(SHEKHAR IYER)  
MEMBER, FCAT

  
(POONAM DHILLON)  
MEMBER, FCAT

  
(JUSTICE MANMOHAN SARIN)  
CHAIRPERSON, FCAT