

F.No. 2/17/2017-FCAT

BEFORE THE FILM CERTIFICATION APPELLATE TRIBUNAL

14th September, 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

FOR THE APPELLANT: MR. SATISH TAMTA, SENIOR ADVOCATE
MS. JAYA GOYAL, ADVOCATE
MR. AKSHAT VERMA, DIRECTOR
MS. ASHI DUA, PRODUCER

IN THE MATTER OF:

CINESTAAN FILM COMPANY PVT. LTD.	APPELLANT
	VERSUS	
CENTRAL BOARD OF FILM CERTIFICATION(CBFC), MUMBAI	RESPONDENT (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 PARTLY ENGLISH FILM "KAALAKANDI"

ORDER

This is an appeal preferred by the Appellant assailing the grant of 'A' certification to the Hindi partly English film 'Kaalakandi' subject to 16 cuts as listed in the impugned order appearing at Pages 19-21 of the appeal paper book. The Appellant is not aggrieved by 'A' certification but is aggrieved by the cuts.

122

2. The impugned order itself records that the "theme, dialogue, language is double meaning and visuals which were suitable for Adult viewing only. The deletions and cuts revolve around the use of abusive and cuss words. The Appellant has sought to justify them relying on precedents and also the theme, the story and the requirement of effectively and truly presenting the characters who use such words as part of their normal spoken language. It is the Appellant's case that the film 'Kaalakandi' (Hindi partly English) depicts the stories of 6 characters from different walks of life whose paths collide during one monsoon night. The film depicts characters who can be taken as belonging to the upper urban class alongwith the underbelly of Mumbai showing gangsters. The film, supposedly a dark comedy, has a continuous thread of humour running through it. The story and content of the film is best described in Appellant's own words:-

a) The movie plays three stories in parallel. The first story is about Rileen(Saif Ali Khan), a successful Investment Banker, who discovers that he has cancer and is dying.

b) The next story is of Tara, who is about to leave for her PH.D. to USA, but, in a turn of events, gets caught in a rave party raided by police.

c) The Third story is of two men working as Carriers for the mob. They are sick and tired of carrying all the money and hatch a plan to steal the money collected from their last trip for their own benefit.

3. Appellant in the appeal has sought to justify the retention of the cuts recommended by the CBFC. The cuss words are mainly used by the 2 gangsters and apart from them by the youngsters who are having rave parties which is a hard reality of present times. Similarly, it is urged that the use of the terms 'randi' and 'saali' be allowed to be retained. The Appellant further contends

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that the message conveyed by the movie is that "a sinful act gets its punishment in one way or the other". Besides the transgender prostitute is shown to be a kind hearted person.

4. We have heard the Learned Counsel for the Appellant and gone over the justification urged for the retention of the cuts directed by the CBFC. The Guideline 3(ii) itself requires the CBFC to examine the films in the light of the period depicted and the contemporary standards of the country. This, of course, is subject to the condition that the film does not deprave the morality of the audience which is largely taken care of by the film being certified for the Adult audience.

5. Let us notice the legal position regarding the use of abusive and cuss words. The mere fact that certain films containing cuss words, expletives and abuses have been certified in the past by itself, without anything more, may not provide a ground for their retention. Reference may be usefully made to the decision of the High Court of Judicature at Bombay in Writ Petition (L) No. 1529 of 2016 titled Phantom Films Pvt. Ltd. & Anr. Vs The Central Board of Film Certification popularly referred as the judgment in the case of 'Udta Punjab'. In the cited case, the High Court of Bombay allowed use of cuss words finding same to be portraying the reality of the characters that were natural to the theme of the film and were allowed. The Court observed that "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". It is the story, its theme, backdrop and setting in which it is made, the message it seeks to convey and its entertainment value would have to be judged by applying the parameters of Section 5-B and of the Guidelines. This Tribunal has followed the above approach in its decision in the case of 'Lipstick

Under My Burkha'. It was held by us that "the principle evolved is that if the expletives, cuss words used are required for giving full expression and effect to the expression and emotion or the depiction of the character keeping the background, the same may be allowed".

6. Let us consider now the specific cuts and insertions recommended by the CBFC.

Cut No.	Cut Insertion	Location	Cut Description	Guidelines
1	Insertion	-	Add smoking disclaimer (half shown) make it complete of complete duration	-
2	Insertion	-	Increase the duration of fiction and add drug consumption disclaimer	-
3	Cut	00:05	Delete the word 'Jack Off' & 'Dick'	2(vii)
4	Cut	00:08 to 1:23	Delete the word 'Behenchod'	2(vii)
5	Cut	00:09	Delete the word 'Gadhe Ka Lund'	2(vii)
6	Cut	14-15	Delete the dialogue 'Take your regulars....panis...vagina...G.spot till should i keep reading'.	2(vii)
7	Cut	15:30	Replaced the word 'Bombai' to 'Mumbai'	-
8	Cut	16	Delete the word 'Laude' from the dialogue 'Kisat Ke Laude Lag Gaye'	2(vii)
9	Cut	20 to 1:31	Delete the word 'Chutiye', 'Chutiyeage', 'Chutiyapa', wherever it appears	2(vii)
10	Cut	24:10	Delete the word 'Ghanta' from the dialogue 'Mere Ghante Se'	2(viii)
11	Cut	25	Delete the dialogue 'Jhaantey' from the dialogue 'Jhantey ho gayi hai life'.	2(vii)
12	Cut	28 to 38	Delete the word 'Saali' & 'Randi' wherever it appears	2(ix)
13	Cut	31	Delete the dialogue 'Mulgi Shikli Pragati Jhali'.	2(viii)
14	Cut	39	Delete the word 'Fuck You' said to cop	2(vii)
15	Cut	32 to 1:30	Delete the words 'Bhadve', 'Samaan', 'Madarchod', 'Bhosdi key', 'Gandul', 'Gand Mari key', 'asshole', 'Bhosda', 'Maa chod di'.	2(vii)
16	Cut	1:07	Delete the dialogue 'There is nothing wrong....legalized any and this country is crazy'	2(xiii)

7(i). The CBFC has desired a smoking disclaimer which is only half shown to be made for the complete duration. Accordingly, the Appellant would show the disclaimer with regard to smoking prominently and in full duration at the start as well as in the interval and wherever the smoking scene occurs. Appellant during the course of hearing and in the memorandum of appeal itself had given its consent for the same in principle. The manner of implementation has been elaborated by us above.

ii. The film has scenes in which the hero under the influence of drugs gets high and has hallucinations which are also colourfully depicted as a pleasurable activity. In these circumstances, a disclaimer and warning regarding the ill effects of use of drugs is warranted. Accordingly, wherever a character is being shown under the influence of drugs, the following disclaimer should be there for minimum 30 seconds or the duration of the scene, whichever is less:

"Taking/Abuse of psychotropic drugs is injurious to health and is an offence under 'The Narcotic Drugs and Psychotropic Substances Act, 1985'".

iii. As regards cuts at S.No. 3 directing deletion of the words 'Jack Off' & 'Dick', the same is allowed to be retained as being part of common parlance of such characters.

iv. Coming to S.No. 4 directing deletion of the word 'Behenchod'. The cut need not be insisted on considering its usage being colloquial with the gangsters.

v. Cut No. 5 directing deletion of the word 'Gadhe Ka Lund', the same be altered to 'Gadhe Ka Ling'.

vi. Cut No. 6 seeking to cut dialogue on telephone when caller Selina is reading an extract 'Take your regulars....penis...vagina...G.spot till should i keep

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reading', the cut is set aside and the dialogue is allowed to be retained. The impact of the reading is not much and is a prelude to their escapade.

vii. Cut no. 7 requiring replacement of the word 'Bombai' to 'Mumbai' need not be insisted upon being wholly unnecessary.

viii. Cut no. 8, 9 and 10 considering the contemporary usage and the theme, content and the context, the same are set aside and allowed to be retained.

ix. Cut No. 11, the dialogue 'Jhantey ho gyi hai life' be changed to 'Jhand ho gayi hai life'.

x. Cut no. 12 is set aside.

xi. As regards Cut no. 13 requiring deletion of 'Mugli Shikli Pragati Jhali' appearing at 31 minutes, the Appellant has offered voluntarily to delete the same. The same is accepted

xii. Cut no. 14 is set aside.

xiii. As regards Cut no. 15, out of the cuss words mentioned therein, the following cuss words be deleted:

- a) Madarchod
- b) Gand Mari Ke
- c) Maa Chod Di

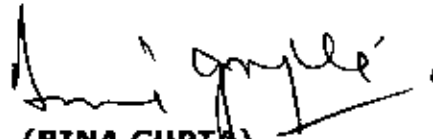
xiv. Cut no. 16 is not sustainable. Such words are spoken in common parlance. It cannot be regarded as promoting communal or anti-national attitude. The cut is unnecessary.


8. The Tribunal has inherent power and discretion to pass such further orders while exercising Appellate powers as it deems necessary. Section 5D(11) empowers the Tribunal to make such order in relation to film as it thinks fit. Apart from the cuts, deletions and substitutions as directed in Para 7, we find that in scene at 00:53, the woman is seen straddling the man. This scene needs


to be curtailed by 50% with further direction that it does not depict the act of coitus being performed. The appeal is decided in above terms.

9. The CBFC shall issue certification in 'A' category with the cuts, excisions and directions as given in Para 7 & 8 above.

10. The appeal is allowed with the aforesaid directions. Copy of the order be furnished to both the parties forthwith.


(BINA GUPTA)
MEMBER, FCAT


(POONAM DHILLON)
MEMBER, FCAT


(SHEKHAR IYER)
MEMBER, FCAT


(SHAZIA ILMI)
MEMBER, FCAT


(JUSTICE MANMOHAN SARIN)
CHAIRPERSON (FCAT)