

F.No. 2/20/2017-FCAT

BEFORE THE FILM CERTIFICATION APPELLATE TRIBUNAL16th November, 2017

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

FOR THE APPELLANT: MR. TABREZ NOORANI
MR. AMAR BUTALA
MR. PRAVESH SAHNI
MR. RAKESH SINGH
MR. SAMIR MALIK, ADVOCATE
MS. BANI DIXIT, ADVOCATE

IN THE MATTER OF:

| | | | |
|---|--------------|--------------|------------------------------|
| MOHADMEDABDUL NOORANI | MAJID | | APPELLANT |
| VERSUS | | | |
| CENTRAL BOARD OF CERTIFICATION(CBFC), MUMBAI | FILM | | 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 FILM "LOVE SONIA".

ORDER

This is an appeal under Section 5C of the Cinematograph Act, 1952 (37 of 1952) assailing the Order No.DIL/229/2017-MUM dated 19.09.2017, whereby the Examining Committee of the CBFC has granted 'A' certificate to the film 'Love Sonia' subject to the following cuts:-

Theme, language, visuals and overall treatment suitable for adults only.

| Cut. No. | Cut Insertion | Location | Cut Description | Guidelines |
|----------|---------------|-----------------|---|------------------------------------|
| 1. | Insertion | 00 | Change the disclaimer as discussed Audio/Video | |
| 2. | Cut | General | NOC from AWBI, Chennai required | |
| 3. | Cut | General | Delete the words 'Bhenchod', 'Motherchod', 'Gaandu', 'Lund', 'Chini Choudu', 'Maa Chodia', 'Maa Choda Rahe Hain', 'Maa Chuda Rahe Hain', 'Maa Chodu Ki' wherever it appears | 2(vii), (vii), (viii), (ix) |
| 4. | Cut | 45 | Delete the dialogue, 'Muh se sex kiya tune' | 2(vii), (ix) |
| 5. | Cut | 50 | Delete the dialogue 'Ter Maa Ki Chut.... Chini Chutiye teri to Bhenchod'. | 2(vii), (viii), (ix), (xii) |
| 6. | Cut | 55 | Delete the entire dialogue from dialogue 'thokam Taka...Kiala Jaa rahi thokam Thukai along with gesture of hand. | 2(vii), (viii), (ix) and 2(iii)(a) |
| 7. | Cut | 32.40 and 33.05 | Delete the frontal nudity (Breast) | 2(vii), (ix), (xii) |
| 8. | Cut | 31.49 | Blur the posters/banner showing political parties. | 2(2)(viii) |
| 9. | Insertion | | Give the source of Data given in the text at the end and add with the text. | |

2. Aggrieved by the aforesaid order of the Examining Committee of CBFC, the appellant has filed the present appeal.

3. The movie has been screened and viewed by us carefully. We have heard the Counsel and Mr. Tabrez Noorani, Director of the film. The main submission of the Appellant is that for effectively portraying and depicting the scenes and projecting the theme, the expletives used are necessary to give full effect to the message sought to be conveyed. The Appellant submitted that the theme and picturization is based on ground realities, witnessed by the Appellant during research done by him in red light areas.

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The characters of the film do not bear any resemblance to any person living or dead and similarity, if any, was purely co-incidental.

4. Regarding the use of expletives and abusive words, the legal position is now fairly well settled. 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 judgement 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 thus allowed. The Court observed "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 cases of 'Lipstick Under My Burkha', 'Babumoshai Bandoobbaaz' and 'Kaalakandi'. 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 with adult certification.

5. We may also note that while considering the cuts and deletions to be imposed, a factor to be considered is that they do not mutilate or adversely affect the theme or result in losing effect of portrayal of the scene and dialogue of characters. In this process, it is the sequence and theme of the film which has to be kept in mind while considering the retention or excision of any individual expression.

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6. This Tribunal has had occasion to deal with these aspects in Babumoshai Bandoobaz and Kaalakandi. This Tribunal has directed deletions of words such as 'Madarchod' and 'Lund'.

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

(a) Regarding Cut No. 1 recommended by CBFC, the appellant has agreed to provide the requisite disclaimer as discussed with CBFC. This is, therefore, a non-issue before this Tribunal.

(b) Regarding Cut No. 2 recommended by CBFC The appellant has stated that snakes and other animals were not actually used. These are stated to be computer generated simulations. The producer has applied for and is awaiting the NOC from AWBI. Therefore, no direction from Tribunal is required.

(c) Regarding Cut No. 3 & 5 recommended by CBFC, we have considered the matter from the perspective of the producer, the setting, the character portrayed and the theme & message sought to be conveyed. We are not inclined to interfere with the discretion exercised by the Board in so far as deletion of 'Madarchod', 'Lund', 'Gaandu', 'Chini Choudu', 'Maa Chodia', 'Maa Choda Rahe Hain', 'Maa Chuda Rahe Hain'. However, with regard to the words 'Maa Chodu Ki' and 'Teri Maa ki chut...', the words 'chodu' and 'chut' to be muted and left at 'Maa Ki'. The words 'chini chutiye' is permitted to be retained.

(d) Regarding Cut No. 4 & 6 recommended by CBFC, the same are not necessary and are set aside.

(e) Regarding Cut No. 7 recommended by CBFC, the display of frontal nudity (breast) is normally not permitted. However, as it appears for a fleeting moment and is hardly noticeable, the cut is set aside.

(f) Regarding Cut No. 8 recommended by CBFC, we find that there is no justification for such a cut even otherwise in the overall viewing of the film, it is hardly noticeable. The deletion is, therefore, not necessary.

(g) Regarding Cut No. 9 recommended by CBFC, the appellant has agreed to provide the necessary insertion.

8. The appeal is allowed and the CBFC is directed to grant an 'A' certificate to the film titled "Love Sonia" (Hindi) with the above cuts given in Para 7 of the order. Copy of the order be furnished to the parties forthwith.


(BINA GUPTA)
MEMBER, FCAT


(POONAM DHILLON)
MEMBER, FCAT


(SHAZIA ILMI)
MEMBER, FCAT


(CHIEF JUSTICE (RETD.) MANMOHAN SARIN)
(CHAIRPERSON, FCAT)