

2025:PHHC:062358



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM M-2179-2024
Date of Decision:05.04.2025**

Keval Singh @ KV Dhillon ...Petitioner
Versus
State of Punjab ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Harparteek Singh Sandhu, Advocate
for the petitioner.

Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

N.S.SHEKHAWAT, J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the FIR No. 0003 dated 09.02.2020 under Sections 153, 153-A, 153-B, 160, 107 and 505 IPC (Annexure P-1) registered at Police Station SAS Nagar, District Mohali, Punjab and all the subsequent proceedings arising therefrom.

2. The FIR in the present case was registered on the basis of the complaint moved by Bhupinder Singh, Inspector and the same has been reproduced below:-

“Today (09.02.2020) while Inspector was present in Office, it has been revealed from reliable source that one K.V. Dhillon produced a movie "Shooter" which is based on the life and crimes of notorious gangster "Sukha

Kahlwan" and it promotes violence, heinous crime, extortion, threats and criminal intimidation. Notorious gangster "Sukha Kahlwan" used to describe himself as sharp shooter and was allegedly involved in more than 20 cases including murder, kidnapping and extortion. He was killed by another gangster in January, 2016. The producer has completed the movie "Shooter" and trailer is already released on 18/01/2020 which has widely viral on social media. The full movie "Shooter" is scheduled to be released on 21/02/2020. This movie is likely to instigate youngsters to take up arms and disturb public peace and harmony. It may be recalled that in a judgement rendered by Hon'ble Punjab and Haryana High Court in civil writ petition 6213/2016 decided on 22.07.2019, it was directed that no songs or live shows will be played which glorify liquor, drug and spread violence. The act of K.V. Dhillon and the promoters, Directors, story writer and Actors of the movie "Shooter" disclose the commission of offences U/s 153, 153-A, 153-B, 160, 107, 505 IPC. At 3:10 PM PS SSOC, Mohali Sd/- Bhupinder Singh, Inspector, SHO, SSOC, SAS Nagar dated 09.02.2020."

3. Learned counsel for the petitioner contends that the petitioner is a professional film producer, who had produced a film titled as "Shooter", which is the center of controversy in the present case. The FIR was lodged with the broad allegations that the film portrays the life and criminal undertakings of an infamous gangster, namely, Sukha Kahlwan, and has been accused of promoting violence, heinous crimes, extortion, threats and criminal intimidation.

Sukha Kahlwan identified himself as a sharp shooter and was allegedly engaged in over 20 criminal cases. In fact, the FIR also raised concerns about its potential to incite young individuals to participate in armed activities, which were likely to affect public peace and harmony adversely. There was also a reference to the judgment passed by this Court in CWP No. 6213 of 2016, whereby, a prohibition was imposed on live shows which glorify liquor, drugs and propagate violence. Learned counsel further contends that the movie "Shooter" was released on 21.02.2020, however, the FIR was registered on 09.02.2020 before its release. Thus, on 10.10.2020, the State of Punjab suspended the exhibition of movie for a period of 02 months citing the reason that the release of the movie would glorify violence and the younger generation could get influenced. In the meantime, the petitioner and others applied for certification before the Central Board of Film Certification (hereinafter to be referred as '**the CBFC**') and certification No. DIL/3/1/2020-del dated 13.03.2020 was issued for the film, confirming its suitability for theatrical display and the petitioner was granted permission to display the movie. Learned counsel further refers to the certification dated 13.03.2020 (Annexure P-3) in this regard. However, despite grant of certification (Annexure P-3) by the CBFC, the petitioner could not release the movie in view of the order dated 10.02.2020 (Annexure P-2) issued by the State of Punjab. Further, in the purported compliance of the provisions of the

Punjab Cinemas (Regulation) Act, 1952, another notification dated 12.07.2021 (Annexure P-4) was issued by the State Government, suspending exhibition/release of the movie till further orders. The petitioner filed CWP No. 14594 of 2021 titled as “Keval Singh Vs. State of Punjab and another” before this Court and challenged the notification dated 12.07.2021 (Annexure P-4) before this Court. However, vide order dated 30.11.2021 (Annexure P-5), the operation of the notification dated 12.07.2021 was stayed by this Court. Thereafter, in view of the interim order passed by this Court, the movie “Shooter” was finally released on 14.01.2022. Since, the movie had been released and exhibited, the CWP No. 14594 of 2021 was withdrawn before this Court.

4. Learned counsel for the petitioner contends that the FIR in the present case was registered only on the basis of apprehension. It has been stated that this Court had directed that no songs glorifying the liquor, wine, drugs and violence are played even in live shows. However, the petitioner had not violated any such directions, as observed by this Court in judgment dated 22.07.2019 (Annexure P-6). Further, from a reading of the FIR, it does not disclose any offence under Sections 153, 153-A and 153-B of IPC. Even, there was no element of *mens rea*, in doing the acts, which were allegedly contemplated in the aforesaid provisions of law. Still further, in the start of the movie, there was a disclaimer that the movie is the work

of fiction and names, characters, business, places, events and incidents were used in a fictitious manner and any resemblance to actual persons, living or dead or actual events was purely coincidental and the movie was made only for the purpose of entertainment and did not intend to hurt sentiments of any person. Still further, the movie was created with a *bona fide* intention to enlighten the young generation about the perils of unlawful and anti-social way of life. The title “Shooter” did not signify the promotion of gun culture, instead it conveyed a message aimed at deterring society from engaging in illegal activities.

5. Learned counsel for the petitioner further contends that the certification issued by the CBFC under the law was a guarantee that the movie satisfied the requirement of law and was fit to be exhibited in public. Any person, who was aggrieved by the decision of the CBFC had the remedy of filing an appeal before the competent authority, which was not done. Even, the State of Punjab or any other individual had not challenged the grant of certification dated 13.03.2020 (Annexure P-3) and thus, the FIR amounted the misuse of process of law and was violation of fundamental right of expression, which was guaranteed to the petitioner under Article 19(1)(a) of the Constitution of India. Learned counsel further submits that the FIR as well as all proceedings emanating from the same are liable to be quashed by this Court.

6. On the other hand, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner on the ground that the name itself suggests that the film made by the present petitioner aimed at glorifying the “violence”, the FIR was rightly registered in view of the directions passed by this Court in CWP 6213 of 2016. Even if, a certification has been provided by the CBFC, the police was having a right independently to examine whether the ingredients of the offence were fulfilled and had rightly registered the FIR against the present petitioner. Even, the State government imposed reasonable restrictions on the rights of the petitioner under Article 19 of the Constitution of India and the film had been correctly banned as well. Thus, the present petition is liable to be dismissed by this Court.

7. I have heard the rival submissions made by the learned counsel for the parties and perused the record carefully.

8. In the present case, the present petitioner is sought to be prosecuted by the police for the commission of the offences punishable under Sections 153, 153(A) and 153(B), 160 and 505 of IPC. Section 153A was amended by the Criminal and Election Laws (Amendment) Act 1969 - Act No.XXXV of 1996. It consists of three clauses of which clauses (a) and (b) alone are material now. By the same amending Act sub-section (2) was added to Section 505 of the

Indian Penal Code. Clauses (a) & (b) of Section 153A and Section 505(2) are extracted below:

"153-A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.-

(1) Whoever

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or

shall be punished with imprisonment which may extend to three years, or with fine, or with both."

"505(2) Statements creating or promoting enmity, hatred or ill- will between classes.- Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious,

racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both."

The common ingredient in both the offences is promoting feeling of enmity, hatred or ill-will between different religious or racial or linguistic or regional groups or castes or communities. Section 153A covers a case where a person by "words, either spoken or written, or by signs or by visible representations" promotes or attempts to promote such feeling. Under Section 505(2), promotion of such feeling should have been done by making and publishing or circulating any statement or report containing rumour or alarming news.

9. The Hon'ble Apex Court has held in ***Balwant Singh and another vs. State of Punjab (1995 3 SCC 214)*** that *mens rea* is a necessary ingredient for the offence under Section 153A. *Mens rea* is an equally necessary postulate for the offence under Section 505(2) also as could be discerned from the words "with intent to create or promote or which is likely to create or promote" as used in that sub-section.

10. The main distinction between the two offences is that publication of the word or representation is not necessary under the former, such publication is *sine qua non* under Section 505. The words "whoever makes, publishes or circulates" used in the setting of

Section 505(2) cannot be interpreted disjunctively but only as supplementary to each other. If it is construed disjunctively, any one who makes a statement falling within the meaning of Section 505 would, without publication or circulation, be liable to conviction. But the same is the effect with Section 153A also and then that Section would have been bad for redundancy. The intention of the legislature in providing two different sections on the same subject would have been to cover two different fields of similar colour. The fact that both sections were included as a package in the same amending enactment lends further support to the said construction.

11. Yet another support to the above interpretation can be gathered from almost similar words used in Section 199 of the Penal Code as "whoever by words.....makes or publishes any imputation....."

12. In *Sunilakhy Chowdhury vs. H.M. Jadwet and another (AIR 1968 Calcutta 266)* it has been held that the words "makes or publishes any imputation" should be interpreted as words supplementing to each other. A maker of imputation without publication is not liable to be punished under that section. I am of the view that the same interpretation is warranted in respect of the words "makes, publishes or circulates" in Section 505 IPC also.

13. The common feature in both sections being promotion of feeling of enmity, hatred or ill-will "between different" religious or

racial or language or regional groups or castes and communities it is necessary that atleast two such groups or communities should be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections.

14. The result of the said discussion is that petitioner who has not done anything as against any religious, racial or linguistic or regional group or community cannot be held guilty of either the offence under Section 153A or under Section 505(2) of IPC.

15. However, on a reading of the provisions of Section 153(a) and 153(b), it is apparent that no offence under those sections is made out against the present petitioner. The FIR admittedly was registered on the basis of a trailer and the complainant had lodged the FIR, without even watching the movie and seeing the offending contents of the movie. Even, there is no evidence to suggest that the petitioner had provoked any person with an intention that such provocation will cause the offence of rioting. Further, the movie in question does not promote enmity between different groups on the ground of religion, race, place of birth, residence as well as language etc., or which could prejudice the maintenance of harmony between various groups. The intention to cause disorder or incite the people to violence is *sine qua non* of the offence under Section 153-A of IPC and high degree of *mens rea* was required to prove the *prima-facie*

existence of such an offence against the petitioner. Similarly, there was no evidence to suggest that the imputations and assertions were prejudicial to national integration and this Court fails to understand as to how the offence under Section 153(b) IPC was invoked by the police. Apart from that, the police had invoked the provisions of Section 160 IPC, which provides for the punishment for committing affray. Section 159 of IPC defines “Affray”, which has been reproduced below:-

“159. Affray.—When two or more persons, by fighting in a public place, disturb the public peace, they are said to “commit an affray”.

16. In the present case, there was nothing on record to suggest that the FIR was registered as a result of an affray between two or more persons. Still further, the ingredients of Section 505 IPC were completely missing in the instant case. The prosecution has miserably failed to show that any statement made by any character in the movie could lead to public mischief or any statement promoted enmity, hatred or ill-will between classes or offence was committed in a place of worship etc. Still further, it has been alleged in the FIR that the movie “Shooter” was likely to instigate gangsters to take up arms and disrupt the peace and harmony, which would also be in violation of the judgment passed by this Court in CWP 6213 of 2016. However, this Court is in agreement with the arguments raised by learned counsel for the petitioner that to illicet the consequences of a social

evil, social evil has to be shown necessarily. In fact, it appears that the complainant has drawn unnecessary inferences from the title of the movie “Shooter” without even watching the movie himself, as the FIR is admittedly based on watching of a trailer of the movie by the complainant.

17. The observations made by this Court also find strength from the law laid down by the Hon’ble Supreme Court in the matter of ***Bilal Ahmed Kaloo Vs. State of Andhra Pradesh, 1997(3) R.C.R. (Criminal) 812.***

18. In the matter of ***Bobby Art International Vs. Om Pal Singh Hoon (1996 AIR (SC) 1846),*** the Hon’ble Supreme Court has held as follows:-

“...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 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...”

19. Apart from that, the law is well settled that the certification issued by the CBFC, i.e., statutory body, guarantees that movie in question satisfies the requirement of law and may be exhibited for the public watching. Further, the statute itself provides

the remedy of appeal and judicial review and any person can avail his remedy in accordance with law. In the present case, admittedly, neither the State of Punjab nor any other individual had challenged the ground of certification dated 13.03.2021 (Annexure P-3) and, thus, the FIR in question is clearly an abuse of the process of the law.

The Hon'ble Supreme Court has held in the matter of **Raj Kapoor Vs. Laxman, 1980 AIR (Supreme Court) 605** as follows:-

“7. Indeed, the Penal Code is general, the Cinematograph Act is special. The scheme of the latter is deliberately drawn up to meet the explosively expanding cinema menace if it were not strictly policed. No doubt, the cinema is a great instrument for public good if geared to social ends and can be a public curse if directed to anti-social objectives. The freedom of expression, the right to be equally treated and the guarantee of fair hearing before heavy investments in films are destroyed belong to Indian citizens under the Constitution. But all freedom is a promise, not a menace and, therefore, is subject to socially necessary restraints permitted by the Constitution. Having regard to the instant appeal of the motion picture, its versatility, realism, and its coordination of the visual and aural senses, what with the art of the cameraman with trick photography, vistavision and three dimensional representation, the celluloid art has greater capabilities of stirring up emotions and making powerful mental impact so much so the treatment of this form of art on a different footing with pre-censorship may well be

regarded as a valid classification, as was held in K.A. Abbas. K.A. Abbas v. The Union of India and Anr. Maybe, art cannot be imprisoned by the bureaucrat and aesthetics can be robbed of the glory and grace and free expression of the human spirit if governmental palate is to prescribe the permit for exhibition of artistic production in any department, more so in cinema pictures. So it is that a special legislation viz. the Act of 1952, sets up a Board of Censors of high calibre and expertise, provides hearings, appeals and ultimate judicial review, pre-censorship and conditional exhibitions and wealth of other policing strategies. In short, a special machinery and processual justice and a host of wholesome restrictions to protect State and society are woven into the fabric of the Act. After having elaborately enacted such a legislation can it be that a certificate granted under it by expert authority can be stultified by a simple prosecution or a shower of prosecutions for an offence under Section 292 I.P.C., driving the producer to satisfy a 'lay' magistrate that the certificate of the Board of Censors notwithstanding, the film was offensive? The Board under Section 5B has to consider, before certification, all the points Section 292 I.P.C. prescribes. Indeed, neither the Penal Code nor the Cinematograph Act can go beyond the restrictions sanctioned by Part III of the Constitution and once the special law polices the area it of pro tanto out of bounds for the general law. At least as a matter of interpretation, Section 79 I.P.C. resolves the apparent conflict between, Section 292 I.P.C. and Part II of the Act relating to certification of films. If the Board blunders, the Act

provides remedies. We are sure the public-spirited citizen may draw the attention of the agencies under the Act to protect public interest”.

10. Two things deserve mention before we close. Prosecutions like this one may well be symptomatic of public dissatisfaction with the Board of Censors not screening vicious films. The ultimate censorious power over the censors belongs to the people and by indifference, laxity or abetment, pictures which pollute public morals are liberally certificated, the legislation, meant by Parliament to protect people's good morals, may be sabotaged by statutory enemies within. Corruption at that level must be stamped out. And the Board, alive to its public duty, shall not play to the gallery; nor shall it restrain aesthetic expression and progressive art through obsolete norms and grandma inhibitions when the world is wheeling forward to glimpse the beauty of Creation in its myriad manifestations and liberal horizons. A happy balance is to

“...consider, on the one hand, the number of readers they believe would tend to be depraved and corrupted by the book, the strength of the tendency to deprave and corrupt, and the nature of the depravity or corruption; on the other hand, they should assess the strength of the literary, sociological and ethical merit which they consider the book to possess. They should then weigh up all these factors and decide whether on balance the publication is proved to be justified as being for the public good”. [Calder and Boyars Ltd. [1969] 1 QB 151 at p. 172]”

20. However, such a right is subject to certain requisite restrictions, which have been provided by the Cinematograph Act 1952, which provides a specific mode for certification of movies with a complete and full proof mechanism to ensure that the depictions made therein are not found offending the feelings of anyone and are in conformity to the “freedom of expression” guaranteed under Article 19 of the Constitution of India. The law is well settled that the CBFC is the only statutory authority, which could examine the contents of a movie to find out whether the same could be released for public viewing or not. Once the certification (Annexure P-3) had been accorded as per the provisions of Cinematograph Act, 1952, it had to be presumed that the contents of the movie satisfy four-corners of law.

21. In view of this above said discussion, this Court is of the considered opinion that the petitioner must succeed and the FIR No. 0003 dated 09.02.2020 under Sections 153, 153-A, 153-B, 160, 107 and 505 IPC (Annexure P-1) registered at Police Station SAS Nagar, District Mohali, Punjab and all proceedings emanating therefrom are liable to be quashed by this Court.

22. Allowed.

05.04.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No