

Delhi High Court

Sh. Raghu Nath Pandey And Anr. vs Sh. Bobby Bedi And Ors. on 22 February, 2006

Author: A Sikri

Bench: A Sikri

JUDGMENT A.K. Sikri, J.

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1. Mangal Pandey, though the first martyr of freedom struggle of India of 1857, but lesser known earlier, is a household name today. It was a name known to the students of history earlier. Even history students, except those who studied freedom struggle of India in depth, may not have known in detail about his deeds except that there was a character Mangal Pandey who was in British Army and revolted against the Britishers in 1857 Mutiny. Today heroic deeds of Mangal Pandey are known to every person-be it a student of history or not; be it a highly educated person or illiterate; be it an old or a young; be it a college going student or a child studying in primary school. It is because of the movie titled 'Mangal Pandey-The Rising' produced and released in India and abroad in the month of August 2005. The impact of Bollywood films-even when they are commercial films-is well known among Indian public. The impact becomes greater and deeper when the movie cast is the icon. Glamourisation and widespread advertising adds to this impact. Much before the movie 'Mangal Pandey-The Rising' was released, media hype about this movie was created when it was being shot. That is the reason that on its release it created ripples. Whether it became a Box Office hit, i.e. commercially successful venture or not, is immaterial. The fact remains that it was much talked about, particularly the character of Mangal Pandey who is depicted as the great freedom fighter and on whose life the film has been produced as a historical movie to present to the young generation his personal and patriotic life. At the same time it has been embroiled in controversy.

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2. Indubitably, Mangal Pandey was a less known freedom fighter even for the historians. There is not much literature about his personal life and his heroic deeds. Therefore, the movie evoked reactions about the correctness of his sublime character depicted in the movie. Columns, articles, write ups, critiques appeared in newspapers and magazines. There were discussions on this in various programmes shown in electronic media as well. We are not concerned with this kind of controversies which the main character Mangal Pandey of the movie generated.

3. Present suit filed by the plaintiffs, who claim themselves to be descendants of Mangal Pandey family, raises different kind of controversy altogether. While on the one hand they express their gratitudes to the producers of the film for glorifying the great freedom fighter and making today's generation aware of his sacrifices, at the same time they feel pained and anguished at the introduction of some of the characters and scenes in the film associating Mangal Pandey with them. According to the plaintiffs, defendants have, by doing this, distorted the history of freedom struggle for independence of India and also defamed and disreputed Mangal Pandey and the entire Pandey family as well as their generations. According to the plaintiffs, it is unfortunate that this action of the

defendants, who are the producers, distributors, directors, story/script writers and main characters (hero and heroine) of the movie, is guided by the ulterior motives of making personal financial gains for commercial success of the movie, totally unmindful of their duty not to offend the personal life and character of the great martyr, his coming generations and the place he belonged to and even the entire nation. They, therefore, feel cheated and are unhappy.

4. In order to appreciate this grievance of the plaintiffs, we may take note of the scenes in which hero and heroine of the film are together. There are five such scenes which need graphic account:

(a) Heera, the main female character is a prostitute which is played by Rani Mukherjee, heroine of the film. In the very first scene, which introduces this character in the film, she is shown to have been sold as a slave and driven in the flesh trade much against her wishes and notwithstanding her defiance. First time she meets the hero of the film, namely, Mangal Pandey, played by Aamir Khan, in a dispensary. Their encounter is limited to a dialogue whereby she says to Mangal Pandey and other British sepoy, who are Indians, in a taunting way, We sell our bodies but you sepoys sell your soul . This leaves a powerful impact on Mangal Pandey.

(b) Some scenes later Mangal Pandey visits Heera and meets her at the backyard of the Kotha where she stays. He asks her if she would like to escape and she refuses.

(c) Third encounter of the two central characters is during a celebration of Holi. Entire town is celebrating Holi. It is well known that depiction of Holi scenes is popular for most of the film makers and Holi song is an integral part of it. Both are shown to have played the Holi together along with others. During this Holi scene they come close to each other and there is a physical contact as well. After Page 1238 the song is over, they proceed alone, away from rest of the crowd, and dip into the Holi river together. Some kind of physical chemistry between the two and a certain level of intimacy between them is more than obvious. This scene gives an impression that they are attracted to each other.

(d) Next time they meet when Heera comes to inform Mangal Pandey about the British plan to disband the regiment and hang the rebel leaders. That is the stage in the film when Mangal Pandey and many of Indian soldiers in his regiment had decided to rebel and were planning an attack on the British Army. Heera is frightened as Britishers have come to know of this move of the rebel soldiers and have decided to hang them. She wants safety of Mangal Pandey. She, therefore, meets him. This meeting takes place in a secluded place and Heera requests Mangal Pandey to escape. Mangal Pandey, however, firmly turns down this offer.

(e) Last meeting of the hero and heroine in the film is almost in the last scene of the film when Mangal Pandey is about to be hanged and Heera comes to meet him and requests him to liberate her by applying 'Sindoor' in her hair-parting. He obliges Heera. This, according to the plaintiffs, is symbolic of Mangal Pandey marrying Heera.

5. The plaintiffs have no quarrel about the introduction of Heera as a character in the film who is a prostitute. What pains them is her association with Mangal Pandey. What is objectionable according

to the plaintiffs? It is the characterisation of Mangal Pandey showing him as a drunkard, regular visitor to the Kothas, his association with a sex worker and ultimately marrying the said sex worker. Plaintiffs claim that to the best of their knowledge and belief such a depiction is utterly false, baseless, highly defamatory and derogatory to the great son of India. From the literature available on Mangal Pandey, it is emphasised that he was a 26 years old bachelor who belonged to a Brahmin family and a puritan. However, in the movie the defendants have, without any authentic source, introduced a passionate lady love in the personal life of Mangal Pandey, that too an important character of a prostitute played by none other than the leading lady of the film and showing Mangal Pandey in intimate love scenes with her, running to the river side and getting into deep water after eloping from the Holi festival celebrations, participated by the village folks. Towards the end of the film the said prostitute even suggests to Mangal Pandey that they elope from the scene and go to live a peaceful life. Mangal Pandey, before proceeding for the gallows, recognises the relationship and accepts the prostitute as his wife. The event of love life and marriage and that too with a sex worker in the life of Mangal Pandey and his visiting Kothas is wholly untruthful and finds no support from any source and least any authentic source. Therefore, it is pleaded with much vehemence that the defendants could not have introduced such a character of a sex worker in the film to be associated with Mangal Pandey. Even if the character of a prostitute named Heera in the film, is a fiction, it cannot be permitted to integrate in the personal life of Mangal Pandey, a historical legend and allowed to pass on to the future generations. The Page 1239 plaintiffs argue that even a fiction as falsehood of history that tends to damage the personal character even of a common man and to defame him and his family would be bad in law. It is stated that disclaimer in the film is totally an eye wash and as it is not specifically informed to the viewers that the character Heera in the film is not a real character but fictionalised and, therefore, audience would get an impression that Mangal Pandey had fallen in love and married a prostitute. It amounts to even distorting the family tree of the plaintiffs by introducing a prostitute in the Pandey clan. Therefore, these scenes are not palatable to the plaintiffs. It is the case of the plaintiffs that while they have no intention to seek ban on the screening of the film per se, their prayer is that the aforesaid offending and defamatory scenes be removed from the film and only with this editing that the movie be exhibited.

6. Defendants have contested the suit as well as prayer for interim injunction on number of grounds. They have, in the first instance, challenged the very maintainability of such a suit filed by the plaintiffs on the grounds that:

- a) Plaintiffs are not the descendants of Mangal Pandey and, therefore, have no legal right or locus standi to file such a suit.
- b) No action for defamation can be taken in respect of a dead person since defamation is a personal wrong and the legal right does not survive and is not actionable after the death of the person in view of principle laid down in the maxim '*actio personalist moritur cum persona*'.
- c) The suit is bad for non-joinder of defendants No.3, 4, 6 and 7 who are the director, script writer, lead actor and lead actress respectively, are unnecessarily imp ledged even when no relief is claimed against them.

d) The disclaimer in the film which appears at the outset before the start of the film categorically states that certain characters have been changed or fictionalised for dramatic purpose and certain characters may be composites or entirely fictions. It is also mentioned that the scenes depicted may be hybrid of fact and fiction. Therefore, according to the defendants, the public is made aware of the fiction in the film and because of this disclaimer there is no cause of action on the basis of which this suit is founded.

7. On merits it is stated that there is no defamatory or objectionable scene in the film which, in any manner, undermines the character of Mangal Pandey or for that matter his descendants. Defendants claim that they are responsible citizens who have excelled in each of their fields and have earned immense respect and admiration not only among Indian public but also film lovers around the world. Defendant No.1 is a reputed film producer who has produced award winning and critically acclaimed films including 'Bandit Queen', 'Maqbool', 'Fire', 'Sathia' etc. He has pioneered the introduction of international industry standards and professional business practices into Indian movie making and has been successful in bridging the gap between Offbeat and Main Screen cinema by making Page 1240 films that appeal to the sensibilities of the audiences. The clarification of the defendants, in so far as the film in question is concerned, is that with a view to retell the story how one man triggered the first fight against the then mighty British empire, this movie is produced. Film portrays Mangal Pandey as a hero and celebrates his courage and determination. Producer has brought together and synergised the creative and artistic talents of some of the best and the most popular actors, musicians, artists, writers, technicians and craftsmen in the country for making of the film. Together they have put in their creative energies and imaginations to bring to life and portray as a human being in flesh and blood, the heroic figure of Mangal Pandey about whom very little is known aside from his act of rebellion against the British in East India Company who condemned him to death after which stories of his courage fired up and triggered the 1857 Revolt. Thus, far from denigrating Mangal Pandey the film is a recognition of his role as the first spark of freedom struggle and thus glorifies and extols his sacrifices and courage and tells his story in the backdrop of 1857 Revolt. The intent and effect of the film has been to generate interest, respect and admiration among Indians for Mangal Pandey. The film is to be considered as a whole while judging its effect on audiences and few scenes of the film cannot be taken out of context to make a grievance. It is emphasised that reactions of the people who have seen this film would show that they have held Mangal Pandey in high esteem of his heroic deeds who sacrificed his life. Therefore, far from being defamatory, the film leaves the impact of him being a real hero. It, therefore, cannot be said that the film is disparaging of Mangal Pandey. It is also explained by the defendants that before the defendants decided to make this film very little was known about the hero who lived almost 150 years ago. However, a number of legends have been built up over the role played by Mangal Pandey in 1857 Mutiny which are evident from oral folklore and stories which have been passed on from generation and are part of the collective conscience of various Indian communities. However, the defendants did extensive research while making the film and found that following were the only facts which were absolutely certain:

- i) In 1857, the British East India Company ruled a large part of the Indian subcontinent.
- ii) The British East India Company had a large army of Indian sepoys.

iii) In 1857, greased cartridges were introduced in the army with new Enfield rifles.

iv) There was grave concern and resentment about this cartridge amongst the Hindu and Muslim sepoy because it was believed that the cartridges were greased with cow and pig fat and the sepoy refused to bite these cartridges.

v) At Berhampore, Col. Mitchell tried to force the sepoy to bite the cartridges with threat of using the cannon. There was a mini mutiny and the Sepoy captured the Bell of arms.

vi) At Berhampore, on 29th March 1857, Mangal Pandey rebelled, shot two British officers and when faced with a large force, shot himself.

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vii) On 4th of April 1857, he was subjected to court martial and sentenced to death.

viii) On 7th of April 1857, they failed to hang him because no hangman was available.

ix) On 8th of April 1857, there was a public hanging of Mangal Pandey.

8. The defendants, therefore, maintain that the aforesaid facts with core symbolism of the historical figure that Mangal Pandey is revered and celebrated for his symbolism significance as the trigger for India's rising and assertion of our people's right to freedom. The film is a work of fiction, in contrast to a documentary film and biography and links together various themes associated with the 1857 Revolt and its period-like the opium trade with China and the anger of India's kings and rulers and the practice of Sati etc. This is the part of artistic and cinematic license and cannot be suppressed. In the process the character of Heera, a woman forced into enslavement is, in fact, envisaged and built upon as a symbol of the India's condition during colonial regime. Still, the defendants have ensured that she is a woman of strong character. Mangal Pandey was a British soldier. Even when he was an Indian, he had joined army of the East-India Company and was fighting against Indians. Therefore, it was necessary to sow the seeds of patriotism in him. It is dramatised by the dialogues of Heera who says We sell our bodies, but you sepoy sell your souls. It is this taunt which triggers the spirit of freedom in Mangal Pandey and is, therefore, a very positive sentiment without any negative connotation. Defendants have sought to justify the scenes of interaction between Heera and Mangal Pandey. It is stated that sporadic and singular visit of Mangal Pandey to the backyard of Kotha with a purpose only to meet Heera as he was impressed by her dialogue, was merely a gesture of gratitude for opening his eyes and to ask her if she would like to escape. There are no sexual favor sought and there are no sexual connotation to the scene. The scene of Holi celebration is sought to be down played by saying that they go to river to wash off the colours of Holi. The scenes of applying Sindoor is endeavored to explain away by arguing that it was her request to liberate her and gesture of Mangal Pandey in obliging her by accepting this request showed a very high order of humanism of liberating a woman of her shame of enslavement. As even he was about to die and, therefore, cannot be treated as any stigma on his character.

9. In so far as scene of consuming 'bhang' is concerned, the explanation of the defendants is that in mid 19th century India there was no prejudice against 'bhang' and thus, no negative connotation as was intended or is communicated in the film. On the contrary, there are number of historical records, which substantiate the fact that Mangal Pandey was known to consume 'bhang'.

It is, thus, pleaded that over all effect of the film should be taken into account in the light of the period depicted and the contemporary standards of the people to whom it relates and one or two scenes of the film cannot be cited or judged out of context.

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10. Mr. Krishnamani, learned senior counsel, argued for the plaintiff No.1 and Mr. Hari made his submissions on behalf of plaintiff no.2 highlighting the aforesaid offending scenes and impact thereof in great detail. They were ably assisted by Mr. M. Tariqe Siddiqui, Advocate. In the process few judgments were cited laying down the principles of law in a matter like this. The submissions of the plaintiffs were countered by Mr. V.P. Singh, learned senior counsel, on behalf of the defendants No.2 and 5 and Mr. Praveen Anand, made his submissions on behalf of defendants No.1, 3, 4, 6 and 7. In addition, highlighting their submissions, as noted above, they have also cited plethora of case law. Submissions of both the parties shall be dealt with during my discussion which follows hereafter.

11. The central theme of the plaintiffs' arguments is two-fold. First, because of the scenes which are objectionable according to the plaintiffs and noted above, the image of Mangal Pandey is tarnished by depicting him a drunkard, a regular visitor to Kotha and not only associating him with a prostitute with whom he is shown to have fallen in love but he even marries her. In the process second limb of submission, which follows from first, is that the history is distorted. Mangal Pandey was a bachelor, a Brahmin and puritan who died at the age of 26 years. However, film falsely projects his love affair with a girl, that too a prostitute whom he married.

12. Let me first analyze the first limb of the argument which is based on the premise that certain scenes in the film are defamatory to Mangal Pandey, the great hero of India and have the effect of defaming the successive generations, including the present one. While examining this aspect, I am keeping aside the other aspect altogether, namely, the alleged distortion of history. I make it clear that I proceed to examine this aspect keeping in view that Mangal Pandey was young and brilliant, Brahmin by caste, who loved his religion more than his life. He was a bachelor and he was pure in his private life. At the same time we have to keep in mind that the movie Mangal Pandey-The Rising though based on historical events and the life of Mangal Pandey, is neither a documentary nor a biography. It is a commercial film and indubitably, fiction is infused into historical events (how much and what kind of fiction could be allowed would be the subject-matter of the second limb).

13. In any film made on commercial basis, dramatic effect of certain scenes has to be allowed. Film is to be an entertainer to woo the masses. Its powerful appeal when compared with any other medium, cannot be undermined. Importance of feature films as a medium of education and spreading a particular message cannot be undermined. It is a powerful medium because the

message is delivered while entertaining the people. The appeal of the film is directed to an audience so diverse that it transcends social and spatial categories. Watched by almost fifteen million people every day, popular cinema's values and language have long since crossed urban boundaries to enter the folk culture of the rural-based population, where they have begun to influence Indian idea of the good life and the ideology of social, family, and love relationships. Thus, people come for entertainment and at the same time they are educated. Audiences want emotions. Empty heroic acts would not suffice to make a film a Page 1243 success. For that purpose, one can read a book also. Visual impact of a message is far greater than words. For this reason every film even when it is based on historical fact, which is known as period film is dramatised. The historical facts are to be in narrative form. There has to be a story line in a feature film. The spell of the story has always exercised a special potency in the oral-based Indian tradition and Indians have characteristically sought expression of central and collective meanings through narrative design. Many psychologists believe that narrative thinking- storying -is not only a successful method of organising perception, thought, memory, and action but, in its natural domain of every day inter-personal experience, it is most effective. [see: John A. Robinson and Linda Hawpe's Narrative Thinking as Heuristic Process in Narrative Psychology: The storied nature of Human Conduct, ed. T. Sarbin (New York: Praeger, 1986) p. 123]. If in this context the producer, story writer or director of the film thought that it would be interesting, nay important, that character of Heera is introduced in the film, even when it was a pure fiction, this much play in the joints is allowed. Blending of fact and fiction is inevitable in a movie, even when it is a historical film. To quote from Sudhir Kakkar's Intimate Relations-Exploring Indian Sexuality I have always felt, at least for a society such as India where individualism even now stirs but faintly, that it is difficult to maintain a distinction between folktales and myths as products of collective fantasy on the one hand and movies and literature as individual creations on the other. The narration of a myth or a folktale almost invariably includes as individual variation, a personal twist by the narrator in the omission or addition of details and the placing of an accent, which makes his personal voice discernible within the collective chorus. Most Indian novels, on the other hand, are closer in spirit to the literary tradition represented by such nineteenth-century writers as Dickens, Balzac, and Stendhal, whose preoccupation with the larger social and moral implications of their characters' experience is the salient feature of their literary creations. In other words, it is generally true of Indian literature, across the different regional languages, that the fictional characters, in their various struggles, fantasies, unusual fates, hopes, and fears, seek to represent their societies in miniature.

14. Before proceeding further, let us analyze the character of 'Heera' in the film. Her character is carefully chosen. She is a young and petite girl. At the same time she is strong, rustic and her words few and brusque. She is not the one who had adopted prostitution as her trade by choice. It was not to earn money. In the very first scene introducing her character she-coming from unknown and one could infer from a poverty stricken background-is sold as a slave. Even at that time her resistance speaks volumes of her mighty character. Nevertheless she is helpless when forced to prostitution. She is forced to sell her flesh but her soul is intact. She does not compromise with her honour, dignity and self-respect. She is not a body with a soul. She is a soul with a physical part called the body. She is more conscious of the presence of the soul. That is why she is sarcastic Page 1244 to the hero in the very first meet up between them. She knows that even as a prostitute who is forced to satisfy the Goras with her body this profession of hers is shown as a lesser evil than that of the

sepoys who are serving those Goras. She knows that it is the soul which is superior than the body and in this backdrop retort comes with the sentence We sell our bodies but you sepoys sell your soul . Depiction of Heera with such strong attributes of her character would not be viewed by the public as something abhorrent. Audience fall in love even with the negative characters when crafted carefully by the producers. Filmmakers keep in mind as to what will appeal the viewers. They regard the Indian cinema audience not only as the reader but also the real author of the text of Hindi films. I do not think that even a common man would have a perception that Mangal Pandey has denigrated himself by associating with Heera, whose character would rather be admired. A prostitute is also a woman. She can possess strong character like any other woman of good virtues. In the following Hymn of Isis, third or fourth century B.C., discovered in Nag Hammadi (borrowed from the novel Eleven Minutes authored by Brazilian Paulo Coelho) this is the projection of a woman:

For I am the first and the last I am the venerated and the despised I am the prostitute and the saint I am the wife and the virgin I am the mother and the daughter I am the arms of my mother I am barren and my children are many I am married woman and the spinster I am the woman who gives birth and she who never procreated I am the consolation for the pain of birth I am the wife and the husband And it was my man who created me I am the mother of my father I am the sister of my husband And he is my rejected son Always respect me For I am the shameful and the magnificent one.

15. Therefore, mere association of a prostitute with Mangal Pandey would not be offensive. Even Bible talks of an interaction of Jesus Christ with a prostitute. Luke 7:37-47 gives the following:

And, behold, a woman which was in the city, a sinner; and when she knew that Jesus was sitting at meat in the Pharisee's house, she brought an alabaster curse of ointment.

And standing behind at his feet, weeping she began to wet his feet with her tears, and wiped them with the hair of her head, and kissed his feet, and anointed them with the ointment.

Page 1245 Now when the Pharisee which had bidden him saw it, he spake within himself, saying, This man, if he were a prophet, would have perceived who and what manner of woman this is which toucheth him, that she is a sinner.

And Jesus answering said unto him, Simon, I have somewhat to say unto thee. And he saith, Master, say on.

A certain lender had two debtors: the one owed five hundred pence, and the other fifty.

And when they had not wherewith to pay, he forgave them both. Which of them therefore will love him most?

Simon answered and said, He, I suppose, to whom he forgave the most. And he said unto him, Thou hast rightly judged.



And turning to the woman, he said unto Simon, Seest thou this woman? I entered into thine house, thou gavest me no water for my feet; but she hath washed my feet with her tears, and wiped them her hair.

Thou gavest me no kiss: but she, since the time I came in, hath not ceased to kiss my feet.

My head with oil thou didst not anoint: but this she hath anointed my feet with ointment.

Wherefore I say unto thee, Her sins, which are many, are forgiven; for she loved much: but to whom little is forgiven the same loveth little.

16. Jesus did not feel any humiliation when a prostitute kissed his feet, washed them with her tears and wiped them with her hair. He did not feel that it was offensive to come in contact with a prostitute who anointed his feet with ointment.

17. Likewise, in the novel 'The Da Vinci Code' authored by Dan Brown following description appears about Mary Magdalene, a prostitute in the life of Jesus Christ, while explaining the painting 'The Last Supper':

Sophie examined the figure to Jesus' immediate right, focusing in. As she studied the person's face and body, a wave of astonishment rose within her. The individual had flowing red hair, delicate folded hands, and the hint of a bosom. It was, without a doubt ... female.

That's a woman ! Sophie exclaimed.

Teabing was laughing. Surprise, surprise, Believe me, it's no mistake. Leonardo was skilled at painting the difference between the sexes.

Sophie could not take her eyes from the woman beside Christ. The Last Supper is supposed to be thirteen men. Who is this woman? Although Sophie had seen this glaring discrepancy.

Everyone misses it, Teabing said. Our preconceived notions of this scene are so powerful that our mind blocks out the incongruity and overrides our eyes.

It's known as scotoma, Langdon added. The brain does it sometimes with powerful symbols .

Another reason you might have missed the woman, Teabing said, is that many of the photographs in art books were taken before 1954, when Page 1246 the details were still hidden beneath layers of grime and several restorative repaintings done by clumsy hands in the eighteenth century. Now, at least, the fresco has been cleaned down to Da Vinci's original layer of paint. He motioned to the photograph. Et voila! Sophie moved closer to the image. The woman to Jesus' right was young and pious-looking, with a demure face, beautiful red hair, and hands folded quietly. This is the woman who singlehandedly could crumble the Church?

Who is she? Sophie asked.

That, my dear, Teabing replied, is Mary Magdalene.

Sophie turned. The prostitute?

Teabing drew a short breath, as if the word had injured him personally. Magdalene was no such thing. That unfortunate misconception is the legacy of a smear campaign launched by the early Church. The Church needed to defame Mary Magdalene in order to cover up her dangerous secret-her role as the Holy Grail.

Her role?

As I mentioned, Teabing clarified, the early Church needed to convince the world that the mortal prophet Jesus was a divine being. Therefore, any gospels that described earthly aspects of Jesus' life had to be omitted from the Bible. Unfortunately for the early editors, one particularly troubling earthly theme kept recurring in the gospels. Mary Magdalene. He paused. More specifically, her marriage to Jesus Christ.

I beg your pardon. Sophie's eyes moved to Langdon and then back to Teabing.

It's a matter of historical record, Teabing said, and Da Vinci was certainly aware of that fact. The last supper practically shouts at the viewer that Jesus and Magdalene were a pair.

18. If the movie makers wanted to give a dramatic effect by shaking the conscience of Mangal Pandey through the means of a prostitute, by no means it can be perceived as something offensive. If this interaction and strong worded statement of Heera triggers the spirit of freedom and Mangal Pandey get impressed by this character (Heera) in the film, maybe a prostitute, it would not mean any violence to his caste or even his 'purity'. Was it necessary to introduce afflatus inspiration-a divine method-to awake his innerself, because he was a Brahmin' I think the medium adopted is no less powerful and has better spell-binding effect, as it is woven in a story. At having humiliated her, he wanted to repay. He is not able to contain himself and visits Heera. No doubt, he goes to Kotha for this purpose but he does not go to Kotha for satiating his carnal desires. In any case, he could not, as purportedly that Kotha was meant for Britishers where Indians were not permitted. He goes to the backyard of Kotha where he meets Heera and asks her as to whether she would like to escape. Impressed by her personality he is able to see through that she is at that rotten place because of forced circumstances. He wants to end this sordid routine of hers and, therefore, takes courage to venture her escape which was fraught with dangers. However, there are no Page 1247 innuendos, no insinuations, no proposals. The scene is as neat as it could be. The defendants have rightly showed that there are no sexual favors sought and no sexual or erotic connotation to the scene at all. Solitary visit of this type to that Kotha by the hero of the film would not depict him as a regular visitor to the Kotha , as alleged by the plaintiffs.

19. What is objectionable if hero in a film wants that a prostitute be made to free herself from the trade in which she is indulged in ? Have we not seen number of films in the past with this as the central theme where hero struggling and fighting with the mighty system to liberate a prostitute and in the process visiting Kotha and the concerned prostitute number of times. Has the public ever viewed such acts of heroes in such films depicting their bad character. On the contrary, such acts are treated as heroic ones where the theme is to expose the ills of prostitution and people are exhorted to come out and eradicate this system.

20. In this backdrop we proceed further. Now, the hero and the heroine celebrate Holi. At once I reject the claim of the defendants that it was simply a Holi scene with entire town participating, including two main characters and their going to river was only to wash off the colours of Holi. Synergy between the two is apparent. There are amorous glances. It is a romantic song. Some intimacy is shown between the two. There is some physical contact also, though it does not transgress the limits of decency. I also proceed on the basis that they go to river together not with the intention to wash off colours. It is because they are attracted to each other and this attraction drives them away from the crowd. The question, however, is as to whether depiction of such a scene as in any manner undermine the character of Mangal Pandey. I do not think so. No doubt, Mangal Pandey was a Brahmin. No doubt, he was a bachelor. However, adding this much fiction in the life of Mangal Pandey would not make him impure. He was a young boy of 26 and unmarried. Would he not have any dreams and desires. To borrow the eternal words of wisdom of Justice Krishna Iyer uttered in *Raj Kapoor v. State* :

Art, morals and law s manacles on aesthetics are a sensitive subject where jurisprudence meets other social sciences and never goes alone to bark and bite because State-made strait-jacket is an inhibitive prescription for a free country unless enlightened society actively participates in the administration of justice to aesthetics.

21. If this girl had on an earlier occasion impressed him and they come close on a occasion when people are celebrating Holi, flirtation of this kind would not stigmatise his character in any manner. The scenes are shorn of any ugliness or obscenity. Today's audience is used to watch much bolder scenes. However, film makers keeping the dignity of the character Mangal Pandey, did not cross the *Laxamanrekha*. One has to keep in mind the difference between love and lust. A pure and sublime love almost at platonic level would by no stretch of imagination be offending. The scene per se, therefore cannot be treated as objectionable. I am also of the view that even if this platonic Page 1248 love scene is enacted with a girl who is a prostitute, it would not be offensive when adjudged in the entirety of circumstances and in the backdrop in which the character of Heera is evolved in the film.

22. Again in order to appreciate the effect of last scene when Mangal Pandey applies Sindoor in the hair parting of Heera, one has to keep in mind its context. Mangal Pandey is in jail. He is going to be hanged. A boy of 26 in his prime youth is about to die and she is the only girl came to his life. No doubt, she was a prostitute but she was forced into prostitution. Audience would sympathise with her. The film makers ensured that-at least endeavored that. That is why positive side of her character is depicted in the film. She had left her indelible mark on the hero due to her positive

traits. If the fag end of his life, when the death is whisker away and he knows it, he decides to liberate this girl-victim of circumstances-at her request. Would it be seen as denigrating or defamatory to the character of hero? I do not think so and I think the audiences did not think so. Applying Sindoor to a girl's hair parting may normally be seen as marrying the girl. Here, the message was different. It was done with a view to liberate her from the flesh trade she was driven to. The idea was to send the message that after this she was liberated and live her life as of any other respected woman. Audience would perceive this as another act of heroism on the part of Mangal Pandey, rather than defaming his sublime character-who was not only a patriot but a good human being as well, a man with nerve of steel and a golden heart. Audience would chersh such a hero rather than looking down upon him. To quote here, again, Sudhir Kakar (supra):

Having viewed some dreams in Indian popular cinema with the enthusiast's happy eye but with the analyst's sober perspective, let me reiterate in conclusion that oneiros-dream, fantasy-between the sexes and within the family, dos not coincide with the cultural propositions on these relationships. In essence, oneiros consists of what seeps out of the crevices in the cultural floor. Given secret shape in narrative, oneiros conveys to us a particular culture's versions of what Joyce McDougall calls the Impossible and the Forbidden, the unlit stages of desire where so much of our inner theater takes place.

23. The defendants are right in their submission, which even the plaintiffs do not dispute, that the film as a whole enhances the image of Mangal Pandey as a hero who triggered the freedom movement; who was the torch bearer of 1857 Mutiny. The overall impression of Mangal Pandey in the estimation of public remains positive. These scenes in question do not, in any manner, undermine his character or even have slightly shaken effect. Showing him taking 'bhang' on particular occasions, once after his wrestling bout with Gorden when they patch up their differences and again during Holi celebration, do not affect his heroic deeds in any manner. The defendants have produced the literature to show that taking 'bhang' in those days was not seen as a negative connotation so much so, even Mangal Pandey was known to consume 'bhang'. Even if it is presumed that the history in this behalf is distorted at the hands of producers, mere taking of 'bhang' is not derogatory. The public is wise enough and mature enough and does not associate such acts as reflecting the character of a person in any manner, Page 1249 be it few love scenes or taking 'bhang'. The Indian audience has come of age if the script demands it and the scene is shot aesthetically, there should be no controversy over it. Art is self-regulatory and if such scenes are depicted artistically, there should be no problem. Obviously, the scenes, with which the plaintiffs feel offended, were there to compliment the script and are not incorporated to titillate. Meaningful and artistic action cannot be allowed to be curbed.

24. Let me now advert to second limb of the argument based on the alleged distortion of historical facts. As mentioned above, it is not a documentary film. It is a feature film, a commercial film, produced by the defendants. No doubt, the film is based on historical events. It is a period film. Mangal Pandey, main character of this film, once lived on this earth. He is not fictionalised. He ignited and fought the first rebellion against East-India Company. Film was made to glorify his deeds. While making the film some fiction is added. The hard reality is that even the recording of history is never based on facts alone. There is an element of fiction in the work of historians also.

The physicist Leo Szirard once announced to his friend Hans Bethe that he was thinking of keeping a diary; I don't intend to publish. I am merely going to record the facts for the information of God . Don't you think God knows the fact? Bethe asked. Yes Said Szirard, He knows the facts but He does not know this version of the facts.

25. Therefore, historians have their own version of the facts. When a feature film is to be made on historical events, invariably it is not only the version of facts but fiction is also infused into the version of facts. That is the essential difference between a documentary film and a feature film. Entelecheia of historical events in a film cannot be expected as it is not a history book. In the present case, the producer has acknowledged this fact specifically in the disclaimer which appears at the outset by stating that The scenes depicted may be hybrid of fact and fiction.... It is also mentioned that certain characters may be composites or entirely fictions.

26. The plaintiffs do not quarrel producer's right to be imaginative while telling historical stories. However, the objection is to the extent of infusing this fiction into reality thereby entirely distorting the history. Learned counsel for the plaintiffs argued that even if little is known about Mangal Pandey, what is certain is that he was a Brahmin by caste, a Brahmchari who went to gallows as an unmarried person. While showing his character, therefore, violence could not have been done with this part of the history by showing his love affair with a girl; that too with a prostitute and going to Kotha to visit her. They have even objection to a prostitute inspiring hero of the film. These scenes, according to the learned counsel, are utter falsehood in so far as history is concerned and they interfere with the essential character of the hero to a great extent. It is submitted that the alleged disclaimer, in this backdrop is of no consequence, as there is no specific disclaimer about the heroine of the film. At this stage, I reproduce the said disclaimer:

This story is based on Actual Events. In certain cases, incidents, characters timings have been changed or fictionalized for Page 1250 dramatic purpose. Certain characters may be composites or entirely fictions. Some names and locations have been changed. The scenes depicted may be hybrid of fact and fiction which fairly represent the source materials for the film believed to be true by the filmmakers.

27. It is the submission of the learned Counsel for the plaintiffs that the above statement of filmmakers is a categorical representation and assurance to the viewers all over the universe that each of the event depicted in the film is a statement of fact and, therefore, an authenticated part of the story knowing fully well that the said representation is based on falsehood as they had themselves distorted the facts to turn the the historical patriotic movie into a 'Masala Movie'. It is emphasised that the very first sentence of the statement, i.e. This story is based on actual events gives an impression that the character of heroine is also an actual event. No doubt, in the very next sentence it is mentioned that some of the characters have been changed and fictionalised for dramatic purpose and certain characters may be entirely fictions, heroine is the main character and cannot be a certain character, which expression would refer to some incidental characters only in the film. It is further submitted that even when it is stated that scenes depicted may be hybrid of fact and fiction, at the same time the defendants claim that these scenes fairly represent the source material for the film believed to be true by the filmmakers. Those persons who do not know the

history will get an impression after watching the movie that Mangal Pandey was involved with a prostitute with whom he married. It is also mentioned that the disclaimer is, therefore, not proper/sufficient disclaimer and that too only in English and, therefore, many would not even know that there is any such disclaimer. It is submitted that there is a difference between events and incidents. When the events are shown they should be correctly shown, though some incidents can be fictionalised. The plaintiffs' grievance, therefore, is that it is a false depiction of history which cannot be allowed to remain on record and the plaintiffs were here for correction of this part of history. It is also submitted that in the name of art and drama the defendants cannot be allowed to invade the history and morally corrupt the character of Mangal Pandey.

28. I have already held that in so far as the scenes to which the plaintiffs object are to be judged from morality and obscenity point of view, there is nothing wrong with the same. I have also recorded my opinion above that mere introduction of a character like Heera, maybe a prostitute, in the life of Mangal Pandey cannot be defamatory per se and would not amount to character assassination of Mangal Pandey. Nobody would denigrate or disparage the character of Mangal Pandey as a whole merely because girl like Heera came to his life and spent those moments.

29. In Halsbury's Laws of England, Fourth Edition, Vol. 28, 'defamatory statement' is defined as under:

Defamatory statement. A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on himPage 1251 disparaging or injurious to him in his office, profession, calling, trade or business.

It is not necessary to site Indian law which has developed accepting the aforesaid connotation of 'defamation'. Applying these tests it cannot be said that either Mangal Pandey and for that matter his descendants are defamed in any manner in the movie.

30. I am also of the view that in stories based on actual events/historical events, some fiction is permitted. Well known and world famous film director and producer Steven Spielberg has recently made a film named 'Munich'. It is based in part on a book 'Vengeance', by George Jonas. It is based on Munich massacre at the 1972 Olympics when Palestinian terrorists held 11 members of Israeli Olympic team hostage which led to botched rescue attempt by the Israeli Intelligence Officers and forces and the murder of the surviving athletes (two had already been killed by the terrorists). It is a film of sympathetic (and in this case anguish) characters and it is, morally speaking, infinitely more complex than the action films. It superficially resembles-features that simply pit terrorists against counter terrorists without an attempt to explore anyone's motives and their tragic implications. While handling the central theme, namely, Munich massacre and the aftermath, in which the Israeli Government mounted a secret war of revenge against the murders, much of fiction is added into the actual events. Some of the critics even say that it is full of distortions and lies of fancy that would impact any Israeli Intelligence officer blush. After watching the movie one would raise the question, where in 'Munich' does fact end and fiction begin? On the controversy as to whether all facts are shown, some facts left out or distorted and how much fiction has interfered with actual events,

Aaron J. Klein, correspondent of 'Time' Magazine in his article The History Behind Munich-separating truth from fiction in Spielberg's movie made the following remarks:

Much is left out. For instance, it would have been nice to know that it was German incompetence-their rescue operation was, operationally, a disaster-that led directly to the massacre. But a film can't show everything, and the meat of Spielberg's narrative is not the massacre itself but Israel's response to it, a counter-terror campaign that has long been shrouded in mystery-and to some extent still is. It is here that artistic license overwhelms, when it does not entirely dispense with, the true story of what happened after Munich.

In the same article, elsewhere, he writes:

But Spielberg has brought into one of the myths of the Mossad-that after Munich they staged a revenge operation to hunt down and assassinate everyone responsible. Israelis, too, bought into this myth (myself included, at one time) which a shocked public demanded-but that doesn't make it true. Spielberg, in inventing a story about violence begetting violence inspired by real events is raising questions worth asking. Even so, Israel's response to Munich was not a simple revenge operation carried out by angst-ridden Israelis. But the larger context, and the facts on the ground, rarely get in Spielberg's way. A rigorous factual accounting may not be the point of Munich, which Spielberg Page 1252 has characterized as a prayer for peace. But as result, Munich has less to do with history and the grim aftermath of the Munich Massacre than some might wish.

Thus, the extent to which the movie repose fact is a matter of debate. Spielberg has himself referred to it as historic fiction saying it is inspired by actual events. In so far as making of the film as an artistic venture is concerned, it has received largely positive reviews with many critics considering it amongst Spielberg's best films with particular praise going to Eric Bana's performance.

31. Thus viewed the film Mangal Pandey, labeling it as historic fiction inspired by actual events, it cannot be said that introduction of the character of Heera and her association with Mangal Pandey in the film is in any case distorting the history. The film, notwithstanding the doubts about its Box Office success or not, has received brilliant reviews. It has succeeded remarkably in achieving its objective, namely, showing Mangal Pandey as a hero who triggered the 1857 Revolt. The viewers after watching the movie will see him in high esteem and merely because of his association with Heera, a prostitute, will not denigrate him. As pointed out above, though Heera is a prostitute in the film, her character also has strong positive attributes because of which she is able to win the sympathy of the audience and is not seen as somebody who is to be shunned. Her liberation is viewed as a heroic act on the part of Mangal Pandey.

32. Following passages from Jean Guglielmi v. Spelling-Goldberg Productions 25 Cal. 3D 860 can be extracted at this stage:

Using fiction as a vehicle, commentaries on our values, habits, customs, prejudices, justice, heritage and future are frequently expressed. What may be difficult to communicate or understand when factually reported may be poignant and powerful if offered in satire, science fiction or parable.

Indeed, Dickens and Dostoevski may well have written more trenchant and comprehensive commentaries on their times than any factual recitation could ever yield. Such authors are no less entitled to express their views than the town crier with the daily news or the philosopher with his discourse on the nature of justice. Even the author who creates distracting tables for amusement is entitled to constitutional protection.

Whether (works of fiction) are creations of merit, whether they have value only as entertainment and no value whatever as opinion, information or education, pose questions which would require us to stake out those elusive lines. It is fundamental that courts may not muffle expression by passing judgment on its skill or clumsiness, its sensitivity or coarseness; nor on whether it pains or pleases. It is enough that the work is a form of expression 'deserving of substantial freedom both as entertainment and as a form of social and literary criticism.

xxxxx Moreover, in defamation cases, the concern is with defamatory lies masquerading as truth. In contrast, the author who denotes his work as fiction proclaims his literary license and indifference to the facts . Page 1253 There is no pretense. All fiction, by definition, eschews an obligation to be faithful to historical truth. Every fiction writer knows his creation is in some sense false . That is the nature of art.

xxxxx Moreover, the creation of historical novels and other works inspired by actual events and people would be off limits to the fictional author. An important avenue of self-expression would be blocked and the marketplace of ideas would be diminished.

xxxxx Having established that any interest in financial gain in producing the film did not affect the constitutional stature of respondent's undertaking.

33. In Bobby Art International v. Om Pal Singh Hoon the Supreme court laid down the principle with which the so-called offending portions of the film are to be judged and observed: The film must be judged in its entirety from the point of view of its overall impact. It must be judged in the light of the period depicted and the contemporary standards of the people whom it relates. Here even the learned Counsel for the plaintiffs conceded that what is shown is in moderation, so far as relation between Mangal Pandey and Heera was concerned. Para 20 of the said judgment is worth taking note of in this context:

20. The guidelines aforementioned have been carefully drawn. They require 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 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 deprave the morality of the audience. Clause 2 requires that human sensibilities are not offended 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 them, they be reduced to a minimum and not particularised.



34. The Court also referred to an earlier judgment in the case of State of Bihar v. Shailabala Devi to the effect that a writing had to be considered as a whole and in a fair and free and liberal spirit, not dwelling too much upon isolated passages or upon a strong word here and there, and an endeavor had to be made to gather the general effect which the whole composition would have on the mind of the public.

35. In the case of Manisha Koirala v. Sashilal Nair and Ors., the Bombay High Court was concerned with a situation where the plaintiff, who played central character in the film, claimed that the producer Page 1254 of the film had, without her permission, used some scenes shot by a duplicate of the plaintiff. These scenes were objectionable and defame the plaintiff in eyes of society. Her grievance was that people watching the film would not know that those scenes were shot by a duplicate but would perceive the plaintiff doing those obscene scenes. Rejecting her contention that the scenes were defamatory, the Court held:

8. The next issue would be whether prima facie atleast the scene enacted by the double would result in the tort or defamation. tort of defamation in the instant case is by association. The plaintiff may be prima facie to contend that those who view the film would not differentiate between a fill-in artist and the plaintiff and association will be with the plaintiff. The question, however, is whether the scenes which are shown in the film would fall with the expression defamation as understood. Salmond and Heuston on the Law of torts, Twentieth Edition defines a defamatory statement as under:

A defamatory statement is one which has a tendency to injure the reputation of the person to whom it refers; which tends, that is to say, to lower him in the estimation of right-thinking members of society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem. The statement is judged by the standard of an ordinary, right-thinking member of society. Hence the test is an objective one, and it is no defense to say that the statement was not intended to be defamatory, or uttered by way of a joke. A tendency to injure or lower the reputation of the plaintiff suffices, for If words are used which impute discreditable conduct to my friend, he has been defamed to me, although I do not believe the imputation, and may even know that it is untrue. Hence, it is settled that a statement may be defamatory although no one to whom it is published believes it to be true.

Carter-Ruck on Libel and Slander, Fifth Edition have carved out some of the tests as under:

- (1) A statement concerning any person which exposes him to hatred, ridicule, or contempt, or which causes him to be shunned or avoided, or which has a tendency to injure him in his office, professional or trade.
- (2) A false statement about a man to his discredit.
- (3) Would the words tend to lower the plaintiff in the estimation of right thinking members of society generally?

These are the tests which the Judge must apply. These tests have to be decided not in the context of what the plaintiff wants or what the defendant No.1 thinks to be just and proper. The test would be based on the theme of the story and the ideas behind it. It will also not be possible for this Court to decide whether any particular scene out to have been used or not used or in what sequence or context. That would be purely in the realm of the person making or directing the film and the impact that person would like to create on the audience who wish to Page 1255 view the film. As set out earlier the theme which has been described earlier is about a working girl and her relationship and intimacy with a boy friend and the infatuation of the young boy when thinks he is in love with her. These prima facie formed part of the story board and was known to the plaintiff. If seen in this context it cannot be said that the scene would fall within the definition of what the plaintiff contends is defamation.

36. At this stage, it would be apposite to take note of a judgment of the Division Bench of the Punjab and Haryana High Court in the case of Paramjit Kaur and Ors. v. Union of India and Ors. . Three films, in quick succession, depicting the life of Sardar Bhagat Singh, a freedom fighter and martyr were released. Petitioners filed writ petition challenging some of the scenes in all these films primarily on the ground that those scenes contain distorted version of the real life history of Shaheed-E-Azam Sardar Bhagat Singh. They also sought directions to be issued to the respondents to refrain from distorting the acts of heroism and patriotism displayed by Sardar Bhagat Singh. On facts the High Court did not find that these films contain any distorted version of the real life story of Bhagat Singh. Therefore, on facts the plaintiffs may be able to distinguish the said case from the case at hand. However, I may take note of some of the portions in the movie titled as Shaheed-E-Azam Sardar Bhagat Singh , which, according to the petitioners in the said case, were offensive:

a) In this film, in one of the scenes Sardar Bhagat Singh, has been shown to be sitting with other revolutionaries and the dialogues spoken include:

'Bhagat Singh kitna sunder hai. Kittni gorian marti hain is par.' 'Bhagat Singh tu kisi angrej afsar ki beti ko pata ley aur hum dahej mein sara Hindsutan maang lenge.' This is complete character assassination of Sardar Bhagat Singh. He had once mentioned to his parents that he sees Bharat Mata tied in chains of slavery in his dreams. However, the above dialogues suggest a total contrary picture. Moreover in this scene itself, Chander Shekhar Azad is shown to be fighting with his colleagues on funny issue like 'Gur Jhootha Kar diya' etc. etc.

b) In another scene, a police officer gives an option to Bhagat Singh to settle in England and marry an English girl. After this Sardar Bhagat Singh is shown to be abusing that officer by using words to the effect that You are a bloody pimp This again is highly derogatory for the reputation of a man like Bhagat Singh who has always been admired as a decent and learned gentleman.

c) In this film, Sardar Bhagat Singh has been shown to have returned to his house from Kanpur on his own along with Rajguru. This is totally incorrect as Sardar Bhagat Singh returned to his house only when he got the information that his grand mother was not well.

d) Further, at many places in the film, the revolutionaries including Sardar Bhagat Singh are shown to be saying 'Jai Hindi' between themselves. Whereas, the slogan 'Jai Hind' was coined by Shri Subhash Chander Bose and Bhagat Singh and others used 'Vande Matram' while greeting each other or raising other slogans.

g) That in another scene of this film, Sardar Bhagat Singh is shown to be talking to his Chacha Ajit Singh. The fact remains that Shri Ajit Singh left India when Sardar Bhagat Singh was only 2 years of age.

36. The explanation given in the counter affidavit filed by the respondents in respect of the above-mentioned scenes was as under:

4. That Shaheed Bhagat Singh is shown with Chacha Ajit Singh when he is only a child in the beginning of the film. Moreover, the film Shaheed-E-Aazam has a caption in the beginning of the film. This film is a dramatised version based on the life of the great martyr Bhagat Singh and his contemporary freedom fighters.

7. That Shaheed Bhagat Singh tries to create patriotism in the minds of youngsters through drama at National College, Lahore and this is merely an incident shown in the film with dramatisation and cinematographic presentation.

8. That in outburst shown of Shaheed Bhagat Singh, it only goes to show his patriotism and hatred for Britishers.

37. What is sought to be highlighted is that though some of the scenes did not depict the history correctly, explanation of the filmmakers was that the film was a dramatised version based on the life of great martyr Bhagat Singh; some incidents shown in the film were merely dramatisation and cinematographic presentation; character of Bhagat Singh even when he had shown his outburst towards Britishers was to project his patriotism and hatred towards Britishers. This was accepted by the Court as valid justification and permissive dramatisation even if some of the scenes were not actual reproduction of historical facts. More important is the narration of legal position contained in following paragraphs:

21. There is no need to further elaborate, inasmuch as, what kind of exhibition of films would violate Articles 21 and 25 of the Constitution of India or would be against the provisions contained in Section 5B of the Act of 1952, is no more res-integra and that being so, it would be appropriate to advert to judicial precedents on issue straightaway. Hon'ble Supreme court in Ramesh Chotalal Dalai v. Union of India and Ors. , considered exhibition of telecasting or screening of serial titled 'Tamas' in the context of fundamental rights of the petitioner under Articles 21 and 25 of the Constitution of India as also Section 5B of the Act of 1952. The petitioner who was a practicing lawyer in the Bombay High Court, had approached Hon'ble Supreme Court by means of the petition under Article 32 of the Page 1257 Constitution for issuance of writ in the nature of prohibition

restraining the respondents from telecasting or screening the serial titled 'Tamas'. It was the case of the petitioner that the serial was against the public order and was likely to incite the people to indulge in commission of offences and it was, therefore, violative of Section 5B(1) of the Act of 1952 and destructive of principle embodied under Article 25 of the Constitution. After noticing Section 5B and 5C of the Act of 1952 and the contention raised by learned Counsel representing the parties. Hon'ble Supreme Court while relying upon the views of Vivian Bose, J. in Bhagwati Charan Shukla v. Provincial Government AIR 1947 Nagpur 1 as also three judgments of Supreme Court in K.A. Abbas v. Union of India, Ebrahim Sulaiman Sali v. M.C. Muhammad and Raj Kapoor v. Laxman, rejected the prayer of the petitioner to restrain order on telecasting or screening the serial titled 'Tamas'. The portion of the judgment of Vivian Bose in Bhagwati Charan Shukla's case (supra), that was relied upon, as reproduced in the judgment in paragraph 13, reads as follows:

That the effect of the words must be judged from the standards of reasonable, strong minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view.

27. After examining all distortions mentioned in the additional affidavit, we are of the view that there is nothing such that may put to shade or even slightly diminish the exemplary role played by Shaheed Bhagat Singh in its endeavor of freedom struggle, for which clause, he ultimately sacrificed his life. It is not even disputed that supreme sacrifice made by Shaheed-A-Azam Bhagat Singh and the message, the same would convey to the taming millions in the country runs through and through all the films sought to be banned for exhibition. If that be so, no complaint can at all be made on few scenes or dialogues which Story Writers, Directors and Producers might have thought necessary for better success of the films at the box office. It is too well known that cut and die story of any National Hero, some glamourisation or addition to the main events, which may not be derogatory or offending as such has been made, nothing wrong can be found with the same. The court is rather of the view that in the present scenario, when almost 7 decades have gone by when Shaheed-A-Azam Bhagat Singh died, the only way to remember his sacrifices would be through TV serials or films or the like but, if, no addition, and we may mention that such addition would not distort the main theme, is made it may not attract the audience, which itself would frustrate the very aim for which the films are on exhibition. We are of the view that the petitioners, who are none other than Page 1258 dependents of Sardar Bhagat Singh, far from feeling depressed would feel happy that after so many years, the memories of their ancestral, who laid his life for the nation, is being kept alive. The real brother of Shaheed-A-Azam Bhagat Singh has appreciated the film and congratulated the Director of one of the films by writing letter dated 18.5.2002, clearly stating therein that the film is based upon true life story of his elder brother Sardar Bhagat Singh. It may be reiterated that younger brother of Bhagat Singh was on the panel of consultants. It is further stated in the letter that during his visit to the sets of shooting the film, he was shown the entire script and it was very heartening that Mr. Santoshi and his team had done so much research and come up with a script which has done full justice in conveying the principles, showing the personality, ideas, views and love for the country and the spirit with which 'Sardar Bhagat Singh' motivated his comrades and countrymen to fight for freedom of the country. He further states in the letter aforesaid that I was delighted to see that utmost care was taken depicting 'Sardar Bhagat Singh' and his comrades in the film. It is apparent that Mr. Santoshi has done excellent research, which is brought out by the fact

that during the detention in the jail and execution, Ajay Devgan, who is playing Sardar Bhagat Singh in the film, is shown as clean shaven, the way I saw him last, before his execution.

38. In the light of aforesaid discussion, case of Shilpa S. Shetty v. Magna Publications Co. Ltd. , as cited by learned Counsel for the plaintiffs, would be of no avail. That was a case where infringing articles contained account of plaintiff's personal life as to whether she was having a relationship with a third actor or whether she was having a relationship with a married man. In the infringing article she was also described as 'maniser' in the manner in which men are called 'womanisers'. The Court granted injunction on the ground that these articles bring down the reputation of the plaintiff and have the impact on her personal life and showed her in an undesirable manner to the world at large. It is not the position in the present case.

39. Another case cited by learned Counsel for the plaintiffs was the judgment of Madhya Pradesh High Court in Shyam Narayan Chouksey v. Union of India . That was a case where the manner in which national anthem was shown in the film 'Kabhi Khushi Kabhi Gum' was objected to. The Court found that the national anthem had been sung in the movie as if it was a song of advertisement for a commercial purpose. Further the Court took note of the fact that when national anthem is sung in a film the audience in the film do not stand up immediately and, therefore, it is derogatory to show national anthem. While granting injunction against depiction of national anthem in the film, the Court observed:

Page 1259 But a sixty-four million dollar question arises whether in the name of creativity in a feature film the national anthem can be utilized in this manner. National Anthem as has been indicated is the symbol of history, unity and pride. In the film, the national anthem has been bifurcated into two parts. The boy sings one part and the mother sings the rest, may be the last five words. Mr. Singh, learned senior counsel appearing for the respondents 4 and 5 with all his forensic skill would submit that the mother immediately thought it appropriate to complete the national anthem as it should not go unfinished. But the fact remains that the boy says 'sorry' in the midst of the anthem and mother after some time completes the same. All this has been done to create a dramatic impact in the picture for the benefit of the producer. This should not be allowed to be done for the popularisation of the national anthem as has been understood in this great country. That apart in our considered view the national anthem which is the glory of the country and portrays the unity of the country cannot be shown in a variety show or a cultural programme of a school as an item. In our considered opinion if Section 5A of Cinematograph Act and Rules framed there under, guidelines framed by the Central Government and Art. 51A-(a) of the Constitution and above all the Apex Court decision rendered in the case of Benjoi (supra) are understood and appreciated in proper perspective, the irresistible conclusion is that incorporation of the national anthem in the film is totally uncalled for. The Board has failed in its duty while giving the certificate. We may say that it has not acted with due responsibility. The Board has taken the stand that nothing was found wrong as it was done for laudable purpose. Watching the necessary part of the picture we do not see any laudable purpose. On the contrary it is for benefit of the individual. Collective sensitivity and national feeling cannot be violated. Corrosive attitude in regard to honour of the national sentiment is totally impermissible. The dramatisation of the national anthem is against the constitutional philosophy.

Obviously, factual premise of the present case is totally different. 40. In *Ramanlal Lalbhai Desai v. Central Board of Film Certification*, writ was filed against the Censor Board for deleting few scenes. While writ was partly allowed, in respect of the following scene the refusal was upheld:

7. To recapitulate, the refusal of the Board and justified by the Tribunal to certify the film for public exhibition, on the ground of its being based on superstition and depicting superstitious practices, is contrary to the statute inclusive of the guidelines. In so far as the certification is declined on the ground of unduly long exposure of the female body Page 1260 outside a swimming tank, inside the bathroom in a bath-tub, three prolonged rape and attempted rape sequences and the passionate love scenes between Roma and Ravi are concerned, the refusal is upheld. Also upheld is the refusal in so far as it depicts erotic movements of Roma's body while being sexually assaulted by an invisible spirit. These scenes will be deleted or suitably altered and the film will be represented for certification to the Board. The Board shall rule upon the request within four weeks of the presentation of the altered film. Rule in the above terms is made absolute, with parties being left to bear their own costs.

In the present case the learned Counsel for the plaintiffs had in the beginning of the case itself, accepted that there is no vulgarity in the film.

41. Last case referred and relied upon by the plaintiffs' counsel was *K.V. Mallikarjuna Rao and Anr. v. Deptt. Of Home and Ors.*. The offending scene in the said film was depicting the currency notes in the scale of Goddess of Justice and the Judge rising when the Chief Minister comes and salutes him. The Court found these scenes as derogatory to the high office of a Judge holding the Court because of the following reasons:

4. ...The Goddess of Justice holding even scales connotes the fair and equal justice administered by the Court, but the currency notes placed in the said scales means otherwise and that too glaringly that the Court is corrupt and that justice is not administered on facts of the case and the law governing the same, but for money considerations. This is derogatory to the cause of justice denigrating the courts. It is nothing but scandalizing the Court as a corrupt institution, corrupting the minds of our cine-goers that the justice in the Court can be purchased. Equally the other scene, Judge rising when a Chief Minister comes into the Court in connection with the case tried by him and wishing him Namaskars is also highly objectionable. No doubt, cinema is a fiction and it may have flashbacks and several other scenes relating to the story and events, but it cannot distort with regard to court procedure. A Judge presiding over a Court never rises no matter how big a person is or the position held by him.... It certainly creates an impression in the minds of the cine-goers that a Judge presiding over a Court of law is a subordinate to the executive government held by the Chief Minister. Such an impression is dangerous to the independence of judiciary as the people will lose faith in the institution of Justice and justice delivery system itself.

5. The judiciary is one of the important pillars of democracy erected by Rule of law, which is designed to protect the value of human rights. It is needless to mention that democracy should conform to Rule of law. Freedom of free society does not mean that anything and everything can be done by the citizens or the State as they please. If Page 1261 the freedom is not regulated, it will turn

out to be gall and wormwood to the people who gave their representatives the power to rule, this is sought to be achieved by appointing a guardian of the Constitution and the laws and the task of this guardian is to keep the law-making and the executive limbs of Government from breaking through the bounds of the people's will. The name of this guardian is Judiciary. Such a judiciary can never be humbled and humiliated and the offending scenes mentioned supra tend to do so and as such, have got to be deleted. It is the duty of the constitutional court like this, if invited to do so, to make known the people that Rule of law means the supremacy of the Constitution and the laws and that none is above the law and whenever any act is invalid on the touchstone of the Constitution, the same shall be declared as guilty of transgression of fundamental laws, and that it is essential to our free society that the people, lay and professional alike hold the Judgeship in the highest esteem that they regard it as a symbol of impartial, fair and equal justice under law and to cherish the Courts of law as respectable institutions.

42. Drawing parallel learned Counsel for the plaintiffs had argued that if the objectionable scenes in this film are permitted and the defendants are allowed to distort the history in this heinous manner and introduce such part of fiction which is far from truth in the name of dramatisation, the filmmakers may cross the limits in the name of free speech and there may not be any end to such a right of the filmmakers. Argument is more in terrorem. The judgment of the Andhra Pradesh High Court cited by the plaintiffs themselves, is a sufficient indicator that wherever, in the name of free society, freedom of speech, limits are crossed, the Courts have put the reins.

43. Having discussed the matter in its length and breadth, one aspect which still lingers on in the mind is that Mangal Pandey was a bachelor. Though avowed objective of 'sindoor scene' may be different, it can also be perceived as Mangal Pandey marrying Heera. Further, not a certain character but main character like Heera is introduced in his life in the form of fiction. As it is done in a historical fiction more for the purpose of dramatisation and without, in any way, compromising with the strength of Mangal Pandey's heroic character and compromising with the central theme and without, in any manner, denigrating him, it is permissible. At the same time it would also be necessary to give clarification by informing the public at large to remove all possible guess work, that Heera's character was fictionalised. Therefore, I am of the opinion that the grievance of the plaintiffs can be taken care of by making the following statement/announcement at the end of the movie in English as well as in Hindi:

The character of Heera is fictionalised. There was no such Heera in the life of Mangal Pandey. Mangal Pandey died a bachelor.

IA is disposed of with aforesaid direction and rejecting other prayers made therein.

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44. The entire matter is examined on the basis of averments made in the plaint and on the assumption that the plaintiffs are the descendants of Mangal Pandey and have locus standi to file this suit. The averments made in the plaint are treated as correct on their face value and on that basis legal position is examined. Therefore, it is not even necessary to set down the case for trial as

even if the factual averments are ultimately established, my conclusion would be same as recorded above. I find no merit in the grievance of the plaintiffs. Thus it is not necessary to go into the preliminary objections raised to the maintainability of the suit. Therefore, entire dispute raised in the suit stands decided. While dismissing the suit of the plaintiffs, it is directed that the defendants shall immediately incorporate the above quoted statement at the end of the movie and shall show the movie with the aforesaid insertion.

45. The suit as well as the IA stand disposed of. No costs .