

UniversuMM-2019

2nd MM NATIONAL JUDGMENT WRITING COMPETITION, 2019

Mr. Rohit Singh & Ors v. Central Board of Film Certification & Ors.

1. Mr. Rohit Singh is an Doneywood film director and producer and is also the Managing Director of TCM Film Pvt Ltd. He is ranked amongst the top film-makers of the country and is also said to be the highest paid directors in India. He is known for making films on issues of social relevance and is acclaimed to be one of the best directors when it comes to portraying sensitive themes on-screen. On January 8, 2017. Mr. Rohit announced that he will be making his next film on the issue of homosexuality where he would show the real-life challenges of homosexual couples in India.

2. Mr. Rohit then signed Ginesh Verma and Parmod Singh, for the main lead roles and Shanaya Kapoor for the lead female role in the film. It was expected that this film with a top-class director along with top actors of Doneywood was definitely going to be the biggest hit of 2018. Mr. Rohit and his team did extensive research work on this issue for the next six months and the shooting began in August, 2017. In May, 2018 a news channel interviewed Mr. Rohit on what he intends to put forth in his upcoming film and whether the title of the film has been decided. Mr. Rohit replied, 'My next movie shall be called Happy Together and shall talk about how homosexual couples face socio religious intolerance in our society.'

3. The interview wide publicity on the internet and soon several religious organisations were seen issuing statements against the film arguing that insult to their religions, in any form, is intolerable. Mr. Shalain Kumar, a member of the Hindu Welfare Association, issued a statement that 'Hindu religion has no place for homosexuality and that no film-maker can be allowed to hurt their community's religious sentiments, and if the movie is released, all who are involved in this movie will face serious consequences. Abdur Rahman, a Maulvi, issued a Fatwa that 'this film is an insult to Islam and if the film is promoted and released, the film-maker and all actors should be ready for any adverse consequences including death penalty.'

4. Despite resistance from religious groups, Mr. Rohit continued with the shooting of his film and was continuously quoted saying that 'the film does not hurt any

religious sentiments, neither does it target any particular religion and that religious groups should first see the movie before making such adverse remarks.’ The shooting of the movie was completed in August, 2018 and the film was submitted to the Central Board of Film Certification on October 6, 2018. Immediately, the opposition from religious groups began to grow and they demanded a nation-wide ban of the film. On October 18, 2018 five Chief Ministers declared that ‘the film shall be banned in their respective states, even if it gets clearance from the Central Board of Film Certification (CBFC), since there is reasonable apprehension of breach of peace in their states rendering the ban necessary.’

5. On November 1, 2018, CBFC notified that Happy Together has been denied certification on the ground that ‘human sensibilities may be offended since the film’s content was vulgar and obscene’ and gave Mr. Rohit fifteen days time to represent his case before the CBFC. On November 7, 2018, TCM Film Production Pvt Ltd. released the online trailer of Happy Together on their official website seeking the opinion of public in this regard. Within the next two hours of its uploading, the video was shared by around 55,000 people from all religions and gender, wherein 80% of the viewers thought the movie to be pro-society and favoured its release. On the other hand, protests in favour and against the release of the film started occurring. On November 8, 2018, during one such protest in the state of Uttar Pradesh, the protestors against the movie turned violent resulting in clashes and death of two persons and another ten persons being severely injured. On November 9, 2018 Mr. Rohit appeared before CBFC to defend his film where he argued that the movie did not hurt the tenets of any religion and that the physical intimacy shown in his movie was very less as compared to those shown in movies that have previously been certified and cleared by the CBFC. He further pleaded to the CBFC to consider the public opinion on his film on his website. But CBFC rejected all contentions of Mr. Rohit and notified on November 29, 2018 that, ‘The film ‘Happy Together’ has been denied Certification by the CBFC and shall not be exhibited in any theatres or online platforms across India. Reasons stated are; (i) Depicting physical intimacy between homosexual couples may deprave the moral standards of the Indian society and corrupt the minds of the audience and hence is obscene. (ii) Since homosexuality is disapproved by all major religions in India, its depiction in any manner whatsoever amounts to vulgarity. (iii) The online public opinion cannot be a yardstick for Certification and CBFC is under no liability to consider the public opinion in its decision process. (iv) Since the film has been denied certification, the release of its trailer or any

advertising material on online platforms is illegal and should be immediately withdrawn.

6. On November 30, 2018, Mr. Bijender Nath, Chief Minister of the state of Uttar Pradesh issued a statement that 'in light of the violent incidents that have occurred due to the film Happy Together, the film shall be banned in the state of Uttar Pradesh, even though it might be cleared by the CBFC. The Minister further said that his Government is under constitutional duty to protect the culture, beliefs, life and property of general public and hence the security of his state and of its people comes before any film or any filmmaker's rights.' Few other Chief Ministers were also quoted endorsing the views of Mr. Baiju Nath. On December 5, 2018, Mr. Rohit met the CBFC Chairperson and expressed his protest and anguish over CBFC's order on his film, calling the decision arbitrary, unreasonable and biased. He told the Chairperson that he would appeal against the order, and that he would not remove the trailer from the website since the jurisdiction of the CBFC did not extend to content on internet and he was free to upload any part of the film or the trailer on the internet.

7. Mr. Rohit appealed before the Film Certification Appellate Tribunal (FCAT) against the decision of the CBFC, on December 12, 2018. FCAT, after hearing the matter upheld the decision of the CBFC. The Tribunal also directed TCM Film and Mr. Rohit to remove the trailer from the website since it was illegal to exhibit an uncertified movie or anything related to it, on any media whatsoever. In the meantime, on December 8, 2018, Mr. Shalain Kumar from Hindu Welfare Association filed a FIR against Mr. Rohit, Ginesh Verma, Parmod Singh and Shanaya Kapoor under Section 292 of the Indian Penal Code. Mr. Rohit thus filed an Appeal before the Bombay High Court against the order of the CBFC, being in violation of his Fundamental rights with a request to issue directions to the concerned State Governments not to ban the screening of his film in their respective states. In the same petition, he also requested the Court to quash the FIR filed by Hindu Welfare Association and the fatwa issued against him and others of his team stating that his movie is not in violation of law of the land. The High Court admitted his petition and the matter has been listed for hearing. Law in force in India is applicable for the argument. The teams are expected to present arguments on the following issues:

1. Whether the order of CBFC, denying certification to the film 'Happy Together', is arbitrary and violative of fundamental rights of the Appellants?

2. Whether the Appellants are liable for selling and promoting obscenity through the film 'Happy Together'?
3. Whether online release of the trailer of the film 'Happy Together' by the Appellants is illegal?
4. Whether the action of Respondent State Governments to ban screening of the concerned film in their respective states unconstitutional and *ultra vires* of the Constitution of India? The teams are free to add or remove any other issue as they deem fit.