

- 1 -

ORDER

This order is passed in respectful compliance of the directions of the Hon'ble High Court of Kerala in W.P(C). No. 20920 of 2022 and Writ Appeal 812 of 2022. This order is issued by the Central Board of Film Certification (hereinafter CBFC) after examining the Malayalam feature film titled Kaduva and verifying its script, documents and the different judgments on the subject matter. Mr. Jose Kuruvinakunnel, his Advocate Mr. Roshan D. Alexander, Mr. Jinu Varghese Abraham, Mr. Listin Stephen and Mr. Shaji Kailas were heard by the CBFC before passing this order.

Brief Facts

1. Mr Jose Kuruvinakunnel submitted a representation dated 28.03.2022 before the Regional Officer, CBFC, Thiruvananthapuram praying that no certificate be granted permitting public exhibition of the movie "*Kaduva*" with the same name or with a different name in its present form. He also prayed that he may be given a personal hearing to explain the various facts stated before a decision is taken in the matter. The grievances highlighted by him was that though, complainant's official name was **Jose Kuruvinakunnel**, he is popularly known as "**Kuruvinakunnel Kuruvachan**". He submitted that on enquiry he was able to comprehend that the portrayal of the central character of the script '*Kaduvakunnel Kuruvachan*' and the movie '*Kaduva*' are of deep concerns to him. He apprehends that the various incidents written in the script and shown in the movie and the references made through various dialogues in the movie would be defaming him. He cited a few objections which he apprehends would damage his reputation
 - (i) The complainant's name and that of the central character of the script and movie is one and the same, viz., '*Kuruvachan*'.

- (ii) Complainant's family name is '*Kuruvakunnel*', whereas the family name of the character '*Kuruvachan*' in the script and the movie is '*Kaduvakunnel*', which is very similar to and rhymes with the complainant's family name.
- (iii) Complainant's age at the time when the various disputes between complainant and Sri. Joseph Thomas took place matches with the age of the protagonist in the movie.
- (iv) Both the complainant and the character '*Kaduvakunnel Kuruvachan*' are Catholic Christians.
- (v) Similar to the complainant, the central character in the movie '*Kaduvakunnel Kuruvachan*' is a planter from Pala, who also owns a bar hotel.
- (vi) As stated above, Sri. Joseph Thomas and complainant hail from Pala and they were parishioners of the same Church. The protagonist and villain in the movie are also depicted as persons hailing from Pala and parishioners of the same church.
- (vii) Sri. Joseph Thomas had a son, who was not well and the rival character of the police officer in the movie also has a son, who suffers from similar ailment.
- (viii) In the script '*Kaduvakunnel Kuruvachan*', the central character '*Kuruvachan*' has estates at Puliyanmala and Theni, and complainant also had estates at Puliyanmala and Theni.
- (ix) In the script '*Kaduvakunnel Kuruvachan*', '*Kuruvachan*' owns a W123 model white Mercedes-Benz car. Complainant also owns a W123 model white Mercedes-Benz car.
- (x) It is evident from the teaser, trailer that the script and the movie '*Kaduvakunnel Kuruvachan*' is about the fight between a

planter from Pala and an IPS officer and it is based on the real-life incidents that happened in complainant's life and Sri. Joseph Thomas I.P.S.

- (xi) Further, as in real life, the dispute between the central character '*Kaduvakunnel Kuruvachan*' in the movie and the antagonist police officer also starts in connection with a dispute relating to a musical instrument donated to the parish church.
- (xii) A scene in the script and in the movie wherein the vicar of the Church makes certain innuendos and sarcastic comments about the character representing hero's wife and attempted to molest her.

In short, Mr Jose Kuruvinakunnel contends that the movie with its central character's name, the scenes and instances highlighted above would impede and degrade his reputation and affect his Right to Privacy.

2. An application for certification of the Malayalam film titled 'Kaduva' was received at the office of the CBFC on 22.06.2022. After the receipt of the said application, this office issued a communication to Mr Jose Kuruvinakunnel on 23.06.2022 and scheduled a hearing to 27.06.2022 for his appearance. He was also asked to produce all relevant documents and legal proceedings to substantiate his claim. Mr. Jose Kuruvinakunnel replied to the said communication expressing his inability to attend personal hearing due to medical reasons. While matter stood thus, Mr Jose Kuruvinakunnel filed WPC 20920 of 2022.
3. The Writ Petition 20920 of 2022 was heard by the Hon'ble High Court on 28.06.2022 and was disposed of with the following directions:-

"The 5th respondent shall hear the petitioner through video conferencing mode on 04.07.2022. The time of hearing, preferably in the morning, shall be intimated to the petitioner in advance. The process of certification shall commence after the hearing is concluded and an appropriate decision taken on the petitioner's objection. Irrespective of such decision, the application for certification of the film 'Kaduva' shall be considered and appropriate decision taken, in accordance with the procedure prescribed under the Act and Rules."

4. Aggrieved by the above judgement of the Learned Single Judge, the makers of the film 'Kaduva' filed Writ Appeal 812 of 2022 before the Division Bench of the Hon'ble High Court of Kerala. After a detailed hearing, the Division Bench passed a Judgement holding as follows:

"24. Thus, when the Regional Officer, Central Bureau of Film Certification, Thiruvananthapuram, the 6th respondent herein, is aware of the litigation between the parties, he has rightly directed the 1st respondent to provide the latest legal position / status / orders / judgments and also provide all documents pertaining to the same.

25. In the above said circumstances, it is for the said authority to consider Exts. P4 and P5 and take an appropriate decision in terms of the statutory provision Section 5B of the Cinematograph Act, 1952 and the guidelines stated supra.

26. Mr. S. Manu, learned Assistant Solicitor General of India, shall communicate the judgement of this Court to the Regional Officer, W. A. No. 812 of 2022 -20- Central Board of Film Certification, Thiruvananthapuram, forthwith.

We also make it clear that the 1st respondent be given opportunity to reply/ refute the arguments made by the appellant."

5. In respectful compliance of the Judgement of the Hon'ble High Court in WPC 20920 of 2022 and Writ Appeal 812 of 2022, a detailed hearing was given to Mr. Jose Kuruvinakunnel, the Writ Petitioner, and to Mr. Jinu Varghese Abraham, Mr. Listin Stephen and

Mr. Shaji Kailas, the scriptwriter, producer and director respectively of the film titled KADUVA, on 04.07.2022.

On a request from Mr. Jose Kuruvinakunnel, his Advocate Mr. Roshan D. Alexander was heard on 05.07.2022 on the issue relating to the applicability of the orders of the Civil Court. The film was screened before the examining committee of CBFC on 04.07.2022.

The issue is thereafter taken for adjudication as per the Cinematograph Act 1952 and the rules made thereunder.

Submissions by the Parties during the Course of Hearing

Arguments of Mr. Jose Kuruvinakunnel

- i. Petitioner who is otherwise known as Kuruvachan will be easily identified with the lead character in the movie called "Kaduvakkunnel Kuruvachan". The main reason being the name given for the character in the movie. It was found so by the learned Sub Judge in Ext.P4 and the District Court in Ext.P5. (paragraph 13 of Ext.P4 and paragraphs 25, 31 and 34 of Ext.P5). that ***"in the facts and circumstances of the case, those similarities are more than sufficient to those who know the Plaintiff to conclude that the person referred therein is nothing but the plaintiff. In other words, I hold that there is merit in the contention of the Plaintiff that the character Kaduvakkunnel Kuruvachan in the above screenplay is none other than the Plaintiff."*** (para 34 in Ext.P5).
- ii. By referring to the scenes in which *Kuruvachan* is portrayed as a person who is taking law in to his hands and hence immense disgrace and ill-repute will be invited to the complainant. Interalia, he pointed out two scenes namely (i) the scene in which the local priest trying to molest the lead character's wife and (ii) the scene in

which the lead role Kaduvakunnel Kuruvachan behaving badly to the antagonist's mother in the movie and asking her that "whether your children are born out of your husband himself". The reason is, by mixing some incidents not at all happened in the complainant's life in the movie; it will give an impression that such scenes had occurred in his life. The various incidents described by the Petitioner in his complaint prove that the subject matter movie contains *visuals and words involving defamation of Petitioner, his wife and his family.*

iii. Arguments were advanced based on the following Judgements:

D.F. Marion v. Davis, 1055 ALR 171,

Kiran Bedi v. Committee of Inquiry & Anr, 1989(1) SCC 494 K.S.

Puttuswamy (Retd.) v. Union of India, 2017 (10) SCC 1,

Oommen Chandy v. State of Kerala & Others, 2018 (2) KLT 748

It was submitted that *the right to enjoyment of a private reputation, unassailed by private slander is of ancient origin and is necessary to human society.* Petitioner's right to reputation and privacy is essentially embedded in Articles 19 and 21 of the Constitution of India. By virtue of the powers conferred under the Cinematograph Act, there is a duty on the State to take all necessary measures to protect the privacy of the individual"

iv. It was further argued that the Board has to exercise its power independently and vigilantly. As per the scheme of the Act, Section 2(b) contemplates a *Board* which means the Board of Film Certification constituted by the Central Government under Section 3 of the Act. As per Section 2(bb), *Certificate* means the certificate granted by the Board under Section 5A of the Act. As per Section 2F, *Prescribed* means prescribed by rules made under the Act. Section 8 of the Act confers power on the Central Government to make rules for the purpose of carrying in to effect the provisions of

Part-II of the Act. As per Section 4 of the Act, any person desiring to exhibit any film shall in the prescribed manner make an application to the Board for a certificate in respect thereof, and the Board may, after examining or having the film examined in the prescribed manner, either sanction the film for restricted or unrestricted public exhibition, as the case may be or to refuse sanction. Under Section 4(1)(iii) of the Act, the Board also has the power to direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition. Under Section 5A, after examining the film in the prescribed manner, if the Board considers that the film is suitable for restricted or unrestricted public exhibition, it shall grant appropriate certificate to the applicant. Section 5B prescribes Principles for Guidance in certifying films. As per Section 5B(1), a film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is inter alia involves defamation. Section 5B(2) empowers Central Government to issue such directions setting out the principles which shall guide the authority competent to grant certificates in sanctioning films for public exhibition. Section 5E contemplates suspension and revocation of certificates whereas Section 5F prescribes the review power of the Central Government and Section 6 prescribes its revisional powers. Rule 21 of the Rules prescribes the mode of application for examination of films, Rule 22 details the constitution and procedure of examining committee according to which Rule 22(13) states that it shall be the personal responsibility of the examining officer to examine whether each and every guideline issued by the Central Government has been followed and to bring any lapse or deviation to the notice of the Chairman. In exercise of the power conferred by Section 5B(2), the Central Government through its Ministry of Information and Broadcasting

has issued S.O. 836(E), dtd. 06.12.1991 prescribing Guidelines for Certification of Films for Public Exhibition.

- v. Regarding Exts. P4 and P5, orders of Civil Court it was submitted that the said orders may have persuasive value; this authority has no obligation to follow those findings blindly. Under the Cinematograph Act, this authority is exercising an independent statutory function. The Statutory authority has to issue an order on the basis of its subjective satisfaction. It was also argued that the statutory authority is not bound to follow the directions of the Civil Court which is already under challenge. In short, an independent decision has to be taken by the statutory authority.
- vi. A statutory authority, if conferred with a statutory obligation, has to discharge that obligation in accordance with the procedure prescribed by the statute alone and not otherwise. Therefore, the statutory authority, while discharging its obligations is duty bound to discharge the same independently and uninfluenced by opinions or views expressed outside the statute.
- vii. It was argued that, this forum is statutorily obliged and duty-bound to examine and ensure that the subject matter movie "Kaduva", its script and screenplay is not containing visuals or words involving defamation of an individual or a body of individuals or contempt of court are not presented. As per Section 5B(1), a duty is casted up on this forum not to certify a film for public exhibition if the film or any part of it is inter alia involves defamation. Under Section 4(1)(iii) of the Act, the Board also has the power to direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition. Since the positive content of Privacy imposes an obligation on the State to take all necessary measures to protect the privacy of the individual, it is imperative that CBFC has to step in and protect the privacy of the complainant.

Arguments of the Film Makers

The Film Makers who appeared for the hearing vehemently opposed the contentions of Mr. Jose Kuruvinkunnel stating that the film is not maligning or defaming the reputation of the complainant. They further stated that the film is a fictional creation of the writer and the similarities alleged are purely coincidental. They also argued that the complainant's case regarding defamation was dismissed with adverse findings against him by the competent Civil Courts and hence the CBFC is bound by the observations therein. It was also argued that the complainant has given interviews to a social media platform and thus his story is there in the public domain. They further added that any delay in issuing the censorship certificate would cause grave prejudice to the film makers.

Findings of CBFC:

The orders of the Civil Court cited by either side were examined in detail. The trial court by order dated 06.04.2022 in IA No. 1/2021 in O.S No. 206/2021 dismissed the injunction application of the complainant. The complainants Appeal before the first appellate court was heard and by judgment dated 20.06.2022, the first appellate court dismissed the C.M.A. The Court below held that the contents of the movie would not bring down the reputation of the Plaintiff or defamatory or libellous to him. It was also held that since the screenplay or the movie is not a biopic, it cannot be blamed. However, it was held that *"there is merit in the contention of the Plaintiff that the character Kaduvakkunnel Kuruvachan in the screenplay is none other than the Plaintiff"*.

As per the Cinematograph Act and Rules, CBFC has to ensure that there is no content in the movie which is defamatory to an individual or a body of individuals.

Section 5B of the Cinematograph Act 1952 reads as follows:

5B. Principles for guidance in certifying films.—

(1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of¹⁹ [the sovereignty and integrity of India] the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence.

(2) Subject to the provisions contained in sub-section (1), the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition.]

Guideline No.2 (xviii) enjoins the Board of Film Certification to ensure that, visuals or words involving defamation of an individual or a body of individuals, or contempt of court are not presented.

Section 4(1) in the Cinematograph Act, 1952

(1) Any person desiring to exhibit any film shall in the prescribed manner make an application to the Board for a certificate in respect thereof, and the Board may, after examining or having the film examined in the prescribed manner,—

(i) sanction the film for unrestricted public exhibition:¹⁴ [***] [Provided that, having regard to any material in the film, if the Board is of the opinion that it is necessary to caution that the question as to whether any child below the age of twelve years may be allowed to see such a film should be considered by the parents or guardian of such child, the Board may sanction the film for unrestricted public exhibition with an endorsement to that effect; or]

(ii) sanction the film for public exhibition restricted to adults; or

[(iia) sanction the film for public exhibition restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film; or]

[(iii) direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition under any of the foregoing clauses; or]

(iv) refuse to sanction the film for public exhibition.

Under Section 4(1)(iii) of the Act, the Board can direct the applicant of a film to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition.

As per Section 5B(1), a film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is inter alia involves defamation.

The Guidelines for Certification of Films for Public Exhibition formulated under Section 5 B clearly empowers the CBFC to deny the certificate if the film has defamatory content.

Having gone through the above orders of the civil court and arguments advanced on both sides, the CBFC decided to examine the film. The film was examined in detail and it was found that there is substantial force in the contention of the complainant that the name of the title character is Kuruvachan which could be relatable to the complainant. The observation of the Civil Court that there is merit in the contention that the character Kaduvakkunnel Kuruvachan in the screenplay is none other than the Plaintiff, also fortifies the said fact. The scenes objected by Mr. Jose Kuruvinakunnel are relatable to him only if the central character of the film is named as Kuruvachan. With the central character's name in the film changed, none of the scenes are attributable to the complainant or his family and the element of defamation would not lie.

It is to be seen that time and again Courts have held that an artist has his own freedom to express himself in a manner which is not prohibited in law and such prohibitions are not read by implication to crucify the rights of expressive mind. If there has to be any limitation, that has to be as per the prescription in law. The creator's freedom as far as the films are concerned is not unrestricted or unbridled. The CBFC which is the statutory authority as per the Cinematograph Act has to exercise its powers derived from the act and ensure that the film is one that does not breach the parameters. The CBFC being a technical body empowered to judge a film has to independently exercise its

powers and censor the film as per the Act and guidelines. It is also to be seen that the scope of interference in a film which is certified by the CBFC is limited and hence the CBFC has to be absolutely certain with its decisions in the matter.

Hence, after detailed deliberations, it was unanimously decided by the examining committee that if the name Kuruvachan is substituted and a strong disclaimer is exhibited, the defamation as alleged by the complainant would be mitigated.

The scenes without referring to the name Kuruvachan cannot be related to the complainant and it has to be treated as a work of fiction.

Conclusion

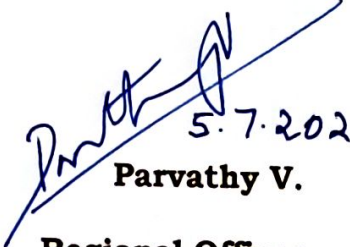
In the result, it is held that the film KADUVA can be permitted for public exhibition with 'UA' Certificate with the following modifications:

- i. Substituting the name of the character Kuruvachan with another suitable name**
- ii. The disclaimer shown in the film is to be exhibited for a minimum of 20 seconds i.e. 10 seconds each in Malayalam as well as English**

Thiruvananthapuram

5.7.2022




5.7.2022
Parvathy V.
Regional Officer

पार्वती वी./ Parvathy V.
क्षेत्रीय अधिकारी/Regional Officer
केन्द्रीय फिल्म प्रमाणन बोर्ड/Central Board of Film Certification
तिरुवनन्तपुरम / Thiruvananthapuram