

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**C.P No. D-7170 of 2022**

**Present:**

Ahmed Ali M. Shaikh, CJ  
And Yousuf Ali Sayeed, J

Moulvi Iqbal Haider.....Petitioner

Versus

Federation of Pakistan  
through its Secretary and others .....Respondents

Petitioner, in person.

Date of hearing : 22.11.2022

**ORDER**

**YOUSUF ALI SAYEED, J.** - The Petition is directed against the release of a Pakistani motion picture film, titled “Joyland”, which apparently portrays a relationship between a married man and a transgender woman, with it being averred that the storyline violates Islamic teachings and the Constitution of Pakistan, and it being prayed that this Court be pleased to accordingly impose a ban on the film so as to restrain its release.

2. The Petitioner, an advocate by profession, appeared in person and submitted that the film depicted and glorified indecent and immoral acts that were not permissible in religion.

3. He contended that the film had been made as part of a larger conspiracy for the purpose of creating chaos in society by mainstreaming the type of relationship depicted, and argued that permitting it to be screened domestically would serve to influence the audience to accept and embrace a similar lifestyle, hence would be detrimental to the moral fabric of society. He submitted further that the film had internationally been considered to be such a masterpiece that it had been nominated at the Cannes Film Festival and received standing ovations around the world, hence capitalizing on such recognition, the Respondents had been able to obtain the required certification for its release in Pakistan from the concerned authority, which failed to recognize that the international acclaim was not a source of pride but a mark of shame. However, he did not point out any legal flaw or procedural lapse in the certification process, and merely sought to argue that the theme and content of the work offended the Constitution. While various Articles of the Constitution were referred to in the Petition, the Petitioner did not make any attempt to show how any Articles would be violated by the screening of the film, other than confined his argument to the extent that the theme and storyline thereof offended Article 227.
  
4. A perusal of Article 227 reflects that it simply stipulates *inter alia* that “All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions”, hence it is apparent from its wording that it bears no applicability to a mere film *per se*.

5. Furthermore, the Petitioner has not even directly challenged the certification of the film or even referred to the Sindh Motion Pictures Act, 2011, let alone impleaded the Board constituted thereunder with the mandate of certifying films for exhibition in this Province in the wake of the 18<sup>th</sup> Amendment. Nor was it even remotely alleged during the course of submissions that the statute offends the aforementioned Article. In fact, much in the same way that prejudice to the “glory of Islam” may qualify as a reasonable restriction to freedom of speech and expression enshrined under Article 19 of the Constitution, Section 6 of the 2011 Act specifically envisages such a consideration as a ground for denying certification to a film. Additionally, Section 8 of that statute envisages the very same consideration as a possible ground for the Provincial Government to decertify a film. That being said, it does not necessarily follow that a film would be prejudicial to the “glory of Islam” merely because its theme or storyline does not strictly conform with social or cultural values.
  
6. However, when questioned as to whether the film in question contained any vilification of Islam, its sacred text or any religious place or personage, or indeed contained any content whatsoever that otherwise violated any law, the Petitioner was found wanting and could not cite any instance of such a transgression. In fact, he conceded that he had no empirical knowledge of the matter at all, as he not viewed the film or any part thereof. In our assessment, that admission aptly demonstrates the superficiality of the Petitioner’s contentions and the frivolity of his claim. The Petitioner also does not properly qualify as an “aggrieved person” for the purpose of Article 199, as his fundamental rights have not been infringed. Indeed, he has had the privilege of exercising a personal choice and done so in opting not to view the film. He cannot claim a personal grievance if a similar privilege is allowed to others.

7. Moreover, in our view, where a cinematic work has passed through the censors, who have examined its content and cleared it for release with an appropriate certification, an individual cannot be allowed to trump that decision through a Court proceeding based on his conception of morality. Indeed, it is not the function of the Court under Article 199 to make a moral judgment so as to curtail the freedom of speech and expression of a filmmaker, as safeguarded under Article 19 of the Constitution, which provides that:

“Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence.”

8. On the contrary, the default position of the Court under Article 199 ought to be that of fully safeguarding the fundamental right by giving as expansive an interpretation to Article 19 as possible, and in the event of a restriction being imposed by the Board or any other authority that may be competent in that regard, testing the reasonableness of that restriction stringently, so as to ensure that the same is “reasonable” in the strictest conceivable sense. As such, in the absence of any restriction imposed by the concerned quarter, whether that be the Board or Provincial Government, it does not fall to the Court to morally police the public by making a determination of what should or should not be viewed and to take on the function of itself devising and imposing a restriction. Suffice it to say that unnecessary censorship suffocates a society and stifles its creativity and growth.

9. Looking to the matter at hand, we are confident that Islam, being the great global religion that it is, is strong enough to withstand a cinematic work portraying a purely fictional account of a relationship humanising a transgender character, and are equally sanguine that our society is not so weak as to crumble as a consequence. Suffice it to say that transgender persons are equal citizens of Pakistan in all respects and the stories of their life, their struggles, and their human relationships deserve equal space and recognition.

10. It is for the foregoing reasons that we had dismissed the Petition *in limine* vide a short Order made in Court upon culmination of the hearing on 22.11.2022.

JUDGE

CHIEF JUSTICE