

Intra Department Moot Court Competition 2022

MOOT PROPOSITION

Nazneen aged about 16 years is a young and a beautiful Muslim girl. She studies in 11th with Medical stream. Being a laborious child since childhood she concentrated only in studies and therefore is not easily distracted by the activities around her. One fine day, the school organized a seminar and various eminent speakers were invited for the same. Rahul, a Hindu boy, aged about 28 years was also invited as a Guest Speaker. Rahul is an extraordinary speaker with exemplary achievements in the field of medical sciences and has excellent command on the subject. Nazneen also attended the seminar along with other students of the school. Awestruck by Rahul's amazing presentation and professional communication skills, Nazneen started admiring him as a Role Model.

Captivated by his charm and personality, Nazneen approached Rahul for career guidance and also complimented him for his extremely attractive personality and communication skills. Surprised by her confidence at such an age, Rahul expressed his gratitude towards the compliment and motivated Nazneen for her future endeavours. Soon Nazneen started visiting Rahul frequently for one or the other reason. The relationship of a Guide and a Student soon turned into a close relationship of friends followed by meeting on coffee, going on long drives and sharing their life secrets with each other and

this went on for two months. Suddenly, one day Nazneen confessed her feelings to Rahul and proposed him. Rahul happily accepted her proposal.

Nazneen's parents started objecting to this relationship. Nazneen with each passing day was getting determined to marry Rahul, who was equally backing Nazneen. Parents of Nazneen explained and warned her repeatedly about the adverse consequences of this relationship, but their efforts were of no avail to dissuade her from her decision. Nazneen's parents also threatened Rahul to stay away from their daughter but all went in vain and one fine day Nazneen voluntarily eloped with Rahul. Both of them directly went to the temple and solemnized marriage according to Hindu ceremonies. With an apprehension of killing, the couple sought legal advice. Their counsel, Mr. Batra advised them to file a Writ Petition under Article 226 read with Article 21 of the Constitution of India in the Hon'ble High Court of Punjab and Haryana. The matter came up for hearing. Mr. Batra, counsel for the petitioners appeared before the Hon'ble High Court and prayed for the issuance of directions to the concerned Superintendent of Police to provide police protection to the couple as there was an apprehension that the petitioners would be subjected to Honour Killing. In this petition, Mr. Batra appended the photographs of their marriage that were taken during their marriage ceremony in the temple. He further contended that Nazneen who is one of the petitioners in the present case, is a Muslim girl governed by Muslim Personal Law. In

Muslim Law, Puberty and majority is one and the same thing and it is a presumption that a female governed by Muslim Law attains majority at the age of 15 years. He further argued that Nazneen had crossed the age of puberty and hence she was free to marry any person of her choice and there should not be any sort of interference in her decision. Therefore, it was contended that the petitioners have married according to the Hindu rites and are thus entitled to seek protection from the Hon'ble Court. Considering the facts of the case the Hon'ble Court by referring to the decision of "Yunus Khan v. State of Haryana" opined that the matter is no longer *res-integra* and it is a well settled law that the marriage of a Muslim girl is governed by the Muslim Personal Law. The Hon'ble Court further issued directions to the Superintendent of Police for the protection of the Fundamental Right of the petitioners under Article 21 of the Constitution of India and refrained from commenting on the validity of the marriage of the petitioners. The Court further observed that merely because the petitioners had got married against the wishes of their family members, they could not possibly be deprived of their fundamental rights as enshrined in the Constitution of India. The Court clarified that this Order shall not be construed in the sense to not initiate any action against the petitioners, for violation of other laws, by them, if any. Alongside, the Hon'ble High Court also granted the custody of Nazneen to Rahul. Pursuant to this Order, the couple started living together.

After six months, due to the persistent arguments on one or the other things the relationship of Nazneen and Rahul deteriorated. Nazneen being frustrated from day to day quarrels decided to return to her parents. Rahul made no attempts to bring Nazneen back. Convinced by her parents' advice and realising her mistake, Nazneen decided to end this marriage. She along with her parents approached the police to register an FIR against Rahul as she now believed that Rahul had taken benefit of her adolescence. An FIR was registered under Section 361 and Section 503 of the IPC, Section 3 and Section 4 of the POCSO and Section 9 & Section 10 of the Child Marriage Prohibition Act. Following this FIR, medical examination of Nazneen was conducted at Government Medical College. According to the expert opinion of the doctor, possibility of attempted sexual intercourse could not be ruled out. Rahul came to know about all the proceedings that were being initiated against him through a common friend and approached Mr. Batra again for his legal advice to protect him against the penal consequences. Mr. Batra filed an Anticipatory Bail on his behalf which was denied by the District and Sessions Court. Thereafter, he moved to the Hon'ble High Court which allowed the Anticipatory Bail Application. Mr. Batra, on behalf of Rahul moved another Application before the Hon'ble High Court of Punjab & Haryana under Section 482 of the Cr.P.C for quashing of the FIR which was registered by the police on the instance of Nazneen. The Counsel for the petitioner pleaded that it was in pursuance of the Orders of this very Hon'ble High Court, that the estranged couple were living

together as husband and wife and he drew the attention of the Hon'ble High Court to the fact that it was this Hon'ble High Court which granted the custody of the complainant (Nazneen) to Rahul. Submitting his final arguments, the Counsel of the petitioner pleaded that the FIR is liable to be quashed in the light of Orders passed by this very Hon'ble Court. He also questioned the charges that were levied against the petitioner. The Hon'ble High Court dismissed the petition of the petitioner observing that the order passed by this Court was abundantly clear. The Order granting the protection to petitioner was not meant to immune the petitioners from any legal action that could be initiated against them for committing any offence under other statutes, if any. Crestfallen and aggrieved by the decision, Rahul decided to challenge the Order of the Hon'ble High Court of Punjab & Haryana before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India sensing the gravity of the present issue, entertained a Special Leave to Petition under Article 136 of the Constitution of India. Notice of Motion was issued to the concerned parties *i.e.* State of Punjab and the Union of India. Argue from both sides.

Issues raised

1. Whether the Hon'ble High Court of Punjab & Haryana was justified in granting protection to the estranged couple under Article 21 of the Constitution of India or not?
2. Whether the Order granting the custody of the estranged wife to the petitioner immune him from the subsequent offences, if any or not?
3. Whether the FIR against Rahul is liable to be quashed or not?
4. Whether the Hon'ble High Court under the shield of Article 21 of the Constitution of India indirectly promoted Child Marriage ignoring the Special Statute?
5. Whether personal laws prevail over special law?