



## MOOT COURT SOCIETY

Department of Laws, Panjab University, Chandigarh.

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### DEMONSTRATION MOOT NOTICE

Moot Court Society, Department of Laws, Panjab University is organising a Demonstration Moot on **16th November, 2023** at **1:30 PM** in **Moot Court Hall** with the aim of familiarising and initiating students into the realm of Mooting. Two teams of experienced Mooters will be arguing in the said Demonstration.

All the students are advised to attend the same as practical knowledge of Mooting is a sine qua non for professional success in the field of law.

The Fact-sheet of the case is attached herewith, all the students are advised to go through the same thoroughly. This Demonstration is a training workshop in the art of Mooting, therefore the students are advised to identify the legal issues and research the appropriate authorities to make this session more fruitful and for better understanding of the proceedings.

Sd/-

Prof. Shipra Gupta

Incharge

Moot Court Society.

## Fact-sheet

Ms. Jasmine aged 16 is a young and beautiful Muslim girl. She studies in 11th standard having a medical background. Being a laborious child since childhood she only concentrates on her studies and she is not easily distracted by things happening around her. One fine day, the school she was studying in, organized a science seminar and various eminent speakers were invited. Mr. Rajiv, a Hindu boy aged 28 years was also invited as a guest speaker because of his extraordinary achievements in the field of medical science. Ms. Jasmine, being one of the students, attended the seminar. Awestruck by Mr. Rajiv's amazing discourse and professional communication skills and display of knowledge in the field of medical sciences. Ms. Jasmine started considering him as her role model. Also, captivated by his charm and personality, Ms. Jasmine in the wake of seeking guidance for further studies approaches Mr. Rajiv. She managed to secure his contact number through the pamphlets distributed during the seminar. The very next day she called him for guidance in the medical profession and also complimented him for his extremely attractive personality and communication skills. Surprised by her confidence in such an age, Mr. Rajiv expressed his gratitude towards her compliment and guided her efficiently for future endeavours in the medical profession. Soon Ms. Jasmine started contacting Mr. Rajiv frequently for one or the other reasons. The relationship of guide and student soon turned into the relationship of friends followed by meeting for coffee dates, going on long drives and sharing their secrets with each other and this went on for two months. Suddenly, one day Ms. Jasmine confessed her feelings to Mr. Rajiv. Mr. Rajiv who was also astonished by her beauty but was reluctant to take the first step due to the age difference accepted her proposal happily. The friendship soon turned into a relationship. The fact of this relationship was no more a clandestine affair and Ms. Jasmine parents started objecting to this. Ms. Jasmine with each passing day was getting determined to marry Mr. Rajiv who was equally supporting her in her decision to marry him. There were several attempts by parents of Ms. Jasmine to make her understand about the adverse consequences of this relationship and also warned her if she did not listen to them. However, all they had to face was a debacle. Ms. Jasmine parents also threatened Mr. Rajiv to stay away from their daughter but all went in vain and one fine day Ms. Jasmine voluntarily eloped with Mr. Rajiv. Both of them directly went to the temple and solemnized their marriage according to Hindu ceremony. Sensing the threat to their life from Ms. Jasmine's family, the couple sought legal advice. Their counsel Mr. Bhalla advised them to file a writ petition under Article 226 read with Article 21 of the Indian Constitution in the jurisdiction of Hon'ble High Court of Punjab & Haryana. The case was listed, and the matter was called up for hearing. Mr. Bhalla appearing for the petitioners argued before the Hon'ble High Court seeking directions from the Hon'ble High Court to concerned Superintendent of Police as he pleaded that if the relief is not granted the couple might become the victim of Honour Killing. In his petition, Mr. Bhalla attached the photographs of their marriage that were taken during their marriage ceremony in temple. He further contended that Ms. Jasmine who was one of the petitioners in the present case is a Muslim girl governed by Muslim Personal Law and in Muslim Law, Puberty and Majority are one and the same thing and it is a presumption that a person governed by Muslim Law attains majority at the age

of 15 years since Ms. Jasmine has crossed the age of puberty, she is free to marry any person of her choice and there cannot be any sort of interference in her decision. Hence, they are validly married to each other and are seeking protection. At the outset, the Court following the precedent in the case of Yunus Khan v. State of Haryana opined the law is clear that the marriage of Muslim girl is governed by the Muslim Personal Law, the Court further held that the danger to the life of the couple in fact was real and being a constitutional Court addressed their apprehension and passed the order issuing directions to the Superintendent of Police for the protection of their fundamental right of their Life and Liberty under Article 21 of the Indian Constitution but without making any remarks regarding the validity of the marriage of the couple. The Court further observed that merely because the petitioners have got married against the wishes of their family members, they cannot possibly be deprived of fundamental rights as enshrined in the Constitution, it being the grundnorm. The Court did grant the asked relief without entering upon an exercise to evaluate the evidentiary value of the documents placed on record. The Court also observed that this Order shall not be construed in the sense to not initiate any action against petitioners, for violation of other laws, by them, if any. Alongside, the Hon'ble High Court also granted the custody of Ms. Jasmine to Mr. Rajiv. In pursuance to this Order, the couple started living together. After six months, the couple started having persistent arguments on one or the other things. These continuous arguments and this sore relationship mentally drained Ms. Jasmine. Being frustrated with all this, Ms. Jasmine decided to return to her parents who were any day happy to welcome her back alone. Mr. Rajiv made no attempts to bring Ms. Jasmine back which turned this marriage into a bogus relationship. Convinced by her parents' advice and realising her mistake, Ms. Jasmine decided to end this marriage and thereby she along with her parents approached the police to register an FIR against Mr. Rajiv as she has now believed that Mr. Rajiv took the benefit of her adolescence. An FIR was registered under Sec 361 and Sec 503 IPC, Sec 3 and Sec 4 of POCSO and Sec 9 & Sec 10 of Child Marriage Prohibition Act. Following this FIR, medical examination of Ms. Jasmine was conducted at a Govt. Medical College and the doctor gave his expert opinion that the possibility of attempted sexual intercourse cannot be ruled out. Mr. Rajiv came to know about all the proceedings that were being initiated against him through a common friend and approached Mr. Bhalla again for his legal advice to protect him against the penal consequences who in return, filed on his behalf an Anticipatory Bail Application which was denied by the District and Session Court. Thereafter, he moved to the Hon'ble High Court which allowed his Anticipatory Bail Application. Mr. Bhalla on behalf of Mr. Rajiv moved another Application under Sec 482 of CRPC for quashing of FIR which was registered by the police on the instance of Ms. Jasmine against him, before the Hon'ble High Court of Punjab & Haryana. 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 informant (Ms. Jasmine) to Mr. Rajiv. Submitting his final arguments, the Counsel of petitioner, Mr. Bhalla pleaded that the FIR is liable to be quashed in the light of above Orders by this very Hon'ble Court. He also questioned the charges that were

levied against his client in the light of above Orders. The Hon'ble High Court rejected the petition for quashing of FIR as it relied on the fact that they had already in the above-mentioned Order made clear that 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, Mr. Rajiv decided to challenge the Order of 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, in absence of any particular legislation and also for framing the guidelines regarding the disposal of such cases granted the petitioner a Special Leave to Petition under Article 136 of the Indian Constitution. Notices were issued to the concerned parties i.e., State of Punjab and also the Union of India. Argue from both sides.

**Issues raised:**

- Whether the Hon'ble High Court of Punjab & Haryana was justified in granting protection to the estranged couple under Article 21 of the Indian Constitution or not?
- Whether The Order granting the custody of the estranged wife to the petitioner immune him from the subsequent offences, if any or not?
- Whether The FIR against Mr.Rajiv is liable to be quashed or not?
- Whether the Hon'ble High Court under the shield of Article 21 of the Indian Constitution indirectly promoted Child Marriage and bypassed any other special statutes?
- Whether in such cases the personal laws take over or it is the special statutes that take the lead?