

MOOT PROBLEM

SCF & Ms. Nasrin Al-Fareed v. Union of India and Dr.Aarif Hakeem

Dhruvasthan is a southern state in the Republic of India. It has one of the best living standards in terms of healthcare, education and amenities available to the public. The state is known for its cultural and culinary heritage. The population consists of 48% of Hindus, 38% of Muslims and 14% of other communities such as Christians, Parsis and other religious communities.

Nasrin Al-Fareed, 24 years old Sunni Muslim woman, was resident of Dhruvasthan. She completed her M.Sc. in Chemistry and was working in Isa University as an Assistant Professor. Her family married her to Dr. Aarif Hakeem, 29 years old Sunni Muslim, as per the customary Islamic law on 27th December 2012. Dr. Aarif Hakeem was an agricultural scientist working for a multi-national corporation.

In December, 2016, Ms. Jane Dover, 22 years old Christian, was assigned to Dr. Aarif Hakeem's team. Slowly affection between Jane and Aarif grew from a colleague to lovers. Aarif wanted to marry Jane. On 22nd August 2017, he proposed to Jane. Jane told him to get separated from Nasrin. To find a ground of talaq from Nasrin, Aarif asked her to quit her job and stay at home to look after his parents. Initially Nasrin resisted, but eventually she agreed and quit her job in October 2017. Seeing no other way, Aarif somehow convinced Jane to marry him on 24th November 2017 as per Muslim customary law.

Nasrin, when got to know about the second marriage, got angry and confronted Aarif. Aarif told her that he is marrying as per the personal law and there is nothing wrong in it. Nasrin went back to her parents' home on 1st of December 2017 and went to file a FIR against Aarif under Section 494 of Indian Penal Code, 1860. The Police refused to file an FIR against Aarif. Nasrin filed a complaint under Section 190 of Code of Criminal Procedure, 1973 to the Judicial Magistrate. The Magistrate dismissed the complaint citing that no prima facie case has been made out against Aarif under Section 494 of Indian Penal Code.

Lex Fortissimus

BILS 5TH NATIONAL MOOT COURT COMPETITION, 2018

Society for Compassionate Feminism (SCF) is a NGO working for protecting women and securing protection for women from arbitrary legislations. Ms. Alisha Farooq, the head of SCF has been an activist and addressed many public forums raising awareness regarding the various discriminatory legislations against women. Alisha, through a friend of her, got to know about Nasrin's failed attempts to initiate criminal proceeding against her husband. Alisha contacted Nasrin and discussed a possibility of filling of Public Interest Litigation.

SCF along with Nasrin filed a Public Interest Litigation in the High of Court of Dhruvasthan in which Aarif was also made a respondent. In the petition, the constitutional validity of Section 494 of Indian Penal Code, 1860 read with Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 on the ground of violation of provisions of Part III of the Constitution of India was being challenged. SCF and Nasrin contended that the impugned legislations were arbitrary and created unreasonable classification on the ground of religion. The High Court of Dhruvasthan, dismissed the petition on the ground that the relaxed rule of locus standi in PIL is available in case the person aggrieved is economically backward and hence access to justice is denied to the person. Since Nasrin is well educated and was working as Assistant Professor, there is no merit in filing a Public Interest Litigation.

Against the order of High Court of Dhruvasthan, SCF and Nasrin filed a Special Leave Petition under Article 136 of Constitution of India. The Supreme Court granted leave and the following issues were framed by the Supreme Court of India:

- a. Whether the dismissal of the PIL by High Court of Dhruvasthan was right or not.
- b. Whether Section 494 of the Indian Penal Code, 1860 read with Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 is violative of Article 14 of Constitution of India.
- c. Whether Section 494 of the Indian Penal Code, 1860 read with Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 is violative of Article 21 of Constitution of India

Note: The participants are permitted to frame any additional issues that are relevant to the petition.