

MOOT PROBLEM FOR 4TH NATIONAL MOOT COURT COMPETITION, 2019

It is trite to say that the women have basic human rights like men and they are to be treated with equal respect and dignity. Few women have picked up courage and are now articulating their experiences of sexual harassment, often at the hands of powerful and influential men. This so called #MeToo movement has brought the submerged experiences to the surface. Individual women have also started coming out of their shells and are now daring to express the inexpressible. One of the reasons they cite for delay in lodging complaint is that they hesitated because of the power the perpetrator wield in the society. They add that the scars are still as fresh, as if the incident had taken place very recently.

Those accused of having committed sexual overtures against women working under them or under their influences or control, have alleged that these are nothing but emotional displays, allegations without any proof, made with ulterior motives and they are further contemplating filing defamation cases against the accusers and wish to take out 'No crying motions' (as done in other countries, though mostly disallowed) against such accusers. They contend that they are well known celebrities / personalities and that the #MeToo movement is harming their reputation.

There are mixed reactions amongst the members of society while some are questioning the delay in voicing their grievances while others are of the view that though the alleged sexual offenses may not amount to legal offenses or civil wrongs, they can certainly be termed as sexually predatory and abusive.

There are some NGOs who believe that the victims are at the receiving end in cases of defamation being filed against them which is being used as a weapon to silence the victim's genuine grievances. They contend that law of defamation or any other way to counter their allegations should not be allowed as the same are being used as a tool for harassment and counterattack. Those against such a view, state that at the best it can be said that the time has come to revisit the constitutional validity of limitation pertaining to defamation laws, malicious prosecution and sexual offenses against women, but the law as it exist cannot be used to convict or punish those accused in the # MeToo movement. It is said that just as the Courts have recently revisited many

archaic laws including Section 377 and 497 of the Indian Penal Code, 1860 and may consider dropping death penalty as a capital punishment even in rarest of rare cases, time has come to relook at the laws pertaining to sexual harassment against women. On the other hand there are also those that want all laws to be gender neutral.

The Courts have a bigger challenge to be sensitive towards the women and at the same time to ensure that no injustice is meted out to the men folk alleged of having committed various offenses. Those supporting the cause of women content that Courts are required to bear in mind that women have more moral power, greater intuition, greater powers of endurance, greater courage and are more self-sacrificing yet in such matters they are helpless and vulnerable. They are demanding change in the mind-set of men folk and respect for women in a tradition bound society.

In the backdrop of all these there is this case of a young manager Amit Shabbir who claims to be 26 years old now based on ossification test and who is alleged to have committed various offences against one Ms. Priya Pandya who is presently a college student studying in the fourth year of Bachelor of Dental Surgery (B.D.S.), in a college in the city. Ms. Priya used to visit a Restaurant-cum-Bar in Mumbai along with her friends, where she came across this Amit Shabbir who was a Manager in one Hotel-cum-Restaurant at Chembur, Mumbai. Amit claims that, Ms. Priya and he were friends for more than four years since 2013 and they visited some places outside the city on their own on a couple of occasions and spent time together.

Ms. Priya alleges that Amit used to follow her up to her college and had approached her on several occasions to have friendship with him. She states that she did not like Amit following her and trying to track her on Facebook, and that she had even tried to change her timings of going to college. Her further allegations are that Amit stared at her continuously with ulterior motives during her visits to the said Restaurant-cum-Bar whenever she visited along with her friends and made her feel uncomfortable and that she had told these facts to her friends as well. She further alleges that once Amit had pulled her dupatta in the Restaurant-cum-Bar and had tried to molest her. Ms. Priya added that she was going through psychological and emotional trauma because of the behavior of Amit as she was about 18 years old at that time.

Ms. Priya further states that Amit had requested her to meet him once to which she agreed just to tell him not to follow her and to leave her alone. However, she states that she actually met him more than once and that

Amit promised to marry her but had taken advantage of her against her will and had physical relations with her which he now claims to be consensual relationship. Ms. Priya states that she was forced to have alcohol during one of their meetings and was asked inappropriate questions about her sex life after showing her some videos on pornography against her will. She further adds that Amit had also taken photos of intimate relations with her and had sent her those photos on her WhatsApp asking for further sexual favours.

Ms. Priya contends that she did not show any interest in him and had refused to meet him. Her further allegations are that Amit actually did not care for her feelings and had an affair with another girl Ms. Amrita from her group after courtship of two years with her (Ms. Priya). Ms. Priya also says that one of her close friends (Sandhya Patil) who had some experience of going to court to attend court proceedings on account of her (Sandhya Patil) domestic violence against her, advised her (Ms. Priya) not to lodge complaint against Amit.

Ms. Priya has lodged an F.I.R. bearing No. 23 dated 12/11/2018, under Sections 345-A, 354 B, 354 C, 354 D, 350, 351, 376 of the I.P.C. 1860 and Sections 66 A, 66 C, 66 E of the I. T. Act, 2000 with the Chembur Police Station, alleging that Amit had committed various offenses against her in the year 2013 and did not marry her inspite of promising her. Ms. Priya further alleged that her engagement with another boy Piyush Shah broke off when he learnt about her affair with Amit. Also she contends that her chat with Amit on Facebook was leaked and she alleges to have exchanged messages with him on WhatsApp also. Further, she alleges that Amit had sent dirty pictures and pornographic videos to her on WhatsApp during their relationship even though she objected to the same. Ms. Priya states that she also blamed Amit in one of the chats on Facebook, when her fiancée Piyush Shah questioned her about her previous affair.

The police had recovered black colored Nokia phone with IMEI No. 242070251622411 from Amit, pursuant to the F.I.R. No. 23 dated 12/11/2018 lodged by her against Amit under Sections 345 A, 354 B, 354 C, 354 D, 350, 351, 376 of the I.P.C. 1860 and Sections 66 A, 66 C, 66 E of the I.T. Act, 2000 lodged by Ms. Priya but the memory could not be fully recovered and the result was inconclusive. So also the Facebook account was investigated but it did not advance the case of Ms. Priya. Ms. Priya had stated that Amit had given her 3 (three) gms. ring on one of her birthdays, which she had shown to the police. The Police had made enquiries with some hotels outside the city but there were no entries found with their names. Ms. Priya had alleged that Amit would

take her on his motorcycle to one particular hotel called “Feel Free (FF)” and they would spent time together. Police had enquired with the panwala near by the said hotel who had stated that he had only seen them there on some occasions but had not given any more information. The Doctor at the medical clinic where she claims to have aborted two months old fetus had not confirmed to the police, that the abortion had taken place at his clinic.

Amit is now working for a multinational Pharmaceutical company in Mumbai (which employ many women) and has a secured job as Manager (Administration). However, his employer has given him a show cause notice for terminating his employment on the grounds that he had not disclosed about his previous employment as a Manager in the Hotel-cum-Restaurant at Chembur and besides that he was alleged to have had asked one lady office colleague out on a date which she had refused to oblige. Amit suspects that the employer was bent on sacking him because Ms. Priya had written to his employer regarding their earlier affair and the employer had learnt about the said F.I.R. lodged against him which contained the above allegations. The management is contemplating suspending him till the enquiry is completed and Internal Complaints Committee is also constituted for the purpose of taking cognizance of the allegations leveled against Amit.

Amit vehemently denied the allegations citing them as false accusations and claimed that Ms. Priya was willfully, deliberately, intentionally and maliciously defaming him and ruining his career. Amit even demanded a written apology from her and threatened to file a defamation case against her as she was maligning his image and destroying his career. Amit claimed that he was pained and dismayed over the allegations against him and would perhaps take the extreme step of ending his life as his image was lowered in the estimation of his friends and relatives and his company was now shunned by them.

Ms. Priya had lodged an F.I.R. bearing No. 23 dated 12/11/2018 against Amit under Sections 345 A, 354-B, 354-C, 354 D, 350, 351, 376 of the I.P.C. 1860 and Sections 66 A, 66 C, 66 E of the I T Act, 2000 and Amit who is already on Anticipatory Bail granted by the Honorable Sessions Court, has filed a Criminal Application An. 226 of the Constitution and U/s. 482 of the Criminal Procedure Code, 1973 in the Bombay High Court for quashing of the said F.I.R. filed against him while the matter is pending in the trial court and charge-sheet is not yet filed.

ISSUES:

- 1) Whether it is a fit case where the F.I.R. should be quashed under Section 482 of the Criminal Procedure Code, 1973 and in the interim, the matter in the trial court be stayed by the Hon'ble Bombay High Court?
- 2) Whether Amit can claim the benefit of Probationary Offenders Act, and whether he can be accused of rape under I.P.C., 1860 besides other alleged offences?
- 3) Whether any amendments / changes are required to be made in the existing laws against women or any directions / guidelines are required to be given by the Hon'ble Court, if yes, what would be the nature of amendments / changes or directions / guidelines, if any?
- 4) Whether compensation can be asked in such criminal matters, if yes by whom & from whom?