

XXI ALL INDIA MOOT COURT COMPETITION, 2023

For Adv. T.S. Venkateswara Iyer Memorial Ever
Rolling Trophy

24-26
February
2023



MOOT PROPOSITION



His Highness The Maharajas
Government Law College,
Ernakulam

Sam
Versus
State of Kerala & Anr

1. Mr. Sam is a citizen of the Republic of Industhan, working as a Senior Scientific Assistant at Venture Fertilizers and Insecticide LLC in the Republic of Kandova. Ms. Riya is also a citizen of Industhan, associated with KTS, a software company.
2. On 02nd January 2020, both Sam and Riya got married according to the customary rituals and practices in Industhan. Sam left for Kandova on 17th January, 2020 along with all the requisite documents for the visa process for Riya. All the procedures were met with and a spouse visa was issued. Therefore, Riya resigned from her job and left to Kandova on 15th February, 2020.
3. After reaching Kandova and spending a few days over there, Riya realised that Sam is an alcoholic and also uses cannabis occasionally. However, she expressed no resentment as such occasions never took an ugly turn. Occasionally, couples used to have drinks together.
4. One day, while having drinks, Sam offered a puff of cannabis to Riya to which she declined first, but was persuaded in taking that by Sam. During their conversation, Sam would often boast about the big fortunes offered to him while his marriage was in contemplation, and that still he chose the proposal from Riya. Riya often ignores this conversation, but she felt very disturbed deep inside, when such conversations were made even before his friends.
5. On 3rd March, 2020, Sam asked for Five Lakhs Rupees from Riya saying that he is having a debt which is required to be paid immediately. Riya managed two lakhs out of her savings and asked the balance amount from her parents and they sent the requested money in favour of Sam. Similar requests were made multiple times by Sam to Riya and her parents and all his demands were met off in terms of money and gold. During all these phases, Riya was emotionally stressed out and found relief in alcohol and cannabis. On 22nd

December 2020, Riya declined the similar demand made by Sam to which he got angry and simultaneously under the influence of alcohol and cannabis abused Riya verbally as well as physically.

6. On 25th December 2020, Sam finds Riya lying unconscious in her bedroom. She was rushed to the hospital. The doctors at BM Hospital suspected a case of poisoning and sent her blood samples for further examination. The hospital informed the police suspecting a medico-legal case. The pathological reports confirmed the presence of Cadmium and Arsenic and doctors confirmed the case of slow-poisoning. The Kandovian police on the basis of medical reports and the testimonies of neighbours registers a case of attempt to murder against Sam. Kandova follows an inquisitorial criminal justice system and the case was referred to a *judge d' instruction*. Riya gained consciousness on 02nd January, 2021 and confessed in favour of her husband and it was found that Riya had attempted to commit suicide. Following which the *judge d' instruction* at Kandova dismissed the charge made out against Sam.
7. Both Riya and Sam left for their hometown Illapally at Industhan on 20th January, 2021. Sam left Riya at the airport and left for his house without informing anyone. Riya's parents took her to their house. They tried to contact Sam in the following days but all their attempts were futile.
8. On 25th January 2021, Riya showed the same symptoms along with more serious respiratory issues. She was immediately taken to the Seashore Hospital, where her condition was worsened as her Central and Peripheral nervous system were affected and thereafter, she was placed under supportive care system. Meanwhile on 7th February 2021, the Hospital received a detailed pathological report of Riya from National Pathological Lab. The blood report showed traces of Cadmium (Cd) and Arsenic (As). Riya gained consciousness on 10th February, 2021 and her condition was reported to be stable. Riya narrated all the issues existing between her and Sam to her parents.
9. Riya gave statements regarding matrimonial cruelty to the SHO Illapally Police Station. SHO, after obtaining the medical reports regarding the presence of As and Cd and the medical opinion, felt suspicious about poisoning and decided to

go ahead with the case. However, to ensure all the possibilities regarding the accusations, the SHO decided to inquire the matter with Kandovian Police department as well.

10. The SHO, gave a request to the Assistant Director, IPCC sanctioning the request for informal information or leads from Kandovian Police Department in accordance with Comprehensive Guidelines for Investigation Abroad and Issue of LR's 2009 and Guidelines on Mutual Legal Assistance in Criminal Matters, 2019. Assuming that sanction will be accorded by the Ministry and Kandovan Police Department, the SHO contacted Kandovian Police and requested for more information and documents relating to Sam and Riya. The Kandovian Police forwarded information regarding dismissal of charge of attempt to murder against Sam by the Kandovian Court on the basis of Riya's confession on attempt to suicide. However, the Ministry of Home Affairs, Industhan declined the request made by the SHO by order dated 22nd February, 2021. Along with the information given by the Kandovian Police, Illapally Police filed final report charging Sam with offences under Dowry Prohibition Act, Secs. 498 A and 307 of Industhan Penal Code. The trial court found that, there are no sufficient grounds to proceed against Sam. Hence, Sam was discharged by Addl. District and Sessions Court.
11. Aggrieved by the order of discharge the State preferred an appeal before the High Court. Simultaneously, Riya filed an application before the High Court under Sec. 482 CrPC for an order for re-investigation. The single bench of the High Court, rejected both the appeal and the petition under Sec. 482 by an order dated 28th May, 2021.
12. Afterwards, Riya's health condition severely worsened and she moved into a condition called Toxic- Metabolic Encephalopathy. Her life was, therefore, dependent on intensive care and invasive mechanical system.
13. Aggrieved by the order of the High Court and the non-intervention of the State in the case, Riya's father Mr. Jay filed an appeal before the Supreme Court of Industhan upon the order rejecting re-investigation into the alleged crime.

Supreme Court allowed the petition and ordered for re-investigation and directed the state to submit the final report within three months.

14. Investigation was taken over by a Special Cell and they felt an investigation into the same matter is very much essential in Kandova as well. Therefore, they approached High Court for issuance of letter of request under Sec. 166A of the Criminal Procedure Code. For the purpose of issuance of such a request, an appropriate request was made to the IS- II Division of MHA as per Guidelines on Mutual Legal Assistance in Criminal Matters, 2019. The request to the MHA was sent through State Home Department after consultation with the Law Secretary. The request was concurred by MHA by order dated 18th June, 2021. The High Court issued LR addressed to the competent authority at Kandova in accordance with MLAT 1998.
15. The Kandovian Police reciprocating to the LR issued by the Court, examined the accused, searched the house and seized various articles including cannabis. The scientific assessment of the cannabis showed presence of As and Cd. Sam was arrested and sent to Industhan in accordance with Extradition Treaty between Kandova and Industhan, 1987.
16. Sam approached the Supreme Court of Industhan against the proceeding initiated against him.
17. The Court formulated the following issues:
 - a. **Whether the Supreme Court has made any error by approving the *locus standi* of Mr. Jay in this case?**
 - b. **Whether initiating criminal proceedings against the petitioner is in violation of the doctrine of double jeopardy under Art. 20 (2) of the Constitution of Industhan and the principle of *autrefois acquit* and *autrefois convict* under Sec. 300 of CrPC?**
 - c. **Whether the request by the State Home Department for obtaining sanction from the Central Government for obtaining LR in consonance with procedures mentioned in the Comprehensive Guidelines of 2019 and whether it is indispensable for doing complete ends of justice.**

d. Whether the offence of attempt to murder under Section 307 of Indian Penal Code can be proved solely on the basis of medical evidence?

- **NB:** The Constitution, Penal Code and Criminal Procedure Code of India is in *pari materia* with the Constitution of India, Indian Penal Code, 1860 and Criminal Procedure Code, 1973.
- The Comprehensive Guidelines on Mutual Legal Assistance in Criminal Cases, 2019, Comprehensive Guidelines for Investigation Abroad and Issue of LR's 2009 are in *pari materia* with similar Indian Guidelines.
- MLAT and Extradition Treaty is *in pari materia* with MLAT between India and Canada in 1998 and Extradition Treaty between India and Canada in 1987.
- The students are at liberty to frame new issues and agitate if it is deemed to be necessary to argue the matter.

***This hypothetical moot problem is authored by Dr. Harigovind P. C., Director, School of Legal Studies, Cochin University of Science and Technology, Kochi 682022.**