



INDIAN INSTITUTE OF LEGAL STUDIES

INTRA MOOT COURT COMPETITION, 2023

[MOOT PROPOSITION FOR FINALS]

Date: - 26th May, 2023

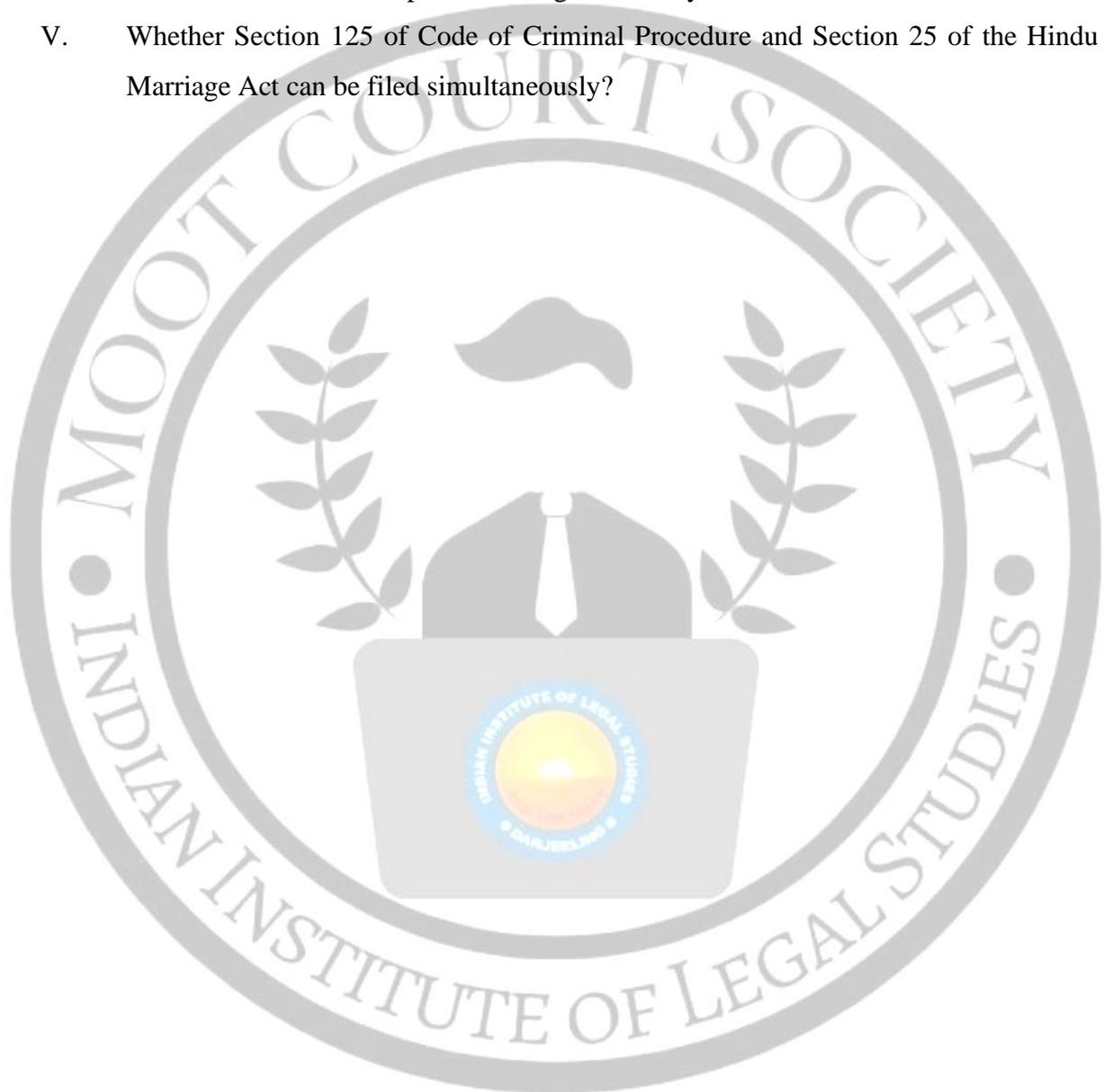
1. Meera Rastogi, a resident of Pradhan Nagar, Siliguri and Raju Sharma, who is a resident of the same place, where by faith Hindu and was of majority age. They both fell in love with each other. Raju, after 3 years of their relationship proposes Meera for marriage to which she agrees. They both went to a temple and Raju put “sindur” on her forehead and said, “This is where our marriage is solemnized and we stand as husband and wife.”
2. They both went away from the city and started their married life. Few years later, approximately after 4 years, their relationship starts to weaken. Raju becomes a regular drinker and sexually assaults Meera for not being able to give her a baby. Meera was depressed with this and she shared the same with her friends and some neighbors.
3. One night i.e. on 26th of April 2023, Raju drinks and comes home as usual and commits sexual intercourse with Meera without her consent. There were noises of breaking of glass objects and shouting and fighting.
4. The very next day, Raju tells her that he has married another woman and he is happy with her and wants to settle with her.
5. Disheartened by such, Meera files an FIR against Raju and accused him of Rape, Sodomy, Cruelty and sexual harassment. She also files a case against Raju for divorce u/s 13 of the Hindu Marriage Act and maintenance u/s 125 Code of Criminal Procedure and u/s 25

of the Hindu Marriage Act.

6. The Session Court of the Darjeeling district declared that Raju was not guilty of rape because the act committed by the accused falls well under the purview of the exceptions to the provision of Rape. But the court held the accused guilty for cruelty, sexual harassment and sodomy under the relevant sections of the Indian Penal Code. The court also awarded the maintenance under section 125 of the Code of Criminal Procedure and rejected the petition u/s 25 of Hindu Marriage Act, stating that both the petitions cannot be filed simultaneously. (The witnesses given before the Sessions Court are given in Annexure 1 of this Moot Problem.)
7. Aggrieved by the decision of the Sessions Court, the victim put an appeal against this order to the High Court of West Bengal on the ground that the exception relied upon by the Trial Court for its judgment is unconstitutional as it infringes Article 14 and 21 of the Constitution of India.
8. The High Court upheld the judgment of the trial court stating that the exception deals with internal and complex matters of a family and thus, the court shall not interfere into the complex matter of “Consent” because such cannot be sufficiently proved in the court of law, and also that the framers of the Constitution had deliberately put family matters outside the context of the Constitution.
9. The judgment created a big chaos in the country. There were demonstrations on the streets and public debates regarding the judgment. This put a question on the responsibility of the Parliament towards the protection of the married women. Seeing the large scale cases of similar nature and the indecisive nature of the High Courts of the different States regarding this matter, the President sought to take advice of the Supreme Court.
10. Meanwhile, the council on behalf of Meers has also appealed before the Supreme Court regarding the constitutionality of the Exception 2 of Section 375 of Indian Penal Code and filing of simultaneous petitions u/s 125 of the Code of Criminal Procedure and u/s 25 of the Hindu Marriage Act through a Special Leave Petition before the Supreme Court.

The issues to be dealt with in this regard are as follows:

- I. Whether Res Sub Judice will be applicable on the appeal and the SLP set forth by Meera?
- II. Whether the marriage between Meera and Raju is valid?
- III. Whether the Exception 2 of Section 375 is unconstitutional?
- IV. Whether consent can be proved through relevancy of facts?
- V. Whether Section 125 of Code of Criminal Procedure and Section 25 of the Hindu Marriage Act can be filed simultaneously?



Annexure 1: Statements given before the Sessions Court

Witness 1: Shilpi Das, friend of Meera Rastogi (Prosecution Witness 1)

She testified that Meers used to complain about her husband's drunken abuse on her. She even had dark spots under her eyes and she was traumatized by her husband's sexual assaults.

Witness 2: Ritu Barman, Neighbor (Prosecution Witness 2)

She testified that she could here Meers shouting and crying especially at night after her husband came back home. This was a very frequent occasion.

Witness 3: Raju Rastogi, Neighbor (Prosecution Witness 3)

He testified that Raju Sharma was a regular drinker and had a very bad temper. He used to lose control on himself after he got drunk.

Witness 4: Leena Khan, Neighbor and Gynecologist of Meera Rastogi (Prosecution Witness 4)

She testified that Meera used to tell her that she is very much paranoid about her husband's behaviour and does not like the way he used to see her and touch her. She also testified that, after the day when the cause of action arose, Meera came to her complaining that she had pain in her vagina and anus. After checkup, it was found that he had signs of forced penetration.

Witness 5: BC Roy, Colleague of Raju Sharma (Defence Witness 1)

He testified that Raju Sharma was a dedicated employee of the company and he was very regular to the workplace. There was never a complaint against him regarding his work or regarding his attitude towards any women within the workplace.

Witness 6: SC Das, Owner of the house where the couple used to stay in Rent (Defence Witness 2)

He testified before the trial court that, both of them were initially very happy. They seemed to love each other very much. But after few years, Raju used to complain of the fact that Meera does not want to be a mother and there were several arguments between them regarding the same. Raju used to say always that he loves Meera but he also wants to become a father. Regarding this he was very depressed and disheartened with Meera.

Witness 7: Rustam Irani, friend of Raju Sharma (Defence Witness 3)

He testified that Raju was not happy in the relationship because Meera was not consummating the marriage and she was becoming more dominating than ever. She used to get pissed off if a single thing goes wrong in the house hold. Her temperament was totally changed and she used to allege Raju of not giving her time and always hoping for a child which she did not want.

