

MOOT PROBLEM

MP 1 The incident relates to the city of New Nagpur Metro region, State of Maharashtra. In the intervening night between 30th December 2014 – 31st December 2014, one Mrs. Nirbhaya was returning to her home at 11.00 am at civil lines, Nagpur from her office which is a medical transcription centre situated in New Nagpur Metro Region. For returning Mrs. Nirbhaya hired a taxi arranged by her office in collaboration with a taxi service 91FM cabs. It is alleged that the taxi driver offered her a spiked drink “KoffeeKool” informing her that, it was welcome drink service introduced by their cab company. It is alleged that, after Mrs. Nirbhaya was incapacitated due to the spiked drink the taxi driver took the car to remote location where he committed rape on the person of Mrs. Nirbhaya and left her there. Upon gaining consciousness in the wee hours of morning on 31-12-2014 Mrs. Nirbhaya found herself in a uninhabited ground in Besa-Beltarodi area from Where she walked down upto Basa Square where she requested an old passer by to help her to be dropped upto nearest police station. Accordingly an FIR was lodged by Mrs. Nirbhaya and after investigation by police culprit of the crime was nabbed from near by village in Wardha district. It is further transpired that the accused was a habitual offender and was accused in two other cases of rape and was menace to this villagers and was externed from Wardha District by order of the Police Department. After due investigation chargesheet came to be filed and case is yet to be committed to the court of session.

MP 2 After a period of seven months Mrs. Nirbhaya filed a writ petition before Hon’ble High court alleging negligence at the hands of police department, State Government and the private taxi service company. It was contented in the petition that, the private taxi company was negligent in the matter of hiring the staff in as much as the criminal antecedent were not checked. It was contended that, the department of R.T.O. was also negligent in giving necessary permit to the company without ensuring safety standards which included check in criminal antecedents of it staff. So also it was contended that police department and department of home affairs has been negligent in the matter of keeping check on the whereabouts of externed persons and there was no co-ordination in the matter of externment between police of various district in as much as no check is kept upon externed person activity and presence by the police of the district where the culprit is presently living and therefore direction be appropriately passed. It was contended that the negligency is caused collectively and it has harbored the intentions of the accused and provided him ease in committing further crimes. It was contended that directions were required to be passed against the respondent in this regard.

MP 3 It was further contended that due to the incidence of rape on the petitioner, it has been devastated in as much as the company was closed due to risk involved and was unable to procure other job for being rejected every time despite her best efforts to conceal her identity as a rape victim. Petitioners contended that the scheme “Manodhairya” framed by the state in accordance with section 357 A of Cr.P.C. does not provide for actual expenditure for livelihood of victim of crime and for its rehabilitation in proper manner.

MP 4 The petitioner contented that amount granted in scheme is meager and payable in installments. Petitioner states that she has to pay bank E.M.I’s and has landed in distress for want of job. Petitioners contended that respondents should be

collectively made liable for compensation and rehabilitation of petitioners by giving job. Provisions of section 357 A focus on conclusion of trial for compensation and rehabilitation. The section and scheme are actually inadequate and directions be passed to state to frame proper policy. Petitioner contended that state is duty bound to protect life and liberty under art.21 of Constitution of India and is not absolved from its responsibility of ensuring safety of women especially working women and rehabilitation especially of ensuring jobs of victims of sexual assaults and rape.

MP 5 State and other respondents company contends namely:

- 1) That, scheme is proper and section 357 A is in light of constitutional provisions and is adequate.
- 2) Petitioner has no legal right to claim job and it is beyond provisions of art.21 of Constitution of India in factual case.
- 3) State denies the allegation regarding the co-ordination in respect of externees.
- 4) Respondents question locus standi of petitioner as regards direction sought in respect of externees, “ Manodhairya” scheme contending that it being in nature of public interest, both causes cannot be collectively agitated in adversarial litigation.
- 5) Petitioner cannot claim compensation in petition under section 226 of Constitution of India and should file a suit.

Parties are before High Court in its jurisdiction U/Art.226 of Constitution of India.