



9TH JAMIA NATIONAL MOOT COURT COMPETITION, 2022

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COMPETITION, 2022**

[ONLINE]

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Organised by

**MOOT COURT ASSOCIATION,
FACULTY OF LAW, JAMIA MILLIA ISLAMIA**

KNOWLEDGE PARTNERS



MOOT PROPOSITION



IN THE SUPREME COURT OF KYMLICKA

ANDY WHITE v. UNION OF KYMLICKA
[Writ Petition (Criminal) No. 488 of 2022]

AND

ANDY WHITE & ANR. v. NATIONAL CAPITAL TERRITORY OF NIMBUS
[Special Leave Petition (Criminal) No. 198 of 2020]

1. The Union of Kymlicka (“Kymlicka”) hosts the second largest population of the world (*i.e.*, 1.4 billion) and is famous for its diverse culture, ethnicity and religion. Kymlicka got independence from the colonial regime in 1947. Thereafter, the mothers and fathers of this country dreamt of making it an inclusive country with an ultimate objective of promoting and achieving Fraternity. The ideals like socialism, secularism, equality and justice were imbibed in the Constitution of Kymlicka. However, certain colonial laws providing for offences like Sedition and Waging war against the government were not repealed and continued to be in force even after the enforcement of the Constitution.
2. Various national parties have formed their government at the Union level in Kymlicka after independence. The laws and policies of almost all the governments have always been subject to criticism in one way or the other. These criticisms were not only confined to academic debates but also witnessed major protests by students, activists, NGOs, academicians, etc. State Governments in Kymlicka have extensively charged such persons for offences like sedition, waging war, unlawful activities, rioting, affray, destruction of public properties etc.
3. Kymlicka kept experiencing an unabated increase in crime rate every year. These crimes majorly included offences against women, children and terrorist activities. As per the National Criminal Records Bureau (“NCRB”), these offences grew by 550% between the year 2010 and 2017. Special laws to deal with terrorist activities were enacted. These laws included Unlawful Activities (Prevention) Act, 1967 (“UAPA”); The Prevention of Money Laundering Act, 2002 (“PMLA”); National Investigative Agencies Act, 2008 (“NIA Act”). Furthermore, the Kymlickan government enacted a



new law called as Criminal Procedure (Identification) Act, 2022¹ (“Act of 2022”) in order to identify the prisoners and facilitate the investigating agencies in conducting speedy and efficient investigation. Accordingly, this law received the assent of the President as well.

4. Andy White is pursuing his studies in journalism from a private college in the capital city of Kymlicka. He also runs his own website where he posts his blogs which are majorly critiques of the government. Andy lost his parents when he was 10 years of age and since then his aunt, Shelly Cobb has been taking care of his education and daily expenses. Shelly Cobb is a citizen of Kymlicka who resides in a different country Switzerland. She runs a business which is spread over few countries. She sends about INR 40,000/- to Andy for his monthly expenses and INR 3,50,000/- every year for his college fees.
5. Andy White has been a staunch proponent of protection of fundamental rights. He has gained popularity in metropolitan cities of Kymlicka due to his constant presence on social media and his website. On 20.04.2017, he posted a blog on his website which was titled as “*Repeal the archaic sedition law!*”. In one of the paragraphs he stated “.....*the offence of Sedition was a tool used by the colonial rulers to stifle the voice of our freedom fighters. However, an unabated use of this law by the present government makes them no different from the colonial rulers. Due to the rampant misuse of this provision, the NCRB figures look fat, whereas the stark reality is that the protesters are innocent and have been exercising their right to dissent. Moreover, the government has continuously enacted security legislations which goes against the principles of natural justice and the constitution.*” His blog received both hot and cold responses. Andy also said that soon he shall plan a peaceful protest against the rampant use of security legislations. Rumours spread that he is planning an unlawful assembly. Based on the cryptic information received by the police, his calls were being intercepted.
6. On 21.04.2017, Andy posted on his social media accounts that he is planning to stage a peaceful protest along with his activist friends in the capital city of Kymlicka (NCT of Nimbus) and requested all others to join him. The same day many protestors

¹ Refer to Criminal Procedure (Identification) Bill, 2022 (India); *mutatis mutandis*.



gathered in large numbers, however, rumours spread that Andy receives foreign funding merely to incite people and dismantle the existing government. Andy responded to these rumours, however, but to no avail, it had already become a wildfire.

7. The protests continued for a few days and during the protest Andy gave several speeches before the mass gathering requesting them to keep raising their voices against the arbitrary and unconstitutional acts of the government. He also said we should keep fighting at all costs and must do whatever it takes. He promised to provide all the logistical support to the protestors. One of the protestors recorded his video and posted the clippings of such video on social media. Thereafter, few reports of violence were reported in the adjoining district. The police then reached the protest spot to stop the protest, however, there were physical altercations. The reason for the physical altercation is unclear.
8. Andy was arrested from the protest site and an FIR [FIR No. 98/2017] was registered against him under Sections 13, 16, 17, 18 of the UAPA; Sections 124A and 120B of IPC². During investigation, the police found that he had approximately INR 6,00,000/- cash at his apartment. On being interrogated about the source of such money, Andy kept silent. Statements of Andy's friends were recorded u/s 161 of Criminal Procedure Code, 1973 ("CrPC") wherein they said that Andy has been raising crowdfunding to carry out the logistical expenses of protests and rallies. They also mentioned that he gets foreign transfers as well. The Central Government *suo motu* directed the National Investigation Agency ("NIA") to carry out further investigation in the matter. Case diaries and all materials collected by the police including the call recordings were handed over to NIA. While the investigation was pending, Andy's bail application was rejected by the Special Court constituted under the NIA Act.
9. The police also shared the information with the Enforcement Directorate ("ED") on an apprehension of money laundering being involved. ED lodged an Enforcement Case Information Report ("ECIR") against Andy u/s 4 of PMLA. During the investigation, ED served a notice u/s. 50 of PMLA and accordingly the Special Court

² Indian Penal Code, 1860.



issued a production warrant and custody of 5 days was given for interrogation. During interrogation Andy admitted that he has raised crowd funding and has also been receiving foreign transfers from his aunt, Shelly. He also admitted that the contents of video clipping shared online were true but were being quoted out of context. After the interrogations got completed by NIA and ED, Andy was remanded to judicial custody. While investigation was pending, the Special Court allowed the NIA officers to collect voice samples from the accused in order to match it with the call recordings which had incriminating conversations.

10. The Special Court took cognisance against Andy based on the chargesheet submitted by the NIA. While taking cognisance, it also took into consideration the case diaries prepared by ED. The court framed all the charges which were pressed in FIR and ECIR. While the trial was pending, Andy's aunt came back to Kymlicka to fight Andy's case. The Special Public Prosecutor filed an application u/s 319 CrPC to arraign Shelly as an accused in the same trial, on the ground that she has been complicit in foreign funding and has played seminal role in Andy's criminal endeavours in Kymlicka. Therefore, the Special Trial Court accepted the application filed by the Special Public Prosecutor.
11. The prosecution submitted video clippings which were shared online as evidence. The prosecution also submitted newspaper articles which stated that protesters led by Andy caused disruptions in public places. The transcriptions of conversation and call recordings were submitted in a pen-drive along with an electronic evidence certificate u/s 65B(4) of Evidence Act, 1872³ ("IEA"). The copy of electronic evidence was given to the accused after the commencement of trial. The prosecution further tendered INR 6,00,000/- cash along with its seizure memo and transaction receipts as evidence.
12. After the prosecution evidence was closed, the Special Court examined both the accused u/s 313 of CrPC. Andy informed that he is innocent as he has only staged a peaceful protest. He further informed that he was subject to custodial violence and certain inculpatory statements were elicited from him. Shelly said that she has only been paying Andy's college fee and his monthly expenses. Thereafter, during the

³ Refer to Indian Evidence Act, 1872; *mutatis mutandis*.



defence evidence stage, Andy submitted his bank account details which proved that most of the transfers were from his aunt, and there were several transactions from various other sources. He also submitted that the call recordings merely contain his conversations with Shelly about his college expenses and his daily endeavours, both in college and outside college, and such conversations are insufficient to prove his guilt beyond reasonable doubt. He also submitted that the video clippings are being shown out of context. Moreover, the newspapers articles are nothing but an exaggeration of facts, and public disruptions were caused by some other fringe elements who came only to disrupt the peaceful protest.

13. After hearing the final arguments, the Special Court found that the prosecution has established its case beyond reasonable doubt. While convicting Andy and Shelly, the court heavily relied upon the electronic evidence and the same was weighed as primary evidence. The court also relied on the statements given by Andy to ED and considered it to be proved. The court further stated that the defence has failed to disprove the onus and their story fails to inspire confidence. The court also found that Andy's blogs and speeches were directly connected with the unlawful assembly and violence. Moreover, the accused failed to provide proper explanation to all the transactions and money received in his bank account. Shelly, on the other hand, was convicted for money laundering and criminal conspiracy as she has constantly aided Andy's endeavours through financial means. Both the accused preferred an appeal against conviction before the High Court. However, the High Court confirmed the conviction and held that there is no reason to interfere with the order of the Special Court.
14. Andy and Shelly filed an SLP [**Special Leave Petition (Criminal) No. 198 of 2020**] under Article 136 against the impugned order of the High Court which upheld conviction by the Special Trial Court. In addition to various other grounds challenging their conviction, the appellant-accused submitted that the Special Court, by convicting, and the High Court by confirming the conviction, committed a gross miscarriage of justice by wrongly applying legal principles and statutes. The appellant-accused raised the following objections in their SLP-



- a. Confessional or inculpatory statements given by Andy to ED during investigation should not be allowed to be proved before the trial court as ED officers should be considered as ‘police officers’ within the meaning of S. 25 of Evidence Act;
 - b. Intercepted call recordings are illegally obtained evidence because they were recorded merely on the pretext of rumour and no emergent situation existed for the same. Thus, such evidence should not be admissible before a trial court as it amounts to violation of right to privacy;
 - c. The Special Court did not have the power to direct the NIA officers to record voice samples during investigation and such an order is in violation of the right to privacy of the accused;
 - d. The trial court erred in admitting the electronic evidence as primary evidence because the original device over which calls were recorded were not produced;
 - e. The trial court exercised its discretion arbitrarily when it gave the copies of electronic evidence only after the commencement of trial, and this therefore resulted in violation of principles of natural justice;
 - f. Arraigning Shelly as a co-accused was wrong because the requisite threshold u/s 319 CrPC is more than a ‘prima facie case’ against the co-accused, and further no cogent evidence was produced against her.
15. The State filed its counter-affidavit in response to the SLP filed by the accused. The state argued that firstly, PMLA allows ED to take certain statements on oath because of the gravity of the offence involved. Secondly, NIA Act is a special legislation and shall override the general evidence law. The state further argued that ‘*fruit of poisonous tree doctrine*’ does not apply in this country and if evidence is related to the ‘facts in issue’ or ‘relevant facts’ of the case, then such evidence cannot be excluded. Thirdly, the state argued that the law provides for discretionary powers to the trial court to record voice samples in the interest of justice. Moreover, even though the electronic evidence was given only after the commencement of the trial, but the same was without prejudice to the rights of the accused as he had the electronic evidence throughout the prosecution evidence stage, and was given all reasonable opportunity to disprove the same. The matter is still pending and final arguments are yet to heard.



16. As these cases were pending, in the year 2020, a pandemic broke out due to the spread of COVID-19 which hampered the functioning of courts in Kymlicka. During this period, Andy and Shelly were serving their sentences pursuant to their conviction by the Special Court. In 2022, Andy reported several instances of custodial torture to his lawyer and informed that he was forced to give measurements as per the new law enacted for identification of prisoners.
17. When the pandemic started to subside in the year 2022, Andy moved a writ petition under Article 32 [**Writ Petition (Criminal) No. 488 of 2022**] challenging the Criminal Procedure (Identification) Act, 2022 on grounds violation of privacy and other fundamental rights under the Constitution. He also submitted that in the absence of a data protection law and regulatory framework, collection of biological samples and biometrics is disproportionate and unconstitutional. In the same petition he also challenged the constitutional validity of S. 50 of PMLA. The Court admitted the petition. The SLP and the Writ Petition was listed before the Supreme Court as Item No. 1 and 2, respectively before the same bench. Accordingly, the following issues were framed in the respective petitions-
- a. Whether the Criminal Procedure (Identification) Act, 2022 constitutionally valid and whether Andy can be compelled to give measurements and biological samples to the jail authorities?
 - b. Whether S. 50 of Prevention of Money Laundering Act, 2002 unconstitutional?
 - c. Whether the trial court erred in applying the procedural laws correctly based on the grounds mentioned in paragraphs 14 and 15?
 - d. Whether the Special Court erred in convicting Andy for the offences u/s 13, 16, 17, 18 of UAPA; u/s 4 of PMLA and u/s 124A, 120B of IPC; and Shelly u/s 4 of PMLA and u/s 120B of IPC?



Instructions-

1. The laws of Kymlicka are *pari materia* to the laws of India.
2. The facts of this Moot Proposition are purely a work of fiction and purely intended for academic purpose.
3. The participants are not required to frame any additional issue, whereas they are free to frame sub-issues on the given issues.
4. The participants are not required to frame arguments on maintainability or jurisdiction.
5. In addition to other relevant legal sources, the participants are encouraged to apply criminal jurisprudence and constitutional principles to advance their arguments.
6. Participants may also refer to foreign judicial pronouncements, foreign doctrines and principles, but they must bear in mind that they will not be binding and will have persuasive value on the Supreme Court of Kymlicka.
7. The Moot Proposition is drafted by Advocate Mohd. Yasin, Delhi High Court, and any attempt to contact him regarding this moot shall result in disqualification.