

VERDICTUM.IN

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REVISED

ITEM NO.15

COURT NO.13

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 1481/2024

(Arising out of impugned final judgment and order dated 23-03-2023 in CRLA No. 13/2022 passed by the High Court Of Meghalya At Shilong)

SUNSHINE KHARPAN

Petitioner(s)

VERSUS

THE STATE OF MEGHALAYA & ORS.

Respondent(s)

(IA No.261875/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 07-05-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE C.T. RAVIKUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

For Petitioner(s) Ms. Sonia Mathur, Sr. Adv.
Mr. Divik Mathur, Adv.
Mr. Bharadwaj S., AOR
Mr. Nikhil Jaiswal, Adv.

For Respondent(s) Mr. Avijit Mani Tripathi, AOR
Mr. Upendra Mishra, Adv.
Mr. P.S. Negi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

While considering the petition and coming across the shocking incident which reveal that despite the prohibition on practice of conducting "two-finger test" to determine whether a victim of a rape was habituated to sexual intercourse, which act strongly deprecated by this Court as it being regressive and invasive nature of test, we put a question to the learned counsel for the State as to what steps have been taken to ensure to eradicate this evil practice, in the light of various decisions of this Court. The

learned Counsel for the State sought and was granted time to get instruction(s) on it.

It is true that the incident in the case on hand had happened a decade ago, to be precise, on 26.10.2013. Thus, the case on hand revealed the continuance of contumacious conduct of conducting the "two-finger test" even after the decision of this Court in *Lillu Alias Rajesh and Anr. v. State of Haryana [(2013) 14 SCC 643]*. The said case was decided on 11.04.2013 and as noticed earlier, in the case on hand the incident occurred on 26.10.2013. It is to be noted that acknowledging the seriousness and importance of the issue the learned Advocate General of the State of Meghalaya Shri Amit Kumar appeared and addressed the Court. The learned Advocate General would submit that in compliance with the decision of this Court in "*State of Jharkhand vs. Shailendra Kumar Rai @ Pandav Rai*", reported in (2022) 14 SCC 299, appropriate action to eradicate the evil practice has been taken. True that some document produced by the State would reveal that certain orders in compliance of the judgment of this Court referred (supra) has been issued. It is true that guidelines issued since then would reveal directions to do away with this practice of conducting 'two-finger test' and letter dated 29.04.2024 would reveal the sounding warning that violation of direction issued by this Court in Shailendra Kumar Rai's case would be treated as a misconduct and appropriate disciplinary action would be taken.

On going through this, we found that what was stated therein is only that in case such test being conducted, same would be treated as misconduct and appropriate disciplinary action would be

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taken against the person. When a particular practice which is deprecated by this Court repeatedly and described it as a regressive and invasive nature, we are of the considered view that the proposed action in terms of the said letter dated 29.4.2024 should have been specific and the consequences must have been spelt out as of serious nature.

In the said circumstances, learned Advocate General for the State of Meghalaya would submit that appropriate further orders would be issued in the matter imbibing the very spirit of the judgment of this Court in Shailendra Kumar Rai (supra) and with a view to ensure eradication of the aforesaid evil practice of conducting 'two-finger test'.

List on 3.9.2024.

(DR. NAVEEN RAWAL)
DY. REGISTRAR

(MATHEW ABRAHAM)
COURT MASTER (NSH)

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R E C O R D O F P R O C E E D I N G S

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On going through this, we found that what was stated therein is only that in case such test being conducted, same would be treated as misconduct and appropriate disciplinary action would be

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