

ITEM NO.8

COURT NO.11

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.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 Meghalaya at Shilong)

SUNSHINE KHARPAN

Petitioner(s)

VERSUS

THE STATE OF MEGHALAYA & ORS.

Respondent(s)

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

Date : 03-09-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE SANJAY KAROL

For Petitioner(s) Mr. Sonia Mathur, Sr. Adv.
Mr. Raka Bejoy Phukan, Adv.
Ms. Neha Tandon, Adv.
Mr. Bharadwaj S., AOR

For Respondent(s) Mr. Amit Kumar, Adv.Gen., Sr. Adv.
Mr. Avijit Mani Tripathi, AOR
Mr. T.K. Nayak, Adv.
Ms. Marbiang Khongwir, Adv.

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

- 1 This Petition is at the instance of a convict-accused and is directed against the judgment and order passed by the High Court of Meghalaya at Shillong dated 23 March 2023 in Criminal Appeal No 13 of 2022 by which the High Court dismissed the appeal filed by the convict and thereby affirmed the judgment and order of conviction dated 30 March 2022 passed by the trial court holding the petitioner (convict) guilty of the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act 2012¹.
- 2 It appears that the petitioner was also held guilty for the offence punishable under Section 4 of the POCSO and Section 376(2) of the Indian Penal Code (for short, 'the IPC') respectively. He was also found guilty of the offence punishable under Section 506 of the IPC. The maximum sentence imposed is that of ten years rigorous imprisonment for the offence punishable under Section 6 of the POCSO.
- 3 Having heard the learned counsel appearing for the parties and having gone through the materials on record, we see no good reason to interfere with the concurrent findings of the two courts below holding the petitioner guilty of the offences with which he was charged. However, we take notice of the order passed by a coordinate Bench of this Court dated 7 May 2024. This order has something to do with the conducting of "two-finger test" to determine whether a victim of a rape was habituated to sexual intercourse.
- 4 This Court has strongly deprecated this practice of conducting "two-finger test". The first decision of this Court on this issue is in the case of **Lillu alias Rajesh and Another vs State of Haryana**².

1 "POCSO"
2 (2013) 14 SCC 643

- 5 As we are disposing of this matter finally, we quote the entire order passed by the coordinate Bench dated 7 May 2024, which reads as under:

“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 is 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 taken against the person. When a particular practice which is deprecated repeatedly by this Court 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.”

- 6 It is evident from the last paragraph of the aforesaid order that an assurance was given to this Court by the Advocate General for the State of Meghalaya that the State would issue appropriate further orders as regards due compliance of the judgment of this Court in the case of ***State of Jharkhand vs Shailendra Kumar Rai @ Pandav Rai***³.
- 7 Mr Amit Kumar, the learned Advocate General appearing for the State of Meghalaya has tendered a circular dated 27 June 2024 issued by the Government of Meghalaya, Health and Family Welfare Department. This circular has been issued prohibiting the “two-finger test” and also disciplinary action for its non compliance. The circular is taken on record and reads as under:

3 (2022) 14 SCC 299

“GOVERNMENT OF MEGHALAYA
HEALTH & FAMILY WELFARE DEPARTMENT

No.Health313/2022/Pt/9 Dated Shillong the 27th June, 2004.

CIRCULAR

**Subject: Prohibition of the Two Finger Test and
Disciplinary Action for Non-Compliance**

The Hon'ble Supreme Court of India and the Ministry of Health and Family Welfare have prohibited the practice of conducting the Two Finger Test (TFT) on survivors of sexual assault. This practice is scientifically baseless, traumatizing, and violates the survivor's dignity and rights. The Health and Family Welfare Department, Government of Meghalaya, is committed to upholding the rights and dignity of all individuals and ensuring that survivors of sexual assault receive appropriate and respectful medical care. Towards this objective, this Circular is issued for compliance by all Government Doctors.

Directive:

Immediate Cessation of the Two Finger Test: All Government Doctors and medical practitioners in the State of Meghalaya are hereby directed not to conduct the **Two Finger Test** on survivors of sexual assault. Adherence to this directive is mandatory for all Government medical personnel.

Strict Disciplinary Action: Any doctor found conducting the test will be held guilty of misconduct and strict disciplinary action will be initiated in accordance with the **Meghalaya Discipline and Appeal Rules 2019**. This may include suspension, imposition of minor or major penalties, and other legal actions as deemed appropriate.

Compliance with Guidelines: All Government Doctors must familiarize themselves with and adhere to the “**Guidelines and Protocols for Medico-legal care for survivors/victims of sexual violence, 2014**” issued by the Ministry of Health & Family Welfare, Government of India.

Compassionate Care: Survivors of sexual assault must receive compassionate, respectful, and sensitive care, including psychological support and counseling services.

This issues with the approval of the Competent Authority.

- sd -

(T.G. Momin, MCS)

Joint Secretary to the Government of Meghalaya,
Health & Family Welfare Department”

- 8 We hope and trust that the circular referred to above issued by the State of Meghalaya is implemented and abided in its letter and spirit. We hope that in future we may not have to once again condemn the State of Meghalaya for such a serious lapse.
- 9 In view of the aforesaid, we close this matter dismissing the Special Leave Petition.
- 10 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar