

[2021] 7 S.C.R. 65

PATRICIA MUKHIM

pyrshah

STATE OF MEGHALAYA & ORS.

(Criminal Appeal No. 141 of 2021)

LBER 25, 2021

[L. NAGESWARA RAO

AND

RAVINDRA BHAT, JJ.]

Ka Penal Code, 1860 – ki kyndon aiñ 153A bad 505(1)(c) – Ka jingshahshoh ba jur bad jingshahthombor jong ki bymdei-riewlum hapoh ka Jylla Meghalaya da ki nar rod bad da ki dieng – Ki nongthombor la kynnoh ba ki dei ki riwulum jong ka jylla Meghalaya – Ka jingpynmih jingthoh lane ka post ha Facebook ba la thoh da ka Nongmudui (Apellant), la kynnoh ba ka long kaba la mut khnang ban pynshit ia ka jingiashun jaitbynriew hapdeng ki riwulum bad ki bymdei-riewlum hapoh ka jylla – Ia ka mokotduma Prima facie (ka nongrim ba hakhmat lane kaba shu peit na sla) la pynlong hapoh ka kyndon aiñ. 153A bad 505(1)(c) ne em – La rai: Ka jingkhmih bñiah ia katei ka jingthoh ha Facebook ia kaba la thoh da ka nongmudui ka kdew ia ka jingsngewsih jong ka kaba long pyrshah ia ka jingleh bymsuidñiew jong u Myntri Rangbah ka jylla Meghalaya, u DGP bad ka Dorbar Shnong jong katei ka jaka ha kaba kim shym la leh ei ei pyrshah ia ki nongthombor kiba la thombor ia kitei ki bymdei-riewlum – Ka jingthoh ha ka Facebook haba la pule baroh kawei ka paw ba, ka kyrpad ia ka jingiaryngkat dor jong ki bymdei-riewlum hapoh ka Jylla Meghalaya – Kam shym don kano kano ka jingthmu na ka liang ka nongmudui ban pynphriang ia kano kano ka jingia-isih kynhun/jaitbynriew – Namar ba ym don kano kano ka jingpyrshang da ka nongmudui ban kynshoit ia ki briew jong kawei ka jaitbynriew ban ia donkti ha ka jingiashoh iadat, ia ki mat tynrai jong ki jingleh palat (offences) kiba hap ha ki kyndon aiñ 153A bad 505(1)(c) ym shym la pynskhem – Ka jingkyrpad jur kaba la pynpaw da ka nongmudui ban iada ia ki bymdei-riewlum kiba shong ba sah ha ka Jylla Meghalaya bad ia ka jingiaryngkat dor ia ki ym lah da kano kano ka ka jingmutdur ban kheñ ba ka dei ka jingkren pyniashun. – Ka long ka jingpyrta ban ioh ia ka hok – ban leh katkum ka aiñ, ha kaba iwei pa iwei i nongshongshnong i don ka hok ban khmih lynti bad ban kren – Ka jingbymsngewhun ia ka jingbym leh ei ei ka sorkar, ym lah ban kynnoh ba ka dei ka jingpyrshang ban pynia-isih hapdeng ki jaitbynriew bapher – Ia ka jingkren laitluid jong ki nongshongshnong ym lah ban khñoit noh da kaba pynngat ia ki ha ki mukotduma kam bymman, lait noh tang lada kum kita ki jait jingkren kidon ia ka bor ban pynthut ia ka imlang sahleng – Ym don daw pyrshah ia ka nongmudui na ka bynta ki jingleh be-aiñ kiba hap ha ki kyndon aiñ 153A bad 505(1)(c).

Penal Code, 1860 – s.153A – ka jingleh be-aiñ da ka jingkren – Ki kyndon pyrshah ia ka jinglaitluid ban kren bad ban pyni – La Rai: Ka jinglaitluid ban kren bad ban pyni ia kaba la ai bor da ka Article 19(1)(a) jong ka Riti Synshar ka Ri India ka long ka hok tynrai kaba kordor – Hynrei, kata ka hok kam long kaba khlem don jingteh – Lah ban teh kyndon da kaba shong ñia ia kata ka hok ban kren bad pyni khnang ban sumar ia ka iktiar bad ia ka jingiatylli hapoh ka Ri India, ia ka jingshongshngain hapoh ka Ri, ia ka jingiadei lok bad kiwei pat ki Ri, ka jingshongsuk ha ka imlang sahlang, ia ka burom ka akor lane ha kaba iadei bad ka jingleh pyrshah ia ka ĩngbishar (contempt of Court), ha kaba iadei bad ka jingpynbudnam lane ka jingpynshit ia ki kam be-aiñ – Ia ka jingkren be-aiñ lah ban pynshitom hapoh ka kyndon aiñ 153A – Riti Synshar jong ka Ri India, 1950 – Art.19(1)(a) – Jingkren pyniashun (Hate speech).

Ka aiñ Penal Code, 1860 – kyndon aiñ 153A – Hapoh ka jingkdup jong – La batai – La Rai: Ka jingdon jingthmu ban pynkulmar lane pynshit ia ki briew ban iashoh iadat ka long kaba donkam eh (sine qua non) ban pynhap hapoh ka jingleh be-aiñ katkum ka kyndon aiñ 153A bad ki nongtian bishar (prosecutor) ki dei ban pyni sabut ia ka jingdon ka jingmut sniew (mens rea) khnang ba kin jop – Ia ka jingdon jingthmu lah ban bishar nyngkong eh na ki kyntien jong ka jingthoh bad na ki jingjia ha kaba la thoh pynmih ia katei ka jingthoh – Hynrei, ia kaei kaei kaba la mudui hapoh ka kyndon aiñ s. 153A dei ban pule lut baroh kawei kumba ka long.

Ka Penal Code, 1860 – ss. 153A & 505 – Ki mat jong ka kyndon aiñ 153A ha kaba ianujor bad ka kyndon aiñ s.505(2) – Ki jingiasryiem bad jingiapher hapdeng ki artylli ki jingleh be-ain – La Rai: Ka jingmut sniew (mens rea) ka long ka bynta kaba donkam ban pyni ha ki kam be-aiñ kiba hap hapoh ka kyndon aiñ. 153A bad 505(2) – Ka mat kiba iahap lang baroh artylli ki kyndon aiñ ka long ka jingpynshit ia ka jingsngew-iashun, ka jingia-isih lane ka jingkwah pynsniew hapdeng ki kynhun niam lane jaitbynriew lane jingiapher ha ka ktien ka thylliej lane kynhun niam lane iapher jait ne kynhun jaitbynriew, ka long kaba donkam ba kumno kumno kadei ban don ka jingiadonkti jong baroh artylli kum kita ki kynhun– Ka jingpynshit ia ka jingsngew jong kawei ka kynhun khlem da kdew ia kawei pat ka jaitbynriew ne kynhun kam lah ban hap hapoh kano kano na kitei ki kyndon aiñ – Hynrei, ka jingpynmih jingthoh ia ki kyntien lane ki jingpyni ka dei ka ba donkam eh (sine qua non) hapoh ka kyndon aiñ s.505 – Ka jingkren pyniashun.

Ka ehajar – ka jingpynduh noh – La rai: Namar ki jingkynnoh kiba la kdew ha ka ejahar lane ha ka jingujor, lada ban shu peit ia ki tang na kaei kaba paw bad pdiang kyllum ia ka na ka nongrim ba hakhmat ne tang na sla ruh (prima facie), kim pynlong ia ka kam be-aiñ ba la kynnoh pyrshah ia ka nongshahmudui, kumta, ia ka ejahar la dei ban pynduh noh.¹

Kaba shah ia ka jingkyrpad (appeal), ka ĩngbishar

LA RAI: 1.1 Ia ka jinglaitluid ban kren bad pyni ia kaba la ai bor hapoh jong ka **Article 19(1)(a)** jong ka Riti Synshar ka Ri India ka long ka hok tynrai kaba kordor. Hynrei, kata ka hok kam long kaba khlem don jingteh. Lah ban teh kyndon da kaba shongnia ia ka hok ban kren bad pyni khnang ban sumar ia ka iktiar bad ia ka jingiatylli hapoh ka Ri India, ia ka jingshongshngaiñ hapoh ka Ri, ia ka jingiadei lok bad kiwei pat

¹ *State of Haryana & Ors. v. Bhajan Lal & Ors., 1992 Supp (1) SCC 335.*

ki Ri, ka jingshongsuk ha ka imlang sahlang, ïa ka burom ka akor lane ha kaba iadei bad ka jinglehpyrshah ia ka ïingbishar (*contempt of Court*), ha kaba iadei bad ka jingpynbudnam lane ka jingpynshit ïa ki kam be-aiñ. Ia ka jingkren be-aiñ lah ban pynshitom hapoh ka kyndon aiñ 153A IPC. [Lyngkhot *Para 8*][72-C-D]

1.2.Hynrei ka jingdon jingthmu ban pynkulmar lane pynshit ïa ki briew ban ïashoh ïadat ka dei kaba donkam bha (*sine qua non*) ban lah ban pynhap hapoh ka jingleh be-aiñ katkum ka kyndon aiñ 153A bad ki nongtian bishar (prosecution) ki dei ban pyni sabut ïa ka jingmut sniew (*mens rea*) khnang ba kin jop. Ia ka jingsngewthuh kyllum ïa ka jingpynkheĩ aiñ hapoh ka kyndon aiñ 153A IPC ka long, ka jingdon jingthmu ban pynmih ka jingsngew shun, jingïa-isih hapdeng ki kynhun bynriew bapher bapher. ïa ka jingdon jingthmu lah ban bishar nyngkong eh na ki kyntien jong ka jingthoh bad na ki jingjia ha kiba la thoh bad pynmih jingthoh. ïa katei ka jingthoh ba la uxor hapoh ka kyndon aiñ 153A dei ban pule lut baroh kawei kumba ka long. Ym lah ban pynshong nongrim ha ki kyntien kiba khor ne ki kyntien ba nangne nangtai ban pynlong sabut lymne ia ka jingkyнноh ban shu shim ïa ki kyntien nangne bad nangtai bad pynïasoh lang ïa ki da ka jingpynleit jingmut ïa ka jingmutdur (*inferential reasoning*).² [Para 9, 10][73-H; 74-A-C]

1.3 Ka jingmut sniew ne ka jingleh khnang (*mens rea*) ka long ka mat ba donkam ban pyni ha ki kam be-aiñ kiba hap hapoh ka kyndon aiñ 153A bad 505(2) IPC. Ka mat kaba iahap lang bad baroh artylli ki kyndon aiñ ka long ka jingkyntiew ia ka jingpynshit ïa ka jingsngew ïashun, jingïa-isih lane ka jingkwah pynsniew hapdeng ki kynhun niam, lane jaitbynriew lane jingiapher ha ka ktien ka thylliej lane iapher niam lane iapher jait ne iapher jaitbynriew, ka long kaba donkam ba kan don ka jingïatyngkhuh la kumno kumno hapdeng artylli kum kita ki kynhun bynriew. Tang ka jingpynshit ïa ka jingsngew jong kawei ka kynhun khlem da kdew ïa kawei pat ka kynhun kam lah ban hap ha kano kano na kitei ki kyndon aiñ. Hynrei, ka jingpynmih jingthoh ïa ki kyntien lane ki dur ka dei ka mat kaba donkam (*sine qua non*) hapoh ka kyndon aiñ 505. [Lyngkhot *Para 11*][74-D-F]

2. Ka jingkhmih bñiah ïa katei ka jingthoh ha ka Facebook ïa kaba la thoh da ka nongmudui ka kdew ba ka jingsngewsih jong ka nongmudui, ka long pyrshah ïa ka jingleh bymsuidñiew jong u Myntri Rangbah ka jylla Meghalaya, u DGP bad ka Dorbar Shnong jong ka jaka ha kaba kim shym la leh ei ei pyrshah ïa ki ba donkti ban shoh ban dat ïa kitei ki bymdei-riewlum. Ka jingthoh ha katei ka Facebook la lah ban sngewthuh ba ka long ka jingpynshai kyrpang ia ka jingbymkheĩ briew ia ki bymdei-riewlum hapoh ka Jylla Meghalaya. Ka nongmudui ka la pynpaw shai ba ki kam bymman kim don jaitbynriew bad hap ban treikam kyrkieh ia ki briew kiba la donkti ha ka jingthombor ban shoh ban dat ia ki samla bym dei riwulum kiba ïalehkai basketball. Ia ka jingthoh ha Facebook, lada pule lut ia ka baroh kawei ka pynpaw ia ka jingkyrpad na ka bynta ka jingiaryngkat dor jong baroh ki bymdei ki riwulum ha ka jylla Meghalaya.Ym don kano kano ka jingthmu na ka liang jong ka Nongmudui ban

² Manzar Sayeed Khan pyrshah *State of Maharashtra*, (2007) 5 SCC 1

pynphriang ïa ka jingpynshit ïa ka jingïashun kyrdan/jaitbynriew. Namarba ba ym don ka jingpyrshang da ka nongmudui ban kynshoit ïa ki briew jong kawei ka jaitbynriew ban iashoh iadat, ïa ki mat tynrai jong ki kam be-aiñ kiba hap hapoh ki kyndon aiñ 153A bad 505(1)(c) ym shym la lah ban shem. Haba ïa ki jingkyrnoh hapoh ka ehajar lane ka jingujor, wat la shu shim tang na sla bad shu pdiang kumba ki long, haba pynshong nongrim tang na ki daw ba hakhmat ne haba shu peit na sla, ym don daw kaba lah ban pynlong ïa ki kam beaiñ pyrshah ïa ka nongmudui, ka ehajar ka long kaba lah ban shah pynduh noh. [Lyngkhot *Para 13*][75-E-H; 76-A-B]

3. Ka jingujor jong ka Dorbar Shnong, Lawsohtun ba ki jingthoh jong ka nongmudui kan pynshit jaitbynriew bad ka lah ban lam sha ka jingïashrut ha ka Jylla baroh kawei ka long tang ka jingmutdur. Ka jingkyrpad jur da ka nongmudui ban ïada ïa ki bymdei-riewlum kiba hapoh ka Jylla Meghalaya bad ïa ka jingïaryngkat dor jong ki ym lah da kano kano ka jingmutdur ruh ban kheñ ba ki dei ki jingkren pynïashun. Ka dei ka jingpyrta ïa ka hok – ban leh katkum ka aiñ, kaba iwei pa iwei i nongshongshnong i don ka hok ban khmih lynti bad ban kren. Ka jingbysngewhun ïa ka jingbym leh ei ei ka sorkar, ym lah ban kynnoh ba ka dei kaba pynshit ban iashun hapdeng ki kynhun jaitbynriew. ïa ka jinglailtuid ban kren ym lah ban khñoit noh da kaba pynngat ïa ki ha ki mukotduma kam bymman, lait noh tang lada kum kita ki jait jingkren ki don ïa ka bor ban pynthut ïa ka imlang sahleng. Ym don mukotduma kaba lah ban pynmih pyrshah ïa ka nongmudui na ka bynta ki jingleh be-aiñ hapoh ki kyndon aiñ 153 A bad 505(1)(c) IPC. [*Para 15*][76-E-H; 77-A]

Balwant Singh pyrshah State of Punjab, (1995) 3 SCC 214; Manzar Sayeed Khan pyrshah State of Maharashtra, (2007) 5 SC 1; Bilal Ahmed Kaloo pyrshah State of A.P. (1997) 7 SCC 431: [1997] 3 Suppl. SCR 327 bad ruh ka State of Haryana & Ors. pyrshah Bhajan Lal & Ors., 1992 Supp (1) SCC 335: [1990] 3 Suppl. SCR 259 – la pynshong nongrim.

Ramesh pyrshah Union of India (1988) 1 SCC 668: [1988] 2 SCR 1011; bad Pravasi Bhalai Sangathan pyrshah Union of India & Ors. (2014) 11 SCC 477: [2014] 4 SCR 476 – ba la kdew.

Saskatchewan (Human Rights Commission) pyrshah Whatcott [2013] 1 SCR 467 (Ka jingrai jong ka ïingcashari Ba ha khliehduh jong ka Ri Canada) – ba la kdew.

Ka jingkdew ïa ki mukotkuma (Case Law Reference)

(1995) 3 SCC 214	la pynshongnongrim na ka <i>Para 9</i>
(2007) 5 SCC 1	la pynshongnongrim na ka <i>Para 10</i>
[1997] 3 Suppl. SCR 327	la pynshongnongrim na ka <i>Para 11</i>
[1988] 2 SCR 1011	la kdew na ka <i>Para 11</i>
[2014] 4 SCR 446	la kdew na ka <i>Para 12</i>

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 141 of 2021

Na ka Rai bad ka Hukum tarik 10.11.2020 kaba la ai ha ka Crl. Petn. No. 9 of 2020 jong ka ĩngkashari High Court jong ka Meghalaya ha Shillong.

Ms. Vrinda Grover, Aakarsh Kamra, Soutik Banerjee, Prasanna S., ki Muktiar na ka bynta ka Nongmudui.

Avijit Mani Tripathi, Shaurya Sahay, P.S. Negi, ki Muktiar na ka bynta ki Nongshahmudui

Ia ka Rai jong ka ĩngbishar la ai da u

L. NAGESWARA RAO, J.

1. ĩa kane ka jingkyrpad *Appeal* la mudui pyrshah ĩa ka jingshahkyntait noh ĩa ka jingkyrpad ba la mudui da i nongmudui katkum ka kyndon aiñ (section) kaba 482 jong ka Code of Criminal Procedure, 1973 na ka bynta ban pynduh noh ĩa ka ejahar (FIR) Laban PS Case No. 72(7)2020 tarik 06.07.2020 ĩa kaba la pynrung (*resgistered*) hapoh ki kyndon aiñ 153A, 500 bad ruh 505(1)(c) jong ka Indian Penal Code, 1860.

2. Ia ka khubor la ai hakhmat ki lad pathai khubor da u/ka Assistant Inspector General of Police (A) ha ka 04.07.2020 ha kaba la don ka jingkdew sha ka jingjia kaba la jia ha ka sngi shuwa kata. Ka jingjia ka la ialam sha ka jingpynrung (registration) ĩa ka jingleh kam be-aiñ ha Laban Police Station hapoh ki kyndon aiñ 326/307/506/34 IPC. La kdew ha ka jingpynmih kotkhubor ba ha ka por kumba 12:30 nohphaisngi, kumba 25 ngut ki khynnah shynrang bym lah ithuh ki la leit shoh leit dat ĩa ki khynnah samla kiba dang ialehkai *basketball* ha ka kyntoit Block 4, Lawsohtun da ki nar rod bad ki dieng. U Arindam Deb, Subharashi Das Paspurkayastha, Saptarshi Das Purkayastha, Binak Deb, Bishal Ghosh bad u Prittish Deb ki la mynsaw. La ĩalam ĩa kiba mynsaw na kane ka jingjia sha hospital Woodland na ka bynta ban ai jingsumar. La kdew ha ka jingpynmih kotkhubor ba katto katne ngut ĩa kiba la suba la kem noh bad ka jingtohkit ka dang iaïd shakhmat. ĩa ka jingkyrpad la pynmih sha ki paidbah ban iarap ĩa ka jingtohkit da kaba pynithuh ĩa ki nongleh kam be-ain. La pynmih ĩa ka jingmaham ba ym dei ban don kano kano ka jingpynthut ia ka jingiashongsuk shongsain.

3. Ha kajuh ka sngi, ka Nongmudui ka la pynmih ĩa ka jingthoh ha Facebook kaba ong kumne harum:

Patricia Mukhim

4 Naitung ha ka por 04:07. *Facebook for Android*

Conrad Sangma, Myntri Rangbah Meghalaya, kaei kaba la jia mynnin ha Lawsohtun ha kaba katto katne ki samla bymdei-riewlum kiba dang ialehkai Basketball ki la shah shoh shah dat da ki tiar pynmysaw bad mynta ki dang don ha Hospital, ka long ka jingjia ka bym lah ban pdiang ba kin jia hapoh ka jylla kaba don la ka jong ka sorkar bad ki bor pulit. Ki nongshoh ki dei ki samla shynrang kiba dei ki riewlum bad kiba la

tap dur khmat ialade la dei ban kem noh shisyndon. Kane ka jingthombor ia ki bymdei-riewlum hapoh Meghalaya kiba ki kmie/kpa tymmen jong ki, ki la im hangne da ki phew snem, don kiba la wan naduh ka por Phareng ka long la kumno kumno ruh kaei kaei kaba dei ban pynrem jur. Ka jingshisha ba naduh ka snem 1979 ia kum kine ki nongthombor ym ju shah kem bad lada kem ruh kim ju ioh jingsaja katkum ka aiñ, ka kdew ba ka Meghalaya ka long ka jylla kabym larkam la bun bun snem.

Ngi kyrpad ia ka sorkar jong phi bad ia ki bor pulit jong phi kiba hapoh u DGP, R. Chandranathan, ban shim khia ia kane ka kam. Pyni ia ngi ki riew paidbah ba ngi don ka bor pulit kaba ngi lah ban shaniah.

Kumno pat haba phai sha ka Dorbar shnong jong kato ka jaka? Hato kim don ki khmat bad ki shkor ban iohi bad iohsngew? Hato kim don jingtip ia ki ba leh ia ki kam pyntriem hapoh ka shnong jong ki? Hato kim dei ban ialam ia ka jingujor bad pynithuh ia kita ki nongleh kam pyntriem? Kane ka dei ka por ban ieng rangbah khlem don jingsngew kynhun jingsngew pher jait bad jingngeit bad ban pyrta jam na ka bynta ka hok.

Ngi kyrmen ba kane kan ym dei da kawei pat ka kam kaba shu jah la ka jah lngaid hapoh ki kot ki sla jong ki Pulit. Ngi kwah ia ka jingtreikam. Ki nongleh kam pynsniew pyntriem kim don jaitbynriew. La dei ban bishar ia ki katkum ka aiñ jong ka Ri.

Balei ba ki hymmen ki para jongngi ki bymdei ki riwulum kin im syier hapoh ka jylla lajong? Kito kiba la kha bad la heh la san hangne ki don ka hok ban khot ia ka Meghalaya ka jylla jong ki kumba khot ki riwulum hi. La kut.

4. Ha ka 06.07.2020, u Rangbah Shnong bad u Secretary, Dorbar Shnong, Lawsohtun, Shillong, ki la mudui da kawei ka jingujor ha u *Superintendent of Police*, East Khasi Hills, Shillong, Meghalaya ba ka jingthoh kaba la pynmih da ka Nongmudui hapoh Facebook ka la pynshit ia ka jingïashun jaitbynriew kaba lah ban ialam sha ka jingïakajia hapdeng ki jaitbynriew. Ka Dorbar Shnong ka la uxor ruh halor ka jingshah pynthohbria. Da kaba shim ia kane ka jingujor, la pynrung da ka ejahar (FIR) ha Laban Police Station bad ia ka jingpyntip la ai sha ka Nongmudui hapoh ka Kyndon aiñ kaba 41 A Cr. PC, kaba la khot ia ka ban leit hajir ha Kench's Trace Police Beat House kaba hapoh Laban Police Station, District East Khasi Hills Shillong, Meghalaya.

5. Ka Nongmudui ka la mudui da ka mukotduma *Criminal Petition No. 9 of 2020* hapoh ka Ìingkasahri High Court jong ka Meghalaya ha Shillong na ka bynta ban weng noh ia ka ejahar. Ka Ìingkashari High Court lyngba ka rai jong ka kaba 10.11.2020 ka la kyntait noh ia ka mukotduma *Criminal Petition No. 9 of 2020*, bad kum ka jingieng pyrshah ia kane ka rai bymshong aiñ sa mih kane ka jingkyrpad (*Appeal*). Ka jingsngewthuh jong ka Ìingkashari High Court ka long ba ka jingkdew ia ka jingshahshoh jong ki bymdei-riewlum hapoh ka jylla Meghalaya da ki riwulum ka lah ban pynsniew ia ka jingiadei hapdeng ki artylli ki jaitbynriew. Da kaba peit thuh ba katei ka jingthoh ha Facebook ka ktik ia ka jingiashun bad jingïa-isih hapdeng ki artylli ki jaitbynriew, ka Ìingkashari High Court ka la peit kum ka nongrim ba hakhmat ne kaba shu peit na sla (*prima facie*) la iohi ba ka don ka jingleh palat katkum ka kyndon aiñ kaba 153 A IPC.

6. Ngi la sngap ia ka Vrinda Grover, ka muktiar ba stad jong ka nongmudui, bad ia u Avijit Mani Tripathi, u muktiar ba stad jong ka Jylla Meghalaya. Ka jingpyni ñia jong ka nongmudui ka long ba ña ki kyndon kiba hap hapoh ka kyndon aiñ ba 153 A IPC ym pat lah ban kdew shai bad ba ka ejahar ña kaba la uxor pyrshah ña ka nongmudui dei ban weng noh. La iasaid na ka liang jong ka nongmudui ba ña katei ka jingthoh ha Facebook la dei ban pule lut kumba ka long. Ña ka jingshahshoh jong ki bymdei-riewlum la kdew shai kum ka jingdawa ban kem ña ki ba donkti. La iasaid na ka bynta ka nongmudui ba kam shym la don kano kano ka jingthmu ban kynshoit ña ka jingiashun ne jingñia-isih hapdeng artylli ki jaitbynriew. La buh jingshaniah ha ka rai jong kane ka ñingbishar ban ia tai ñia ba ki kyntien ba la thoh da ka nongmudui la dei ban bishar halor ka nongrim jong u briew uba pynshong ñia, uba khelaiñ ka jingmut jingpyrkhat bad uba shlur. Ka nongmudui ka la ban jur ña la ka hok kaba hap hapoh ka *Article 19(1)(a)* jong ka Riti Synshar jong ka Ri India. Ka la pyni ia ka jingsngewkhia jong ka halor ka jingshah tian bishar ia ka kaba ktah jur ña ka hok tynrai (*fundamental right*) jong ka ban kren laitluid.

7. U muktiar ba stad na ka bynta ki nonshahmudui-ka Jylla (Respondent-State) u la ñatai ñia ba ka nongmudui ka dei ka nongthohkhubor ba paw nam, bad la khmih lynti ba ka dei ban kham long adkar haba ka pynmih ña kano kano ka jingthoh kaba ñadei bad u paidbah. U muktiar ba stad jong ka Kynhun Nonshahmudui (*State*) u la ong ba ki kyntien jong ka nongmudui ki don ka bor ban kynshoit ña ka jingiashrut jaitbynriew. U la ong ba ka ñingbishar High Court ka la leh ña kaba dei ha kaba ka la kyntait noh ña ka jingkyrpad (*application*) ña kaba la mudui hapoh ka Kyndon aiñ 482 Cr. PC bad u la kyrpad ña kane ka ñingbishar ba kan ym tuklar ei ei halor kane namar ka jingtohkit ka dang iaaid shakhmat.

8. “*Ka long kaba donkam bha ban ai laitluid ña ki jingkren baroh khnang ba ka jingshisha kan paw bad ba ngin ioh ña ka imlang sahang kaba shai.*” – Thomas Jefferson. Ka jinglaitluid ban kren bad ban pynpaw ña la ka jingsngew ña kaba la ai bor hapoh ka *Article 19 (1) (a)* jong ka Riti Synshar ka long ka hok tynrai kaba kordor. Hynrei, kata ka hok kam long kaba biang lut ne khlem don jingteh – Lah ban teh kyndon ña kata ka hok halor ka jingkren bad jingpynsngew ba laitluid khnang ban sumar ña ka iktiar bad ña ka jingiatylli ha Ri India, ña ka jingshongshngaiñ hapoh ka jylla, ña ka jingiadeilok bad kiwei pat ki Ri ka pyrthei, ka jingshongsuk ha ka imlang sahang, ña ka burom ka akor lane ha kaba ñadei bad ka jingleh pyrshah ia ka ñingbishar (*contempt of Court*), ka jingpynthohbria lane ka jingpynshit ña ki kam be-aiñ – Ia ka jingkren be-aiñ lah ban pynshitom hapoh ka Kyndon aiñ. 153A IPC. Ka jingkyshoit ña ka jingiashun paidbah da ka jingiasngew pher niam, jaitbynriew, jaka kha, jaka shong jaka sah, ka ktien ka thylliej, bad kiwei kiwei.. bad kaba leh ña kiei kiei kiba pynthut ña ka jingshongsuk shongsaiñ ka long kaei kaei kaba lah ban pynshitom da kaba set phatok haduh lai snem lane da kaba shah daiñ kuna lane baroh artylli kitei kiba hap hapoh ka kyndon aiñ kaba 153 A. Namarba ña ngi la khot ban rai la ka mokotduma halor ka nongrim ba ha khmat (*prima facie*) ka long ne em pyrshah ña ka nongmudui halor ki kam be-aiñ kiba ka la leh, kiba hap hapoh ka kyndon aiñ 153 A bad 505(1)(c), ka long kaba donkam bha ban pyni ña ki jingaibor (*provisions*) kiba long kumne harum:

152A. Ka jingkyshoit ña ka jingiashun hapdeng ki kynhun bapher halor ka nongrim ka jingiasngew pher niam, jaitbynriew, jaka kha, jaka sah, ka ktien ka

thylliej, bad kiwei kiwei, bad kaba leh ia kiei kiei kiba pynthut ia ka jingshongsuk shongshngaiñ. –

(1) Mano mano kiba

- (a) da ka ktien,ba shu kren ne shu thoh, lane da ki jingai dak ne jingkdew kiba lah ban iohi lane da kumwei pat, kiba kynshoit lane kiba pyrshang ban kynshoit halor ki nongrim jong ka niam, ka jaitbynriew, ka jaka kha, ka jaka sah, ka ktien ka thylliej, ka jait ka kynja lane ka kynhun jaitbynriew lane kano kano ka nongrim, ka jingbymia-shongsuk lane, ki jingsngew iashun, jingia-isih, hapdeng ki kynhun niam, jaitbynriew, ka ktien ka thylliej lane ki kynhun jong ki thaiñ bapher bapher lane kiba iapher jait ne kynhun jaitbynriew, lane
- (b) ki leh ia kano kano ka kam kaba pynthut ia ka jingshongsuk shongshngaiñ hapdeng ki kynhun niam, jaitbynriew, ka ktien ka thylliej lane kiba iapher shnong ne jait ne kynhun jaitbynriew, bad kaba pynthut lane kaba lah ban pynthut ia ka imlang sahleng, lane
- (c) kaba pynlong ia kano kano ka jingialang, jingiaakhih, ka jingiaid paidbah lane kino kino kiba kum kine da kaba don jingthmu ba ki nongiaschim bynta kin pyndonkam ne pyntbit ban pyndonkam da ka bor be-aiñ (*criminal force*) lane da kaba thombor, lane da kaba tip ba ki nongiaschim bynta kin pyndonkam ne pyntbit ban pyndonkam da ka bor be-aiñ (*criminal force*) lane da kaba thombor pyrshah lane iashim bynta ha kum kine ki kam da kaba don jingthmu ha kum kine ki kam ne pyntbit ban pyndonkam da ka bor aiñ lane kaba thombor lane da kaba tip ba ki nongiaschimbynta ha kum kine ki kam kin pyndonkam pyrshah ia kano kano ka kynhun niam, jaitbynriew, kiba iapher ka ktien ka thylliej ne ka jaka shong, lane iapher jait ne kynhun jaitbynriew bad kum kita ki jingleh ki pynlong ne ki lah ban pynlong ia ka jingtieng jingsmiej lane ka jingkyndit lane ka jingshongsyier hapdeng kum kita ki kynhun niam, jaitbynriew, kiba iapher ktien ne thylliej, lane kiba iapher jaka shong lane pher jait ne kynhun jaitbynriew, lah ban shah pynshitom da kaba set phatok haduh lai snem, ne da kaba shah daiñ kuna lane baroh artylli kitei.

Ki kam be-aiñ ha ki jaka mane blei, bad kiwei.— (2) Mano mano ba leh kam be-aiñ kiba don hapoh ka kyndon aiñ synrop (sub-section) (1) ha kino kino ki jaka mane blei lane kino kino ki jingialang na ka bynta ki jingleh niam leh rukom kin shah set phatok haduh san snem bad ki lah ruh ban shah daiñ kuna.

505. Ki kyntien kiba pynthut ia ka jingshongsuk shongsaiñ u paidbah. –

(1) Mano mano kiba kren, ba pynmih jingthoh lane kiba pynsaphriang ia kino kino ki kyntien, ki hamsaia lane ki khubor, –

- (c) da ka jingthmu ban pynshit, lane kaba lah ban pynshit, ia kano kano ka kynhun lane ka jaitbynriew ban leh ia kano kano ka kam be-aiñ pyrshah ia kano kano pat ka kynhun lane ka jaitbynriew,
lah ban shah pynshitom da kaba set phatok haduh lai snem lane shah daiñ kuna, lane baroh artylli na kitei.

9. Tang haba don ki kyntien kiba la thoh ne kiba la kren kiba lah ban pynthut ia ka suk ka saiñ u paidbah lane ban pynthut ia ka jingshongsuk shongshngaiñ u paidbah, ka bor aiñ ka donkam ban tuklar ban khang lad ia kum kita ki jingjia. Ka jingthmu ban pynthut ia ka jingshongsuk shonshngaiñ ne ban pynshit ia ki briew ban iashoh iadat ka long ka nongrim (*sine qua non*) jong ka kam be-aiñ hapoh jong ka kyndon aiñ 153 A IPC bad ki nongtian bishar kin hap ban ai sabut ia ka jingdon ka jingmut sniew (*mens rea*) khnang ba kan jop.³

10. Ka jingbatai kyllum ia ka jingleh be-aiñ hapoh jong ka kyndon aiñ 153 A IPC ka long ka jingdon jingthmu ban kynshoit ia ka jingiashun lane jingia-isih hapdeng ki kynhun bynriew. Ia ka jingthmu dei ban bishar khamtam eh da ki kyntien kiba don ha ka jingthoh bad da ki jingjia kiba la jia haei ba la thoh ban mih. Ia kaei kaei kaba la kynthoh hapoh ka kyndon aiñ 153A dei ban pule lut baroh kawei kumba ka long. Ym lah ban pynshong nongrim ha ki kyntien kiba khor ne ki kyntien ba nangne nangtai ban pynlong sabut lane ban shu shim ia ki kyntien nangne bad nangtai ban pyniasoh lang ia ki da ka jingpynleit jingmut ha kiei kiei kiba rit jong ka jingmutdur (*inferential reasoning*).⁴

11. Ha ka mukotduma **Bilal Ahmed Kaloo** pyrshah *State of A.P.*,⁵ kane ka Iingbishar ka la peit bniah ia ki mat jong ki Kyndon aiñ 153 A bad ruh 505 (2) IPC. La pynieng nongrim ba ka kyndon aiñ 153 A ka kynthup ia ka mukotduma ha kaba u/ka briew da ki “kyntien, kiba la kren ne thoh, lane da ki jingai dak ne ki jingkdew kiba lah ban iohi”, ki pynshit ne ki pyrshang ban pynshit ia ka jingiashun, jingia-isih lane jingia-ibeiñ. Hapoh jong ka kyndon aiñ 505 (2), ka jingpynshit ia kum kitei ki jingsngew dei ban leh da kaba pynmih jingthoh lane da kaba pynsaphriang ia kum kitei ki kyntien lane ki khubor kiba long hamsaia lane ki khubor pynkyndit. Ka jingthmu basniew bad jingleh khnang (*mens rea*) kadei ban dei kawei na ki mat kaba donkam hapoh ka kyndon aiñ 153 A bad ruh ka kyndon aiñ 505 (2). Ka jingdon kyllum jong kitei ki mat ha baroh artylli kitei ki kyndon aiñ, la ka long ka jingpynshit ia ka jingsngew ia ka jingiashun, jingia-isih, ne jingia-ibeiñ hapdeng ki kynhun niam, jaitbynriew, kiba iapher ktien, niam, jait, ne kynhun jaitbynriew, ka dei ruh ban don la kumno kumno ka jingiатыngkhuh jong ki ar tylli ki kynhun bynriew. Kiba ngat lang shuh shuh la pynieng nongrim ha ka mukotduma **Bilal Ahmed Kaloo** (ba haneng) ba tang ban shu pynshit ia ka jingsngew jong kawei ka jaitbynriew ne kynhun khlem da kdew pyrshah sha kano kano pat kawei pat ka jaitbynriew ne kynhun kam lah ban khring ia kitei ki artylli ki kyndon aiñ. Ka Iingbishar ka la kdew shuh shuh ia ka jingiapher hapdeng ki artylli kitei ki kam be-aiñ, da kaba ieng skhem ba ka jingpynmih jingthoh da ki kyntien ne ki dur ka long ka kaba donkam eh (*sine qua non*) ban pynhap hapoh ka kyndon aiñ 505. Ka long ruh kaba donkam ban kdew sha ka rai jong kane ka Iingbishar ha ka mukotduma **Ramesh pyrshah ia ka Union of India**⁶ ha kaba la ieng nongrim ba ki kyntien kiba la pyndonkam ha katei ka jingkynmaw ba kren be-aiñ dei ban bishar bniah halor ka

³ Balwant Singh pyrshah *State of Punjab*, (1995) 3 SCC 214.

⁴ Manzar Sayeed Khan pyrshah *State of Maharashtra*, (2007) 5 SCC 1

⁵ (1997) 7 SCC 431

⁶ (1998) 1 SCC 668

nongrim jong u briew uba pynshong ñia, uba khelaiñ ka jingmut jingpyrkhat, uba skhem bad uba shlur, bad ym na ka nongrim jong kito kiba tlot bad kiba khih jingmut, lymne na ka nongrim jong kito kiba khmih jingsniew na kino kino kiba pyrshah man la ka jingiohi. Haba ña pyrshah ka kyrdan jong u riew paidbah uba pynshongñia, lane kumba ki ong ha ka aiñ Phareng, “u briew uba ha tnum jong ka bos ha nongbah Clapham”, dei ban pyntreikam.

12. Kane ka ĩingbishar ha ka mukotkuma *Pravasi Bhalai Sangathan pyrshah Union of India & Ors.*⁷ ka la kdew sha ka rai jong ka ĩingbishar ba ha khliehduh jong ka Ri Canada (Canadian Supreme Court) ha ka mukotduma *Saskatchewan (Human Rights Commission) pyrshah Whatcott.*⁸ Ha katei ka rai, ka ĩingbishar ba ha khliehduh jong ka Ri Canada ka la rai bad kaba la kheiñ kum ka rai kaba batai shai ña ka “jingisih” (*hatred*) kumba la pyndonkam ña ka ha ki kam thawaiñ ban khang ña ki jingkren pyniashun (*hate speech*). Ka jingtynjih kaba nyngkong ka long ña ki ĩingbishar ban pyntreikam ña ka jingkhlanglad da ka jingthmu pyrshah ña ki jingkren pyniashun bad, da kaba leh kumta, ban kylli la u/ka briew kiba biang ka jingmut jingpyrkhat, kiba tip ña ki jingkren ne jingthoh kiba lamkhmat ña ka jingkren ne jingthoh bad ki jingjia, la kin sngew ne em ba kata ka jingkren ka thad ne buh jingshun ña kano kano ka kynhun briew ba la ñada. Ka jingtynjih kaba ar ka long ban buh kyndon ña ka jingbatai ña ka jingmut ña ka ktien aiñ “jingisih” (*hatred*) khamtam ña kino kino ki jingpynsngew kiba palat ña ka jingpynpaw jong ka jingkhih jingmut kiba lah ban batai ha ki kyntien “shun thlong mluh thlong sying” (*detestation*) bad “jingkren pynjahburom ne jingkren poh” (*villification*). Kane kan iarap ban jiar noh bad ban ñada ña ki jingkren kiba sngew jaboh bad kiba pynmong hynrei ki bym pynkhih ña ka jingthew jong ka jingisih, pynduh ña ka jinglong aiñ bad ka jingkyntait kaba buh jingma kaba lah ban long ka daw ka ba wanrah ia ka jingiapher ne pynmysaw. Ka jingtynjih kaba lai ka long ña ki ĩingbishar ban khmih bñiah da kaba shai ña ka jingktah jong kita ki jingthoh kiba ha kane ka kam mukotduma ba mynta, la ki long ne em kum ban pynpaw bad pynap ña kino kino ki briew ne ki kynhun ban pyn-isih ña ki da kiwei pat. Tang ka jingñaleh pyrshah ña ki jingmut ba la pynpaw, kam biang pat ban ong ba ki long kiba be-aiñ bad kiba hap ban ai jingsaja.

13. Ha kane ka mukotduma kaba mynta, da kaba pyntreikam ña ki nongrim kiba la buh da ka ĩingkashari, kumba la kdew ha neng, ka jingkylli kaba mih ña ngi ban pyrkhat mynta ka long la katei ka jingthoh hapoh Facebook kaba myn 04.07.2020 ka long ne em kaba la don jingthmu ban pyniashun ña ki kynhun jaitbynrew ne ka lah ne em ban pyniashrut hapdeng artylli ki jaitbynriew. Ka jingkhmih bñiah ña katei ka jingthoh hapoh Facebook kan pyni ba ka jingsngewsih jong ka nongmudui ka long pyrshah ña ka jingleh bym suidñiew jong u Myntri Rangbah ka Meghalaya, u Rangbah Pulit *Director General of Police* bad ka Dorbar Shnong jong kato ka jaka ha kaba kim shyim la leh ei ei ña kitei ki nongthombor pyrshah ña ki samla bymdei-

⁷ (2014) 11 SCC 477

⁸

riewlum. Ka nongmudui ka la kdew sha ka jingshah thombor jong ki bymdei-riewlum ha ka snem 1979. La kumno kumno, ia katei ka jingthoh ha Facebook lah ban sngewthuh ba ka kdew ia ka jingshah kheĩn pher jaitbynriew pyrshah ia ki briew ki bymdei-riewlum hapoh ka jylla Meghalaya. Hynrei, ka nongmudui ka la pynshai kdar ba ki kam bymman kim don kynhun jaitbynriew bad dei ban pynshitom mardor ia ki briew kiba donkti ban shoh ban dat ia ki samla bymdei-riewlum katba ki dang ialehkai *basketball*. Ka jingpule ia ka jingthoh baroh kawei ha Facebook ka paw ia ka jingdawa ban don ka jingiaryngkat dor ia ki bymdei-riewlum hapoh ka Jylla Meghalaya. Ha ka jingsngewthuh jong ngi, ym shym la don ka jingthmu na ka liang jong ka nongmudui ban pynshit ia ka jing-isih jaitbynriew. Namar ba kam don ka jingpyrshang na ka liang ka nongmudui ban kynshoit ia ki briew jong kano kano ka jaitbynriew ban donkti ha ka jingiashoh iadat, ki kyndon ba iahap bad ka kam be-aiĩ hapoh ka kyndon aiĩ 153A bad ruh 505(1)(c) kim iahap ban pyntreikam. Ia ki jingkyndoh kiba la kdew ha ka ejahar lane ha ka jingujor, wat tang ban shu peit ia ki tang na kaei kaba paw bad pdiang kyllum ia ka na ka nongrim ba hakmat ne tang na sla ruh (prima facie), kim pynlong ia ka kam be-aiĩ ba la kyndoh pyrshah ia ka nongmudui, kumta, ia ka ejahar la dei ban pynduh noh.⁹

14. Ka Ri India ka dei ka ri kaba bun ki jaitbynriew bad ki riti dustur jong ka imlang sahleng bapher. Ka jingkular ban ai laitluid ia kaba la buh ha ka Preamble jong ka Riti Synshar, ka pynpaw ialade ha ki kyndon jingaibor bapher bapher (*provisions*) kiba kdew ia ka hok jong ki nongshong shnong; kiba kynthup ia ka hok ban kren laitluid, ban leit jingleit laitluid bad ban shong shnong laitluid (katkum ki jingpyrkhing kiba iahap kumba la buh) ha kylleng ka jingjrong bad pyngkiang ka Ri India. Don ki por ha kaba pyndonkam ia kum kane ka hok, ba shong aiĩ ka jingiaid lynti ki briew, ka jingpoi sah bad ka jingpoi trei poi ktah ha ka jaka kaba ki sngew iahap, bad ki lah ban don ki jingsngewpher, khamtam lada kum kita ki nongshongshnong ki roi ki par, bad kane ka lam sha ka jingsngew shun bad wat ka jingiashoh iadat. Ha kum kita ki khep, haba ki nongshah lehbeĩn ki pyrta ia la ka jong ka jingbysngewhun bad ki kren pyrshah, khamtam lada ki bor synshar ki leh bym patiw, lane ki leh tud, kum kata ka jingpyrta ia ka jingbysngewhun ka la long shisha ka jingiam na ka bynta ka jingshah iuhroit ka hok jong ki lane ka jingpynslem. Kane ka long kaei kaei kaba I kumba ka lah jia ha kane ka mukotduma.

15. Ka jingshah shoh jong hynriew ngut ki bym dei trai jylla ia kaba la leh da ki riwshimet kiba la deng jingsopkhmat, ym shym la len da ka sorkar jylla (*State*); ka jingmudui ia kata ruh ym shym la len. Ka sorkar jylla (*State*) lei lei ka la pyllait khubor ruh. Ka jingtohkhit kam i poi shano shano. Ka jingujor jong ka Dorbar Shnong, Lawsohtun ba ka jingthoh jong ka nongmudui kan pynshit ia ka jingiashun jaitbynriew bad ba ka lah ban wanrah ia ka jingiashrut hapoh jong ka jylla baroh ka long tang ka jingmutdur. Ka jingkyrpad ba shitrhem jong ka nongmudui ia ka jingiada ia ki bymdei-riewlum ba shong ba sah hapoh jylla Meghalaya bad ia ka

⁹ *State of Haryana & Ors. v. Bhajan Lal & Ors.*, 1992 Supp (1) SCC 335.

jingiyngkat dor ia ki, ym lah da kano kano ka jingmutdur ban kheiñ ba ka dei ka jingkren pyniashun. Ka long ka jingpyrta ban ioh ïa ka hok – ban leh ei ei kat kum ka aiñ, ia kaba uwei pa uwei u nongshong shnong u don ka hok ban khmih lynti bad ban kren. Ka jingbysngew hun ïa ka jingbym leh ei ei ka sorkar ym lah ban ong ba ka dei ka jingpyrshang ban pynshit ïa ka jingia-isih hapdeng ki jaitbynriew bapher bapher. Ia ka hok ban kren laitluid jong ki nongshong shnong jong kane ka Ri ym lah ban pynduh noh da kaba pynngat ïa ki ha ki kam be-aiñ, lait noh lada kita ki jingkren ki don ka jingthmu ban pynkulmar ïa ka shongsuk shongsaiñ u paidbah. Ka jingpynkut jong katei ka jingkhmih bniah ha kaba iadei bad ka jingthoh hapoh Facebook ïa kaba la thoh da ka nongmudui ka long ba ym don ka daw kaba lah ban pynlong pyrshah ïa ka nongmudui na ka bynta ki kam be-aiñ kiba hap hapoh ki kyndon aiñ 153 A bad 505(1)(c) IPC.

16. Na bynta kitei ki daw kiba ha neng, ïa ka Jingkyrpad (*Appeal*) la shah bad ïa ka rai jong ka ĩngkashari High Court la pynduh noh. Ia ka ejahar PS Case No. 72 (7) 2020 tarik 06.07.2020 ïa kaba la pynrung ha ka thanat Police Station Laban la pynduh noh.

Bibhuti Bhubshan Bose

Ia ka Jingkyrpad (*Appeal*) la shah.