

**(2005) 05 GAU CK 0038**  
**In the Gauhati High Court**  
**Case No : Criminal Reference No. 1 of 2004**

State of Meghalaya

APPELLANT

Vs

Richard Lyngdoh

RESPONDENT

**Date of Decision :** 16-05-2005

**Acts Referred:**

Administration of Justice and Police in the Khasi and Jaintia Hills Rules, 1937 — Rule 19  
Assam High Court (Jurisdiction Over District Courts) Order, 1954 — Rule 4  
Assam Re-Organisation (Meghalaya) Act, 1969 — Section 3  
Constitution of India, 1950 — Article 244  
Criminal Procedure Code, 1973 (CrPC) — Section 1(2), 157(2), 173, 173(2), 200  
Garo Hills Autonomous District (Administration of Justice) Rules, 1953 — Rule 23(1), 4  
Penal Code, 1860 (IPC) — Section 395, 427, 448, 506

**Citation :** (2006) 2 GLR 328 : (2006) GLT 166 Supp

**Hon'ble Judges :** Iqbal Ahmed Ansari, J

**Bench :** Single Bench

**Advocate :** A. Sharma, for the Appellant; D. Das, G.S. Massar and D.K. Mishra, for the Respondent

## Judgement

I.A. Ansari, J.—Dr. S Marak, Medical & Health Officer lodged, as in-charge, Primary Health Centre, Sutnya, Jaintia Hills District, a written FIR, on 11.1.2001, at Khlichriat Police Station, against accused Richard Lyngdoh alleging, inter alia, that on 11.1.2001 at about 12.05 a.m., the accused aforementioned, as headman of Sukna village, broke into the Government quarter, which was in occupation and use of the informant, and started looking for the informant with the aim of assaulting him, but as the informant hid himself inside his said quarter, the accused broke open the main door of the said residential quarter, the accused also broke the window-panes of the quarter, came inside the quarter shouting that he would kill the informant and as the accused could not locate the informant, he (accused) broke all the materials inside the sitting room of the said quarter and left. Based on this FIR, Khlichriat Police Station case No. 8 (1) of 2001 (corresponding to GR Case No. 19/2001) u/s 448/427/506 IPC was registered. The investigation carried out by the police resulted into filing of the

charge sheet against the accused aforementioned under Sections 427/506 IPC. The charge sheet was accordingly laid in the Court of learned Additional Deputy Commissioner, Jaintia Hills District, Jowai. After furnishing copies in terms of Section 173 Cr.P.C, the learned Additional Deputy Commissioner, Jaintia Hills District, Jowai, made over the case to the learned Judge, District Council Court, Jaintia Hills Autonomous District, for trial.

2. On noticing that though both the complainant and the accused in the case were tribals and the offences were, ordinarily, triable by the District Council Court, yet since the complainant was a Government servant and had lodged the FIR in his official capacity as doctor/in-charge of the Primary Health Centre, Sutnya, Jaintia Hills District, the case cannot be treated as a case between two tribals, the learned Judge, District Council Court, Jowai, vide order, dated 10.3.2004, made a reference to the High Court, the reference being as follows:

Whether a Government servant, who lodges an ejahar in his official capacity, is a tribal or non-tribal ?

3. As directed by Hon''ble the Chief Justice, the matter was laid before this Court. I have heard Mr. D Das, learned Counsel for the accused above-named, and Mr. A Sharma, learned Advocate General, Meghalaya, appearing on behalf of the State. I have also heard Mr. G.S. Massar, learned senior counsel, and Mr. D.K. Mishra, learned senior counsel, as amicus curiae.

4. Before coming to the submissions advanced before this Court, it is pertinent to note that Meghalaya was, initially, formed as an Autonomous State by virtue of Section 3 of the Assam Re-Organisation (Meghalaya) Act, 1969, which came into force w.e.f 2.4.1970. The Autonomous State of Meghalaya was created within the State of Assam and the said Autonomous State of Meghalaya comprised of the Autonomous Garo Hills District and Autonomous District of Khasi and Jaintia Hills.

5. Thereafter, North Eastern Areas (Re-Organisation) Act, 1971, was enacted, which came into force w.e.f. 21.1.1972, and by virtue of the same, the State of Meghalaya came into existence and the same comprised of the territories contained in the aforesaid Autonomous State of Meghalaya, the Cantonment and Municipality areas of Shillong. It may be noted that prior to the enactment of the North Eastern Areas (Re-Organisation) Act, 1971, the areas contained in the Cantonment and the Municipality of Shillong (also known as Normal Areas) did not form part of the Autonomous State of Meghalaya. The Municipality of Shillong (Normal Areas) includes the Territories of Police Bazar, Jail Road and the General Ward, which is also known as European Ward. It may also be noted that the Syiem (who is customary Head of Khasi Tribal) of Myllem ceded to the Shillong Municipality some of the areas of Syiemship for the purpose of Municipal Administration and these areas are known as Administered Areas of Shillong. In other words, Administered Areas mean areas falling within the town of Shillong, where municipal administration exists, but does not form part of the Normal Areas.

6. The entire State of Meghalaya, save and except the Cantonment Area and the Normal Areas, including Shillong Municipal Areas, forms the Tribal Areas and the same are administered under the Sixth Schedule to the Constitution of India.

7. The Shillong Municipality and the Cantonment Areas are administered under the Shillong Civil Courts Act, 1947, for Civil Cases and, under the Criminal Procedure Code, for Criminal Cases. In the aforesaid two Areas, Laws of Parliament and the State are applicable like that of any other Plain District of Assam, i.e., Civil Justice is vested in the District Judge and the Criminal Justice is vested in the Sessions Judge. By virtue of the Notification issued under the Extra-Provincial Jurisdiction Act, 1947, and also by Notification issued u/s 1(2)(b) of the Criminal Procedure Code, the administered areas of Shillong were brought under the jurisdiction of the Sessions Judge, Shillong. Therefore, the District and Sessions Judge and the Assistant Sessions Judge have power to try criminal cases in Normal and Administered Areas and civil cases in Normal Areas and Cantonment Areas.

8. Administration of Justice in the Tribal areas of the State of Meghalaya is carried on as per the provisions of Paragraphs 4 and 5 of the Sixth Schedule to the Constitution of India and in terms of Khasi Syiemships (Administration of Justice) Order, 1950, the Rules for Administration of Justice and Police in Khasi and Jaintia Hills, 1937, the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953, Rules for Administration of Justice and Police in the Garo Hills, 1937, and the Garo Hills Autonomous District (Administration of Justice) Rules, 1953.

9. Under the United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953, which came into force w.e.f. 7.1.1954, the District Council Courts, Sub-ordinate District Council Courts, Additional Sub-ordinate District Council Courts and the Village Courts were constituted and these Courts have been vested with the powers to try Civil and Criminal cases as provided under the Rules of 1953.

10. While considering the present reference, two predominant facts are required to be borne in mind. The reference has arisen out of the order passed by the learned Judge, District Council Court, Jowai, which falls under the Jaintia Hills Districts, and that the reference invites this Court to lay down the law relating to criminal justice system under an autonomous district council. I shall, therefore, try to keep myself confined to the discussion of the criminal justice system in an autonomous district council, particularly, in the Jaintia Hills of the State of Meghalaya, except where a reference to, or discussion of, the concept of criminal justice system, in general, in the State of Meghalaya, becomes indispensable for effective disposal of the present reference.

11. In view of the fact that the reference arises out of a District Council Court and relates to administration of criminal justice in a tribal area of an autonomous district, which has distinct schemes regarding administration of justice, there is

no controversy before me that the reference, in question, cannot be answered completely in the affirmative or entirely in the negative, for, the answer to the question posed above will depend on a variety of situations, which may arise out of the peculiarity of the system of the administration of justice in the areas falling under autonomous districts.

12. In other words, for the reason that the reference calls this Court to answer the question as to whether a case, which arises out of an information lodged with the police or out of a complaint lodged with the District Council Court or with a Magisterial Court under the establishment of the Deputy Commissioner, by a public servant, who is a tribal, against another tribal as an accused, will be triable by a District Council Court or not, the answer to the reference cannot be completely in the affirmative or entirely in the negative, for, in the context of the peculiar system of administration of justice followed in the State of Meghalaya, the answer to the question posed above will depend on a variety of issues, which arise out of the system of administration of justice followed in the areas, which come under the autonomous districts.

13. Since any legislative or administrative scheme for administration of justice has to conform to, and abide by, the scheme of administration of justice as envisaged by the Constitution of India, it is pertinent to point out, at the very outset, the Constitutional scheme with regard to administration of justice, in the tribal areas, i.e., areas falling under the autonomous districts and autonomous regions. Clause (2) of Article 244 contained in Part X of the Constitution of India makes it clear that the provisions of the Sixth Schedule shall apply to the administration of tribal areas, amongst others, in the State of Meghalaya.

14. It may, now, be noted that Paragraphs 4 and 5 contained in the Sixth Schedule are pertinent for the purpose of determination of the controversy at hand. Let me, therefore, quote hereinbelow the relevant provisions of paragraph 4, which, I notice, run as follows:

Administration of justice in autonomous district and autonomous regions : -

(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village councils or presiding officers of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.

(2) Notwithstanding anything in this Constitution, the Regional Council for an autonomous region or any court constituted in that behalf by the Regional

Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in that behalf by the District Council, shall exercise the powers of a court of appeal in respect of all suits and cases triable by a village council or court constituted under sub-paragraph (1) of this paragraph within such region or area, as the case may be, other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other court except the High Court and the Supreme Court shall have jurisdiction over such suits or cases.

(3) The High Court shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the Governor may from time to time by order specify.

(4)\* \* \*

(5) \* \* \*

15. The provisions contained in paragraph 5 of the Sixth Schedule, which are relevant for the purpose of this reference, run as follows:

5. Conferment of powers under the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, on the Regional and District Councils and on certain courts and officers for the trial of certain suits, cases and offence.

(1) The Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in that behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law or the time being applicable to such district or region, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or as the case may be, the Code of Criminal Procedure, 1898, as he deems appropriate, and thereupon the said Council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred.

(2) The Governor may withdraw or modify any of the powers conferred on a District Council, Regional Council court or officer under sub-paragraph (1) of this paragraph.

(3) Save as expressly provided in this paragraph, Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898 shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region to which the provisions of this paragraph apply.

(4) On and from the date appointed by the President under sub-paragraph (5) of paragraph 4 in relation to any autonomous district or autonomous region, nothing contained in this paragraph shall, in its application to that district or region, be deemed to authorise the Governor to confer on the District Council or

Regional Council or on courts constituted by the District Council any of the powers referred to in sub-paragraph (1) of this paragraph.

16. A careful reading of paragraph 4 as well as Paragraph 5 of the Sixth Schedule clearly show that these two paragraphs apply to the trial of suits and cases, the suits obviously being civil suits and the cases being criminal cases.

17. Coupled with the above, what is also too glaringly noticeable to the eyes is that the regional or district council courts hold trial of suits or cases between "the parties" all of whom belong to Scheduled Tribes within such areas" meaning thereby that in order to fall within the jurisdiction of the regional or district council courts, a civil suit or a criminal case must be such, which is between the parties, all of whom belong to the Scheduled Tribes of such area or areas, which fall within the territorial limits of the jurisdiction of the autonomous districts or autonomous region, where the Regional Council Court or the District Council Court is situated. In other words, if two persons belonging to Scheduled Tribes come from two different areas or belong to two different autonomous districts or autonomous regions, such suits or criminal cases cannot be tried by the District Council Courts or Regional Council Courts. To put it differently, the Regional or District Council Courts will deal with only those cases in which all the parties belong to the Scheduled Tribes within the areas, which falls under a given autonomous district or autonomous region. If two Scheduled Tribe persons belong to two different autonomous districts or regions, none of the District Council Courts, located in such autonomous districts or regions, would be competent to try such suits or cases. This broad principle, when extended, will logically mean that if in a criminal case, an accused belongs to the Scheduled Tribe of a particular area, but the complainant is either a non-tribal or a tribal from an autonomous district, different from the one to which the accused belongs to, the District Council Courts will have no jurisdiction to try such a case. Similarly, when the dispute is between the Scheduled Tribe belonging to an autonomous district or region, on the one hand, and the State, on the other, such a dispute, civil or criminal, will not be triable by a Regional or a District Council Court, for, the State, as would be seen shortly, cannot be regarded as a tribal.

18. Moreover, a careful reading of paragraphs 4 and 5 of the Sixth Schedule reveals that there are two distinct categories of cases, which can be tried by the Regional or District Council Courts. Sub-paragraph (2) of paragraph 4 of the Sixth Schedule to the Constitution of India shows that the Regional or District Council Courts can try only those suits or cases, which do not fall within sub-paragraph (1) of paragraph 5 of the Sixth Schedule. What sub-paragraph (1) of paragraph 5 of the Sixth Schedule lays down is that the Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district or region, being a law specified in that behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other

law for the time being applicable to such district or region, confer on the District Council or the Regional Council having authority over such, district or region or on courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or as the case may be, the Code of Criminal Procedure, 1898, as he deems appropriate, and, thereupon, the said Council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred. This shows that unless conferred with power by the Governor for trial of offences, which are punishable with death, transportation for life or imprisonment for a term of not less than five years, the District or Regional Council Courts shall have no authority or jurisdiction to deal with or hold trials.

19. What logically follows from a combined reading of sub-paragraph (1) of paragraph 5 and sub-paragraph (2) of paragraph 4 of the Sixth Schedule to the Constitution of India is that when an offence, punishable either under the Indian Penal Code or under any other law, is one, which is punishable with imprisonment for a term of less than five years, the Regional or District Council Court shall be the only competent court to try such offences if the accused as well as the complainant belong to the Scheduled Tribe of an area falling under one and the same autonomous district or autonomous region, where the District or Regional Council Court is situated. However, even if the complainant as well as the accused belong to Scheduled Tribe of a given District Council, the District Council Court cannot try such an accused for an offence if the offence is such, which is punishable with death, imprisonment for life or imprisonment for a term of not less than five years unless the Governor, in exercise of his powers under sub-paragraph (1) of paragraph 5 of the Sixth Schedule, empowers the Regional or District Council Court to try such an offence. Moreover, even if a Governor has empowered a Judge of a District Council Court or a District Council Court to try offences, which are punishable with death, transportation for life or imprisonment for a term of not less than five years, such a Judge or District Council Court will still not be competent to try criminal cases, which are not confined to persons belonging to the Scheduled Tribes falling under one and the same autonomous district council, where the District Council Court is situated or exercises jurisdiction.

20. Bearing in mind the above prominent principles, which the Sixth Schedule contain, let us, now, turn to a case, which commences with the lodging of a complaint or information with the police.

21. It has been submitted by Mr. D. Das, learned Counsel appearing on behalf of the accused, that when a person, as an informant, lodges a complaint with the police, it is the State, which assumes the responsibility of prosecution on behalf of the informant, and such a case does not remain confined between the informant, on the one hand, and the accused named by him on the other; rather, the same becomes a case between the State, on the one hand, and the accused, on the other. In such a case, contends Mr. Das, the accused, even if a tribal from

an autonomous district, cannot be tried by the District Council Court, for, while the accused, in such a case, will be a person belonging to a Scheduled Tribe falling under the tribal area of an autonomous district council, the complainant will be the State and since the State cannot be treated as a tribal, it logically follows that the case will be a case between a non-tribal, on the one hand, as complainant and a tribal, on the other, as the accused. For the proposition that the State cannot be treated as a tribal or cannot be treated as a person having the characteristics of a tribal, Mr. Das refers to, and relies upon, the case of Union Territory of Mizoram and Anr. v. Shri Lal Than Para and Anr., reported in (1983) 2 GLR 269.

22. On the contrary, Mr. A Sharma, learned Advocate General, relying upon an unreported decision, dated 11.7.1967, rendered in Criminal Revision No. 75/1967 (U. Yur Rynjah and Anr. v. State and Ors.), submits that even if a case is investigated by police, yet when the informant is a tribal and he alleges commission of offence by another tribal, such a case will still remain essentially a case between two tribals and if the two tribals belong to the same autonomous district, it is the District Council Court, which shall have the jurisdiction to try such an offence, provided, of course, that the District Council Court is, otherwise, competent to try such an offence, that is to say, when the offence is punishable by death or transportation for life or imprisonment for a term of not less than five years, the Judge, District Council Court, is empowered by the Governor, in exercise of powers under paragraph 5(1) of the Sixth Schedule, to try such offences. Mr. Sharma has also submitted that the decision given in U. Yur Rynjah (supra) has been accepted and followed in yet another decision, namely, State of Meghalaya v. U. Bakingster Syiemiong, reported in (1984) 2 GLR 159.

23. While, broadly, lending support to the submissions made by Mr. Sharma, learned Advocate General, Mr. G.S. Massar, learned senior counsel, submits that the District Council Courts have not, in general, been conferred with the power to try offences punishable with death, transportation for life or imprisonment for not less than five years, but, occasionally, the individual Judges have been, by name, empowered by the Governor to try such offences. This position is not disputed by the learned Counsel for the parties.

24. What, however, Mr. Massar contends, same as Mr. Sharma, is that if the Judge of the District Council Court concerned is empowered in terms of paragraph 5(1) of the Sixth Schedule, such a Judge of the District Council Court shall be competent to try the offences even in those cases, which are investigated by the police, provided that the informant as well as the accused belong to the Scheduled Tribe of the areas falling under an autonomous district council.

25. In other words, according to Mr. Massar, when the informant as well as the accused belong to the Scheduled Tribe of an area falling under one and the same autonomous district council, such a case will be triable by the District Council Court even if the case has been investigated by the police.

26. In terms of the decision given in *U. Yur Rynjah* (supra), the State Government, further points out Mr. Massar, issued, as early as on 30.1.1981, an order, directing the Deputy Commissioners and Assistants to the Deputy Commissioners to transfer to the District Council Courts such cases, which are triable by the District Council Courts.

27. Differing, somewhat, from the submissions made by Mr. A. Sharma, learned Advocate General, and Mr. G.S. Massar, learned senior counsel, and agreeing, substantially, with what has been contended by Mr. D. Das, learned Counsel for the petitioner, Mr. D.K. Mishra, learned senior counsel, has pointed out that Rule 19(b) of the Administration of Justice and Police in Khasi and Jaintia Hills 1937 (hereinafter referred to as "the 1937, Rules") bars the customary village authorities to decide cases, when the offence triable is against the State, though no such bar, candidly submits Mr. Mishra, is prescribed under the Administration of Justice in United Khasi-Jaintia Hills Autonomous District (Administration of Justice) Rules, 1953 (hereinafter referred to as "the 1953 Rules"), which has been framed under paragraph 4(4) of the Sixth Schedule to the Constitution of India.

28. A bare reading of the 1953 Rules makes it clear, points out Mr. Mishra, that there is a three-tier system for administration of justice in accordance with the customary laws as is mentioned in Rule 4 under Chapter 2 of the 1953 Rules and there is no provision in the 1953 Rules, which empowers these customary courts to try a criminal case, where State is a party.

29. It is well settled, submits Mr. Mishra, that when, on the basis of an F.I.R., a case is registered by the police, the status of the informant is reduced to a mere witness, though on account of the fact that the informant has vital interest in the case registered by the police, the Code of Criminal Procedure gives him certain privileges contained therein, such as, Sections 157(2), 173(2)(i)(g)(ii), 301(2), etc., yet the informant, as such, emphasises Mr. Mishra, does not remain a complainant in the criminal proceeding. Considered, thus, it is clear, contends Mr. Mishra, that when a case is investigated by police, though lodged by a tribal, the case becomes a case between the State and the accused and, hence, in such a case, even if the accused is a tribal belonging to an autonomous district council, the case will not be triable by a District Council Court, for, the District Council Courts, as customary courts, cannot deal with such criminal cases.

30. In the case at hand, points out Mr. Mishra, it is government property, which has been allegedly destroyed, and though Section 427 IPC is compoundable, the informant cannot get the offence compounded since as per Section 320 Cr.P.C, further points out Mr. Mishra, offences can be compounded only by the person(s), whose property has been damaged or who has been injured, agree(s). Therefore, it is clear, contends Mr. Mishra, that unless the Governor specifically spells out under paragraph 5 of the Sixth Schedule to the Constitution of India that a G.R. case, where the State is a party, will be triable by the District Council Courts, a G.R. case, according to Mr. Mishra, cannot be tried by the customary

courts including the District Council Courts.

31. What surfaces from the submissions made on behalf of the parties concerned and also by the learned amicus curiae is that there are two views of thoughts with regard to the powers of the District Council Courts to try offences. One view is that if any criminal case is lodged by a tribal against a tribal from the same tribal area of a given District Council and if the offence is punishable by imprisonment of a term less than five years, such a case will be triable by the District Council Courts irrespective of the fact whether a tribal lodges the complaint in his capacity as a person belonging to Scheduled Tribe of a tribal area or whether he lodges the complaint in his capacity as a public servant and, further," irrespective of the fact as to whether the complaint is lodged with the police or with the Magistrate, such a case will be triable by the District Council Courts. This view seeks to derive support from the case of *U. Yur Rynjah* (supra), which is an unreported decision, followed in *U. Bankingster Syiemiong* (supra). The other view is that when a person, though tribal, lodges an information or complaint with the police, it is the State, who assumes the responsibility of prosecutors of the accused, the status of the informant gets, then, reduced to a mere witness, though a material one, and, hence, such a case cannot not be said to have remained confined between two tribals and in such a case, it is not the District Council Court, but the Deputy Commissioner or Assistant to the Deputy Commissioner or Magistrate, who shall be competent to try such cases. The contenders of this view seek to derive strength from the case of *Shri C. Lal Than Para* (supra).

32. Upon considering the rival submissions made, as above, on behalf of the parties, perusal of the materials on record, the relevant provisions of the Constitution and the various enactments, notifications and orders contained in that behalf, I am of the view that answer to the reference made to this Court lies between the two extremes, which the protagonists of the two views have canvassed before this Court. This apart, there is, to my mind, no inherent contradiction between the law laid down in *Shri C. Lal Than Para* (supra), on the one hand, and *U. Yur Rynjah* (supra), which has been substantially followed in *U. Bakingster Syiemiong* (supra), on the other.

33. For proper appreciation of the controversy involved in the reference, it is, in my view, appropriate to clearly reflect as to what the three decisions, which have become the corner-stones of the conflicting submissions made before this Court, convey.

34. In *U. Yur Rynjah* (supra), dealing with the controversy raised in the said revision, Nayudy, CJ, observed and held as follows : -

This is a revision filed under Rule 4 of the Assam High Court (Jurisdiction over District Council Court) Order, 1954. The point taken is that as in this case, there is a charge-sheet submitted by the police u/s 379, Indian Penal Code, this cannot be regarded as a prosecution between two scheduled tribes people, as on one

side, the party is the State, who cannot be regarded as belonging to the scheduled tribe. There is a confusion of thought in this argument. The prosecution, whenever it is conducted by the State, is conducted firstly on behalf of the aggrieved party who is the complainant or the person lodging the ejahar with the police, and on the other hand in the interest of law and order and maintenance of discipline. Hence, in every criminal case arising out of the charge sheet submitted by the police, if the person who lodges the information is a man belonging to the Scheduled Tribe, the dispute in fact is a dispute between the two Scheduled Tribes people. The mere fact that the State figures as a party on behalf of the aggrieved party, makes no difference. If this were to be accepted as correct, no police prosecuted case can be tried by a Subordinate District Council Court or a District Council Court. If this were intended by the Constitution makers, they would have said so. On the other hand, a reading of paragraph 5(1) of the Sixth Schedule to the Constitution shows that prosecution under the Indian Penal Code of offences punishable with a sentence of not less than five years are punishable by the District Council Courts, when a notification by the Governor is issued conferring those powers, such prosecutions are generally always by the police.

35. From a reading of the above observations, it becomes apparent that what has laid down in *U. Yur Rynjah* (supra) is, in substance, what Mr. A. Sharma, learned Advocate General, and Mr. G.D. Massar, learned senior counsel, have presented before this Court inasmuch as what the learned Chief Justice has laid down in *U. Yur Rynjah* (supra) is that even when a case lodged by a tribal as an informant is investigated by police and the State figures as a party and though the State may not be regarded as a Scheduled Tribe person, the case, so investigated by the police, still essentially remains and, in reality, continues to be a case between two tribals and such a case would still be triable by the District Council Court, for, it is not material that the State figures as a party on behalf of the aggrieved party, i.e., the informant. Clarifying the reasons for the conclusions, so reached, the learned Chief Justice observes that in a case, which is investigated by the police, though the State figures as an aggrieved party, yet if the case really concerns two tribals, the District Council Courts shall have jurisdiction to try such offence, for, if such a view is not adhered to, no police prosecuted case can be tried by a District Council Court and had this been the intention of the Constitution-makers, they would have reflected so in the Sixth Schedule of the Constitution, whereas the Sixth Schedule makes it clear, according to the learned Chief Justice, that in respect of offences punishable with a sentence of less than five years, it is the District Council Court, which shall have exclusive jurisdiction to hold trials.

36. Relying upon the decision in *U. Yur Rynjah* (supra), the State Government has, I find, issued a circular vide its letter, dated 30.1.1981, directing the Deputy Commissioner and Assistants to the Deputy Commissioner, as correctly pointed out by Mr. Massar, to transfer such cases, which are punishable by imprisonment for less than five years, to the District Council Courts. This circular and also the

decision in U. Yur Rynjah (supra) have been taken note of in U. Bakingstar Syiemiong (supra). In U. Bakingstar Syiemiong (supra), Saikia, J (as his Lordship then was) noted and observed as follows : -

...The relevant facts are that on 10.5.1983 Shri Johori, Shri Dringly and Shri D Gin of Village Mawpyllum lodged a written ejahar at Gomaghat Out Post under Nongstoin Police Station alleging, inter alia, that on that day at about 5.30 P.M. the accused-opposite parties U. Bakingstar and Ors. of village Phlangdilion snatched away a sum of Rs. 276.45 paise being the tolls collected at Mawpyllum Bazar under Langrin Syiemship which amount belonged to the complainants. Thereupon police registered Nongstoin P.S. Case No. 5(5) of 1983 u/s 395 I.P.C. and in course of investigation the accused-opposite parties were arrested and the allegedly looted amount was recovered from the accused-opposite party No. 1, U. Bakingstar. It appears that bail was granted to the accused-opposite parties finally on 31.5.1983 by the Addl. Deputy Commissioner, Nongstoin imposing certain conditions. The accused-opposite parties filed an application before the Addl. Deputy Commissioner for removal of those conditions and the said application was taken up for hearing on 16.6.1983 in presence of the learned Counsel for the opposite parties and the P. J. The learned Counsel for the accused-opposite parties, submitted that the provision of para 4 of the Sixth Schedule of the Constitution laid down the procedure of administration of justice in autonomous district and autonomous region and referred to a decision of this Hon'ble Court in Criminal Revision No. 76 of 1967 decided on 11th July, 1967, which was circulated by the Government vide letter No. L. J.69/73/58 dated 30th January, 1981. In Criminal Revision No. 76/67 (U. Yur Rynjah and Anr. v. State and Ors.)

...In the aforesaid circular it was directed that under the Meghalaya Autonomous District Administration of Justice (Miscellaneous Provision) Act (Assam Act XXII of 1957 as adopted by Meghalaya), the Deputy Commissioner and an Assistant to the Deputy Commissioner have no power to try any case which is exclusively triable by any Court constituted by the District Council under paragraph 4 of the Sixth Schedule to the Constitution, and that any such case which at any stage after the Deputy Commissioner or Assistant to him has taken cognizance of, transpires to be so triable shall have to be transferred to the competent court of the District Council immediately. Following the above direction the learned Additional Deputy Commissioner observed that in the circumstances the case was triable only by the District Council Court and that either the Deputy Commissioner or Assistant to him had no jurisdiction excepting taking cognizance of the offence ; and that as soon as the cognizance of the offence is taken, the Deputy Commissioner or

Assistant to him is to transfer the case to the competent court, i.e., the Court constituted by the Governor under paragraph 5 of Sixth Schedule of the Constitution of India.

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...Thus, after the learned Addl. Deputy Commissioner rightly came to the conclusion that he had no jurisdiction to proceed with the case, which was triable by a competent Court of the District Council he should have refrained from passing any order on the case itself. Instead of doing that he proceeded to observe that in view of the appointment and confirmation made by the District Council appointing and confirming accused-opposite party No. 1, U. Bakingstar Syiemiong as the acting Chief, the ejahar lodged by Sri Johori, Shri Dringly and Sri D. Giri could not stand and he, therefore, discharged the accused persons and disposed of the case itself. He further observed that the Government, if so advised, might go to the higher court on appeal.

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On a consideration of the facts and circumstances of the case including the fact that no charge-sheet was submitted, I am of the view that having found correctly that learned additional Deputy Commissioner had no jurisdiction to try the case it was not open to him while considering the application for removing the conditions of bail to have held that the F.I.R. did not stand or to have discharged the accused opposite parties. The impugned order to that extent must be, and is accordingly, set aside and quashed.

37. From the case of U. Bakingster Syiemiong (supra), it is clear that despite the fact that the learned Additional Deputy Commissioner rightly came to the conclusion that he had no jurisdiction to proceed with the case, the case being exclusively triable by District Council Court, yet he proceeded ahead and discharged the accused. This was interfered with by the High Court on the ground that having rightly come to the conclusion that he had no jurisdiction to try the case, it was not open to the learned Additional Deputy Commissioner to discharge the accused and he ought to have allowed the investigation to proceed without interfering with the case, for, interference, if any, could have been by the District Council Courts.

38. In Shri C Lal Than Para (supra), the question was whether, under the relevant rules, the District Council Court was competent to try suits in respect of property, which belongs to the Government of Mizoram. Since the District Council Courts, as is the case at hand, can try cases in which all the parties belong to Scheduled Tribe of the area, which falls under the autonomous district council, it was contended that such Courts are not competent to try a case in which one of the litigants is a State, for, the property, in question, belongs to the State and the State could not have been treated as a tribal. Agreeing with the submissions, so made, that the State cannot be regarded as a tribal and that a suit in which the property of the State is involved cannot be tried by the District Council Courts, the Division Bench, speaking through Lahiri, J (as his Lordship then was) observed and held as follows : -

... The subordinate District Council Court had no jurisdiction to try any action in respect of the property belonging to the Government of Mizoram, in view of the

bar imposed by Rule 23(1)(b) of the Rules.

... According to the commands of the Rules the District Council Courts can try suits when all the parties belong to Scheduled Tribe. However, the Courts are incompetent to try any action or case in which one of the litigants does not belong to a Scheduled Tribe. The cases in which a party does not belong to a Scheduled Tribe must be tried under the Rules for the Administration of Justice, 1937. There cannot be any dispute in this regard.

Now we are to consider whether the Union Territory of Mizoram is a person belonging to a Scheduled Tribe. If all the litigants belong to a Schedule Tribe the District Council Courts can undoubtedly try the action and no problem arise. However, when one of the litigants is a person not belonging to the Scheduled Tribe a suit cannot be entertained by the District Council Courts. It is very much significant that the term "person" is enjoined by certain qualifying words "belonging to a Scheduled Tribe". So, "the person" must have the requisite qualities or characteristics. "The person" must have the capability or faculty to inherit or acquire the characteristics of a Tribal. The Rules have been made for the simple minded Mizos and they should take simple construction. There cannot be any debate that the prime case of a person is a human being, and personality would seem to entail the possession of those characteristics belonging to mankind, i.e., the power of thought, speech and choice. Only "a natural person" can belong to or accepted as a Tribal by a particular tribe. No Tribe or clan can recognize "a being" other than "human being" as belonging to the tribe or clan. Generally speaking only "a human being" can be a member of a Scheduled Tribe. It is difficult to accept that any "non-human being" can belong to a Schedule Tribe. Only a human being can either inherit or acquire the qualities and characteristics of a tribe. A human being is a natural person and, only a natural persons can inherit or acquire the characteristics of a tribe. Under these circumstances we hold that a legal or juristic person cannot be a person "belonging to a Scheduled Tribe, and, accordingly the Subordinate District Council Courts cannot entertain any suit or action against any juristic or legal person like the Union Territory of Mizoram ....

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... As such the term, "person" may include a State. It may sue or be sued but is it possible to fit in a legal or juristic person in Rule 23(1)(b) of the Rules, as a person belonging to a Scheduled Tribe? No State or Union Territory can claim to be tribal or non-tribal. Similarly, the Union Territory can not claim to be tribal or non-tribal. Similarly, the Union Territory of Mizoram and/or the Administrator cannot claim as persons belonging to a Scheduled Tribe. There is nothing in the Constitution and the law that only a Tribal can get elected in the Union Territory of Mizoram and form Govt. and/or the State does not comprise exclusively of the members of the Scheduled Tribe person. Even where the constituents of the State and/or the Govt. are composed of only Scheduled Tribes people, the Constituents shed their Scheduled Tribes trappings while taking the composite

character. No State or Govt. can claim itself to be "belonging to a Scheduled Tribe.

As a result of the foregoing discussions, we reach the conclusion that the State is not a natural person, the Rule 23(1)(b) of the Rules includes only natural person belonging to a Scheduled Tribe, that the State is a legal or juristic person which can sue or be sued but they cannot be termed as "person belonging to a Scheduled Tribe" and that the District Council Courts can try cases between natural persons all of whom belong to the Scheduled tribes and can not try the cases wherein one of the parties does not belong to a Scheduled Tribe.... We hold that suit is exclusively triable by the Deputy Commissioner and/or the Additional Deputy Commissioner, Aizawl under the Rules for the Administration of Justice, 1937....

39. From the case of Shri C Lal Than Para (supra), it is abundantly clear that if all the litigants do not belong to a Scheduled Tribe, the District Council Courts can have no jurisdiction to try such a case, civil or criminal and that since the State cannot be regarded as a person belonging to a Scheduled Tribe, a case in which the State is a party, it cannot be tried by a District Council Court.

40. Before proceeding further, it is also imperative to note that the decisions in U. Yur Rynjah (supra) as well as U. Bakingster Syiemiong (supra) are both rendered by Single Benches ; whereas the decision in Shri C Lal Than Para (supra) is a decision of the Division Bench. If there is any inconsistency and/or contradiction between U. Yur Rynjah (supra) and U. Bakingster Syiemiong (supra), on the one hand, and Shri C. Lal Than Para (supra), on the other, the views in Shri C Lal Than Para (supra) will obviously prevail, provided, of course, if the inconsistency and/or contradiction is real. It is also imperative to note that in the face of the Division Bench decision in Shri C Lal Than Para (supra), there can be no escape from the conclusion that when an essential party to a suit or a criminal trial is the State and since the State cannot be described as a tribal, the District Council Courts would have no jurisdiction to try such cases meaning thereby that if it is a tribal, who has lodged a complaint with the police as regards mischief to a government property, the aggrieved party, in reality and substance, would be the State and in such a case, since the offence is committed against the State, one of the parties to such a case will be the State and such a case, on account of the fact that the State cannot be regarded as a tribal, is not triable by a District Council Court; but if such a case had been lodged for commission of mischief to a property of a tribal, such a case, even if investigated by police, would still be triable by a District Council Court if the complainant and/or the informant as well as the accused belong to Scheduled Tribe of the areas falling under one and the same autonomous district.

41. It is largely true, as contended by Mr. D. Das and also Mr. D.K. Mishra, that when a person lodges a complaint with the police, his status becomes merely that of an informant and though he becomes an important witness, it is the State, which assumes the responsibility to conduct the prosecution, and in this

view of the matter, the case does not remain confined between two individuals, but becomes a case between the State, on the one hand, and the accused, as an individual, on the other. While considering the decisions in *U. Yur Rynjah* (supra) and *U. Bakingster Syiemiong* (supra), it is of immense importance to note that none of these two decisions considered the fact as to what would happen if the person, who lodges the information with regard to commission of offences with the police, though a tribal, is a public servant or if such a public servant, though tribal, lodges information with police in discharge of his official duty and for an offence, which has been committed against the State. For instance, a tribal, though public servant, may lodge information with the police in his private capacity as complainant with regard to commission of an offence by another tribal of the same tribal area. Such an information or complaint remains essentially a case lodged by one tribal against another tribal. Such a case, according to *U. Yur Rynjah* (supra) and *U. Bakingster Syiemiong* (supra), being essentially a case between two tribals of the same tribal area, falling under the same autonomous district council, would be triable by the District Council Court and such a case cannot be taken away from the District Council Courts merely on the ground that the complaint/information has been lodged with the police and/or on the ground that the informant or the complainant, though tribal, is a public servant,. The decisions in *U. Yur Rynjah* (supra) and *U. Bakingster Syiemiong* (supra) do not, however, take into account a case in which a public servant, though tribal, lodges information with the police with regard to commission of an offence against a co-tribal of the same tribal area in his capacity as a public servant and in discharge of his official duties. In such a case, notwithstanding the fact that the informant is a tribal, the case will really be between a tribal as the accused, on the one hand, and the State as an aggrieved party, on the other, whose interest even a tribal, as a public servant, is bound to protect.

42. That there is a distinction between a complaint lodged by a public servant in his individual capacity with regard to his personal grievances and a public servant, who lodges complaint of commission of an offence in discharge of his official duties, can be noticed even in a complaint case, for, a careful reading of Section 200 Cr.P.C. shows that examination of the complainant on oath and the witnesses present, if any, is imperative if a Magistrate takes cognizance of an offence on the basis of a complaint. Such examination is, however, not required if a public servant, acting or purporting to act in the discharge of his official duty, makes a complaint or a Court makes a complaint. The reason is very simple. If the offences, allegedly committed in such cases, are compoundable u/s 320 Cr.P.C, the compromise has to be made between the accused, on the one hand, and the person aggrieved, i.e., the State, on the other.

43. What logically follows from the above discussion is that in a case in which "mischief to a property is alleged to have been caused, such a case is compoundable by the person to whom the loss or damage is caused meaning thereby that if the "mischief is alleged to have been caused to a government property, it is the government, which shall be treated to have sustained the loss

or damage, and it is, in such a case, the State, which has to agree to the compounding of such an offence. Hence, even if a complaint is lodged by a tribal person, yet if he lodges the complaint in his capacity as a public servant in discharge of his official duties, his complaint will not be a complaint of a tribal, but will be a complaint lodged by a tribal person on behalf of the State. Since the State, in the light of the decision of Shri C Lal Than Para (supra), is neither a tribal nor a non-tribal, such a case would not be triable by a District Council Court, for, all the parties in such a case cannot be treated as persons belonging to the Scheduled Tribe. It further logically follows that if a complaint is lodged by a Tribal against another Tribal of the same Tribal area, but not in discharge of his official duty, such a complaint, even if lodged with the police, would still remain essentially a case between a complainant, who is a tribal, and the accused, who too is a tribal. Such a complaint, though lodged by a public servant, will be triable by a District Council Court.

44. What emerges from the above discussion is that the decisions in U. Yur Rynjah (supra) and U. Bakingster Syiemiong (supra) lay down the law, in general, as regards the trial of a case, which takes place as a result of lodging of a complaint or information with the police by a tribal person in his individual or private capacity as a tribal against another tribal of a tribal area. These decisions do not take into account the exceptions thereto. That there can be such exceptions to the general principle of law laid down in U. Yur Rynjah (supra) and followed in U. Bakingster Syiemiong (supra) is clearly discernible if the observations made in Shri C Lal Than Para (supra) and the philosophy behind the decision in Shri C Lal Than Para (supra) is kept in mind.

45. What crystallizes from the above discussions held, as a whole, is that a District Council Court can try, in general, only such cases, wherein the accusation is made against a tribal of a tribal area of an Autonomous District Council by another tribal of the same Autonomous District Council or by a person on behalf of a tribal of such an Autonomous District Council. Even if such a case arises as a result of information lodged with the police or with the Magistrate, yet when it comes to the notice of the Magistrate, at the time of issuing process against the accused or at any time thereafter, that the case is really a case between two tribals, who belong to the same Autonomous District Council, the Magistrate, shall transfer such a case to the District Council Court for trial provided that the offence is punishable by imprisonment for a term of less than five years ; but if the offence is punishable by sentence of death, transportation of life or imprisonment for a term of not less than five years, such a case cannot be transferred to, or tried by, the District Council Courts unless the Judge of the District Council Court is empowered, in this regard, by the Governor in exercise of powers under sub-para (1) of paragraph 5 of the Sixth Schedule when an information is lodged with the police by a tribal in his capacity as a public servant in discharge of his official duties and the charge sheet is laid, in such a case, on completion of the investigation by the police, the case will be triable by the establishment of the Deputy Commissioner and not by the District Council

Courts, for, the case will not be a case between two tribals, but between the State, on the one hand, which is not a tribal and an accused, a tribal, on the other, who is a tribal.

46. Coupled with the above, it is of paramount importance to note that a complaint lodged with the Magistrate or an information lodged with the police by a person may not necessarily be for an offence committed against such a person but such a complaint may be made for or on behalf of someone else. If the complainant or informant is a tribal, but the complaint is made on behalf of a non-tribal, such a complaint or a charge sheet, which results from such an information lodged with the police, will not be triable by a District Council Court. For instance, "X", a tribal, may lodge a complaint with the police against "Y", another tribal, for grievous hurt caused to "Z," a non-tribal. In such a case, since the person aggrieved will really be the injured, who is a non-tribal, such a case will not be triable by a District Council Court merely because of the reason that the complaint was lodged with the police by a tribal against a tribal. It is the complaint or information, in substance, which shall give jurisdiction to the District Council Court to try an offence. If a case, which arises either out of an information lodged with the police or out of a complaint instituted in a Magisterial Court, is essentially a case or a dispute between two tribals belonging to the same autonomous district, such offence will only be triable by the District Council Courts only.

47. Bearing in mind what have been pointed out above, when I revert to the case at hand, what notice is that in the case at hand, the informant, Dr. S. Marak, though a tribal, lodged the FIR with the police for the alleged act of criminal trespass committed by the accused into the residential quarter belonging to the Government, the offence of mischief committed against Government properties and the criminal intimidation of the informant. Thus, the offences allegedly committed by the accused included, at least, one offence, namely, the offence of mischief, which was committed against the State's properties and the State became the real aggrieved person, though the informant was a tribal. Such a case cannot be tried by a District Council Court. In the case at hand, therefore, the District Council Court, at Jowai, does not have the jurisdiction to try the case.

48. The reference shall stand answered accordingly.

49. The learned District Council Court, Jowai, is hereby directed to transfer the case, in question, to the Court of the Deputy Commissioner, Jowai.

50. With the above observations and directions contained hereinabove, the present reference shall stand disposed of.

51. Send back the records.