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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 04th September, 2023*

+ **CRL.REV.P. 384/2017 & CRL.M.A. 8663/2017**

STATE (GNCT OF DELHI) Petitioner
Through: Mr. Utkarsh, APP for the State
with SI Koyal, PS Mangolpuri.
versus

ROHIT KUMAR Respondent
Through: Ms. Sunita Arora and
Mr. Krishan Kumar, Advocates.

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

1. The present Revision Petition is filed under section 401 Cr.P.C. to impugn the order dated 29.07.2016 passed by the Court of Sh. Vinod Yadav, ASJ-01, North West District, Rohini Court, Delhi arising out of FIR bearing no. 1799/2015 titled as **State V Rohit Kumar**.

2. The charge sheet as per the mandate of section 173 Cr.P.C was filed after conclusion of investigation arising out of FIR bearing no. 1799/2015 registered under sections 363/366/366A/376 IPC & under section 4/6 POCSO Act, 2012 at PS Mangol Puri, Delhi on the basis of complaint made by "K". The complainant in the complaint dated 10.09.2015 stated that her daughter namely "R" stated to be aged about 16 years was found to be missing on 09.09.2015 at about 11:00am and appeared to have left the house without informing any other person. The complainant suspected the respondent as the person



who has taken away “R”. Thereafter, FIR bearing no. 1799/2015 under section 363 IPC was got registered.

3. During investigation it was revealed that “R” got married with the respondent on 12.09.2015 and had also refused to undergo medical examination. The statement of “R” was also recorded under section 164 Cr.P.C. wherein she stated that she had left with the respondent out of her own free will and after getting married with the respondent, she established relation with the respondent. “R” also stated her year of the birth as 1994 and was aged about 21 years.

4. The Court of Sh. Vinod Yadav, ASJ-01, North West District, Rohini Courts, Delhi vide impugned order dated 29.07.2016 has discharged the respondent for the offences punishable under sections 363/366/366A/376 IPC & under section 6 POCSO Act. It was observed as under:

The accused stood charge sheeted in this matter for commission of offences punishable U/S 363/366/366A/376 IPC r/w Section 4/6 of POCSO Act. The FIR in the matter was got recorded on the statement of the mother of the prosecutrix with regard to the prosecutrix having left the house without informing anybody on 10.09.2015 at about 11 a.m. and she having not returned back till late in the night. Thereafter the prosecutrix herself returned back home on 23.09.2015 at about 9 p.m. She was taken to PS by her mother, as a missing persons report was lying registered there in this regard. She was taken to hospital for her medical examination wherein she claimed herself to be aged about 21 years and having gone along with the accused of her own free will. She categorically refused to have herself examined internally. In her statement recorded U/S 164 Cr.P.C she did not level allegations of either kidnapping or sexual assault against the accused. The IO has taken into



possession the documents with regard to the marriage of prosecutrix with the accused as well as her Adhar Card which show her date of birth to be 01.01.1994. It is clearly apparent that the accused and the prosecutrix were in love with each other and the prosecutrix had represented to the accused her age to be 21 years. The date of birth of the prosecutrix as appearing in her school records is not based upon any birth certificate issued by MCD or any other statutory authority. Even the date of birth of the accused in the records of the school first attended by him is 11.12.1999, however he has been charge sheeted in the matter on the basis of ossification test report wherein his age has been opined to be between 20-22 years.

In view of the aforesaid material, I do not find any evidence which could prima-facie indicate about the commission of offence U/S 363/366/366A IPC against the accused.

As far as the ingredients of offences punishable U/S 376 IPC and Section 6 of POCSO Act are concerned strangely there is no authentic document on record which could give clear indication about actual date of birth of the prosecutrix.

In a some what similar case decided by the Hon'ble High Court of Delhi on 21.07.2015 vide Criminal Revision petition No. 266/14 titled as Umesh Vs. State, the order of discharge of the accused in that case was upheld.

Accordingly accused Rohit stands discharged for the offences in this case. The bail bond of the accused stands cancelled. Surety stands discharged. Endorsement, if any on documents of either the accused or his surety be cancelled forthwith.

5. The Additional Public Prosecutor appearing on behalf of the petitioner/State argued that the Trial Court has erred in relying upon the Aadhaar Card and without resorting to the section 94 of the



Juvenile Justice (Care and Protection of Children) Act, 2015. As per the documents collected during the investigation from the concerned school, the prosecutrix was minor at the time of commission of the offence. The Additional Public Prosecutor relied on the judgment dated 01.07.2013 titled as **Jarnail Singh V State of Haryana** passed by the Supreme Court in Criminal Appeal no. 1209/2010.

6. The counsel appearing on behalf of the respondent argued that the Trial Court had rightly relied upon the Aadhaar Card and as per the Aadhaar Card, the date of birth of the prosecutrix happen to be 01.01.1994. The counsel for the respondent also argued that the age of the prosecutrix as appeared in the school record was not based on any birth certificate issued by the MCD or any other statutory authority. The counsel for the respondent relied on the judgment dated **P. Yuvaprakash V State rep. by Inspector of Police**, 2023 SCC OnLine SC 846.

7. As observed in **P. Yuvaprakash V State Rep. by Inspector of Police** that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;



(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

8. In the present case, the Investigating Officer did not collect any birth certificate from the school of the prosecutrix or birth certificate issued by MCD or any other statutory authority or panchayat. The coordinate Bench of this Court in **State NCT of Delhi V Umesh**, 2015 SCC OnLine Del 10596, also referred the Aadhaar card to determine the age of the prosecutrix.

9. The perusal of impugned order dated 29.7.2016 reflects that the Trial Court had rightly observed that the date of birth of the prosecutrix as appearing in the school record was not based on birth certificate issued by MCD or any other statutory authority and in the absence of these documents, the Trial Court has rightly relied upon the Aadhaar card to ascertain the age of prosecutrix as per mandate of section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which reflects the date of birth of the prosecutrix as 01.01.1994. It is also pertinent to mention that the prosecutrix was not subjected to the ossification test to determine her approximate age.



10. The impugn order does not call for any interference, hence the present petition, along with pending applications, if any, stands disposed of.

(DR. SUDHIR KUMAR JAIN)
JUDGE

SEPTEMBER 04, 2023/sk/sm