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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL
ON THE 19th OF APRIL, 2023

CRIMINAL REVISION No. 1641 of 2023

BETWEEN:-

MANOJ KUMAR YADAV S/O MR. DEENA NATH YADAV,
AGED ABOUT 22 YEARS, OCCUPATION: PRIVATE
SERVICE R/O IMALIA MODH BEHIND MALLU DAIRY
P.S. ADHARTAL ADHARTAL DISTT. JABALPUR
(MADHYA PRADESH)

.....PETITIONER

(BY SHRI KARTIK JAGGI - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH THROUGH POLICE
STATION ADHARTAL DISTT. JABALPUR (MADHYA
PRADESH)

.....RESPONDENTS

(BY SHRI MANAS MANI VERMA - GOVERNMENT ADVOCATE)

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*This revision coming on for admission this day, the court passed the
following:*

ORDER

This criminal revision is filed by the petitioner being aggrieved of the order dated 08.04.2023 passed by the learned Special Judge (POCSO), District Jabalpur in SC ATR No.65/2020, rejecting an application filed by the petitioner herein seeking submission of original Aadhar card as a proof of date of birth of the prosecutrix, photocopy of which was already available on record.

2. In support of his contention, learned counsel for the petitioner has placed reliance on a Division Bench decision of High Court of Delhi at New Delhi in CRL.A.1444/2013 (*Jabbar Vs. State*), wherein in para 37, after

referring to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, it is held as under:-

"37. Rule 12 of the JJ Rules, therefore, assigns, in descending order of importance, primacy, as proof of age, to (i) the matriculation, or equivalent, certificate, (ii) the date of birth as recorded by the school first attended, and (iii) the certificate of birth, given by a Corporation, municipal authority, or panchayat. No specified format, for these certificates, is prescribed in the said Rules. The Aadhar Card, being a document issued by the Government of India is, in our view, equivalent - in fact, superior - to a certificate given by a Corporation, municipal authority, or panchayat. The entry, in the said Aadhar card (Ex. PW-11/H), of the age of 'S' as 6 years, must be taken, therefore, as proof of the fact that, on the date of issuance of the said card (2nd March, 2013) 'S' was, in fact, 6 years of age. We may mention, here, that a Division Bench of the High Court of Madras, in **Panneerselvam vs. Inspector of Police, MANU/TN/1054/2014**, opined that the Aadhar Card could not satisfy the requisites of Rule 7 of the JJ Rules, as proof of age of the holder thereof, as it did not mention the date of birth, and mentioned, instead, the age in years. This, in our view, is a distinction without a difference. After all, the determination of the date of birth is only for the sake of ascertaining the age of the person concerned. That apart, Rule 7(3) of the JJ Rules states that - the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining one of the documents enlisted thereunder. As such, the document is only to be referred to, by way of evidence for ascertaining the age of the person concerned, and the Rule does not require, either expressly or by necessary implication, that the date of birth of the person should figure on the body of the said document. Indeed, when the document mentions the age itself, no better proof could be sought, for ascertaining the age of the person concerned. We, therefore, regretfully express our inability to subscribe to the view adopted by the High Court of Madras in **Panneerselvam** (supra)."

3. Yet distinguishing the decision of Hon'ble Madras High Court in **Panneerselvam Vs. Inspector of Police, MANU/TN/1054/2014**, Division

Bench of Delhi High Court has held that Aadhar card will be a superior document and is to be taken into consideration for determination of age.

4. Shri Kartik Jaggi fairly admits that the decision of the Supreme Court in **Jarnail Singh Vs. State of Haryana, AIR 2013 SC 3467**, is though discussed in para 36 of the judgment by the Division Bench of Delhi High Court but while arriving at its conclusion in para 37, it has not discussed that how the statutory rules can be superseded merely because a particular document is issued by the Government of India. In fact that document is not issued by the Government of India but an independent agency, namely, UIDAI.

5. In case of **Jarnail Singh** (supra), it is held that on the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the "Rules of 2007"). The aforesaid Rules of 2007 have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the "Act of 2000").

6. Thus, it is evident that since the ratio of the judgment of Hon'ble Supreme Court is that provisions contained in Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the "Act of 2015") or the Juvenile Justice (Care and Protection of Children) Rules, 2012 (hereinafter referred to as the "Rules of 2012") are statutory and binding, they will have over reaching effect and no other provision will be applicable.

7. Thus, in my opinion since Aadhar card is not a proof of age of the prosecutrix and her age is to be necessarily determined in terms of Rule 12 of the Rules of 2007 or Section 94 of the Act of 2015, which provides as under:-

"94. Presumption and determination of age.

(1) Where, it is obvious to the Committee or the Board, based on

the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining-

(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: Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

8. Therefore, in view of the statutory provisions available and there being no provision for taking into consideration Aadhar card as a proof of age for presumption and determination of age, prescribed under Section 94 of the Act of 2015, I am of the opinion that there is no illegality in the impugned order, calling for interference in the revisional jurisdiction of this High Court.

9. In view of above, petition fails and is dismissed.

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