

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

247

CRM M-17864 of 2021
Date of Decision: 11.12.2023

Jamshed

...Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Mohit Garg, Advocate
for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

Mr. Varun Issar, Advocate
for respondent No. 2.

Mr. Ankur Lal, Advocate, for respondent No. 3.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to issue directions to the trial Court to summon the witness/concerned official of UIDAI, Regional Office, in view of the amendment to Section 33(1) of the Aadhar Act 2016 [made vide “the Aadhar & other laws (Amendment) Act, 2019] , (hereinafter to be referred as 'the Aadhar Act').

2. Learned counsel for the petitioner submitted that the petitioner was arrayed as an accused in a case FIR No. 10/2018 under Sections 363, 366, 376 and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter to be referred as '**the**

POCSO Act') In the said case, the complainant/respondent No. 3 had taken a stand that she was minor, whereas, it was the consistent stand of the petitioner that Section 6 of the POCSO Act was not made out as the prosecutrix was not a minor girl and she had produced false record regarding her age. In order to prove that the prosecutrix was a minor girl, the prosecutrix alleged that her date of birth was 31.05.2001. To prove her birth certificate as well as the age, the prosecutrix examined PW10 Ram Kumar, Clerk, MC, Faridabad, who appeared alongwith the record of birth and death. In his testimony (Annexure P-1), he stated that the entry regarding the birth certificate of the prosecutrix was at Serial Number 1279 dated 31.05.2001, which was made on the basis of record of Life Line Nursing Home, Faridabad. The learned counsel for the petitioner cross-examined PW10 and it was revealed in the cross-examination that the name of prosecutrix was added to the record on 11.01.2017. Learned counsel also referred to the cross-examination of PW10 Ram Kumar, Clerk, wherein, he admitted the fact that the name of the prosecutrix was added in the record later on 11.01.2017 and the certificate Ex.PN was issued on 11.01.2017, after adding the name of the prosecutrix in the record. Learned counsel further submitted that Ram Kumar, Clerk MC, Faridabad was again called as defence witness and made his testimony (Annexure P-2) before the trial court. Even, he stated as follows:-

“The record of life line nursing home Faridabad on the basis of which this entry is shown to have been made is not in our record. There is no record of receipt of any application on the basis of which the name (prosecutrix) was inserted against the entry No. 1279 on 11.1.2017. There is no application on behalf of father and mother or any other relative of the prosecutrix to mention the name against the entry No. 1279. As per record no fee was deposited by anyone for issuing the birth certificate of entry No. 1279 dated 11.1.2017. There is no application on record for issuance of any birth certificate of entry no 1270 is on record. I can't say on the basis of which this entry was made.”

3. Learned counsel for the petitioner further contended that the prosecutrix wrongly claimed her age to be 31.05.2001 and no weightage could be attached on the certificate, which was sought to be placed on record by the prosecution. However, after some time, the petitioner was able to find the Aadhar Card of the prosecutrix, wherein, the date of birth of the prosecutrix was shown to be 01.01.1999. The petitioner also moved an application before the concerned Court to summon the Incharge/concerned official of UIDAI, Regional Office, so that Aadhar Card could be exhibited before the trial Court and same could be read in evidence.

4. The trial Court issued summons to the Incharge/concerned official of Regional Office, UIDAI and a mail was sent by the concerned official/incharge of UIDAI to the trial Court that in view of the provisions contained in the Aadhar Act, the information could be supplied pursuant to an order of a Court not inferior to that of Judge of the High Court and such order could be passed after affording the opportunity of hearing to UIDAI and the concerned Aadhar card holder. Learned counsel further submitted that the testimony of UIDAI official was necessary for the fair trial so as to prove the Aadhar card of the prosecutrix and to prove the fact that the prosecutrix was major and no offence under the POCSO Act was made out against him. Learned counsel further contended that before the UIDAI authority, the prosecutrix herself must have entered her date of birth and, therefore, it needs to be proved by way of evidence by the petitioner before the trial Court to show that actually she was above the age of 18 years on the date of alleged occurrence. Consequently, the production and proof of the Aadhar card by the prosecution by the officials of UIDAI authority was just and essential for the fair disposal of the trial.

5. The prayer made by the learned counsel for the petitioner has been vehemently opposed by the learned counsel appearing on behalf of respondent No. 2. It was submitted that in view of the provisions contained under Section 33(1) of the Aadhar Act, the information as sought by the petitioner, could only be provided by

UIDAI, in pursuance to an order passed by this Court and no order by this Court could be made without giving an opportunity of hearing to the UIDAI Authority and the concerned Aadhar card number holder. Still further, Aadhar number could be used for establishing the identity of an individual, subject to authentication and, thereby, *per se*, it was not a proof of date of birth. Still further, he stated that the date of birth was recorded on the basis of the self declaration given by the card holder/respondent. Therefore, in case, the dispute regarding the correctness of date of birth, the burden of proof was with the card holder/respondent.

6. Learned counsel appearing on behalf of the respondent No. 3 also vehemently opposed the submissions made by the learned counsel for the petitioner. Learned counsel submitted that Aadhar card was only a proof with regard to the identity of the card holder and could not be used for ascertaining the date of birth of the card holder. In the present case, the accused wanted to show that the prosecutrix was not minor and this fact could be proved only by way of leading evidence with regard to the date of birth.

7. I have heard learned counsel for the parties and perused the record.

8. The Hon'ble Supreme Court in the matter of Natasha Singh Vs. Central Bureau of Investigation (2013) 5 Supreme Court Cases 741 has held as follows:-

“16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardised. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. [Vide Talab Haji Hussain v. Madhukar Purshottam Mondkar⁹, Zahira Habibulla H. Sheikh v. State of Gujarat¹⁰, Zahira Habibullah Sheikh (5) v. State of Gujarat¹¹, Kalyani Baskar v. M.S. Sampooram¹², Vijay Kumar v. State of U.P.¹³ and Sudevanand v. State ¹⁴.”]

9. In the present case, the prosecutrix alleged that her date of birth was 31.05.2001 and at the time of commission of the offence, she was minor. She also examined PW10 Ram Kumar, Clerk, Municipal Corporation, Faridabad, who placed on record the proof relating to the birth entry of the prosecutrix in the record. However, the said witness stated that even though the date of birth of the prosecutrix was 31.05.2001 but the name of the prosecutrix was added in the record later on 11.01.2017 and the certificate Ex.PN was

issued on 11.01.2017 after adding the name of the prosecutrix in the record.

10. To prove his case, the present petitioner/accused wanted to summon the Incharge/concerned witness from UIDAI. In fact, as per settled law, after the recording of the prosecution evidence, the accused is called upon to enter his defence and adduce any evidence, he may have in support thereof. Still further, as per Section 233 of Cr.P.C, if the accused applies for the issue of any process for compelling the attendance of any witness or production of any document or thing, the Court shall issue such process unless he considers, for the reasons to be recorded, that such application should be refused on the ground that it was made for the purpose of vexation or delay or defeating the ends of justice.

11. In the present case, the petitioner had also moved an application before the trial Court for summoning the concerned official/incharge of Regional Office of UIDAI Authority to prove the Aadhar card and the relevant entry/record to prove the date of birth of the prosecutrix. Even though, apparently, the Aadhar card can be exhibited as a proof of identity of Aadhar card holder and may not be exhibited as proof of birth, however, the date of birth is recorded on the basis of self declaration given by the card holder/respondent. Thus, by producing the Aadhar card record of the prosecutrix, the accused could disprove the case of the prosecution. Even otherwise,

the law is well settled that the accused should be given an adequate opportunity to lead his defence evidence and should be permitted to examine the witnesses of his choice to prove his defence unless for the reasons to be recorded, such prayer is made for the purpose of delaying the trial or for defeating the ends of justice. In the present case, the petitioner/accused wanted to examine the concerned official/incharge of the Regional Office of UIDAI Authority to allow him to produce the relevant record from UIDAI Aurhotity and in the considered opinion of the Court, such evidence may be produced to facilitate a just decision.

12. Consequently, the present petition is allowed and the petitioner is permitted to lead evidence by examining a witness/official of the Regional Office of UIDAI Authority, who shall exhibit all the information pertaining to Aadhar Card of the prosecutrix, except the core biometric information pertaining to the said Aadhar card. The trial Court is directed to pass appropriate orders in this regard and should facilitate the production of such evidence by summoning the concerned witness in this regard.

11.12.2023	(N.S.SHEKHAWAT)
amit rana	JUDGE
Whether reasoned/speaking	: Yes/No
Whether reportable	: Yes/No