

In the High Court of Punjab and Haryana at Chandigarh

**C.W.P. No. 16752 of 2015 (O&M)
Date of Decision: December 07, 2015**

Mohamed Arman

... Petitioner

Versus

Union of India and another

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) *Whether Reporters of the local papers may be allowed to see the judgment?*
- 2) *To be referred to the Reporters or not?*
- 3) *Whether the judgment should be reported in the Digest?*

Present: Mr. Inderjit Kaushal, Advocate,
for the petitioner.

Mr. V.K. Kaushal, Central Govt. Standing Counsel,
for the respondents.

Paramjeet Singh, J.

CM-13930-CWP-2015

Civil Misc. application is allowed subject to all just exceptions. Written statement on behalf of the respondents is taken on record.

CM-14367-CWP-2015

exceptions. Replication to the written statement is taken on record.

CWP No. 16752 of 2015

Instant writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari to quash the impugned order dated 29.06.2015 (Annexure P/13) passed by respondent no.2 – Regional Passport Officer, Chandigarh vide which respondent no.2 has refused to issue new passport in favour of the petitioner on the ground that name of adopted father cannot be written in the passport of the petitioner as he has born from the earlier marriage. Further prayer for issuance of a writ in the nature of mandamus directing respondent no.2 to issue a new passport in the name of the petitioner by mentioning the name of Mohamed Mansoor in the column of father's name being an adopted father of the petitioner.

Brief facts of the case are that petitioner has born out of the wedlock of Afsar Jahan (mother) and Nadeem Ahmed (biological father) on 14.07.2000 and named as Arman. The biological father of the petitioner gave a '*Talaq*' to his mother and the said *talaq* was duly affirmed vide affidavit dated 20.08.2004 (Annexure P/2) executed by the biological father of the petitioner duly attested by the Executive Magistrate, Chandigarh. Afsar Jahan, mother of the petitioner, got remarried with Mohamed Mansoor on 07.09.2004 by way of

'Nikahnama' (Annexure P/3). At that point of time, the age of petitioner was 4 years. Since then petitioner is being brought up by Mohamed Mansoor and is performing all the duties as father and providing schooling and bringing up etc. The petitioner has no recollection of Nadeem Ahmed, biological father and has not even met him. Thereafter, name of the petitioner has been changed as Mohamed Arman. Said change has been duly notified in the Chandigarh Gazette. Accordingly, request was made by the adopted father of the petitioner to the school authorities to change the name of the petitioner from Arman to Mohamed Arman in the school record. The adopted father of the petitioner submitted on-line application of the petitioner being minor to respondent no.2 for issuance of passport wherein in the column of father's name mentioned "Mohamed Mansoor adopted father". In pursuance of said application, petitioner was called for interview and scrutinizing the relevant documents and ultimately, passed the impugned order dated 29.06.2015 (Annexure P/13) and declined to mention the name of the adopted father in the column of father's name in the passport. Hence, this writ petition.

In pursuance of notice of motion, respondents appeared and filed written statement taking plea that as per modification of Para 3.1,

been issued:-

“(1) xxxx xxx xxx

(2) In the event of remarriage after divorce, the name of applicants must write the names of their biological parents in the application form. However, if the stepfather or stepmother is appointed by a court as legal guardian, the name of such step-parent can be written as legal guardian.”

Replication by way of affidavit of Afsar Jahan, G.P.A.

Holder of Mohamed Mansoor, was also filed.

I have heard learned counsel for the parties.

The question which arises for determination is:-

“Whether the name of the stepfather / allegedly adopted father can be reflected in the passport instead of name of biological father?”

Learned counsel for the petitioner vehemently contended that admittedly petitioner was born out of the wedlock of Afsar Jahan (mother) and Nadeem Ahmed (biological father) on 14.07.2000. It is also admitted that Afsar Jahan was divorced by her earlier husband Nadeem Ahmed, who is the biological father of the petitioner. He was named as Arman and his name has been subsequently changed as Mohamed Arman. Since the age of the petitioner was only 4 years at that point of time, he is not aware of the name of his biological father and name of the

also been mentioned in the various documents i.e. Aadhar Card, Ration Card etc.

Per contra, learned counsel for the respondents submitted that they are bound by the Passport Manual which specifically states that if there is divorce between the parents, father's and mother's name in the respective columns of the passport shall be mentioned only of the biological parents, not the name of step parents. In the present case, the name of the stepfather with whom the mother of the petitioner has married after divorce is sought to be added which is contrary to the instructions issued by the competent authority as detailed in the passport manual.

I have considered the contentions raised by learned counsel for the parties and perused the record.

Admittedly, the petitioner is the biological son of Afsar Jahan and Nadeem Ahmed. He was given the name Arman by them, but unfortunately, the parties are governed by the Mohammedan Law, divorce was granted to Afsar Jahan, biological mother of the petitioner by way of *Talaq* which is not in dispute. After *talaq* from Nadeem Ahmed, Afsar Jahan remarried with Mohamed Mansoor. The petitioner continued to be brought up by the step father and mother. There is no

by way of custom or under the provisions of Mohammedan Law. The modified para 3.1, Chapter IX of the Passport Mannual (2001) reads as under:-

“(2) In the event of remarriage after divorce, the name of stepfather/stepmother cannot be written in the passport of children from the previous marriage. The relationship of the child to his biological parents subsists, even after divorce by parents. It is also not possible to leave the column of father or mother blank in the passport in such cases. Therefore, such applicants must write the names of their biological parents in the application form. However, if the stepfather or stepmother is appointed by a Court as legal guardian, the name of such step-parent can be written as legal guardian.”

From the perusal of above instructions, it is clear that the name of the step father cannot be written after re-marriage. The relationship of the child to his biological parents subsists, even after divorce by parents. If there is decree or legal document, only in such circumstances, the passport authorities are bound to follow the judgment and decree by the competent Court. In the present case, there no such

the competent authority that Mohamed Mansoor will be treated as an adopted father of the petitioner nor any other legal document indicating the adoption has been produced on record. Even there is no evidence on record that the earlier biological father has given a writing that he has severed his relation with the petitioner and he will be treated as a son with whom his divorcee wife may marry. It is settled principle of law that with the change of name of biological father various other issues arise the person who is actually entitled to share by inheritance, any maintenance etc. from the biological father cannot claim the same. Even the stepfather can deny all these rights which may flow from relationship of father with any child. Issue of inheritance of the children which may be born after the remarriage of the mother from second husband will also become an issue, unless some decree or legal adoption is proved in accordance with law. This Court is conscious of the fact that may be due to ignorance, the name of the petitioner has been changed and the name of stepfather in various documents has been wrongly mentioned, it will lead to number of problems, complexity and complications in future, so in these circumstances, the petitioner can seek declaration about his parentage after impleading all the relevant persons as party.

In view of above, I am of the view that passport authority

alleged adopted father in the passport. Hence, instant writ petition is dismissed. However, it will be open to the petitioner to avail the other alternative remedies.

December 07, 2015

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**[Paramjeet Singh]
Judge**