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

CRWP No.197 of 2017 (O&M)

Date of decision: March 15, 2017

Navjinder Kaur

.....Petitioner

Versus

Union Territory, Chandigarh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Veneet Sharma, Advocate for the petitioner.

Mr. Gautam Dutt, Advocate for U.T., Chandigarh.

Mr. Vivek Lamba, Advocate for respondent No.4.

Mr. Ashish Sharma, Advocate for respondents No.5 and 6.

Mr. Varun Issar, Central Government Counsel
for respondent No.7.

A.B. CHAUDHARI, J (Oral)

Rule. Heard forthwith with the consent of the learned
counsel for the rival parties.

The petitioner-Navjinder Kaur had filed this petition on
20.02.2017 with further motion praying for appointment of warrant
officer. This Court had, on 20.02.2017 made the following order:-

“Notice of motion returnable on 22.02.2017.

*In view of the averments made in the present
petition, detenués as mentioned in petition are, prima-
facie, in the illegal possession of respondents No.4 to 6.*

*A roving writ in the nature of Habeas Corpus is
issued.*

Registry is accordingly, directed to appoint Warrant

Officer who shall visit the place(s) as pointed out to him by the petitioner. The Warrant Officer shall accordingly, submit his report to this Court on or before the adjourned date. The expenses including the fee of the Warrant Officer, shall be borne by the petitioner. Detenues be produced before this Court on the adjourned date, i.e. 22.02.2017.”

Pursuant to the said order, the Warrant Officer, on the date of passing of the above order, i.e. 20.02.2017 itself, went to the House of respondent No.4 with the help of police to trace out the children, i.e. a boy by name, Vansh Kumar Dhall aged 12 years and a girl by name, Bhumi aged 11 years. The returnable date was 22.02.2017 but on the request made by the Registry of this Court, the matter was taken up on 21.02.2017 as the children were recovered in the night of 20.02.2017. The children were produced by the Warrant Officer before the Court. This Court made enquiry from the children who stated in one voice that they would like to live with their mother and they being Australian citizen would like to go Australia with their mother. On that date, respondent No.4 did not appear before the Court, though, the children were recovered from his House. This Court then recorded accordingly, in the order and since the children desired to go with their mother, allowed them to do so. The children made a statement before this Court that their original passports were with their father-respondent No.4. Looking to the urgency, this Court directed Station House Officer concerned to conduct raid on the house of respondent no.4 to find out passports and the matter was adjourned for 23.02.2017.

On 23.02.2017, respondent no.4 appeared with his Advocate and filed reply which was taken on record. He also offered to get new passports prepared by applying afresh. However, this Court wanted to know the status of the original passports of the children since there was apprehension that without knowing the whereabouts of the original passports, duplicate or new passports may not be issued and this Court therefore, did not allow the counsel for respondent No.4 to make any submissions, though, he strenuously tried. The reason was, the only issue on that date was to have the original passports before this Court and nothing more. It is in this context, thereafter, the matter proceeded and the counsel for the U.T., Chandigarh along with concerned SHO were asked to find out the passports by making roving and fishing inquiries. On the last date of hearing, learned counsel for the U.T., Chandigarh, on instructions from the concerned police, made a statement that during investigation, it has been found that the original passports of both the children have been destroyed and therefore, there was hardly any hope to recover same. Learned counsel for respondent No.4 was therefore, asked to file an affidavit, as admittedly, he was in the custody of both the children and their passports. Therefore, it was his responsibility to file an affidavit as to the whereabouts of the original passports of the children. Learned counsel for respondent No.4, though, was apprehensive about his statement if recorded on affidavit or otherwise to be read as confession, has filed an affidavit of respondent No.4 today in the Court, which has been taken on record and is marked 'X' for

identification which shall be the part and parcel of the record. In the affidavit, it has been stated as under:-

“That as per the knowledge of deponent the passports of children of deponent namely Vansh Kumar Dhall and Bhoomi have been destroyed. The deponent has no objection if fresh passports of Vansh Kumar Dhall and Bhoomi are issued to them.”

This Court is concerned with the present petition to a limited extent in the sense that this Court is not supposed to decide the civil rights of the parties as this is a petition for issuance of writ in the nature of Habeas Corpus. It is in that context, this Court looks at the affidavit in order to protect the interest of both the children who have already been handed over by the order of this Court to the petitioner-mother. This Court, therefore, reserves liberty for both the parties to project their claim, if any, for children before the appropriate and competent Court. The statement made in the affidavit of respondent No.4 as above, categorically states that the passports have been destroyed. He, further states that he has no objection, if fresh passports of both the children are issued to them by the competent authority.

In my opinion, the statement made by respondent No.4-Sham Sunder as above, deserves to be accepted as it is for the limited purpose for issuance of fresh passports for the children, namely, Vansh Kumar Dhall aged 12 years and a girl by name, Bhumi aged 11 years. The concerned authority would do well in treating the original passports of both these children as not in existence as a reason for issuance of fresh passports in their favour. To repeat after recovery of

the children from the custody of respondent No.4, they have been handed over to the petitioner-mother-Navjinder Kaur and would continue to be in her custody, subject to the decision by the competent civil Court. In view of the whole background, the competent authority issuing Visa would also sympathetically consider the issuance of passports since the children are the Australian citizens.

Learned counsel for respondent No.4 fairly states that respondent No.4 is ready to give consent for issuance of passports and would not obstruct the same and would also pay passport fees for both the children.

Statement is accepted.

Petition stands disposed of, in above terms.

(A.B. CHAUDHARI)
JUDGE

March 15, 2017

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No