

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

**CWP No.23335 of 2018
Date of Decision:13.09.2018.**

Jasmeen Kaur

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr.Rajesh Kumar Sharma, Advocate
 for the petitioner.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is filed by a minor through her mother, Harpreet Kaur Saini, for seeking a direction to the respondents to take appropriate measures to re-unite the petitioner with her natural mother who lives in Australia.

In brief, the petitioner, namely, Jasmeen Kaur, aged 13 years, was born from the wedlock of Parminder Singh Saini and Harpreet Kaur Saini (for short 'the natural parents'). Learned counsel for the petitioner has submitted that there was a divorce between the natural parents and as a result thereof, petitioner, Jasmeen Kaur stayed with Harpreet Kaur Saini (her mother) as a single parent. Later on, her mother got married with Charan Jit Singh who was also a divorcee. According to the counsel for the petitioner, Harpreet Kaur Saini gave her daughter Jasmeen Kaur to Charan Jit Singh in adoption by way of adoption deed dated 05.11.2009 (Annexure P-5). Since, Harpreet Kaur Saini living in Australia and wanted to take Jasmeen Kaur to Australia with her, had applied for visa with the Australian

High Commission at New Delhi. An objection has been raised by the Australian High Commission that since the petitioner is less than 18 years of age, therefore, the form submitted by Harpreet Kaur Saini should be signed by the non-accompanying adoptive father (Charan Jit Singh) as well.

Learned counsel for the petitioner has submitted that the adoptive father has not signed the said form/NOC for the purpose of obtaining visa. It is further submitted that as per the United Nations Convention on the Rights of the Child (UNCRC) to which the Government of India is not a signatory but ratified the said Convention in which Article 9 which deals with the separation of parents, which provides that :-

“The child has the right to live with his or her parents unless it is not deemed to be in his or her best interest; the child has the right to maintain contact with both parents if separated from one or both.”

Article 10 which deals with family reunification provides that :-

“The State has an obligation to foster and enable family reunification where children and parents live in separate countries; the child whose parents live in a different state has the right to maintain personal relations and direct contact with both parents”.

Learned counsel for the petitioner has, thus, made a prayer for a direction to respondent No.4 i.e. Australian High Commission to not to impress upon the no objection certificate/signatures of the adoptive father Charan Jit Singh on the form No.1229/NOC, filled by the Harpreet Kaur Saini for the purpose of obtaining Visa of Jasmeen Kaur (petitioner).

It is submitted that it is the right of a child as per the United Nations Convention on the Rights of the Child to decide with which parent he/she would like to live.

I have heard learned counsel for the petitioner and perused the record with his able assistance.

Even it is presumed for the sake of arguments that the petitioner, Jasmeen Kaur, is the biological daughter of Harpreet Kaur Saini, yet there is no dispute that the said Harpreet Kaur Saini has given her daughter in adoption by way of adoption deed dated 05.11.2009.

The question, thus, would arise that whether the provisions of Hindu Adoptions and Maintenance Act, 1956 would apply to this case ?

Section 2 of the Hindu Adoptions and Maintenance Act, 1956 (for short 'the Act') deals with the application of the Act in which it is provided that the Act would apply to any person who is Buddhist/Jain/Sikh by religion. Since the parties to the *lis* are Hindus, therefore, the provisions of the Act would apply in which Section 12 which deals with effect of adoption. Section 12 is reproduced as under-

*“ An adoptive child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:
Provide that-*

a. the child cannot marry any person whom he or she could not have married if he or she had continued in the family of

his or her birth;

b. any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property,

c. the adopted child shall not divest any person of any estate which vested in him or her before the adoption.”

According to the said provisions an adoptive child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and all the ties of the child in the family of his or her birth shall be deemed to be severed and such a child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth.

Thus for all intents and purposes, the petitioner (Jasmeen Kaur) is the daughter of the Charan Jit Singh i.e. adoptive father w.e.f. the date of adoption and Harpreet Kaur Saini has become stranger to her. In view thereof, the question would again arise as to whether Harpreet Kaur Saini (stranger) can apply for visa of Jasmeen Kaur for taking her Australia without the consent of her father ? The answer is 'No' because the child cannot be removed by a stranger from the lawful guardianship without the permission of the said guardian.

Thus, in my considered opinion, the objection raised by the Australian High Commission asking for NOC from the adoptive father is very well in place and the provisions of UNCRC relied upon by the petitioner would not apply.

With these observations, I hardly find any merit in the present petition and the same is hereby dismissed though,without any order as to cost.

(RAKESH KUMAR JAIN)
JUDGE

September 13, 2018
Jyoti-IV

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No