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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10433/2024**

NIVEDITA PRASAD

.....Petitioner

Through: Mr. Aditya Narayan Tripathy,
Advocate with Mr. Raghunath
Pathak, Advocate.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Ankur Mittal, CGSC with Ms.
Ikshita Parihar, Advocate for
Respondent No. 1.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

21.08.2024

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1. The Petitioner was married to Mr. Jayanth Kalyankar, a resident of Balanagar, Hyderabad on 21st June, 2006. From this union two children were born who are presently aged 17 years and 15 years. After her marriage, the Petitioner along with her husband, migrated to various places including the United States of America¹, as per the job requirements of her husband.

2. The Petitioner nonetheless alleges that her husband, father and natural guardian of the children as per Indian laws, has kidnapped the minor children and moved to U.S.A. without the knowledge or consent of the

¹ "U.S.A."



Petitioner. She submits that on 5th August, 2017, when both the children did not come home from cricket coaching at the expected time, she started searching for them everywhere and allegedly discovered that her husband had taken the kids away without informing the Petitioner. On the next day, on 6th August, 2017, she filed an FIR against her husband at the Police Station, S. Jawahar Nagar, Rachakonda Commissionerate.

3. The Petitioner submits that her husband has left the country and has taken the children along with him to U.S.A. Further, it is urged that the husband has blocked the Petitioner phone number, as a result of which she does not have any information on her children's whereabouts and has been unable to establish communication with them. According to the Petitioner, her children as well as husband, are presently residing in USA, however she does not have any contact information or the address of the Petitioner's husband in U.S.A. Therefore, bereft of any knowledge on the whereabouts of her husband or her children, she is unable to file a case seeking custody of the children in India.

4. In this regard, the Petitioner has sent representations to Respondent No. 1 - Ministry of External Affairs, New Delhi, Respondent No. 3 - the National Commission for Women, New Delhi, Respondent No. 5 - the U.S. Embassy, New Delhi and Respondent No. 6 - the U.S. Consul General, Kolkata, seeking assistance of the authorities to track down her children's whereabouts and husband's residential and official address in U.S.A.

5. Pertinently, the Petitioner's representation to the National Commission for Women, New Delhi was forwarded by them to the Respondent No. 2 - Consulate General of India, San Francisco for necessary action. However, through e-mail dated 25th April, 2024, Consulate General



of India, San Francisco has informed the Petitioner that in terms of her request as to tracing the whereabouts of her children, she can file an appropriate complaint with the nearby US Consulate or Embassy. She was also informed that she can seek legal action against her husband as per the established procedure, explained by the Consulate General of India in the ‘Frequently Asked Questions: Legal and other provisions in foreign countries on Indian women cheated/abandoned/abused by Overseas Indian Spouses’², which was also attached along with the said communication. The relevant FAQs at serial nos. 5 & 12, which read as follows:

<i>S.No.</i>	<i>Frequently Asked Question</i>	<i>Answer</i>
5.	<i>Finding out location or whereabouts of husband in foreign country</i>	<i>Privacy Act of the country does not allow them to share the information; However legal course can be pursued to find the details through the court. Information can also be ascertained through his/her employer or from foreign government immigration, etc.</i>
..	...	...
12.	<i>My Child has been taken by my overseas Indian husband without my consent to foreign country. I am residing in India; I want to reunite with my</i>	<i>You may:</i> <i>1. Register case on MADAD Portal.</i> <i>2. Approach NCPCR (Mediation Cell), Ministry of Women and Child Development</i>

² “FAQs”



	<i>child. What should I do?</i>	<i>(Child Welfare Division)</i> <i>3. File case for the child custody in India.</i> <i>4. Make a complaint to the Embassy of the Foreign country where the child has been taken.</i> <i>5. File case against your husband in the foreign country where he resides.</i>
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6. Admittedly, the Petitioner has not availed any of the legal remedies available against her husband in U.S.A., but has filed the instant writ petition under Article 226 of the Constitution of India, seeking appropriate directions to the Respondents to track down the whereabouts of her children and husband in U.S.A.

7. Indisputably, the children as well as husband of the Petitioner are not within the Indian jurisdiction. The Indian Consulate Office has pointed out that within U.S.A. the privacy laws prevent them from disclosing nay information in terms of the contact details or location of the Petitioner's husband and children. In these circumstances, the Petitioner has been directed to agitate a legal recourse by approaching a court of law, which, in the opinion of the Court, must necessarily be of the foreign country where the husband and the children are presently residing.

8. In such circumstances, this Court is not in a position to redress the situation of the Petitioner. In terms of the Indian authorities arrayed as Respondents in the instant writ petition, against whom the Petitioner has sought directions for tracking down the whereabouts of her children and



husband, it must be pointed out that such an action would be beyond the scope of their jurisdiction as well. At best, the Indian authorities can request their counterparts and corresponding offices in U.S.A. for the required information. In this regard, as noted above the Consulate General of India, San Francisco has already pointed out the mechanism and provisions that the Petitioner can invoke for redressing her grievances.

10. With respect to the other remedies available with the Petitioner, it is noted that even though she did not file any complaint on the MADAD Portal of the Ministry of External Affairs, she sent a written representation to them which was forwarded to the National Commission of Women.

11. In terms of availing legal remedies against her husband, the Petitioner is directed to approach the Court of competent jurisdiction in the U.S.A. For this purpose, Respondent No. 1 – Ministry of External Affairs is directed to issue a request to Respondent No. 2 – Consul General of California, Consulate General of India to facilitate access to an appropriate legal counsel for the Petitioner in U.S.A, who can assist the Petitioner in taking recourse to her legal remedies. Needless to state, the Petitioner shall bear the costs for such legal representation that may be arranged by Respondent No. 2.

12. In light of the above, the instant writ petition, along with pending application(s), is disposed of with the aforementioned directions.

SANJEEV NARULA, J

AUGUST 21, 2024

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