

Harkesh Kr Dang vs The State (Nct Of Delhi) & Ors on 23 December, 2021

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 3489/2021
HARKESH KR DANG

Through: Mr. Jatan Singh, Mr. Arun
Mr. Afreen Khan and Mr.
Sharma, Advocates

versus

THE STATE (NCT OF DELHI) & ORS Respondent

Through: Ms. Kusum Dhalla, APP for State
with SI Prakash Kashyap, P.S.
Rajouri Garden.
Mr. Naginder Benipal, Sr. Panel
Counsel (UOI) with Mr. Harjeet
Singh Sachdev and Ms. Harithi
Kambiri, Advocates for R-2.
Mr. Arvind Chaudhary, Advocate
R-3.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
ORDER

% 23.12.2021 Exemption allowed subject to just exceptions.

The application stands disposed of.

CRL.M.C. 3489/2021 & CRL.M.A. 20829/2021 (Stay)

1. By way of this instant petition filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C."), the petitioner seeks the following reliefs:-

a) Call for record of proceedings before the Ld. Additional Sessions Judge/Special Judge (NDPS) West District, Tis Hazari Courts, Delhi, in Criminal Revision Petition No. 111/2021.

b) Set aside the Impugned Order dated 30/11/2021 passed by the Ld. Additional Sessions Judge/Special Judge (NDPS) West District, Tis Hazari Courts, Delhi, in Criminal Revision Petition No. 111/2021.

c) Direct the Respondent No. 3 to approach the concerned Family Court in terms of the order/direction dated 06/05/2021 passed by this Hon'ble High Court in the matter of W.P. (C) 4960/2021.

2. Learned counsel for the petitioner submitted that Respondent No. 3 registered a false report with the Crime Branch, Delhi reporting the Passport as „lost item , and submits the same with the passport office. It is further submitted that the passport office received an adverse report from Delhi Police stating that Respondent No.3 is not living at the given address and it belongs to her maternal uncle, and also about criminal case registered against Respondent No. 3 which is under investigation. Learned Additional Session Judge, West (Tis Hazari), Delhi (hereinafter "ASJ") allowed yet another application of Respondent No. 3 and directed the Petitioner to handover damaged passport of the minor child to the IO vide order dated 3rd February 2021. The petitioner has preferred an application for suitable modification of directions/orders of 3rd February 2021 before the learned ASJ apprising the Court of the fact that the said orders/directions have been fraudulently obtained by respondent no.3. Vide order dated 5 th April 2021, learned ASJ Court dismissed the said application preferred by the petitioner. This Court vide order dated 6th May 2021, disposed of the Writ Petition bearing No. 4960/2021 recording observations as follows:-

"12. Moreover, considering the fact there are 8-10 matrimonial disputes which are pending between the parties, as also the fact that both the parents are highly educated professionals, the parties agree to explore amicable resolution of the disputes. They are accordingly referred to the Delhi High Court Mediation and Conciliation Centre, for attempting an amicable resolution of their disputes, especially keeping in mind the interests of the child.

13. The Mediation Centre may appoint a Senior Mediator, who is permitted to hold the mediation proceedings, either physically or through a virtual/VC platform. The parties shall appear before the Delhi High Court Mediation and Conciliation Centre on 17th May, 2020 at 3:00 P.M. If the disputes are amicably resolved, the mediator may submit a mediation report before the trial court for recording the same.

14. Finally, it is submitted that the child custody proceedings are going on before the concerned Presiding Officer, Family Court, Gautam Budh Nagar, Noida, and not in the Tis Hazari Courts, as recorded in the order on the last date.

15. The present petition is disposed of in the above terms, giving liberty to the Petitioner and the Respondent No.3 to file an application for issuance of a fresh passport before the concerned trial court."

3. On 17th June 2021, respondent No.3 preferred an application for grant of permission for issuance of Passport to the minor child before the Court of learned Metropolitan Magistrate, (Delhi West). The said Court dismissed the application directing the applicant to approach the concerned Family Court. The Principal Judge, Family Court, Noida District, Gautam Budh Nagar allowed the said application under Order VII Rule 11 of the Code of Civil Procedure, 1908, preferred by respondent

no.3 and dismissed the custody petition (G.W. Case No. 01.2021) on the ground for want of territorial jurisdiction vide order dated 11th October 2021. On 26th November 2021, the petitioner preferred a petition under Guardians Act for the custody of the minor child before the Court of Principal Family Judge (West) Delhi, which is scheduled to be listed on 30th November 2021. The Court of learned ASJ vide order dated 30th November 2021 set aside the order of learned Metropolitan Magistrate directing "No Objection Certificate be issued to respondent no.2". Hence, the instant petition.

4. Learned counsel appearing for the petitioner submitted that vide order dated 6th May 2021 passed by learned Additional Sessions Judge/Special Judge (NDPS), West District, Tis Hazari Courts, Delhi {hereinafter "Special Judge (NDPS)"} has erred in not following the law settled by this Court as well as the mandate of the Co-ordinate Bench of this Court.

5. Learned counsel appearing on behalf of respondent No.3/private respondent vehemently opposed the instant petition and submitted that there is no illegality in the order dated 30th November 2021 and that the impugned order was passed by learned ASJ while considering the entirety of the matter. Learned counsel further submitted that the petitioner has failed to make out any case of ground for invoking extraordinary jurisdiction of this Court under Section 482 of Cr.P.C. for setting aside the order dated 30th November 2021 passed by learned Special Judge (NDPS). He, accordingly submitted that the instant petition is devoid of any merit and same is liable to be dismissed.

6. Heard. Learned APP for the State and learned counsel for respondents no.2 and 3 appear on advance notice.

7. After some length of arguments both the parties have agreed that the passport of the minor child may be issued by the concerned authority in accordance the applicable Rules of The Passport Act, 1967. It is agreed by the petitioner that he shall issue "No Objection Certificate", if the same is required for the purpose of issuance of the passport of the minor child namely Vivaan Dang. Learned counsel for the parties have also agreed that after issuance of the passport, the same shall be kept in the custody of the Court, who is adjudicating the matter relating to the custody of the minor child.

8. Since both the parties have consented that there is no objection regarding issuance of passport to the minor child in accordance with the Rules of The Passport Act and keeping in view the aforesaid facts and circumstances of the case, it is directed that the Passport Authority shall issue the passport on the application filed on behalf of the minor child Vivaan Dang in accordance with applicable Rules as well as the statute of The Passport Act. After issuance of the passport, the same shall be kept in the Court of Sh. Raj Kumar Tripathi, Additional Principal Judge, West, Tis Hazari, Delhi, till disposal of the petition bearing no. GP/130/2021, filed under Guardians Act for custody of the minor child.

9. In view of the aforesaid observations and directions, the instant petition stands disposed of.

CHANDRA DHARI SINGH, J DECEMBER 23, 2021 Aj