

IN THE HIGH COURT OF SINDH, KARACHI

CONSTITUTION PETITION NO.D-4864 OF 2020

Before

Mr.Justice Muhammad Ali Mazhar

Mr.Jutice Amjad Ali Sahito

M/s Abid Shahid Zuberi, Haseeb Jamali, and
Shahab Sarki & Khurram Nizam, advocates for the
Petitioner along with the Petitioner

Mrs. Navin Merchant, advocates for respondent
Nos. 9 and 10

M/s Ch.Muhammad Farooq and Samina Iqbal,
Advocates for NADRA

Mr. Khalid Zubairi, Assistant Director South/Law Officer
Passport Office, Saddar, Karachi.

Mr. Hussain Bohra, Assistant Attorney General

Date of hearing : 13.04.2021

Date of Judgment: 04.06.2021

J U D G M E N T

AMJAD ALI SAHITO--J., Through instant Constitution
Petition, petitioner has sought for the following relief(s):-

- i.** Declare that the amendments in NADRA record of the above named minor including change of his name upon misrepresentation by the mother and influence of maternal grandfather and without consent / permission / knowledge of Petitioner/Natural Guardian/Father as illegal and void *ab initio*.
- ii.** Declare that issuing of Passport of the minor under false and fake name is illegal and void *ab initio*.
- iii.** Cancel the Passport No.LF6807661 (Annexure P-6) issued under fake name to the Minor.

- iv.** Direct the official Respondents as well as all record holding authorities to correct its record of minor as “Taimur Hasan Hashmi”.
- v.** Direct Respondents No. 4, 5, 6, 7 & 8 to ensure minor is not removed from the jurisdiction of Pakistan under any circumstances, without written consent of the Petitioner/father/natural guardian.
- vi.** Direct the Respondent No.7 to register criminal case against the Respondents No. 9 and 10 as well as officials of the NADRA and Passport Office from Sanghar and prosecute them in accordance with Law.
- vii.** Permanently restrain respondents No. 4, 5, 6 & 7 from issuing any new passport for Minor under any name, without the permission/consent of the father/petitioner.
- viii.** Any other relief deemed appropriate may also be granted.

2. Precisely facts as is envisaged in the instant Constitution Petition are that Petitioner and respondent No.9 knotted into wedlock as depicting via nikahnama dated September 16th, 2017; out of wedlock one male issue master Taimur Hassan Hashmi was born. There was creation of a hateful union between spouses, the respondent No.9 took step to live separate at her parent house thereafter on **22.10.2019** she filed suit seeking dissolution of her marriage before the court of Family Judge, Tando Adam, District Sanghar. After knowledge, the Petitioner divorced respondent No.9 and marriage stand dissolved. The Petitioner sued respondent No.9 before the court of learned Family Judge, Karachi [South] by filing Application under Section 25 of the Guardian & Ward Act, 1890, sought custody of minor master Taimour Hassan Hashmi. The Guardian Judge returned the

application to the Petitioner for submitting the same before the Court having jurisdiction; Petitioner moved an appeal before the Appellate Court and succeeded in obtaining judgment in his favour.

3. The learned counsel for the petitioner contended that mother has no right to change the name of minor; that the NADRA and Passport authorities have acted beyond the scope of Law; that the issuance of Passport of minor master Taimour Hassan Hashmi in the name of Ibrahim Hassan is illegal and is in violation of settled provisions of Law; that the change of minor's name required proforma duly filled in with signature of father and mother by the authorities; that the rules and regulations of Immigration and Passport department requires presence of both parents altogether, authorities changed the name of minor only at the sole discretion of respondent No.9 [mother] the said fact is apparent from the record; per learned counsel the authorities have acted beyond their official capacity; lastly learned counsel prayed that the instant constitution petition may be allowed as prayed. In support of his contention, he has relied upon the case law PLD 2007 SC page 642.

4. Conversely, learned counsel for respondent No.9&10 *inter alia* contended that the instant constitution petition has been filed with *mala fide* intention and most of the contents thereof are misconceived and false; per learned counsel respondent No.9 at the time of separation the custody of minor master Taimour Hassan Hashmi now Ibrahim Hassan was consensual; that the minor was keeping unwell continuously and on the advice of the elders of the family, his name was changed from Taimur Hassan to Ibrahim Hassan; that the petitioner failed to established the allegation that the change of the minor's name was the purpose of removing the minor from Pakistan; that the Respondent No.9 travelled two

times out of the country with the minor and had she any intention of removing the minor from Pakistan she would have done so long ago; lastly learned counsel prayed that the instant constitution petition is not maintainable being meritless, same is liable be dismissed.

5. The Assistant Director/Law Officer representing Passport Department contended that as per SOPs for issuance of passport, either of the parents may accompany the minor at the time of processing of passport, for signature of the passport application; that the passport was issued to bonafide citizen of Pakistan to facilitate the journey on the strength of valid/active Form "B"/CRC; that there is no ambiguity in issuing a passport to minor master Ibrhaim Hassan.

6. Learned counsel for respondent No.2&3 (NADRA) contended that as per available NADRA record, the petitioner having CNIC No.42201-3828640-5 process the CRC (Child Registration Certificate) of his son namely "Taimoor Hassan Hashmi" from PHQ Karachi on 27-03-2019 and obtained CRC No.42201-7173766-7 of his son. Subsequently, Mst. Hira Imam, CNIC No.44206-1933847-8 obtained duplicate CRC of her son "Taimoor Hassan Hashmi" on 03.07.2019, being mother and natural custodian of an infant. It has been further contended that, the name of modification form "Taimoor Hassan Hashmni to "Ibrahim Hassan" was also processed on 09.07.2019 with biometric attestation of her mother and issued, accordingly. While FRC (Family Registration Certificate) was processed and obtained by the petitioner on 31.10.2019.

7. Learned Assistant Attorney General opt arguments advanced by the respective learned counsel(s) representing the respondents and denied the contents of instant

constitution petition in *toto*; further learned AAG submits that all the recourse and process of change of name has been done owing to the rules and regulation of the department which is in accordance with the Law; per learned AAG respondent No.9 being a mother of minor master Taimour Hassan Hashmi filed her affidavit before the department for obtaining passport and change of the name; lastly learned AAG prayed that the instant constitution petition may be dismissed.

8. We have heard learned counsel for the parties and have gone through the record available before us. It is displayed from record the name of minor was changed in July 2019, the petitioner having CNIC No.422013828640-5 processed the CRC of his son namely Taimoor Hassan from HQ Karachi on 27.03.2019 and obtained CRC No.422017173766-7 of his son. Subsequently, Mst Hira Imam/mother having CNIC NO.442061933847-8 obtained duplicate CRC for her son on 03.07.2019 and applied for change of the name of the minor, after completion of formalities as per procedure and NADRA policy. The child smart card of “Ibrahim Hassan” was also processed on 09.07.2019 with biometric attestation of her mother, the smart card, was issued. As per Registration Policy which is available in the file at page No. 269, which reflect that, the **NADRA REGISTRATION POLICY, version 4.0, HQ OPERATIONS DEPARTMENT**, the requirement of modification of National Identity Card (S/CNIC-S/NICOP/CRC), the following criteria has been prescribed:-

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| <p>Name: Definition: Change mean name is being transferred from “A” to “B”. The need for a name change may</p> | <p>a. Original S/CNIC-S/CNIC-S/NICOP/CRC of applicant AND b. Affidavit as per format attested by Oath Commissioner/Certificate form Dar-Ul-Afta (due to religion change only) AND c. Biometric Verification of CNICF from any blood/immediate relative.</p> |
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| <p>result from change of religion or simply a desire to have another different name. Anything which doesn't affect applicant's given name should not be considered name change and no document(s) will be require.</p> | <p>Expectations/Remarks</p> | <p>I. Above mentioned documents(s) are for modification only, for correction in name no document(s) is required and every possible measure shall be used to facilitate applicant.</p> <p>II. Applicant neither can revert back to his/her previous name nor can modify name for 2nd time except female applicant (modified name with husband/father).</p> <p>III. Once applicant modifies his/her name, all dependents shall also modify their registration document (if required)</p> |
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9. From the above it is clear that for changing the name of minor the presence of any blood/immediate relative is necessary. Per learned counsel for NADRA as per available NADRA record, the name of minor was change and smart card was processed with biometric of her mother, hence they have not committed any illegality rather acted the following policy. He further argued that on 12.11.2019 a new policy was introduced for changing the name of minors, wherein consent of both parents has been incorporated. Whereas the name of the minor was changed in the month of July 2019.

10. The next contention of the learned Counsel for the petitioner was that for children below the age of 18 years the presence of both parents is mandatory for passport processing and the respondent 4 to 6 committed great irregularity by issuing the passport in absence of his father. He has also relied upon the documents filed with the petition as well as along with a statement. Mr. Khalid Zubairi Assistant Director South/Law officer passport office submits that as per Standard Operating Procedures Directorate General Immigration & Passports Govt. of Pakistan the requirement is only if the applicant is below 18 years of age

he will be accompanied by either of his/her parents or legal guardian. In this view of the matter, he has relied upon the SOPs available in the file dated 03.12.2013, it would be appropriate to reproduce herein below the STANDARD OPERATING PROCEDURES, Directorate General Immigration & Passports Government of Pakistan, updated on December 03.2013 for obtaining passport below the age of 18 years is as follows:-

Token Issuance

- a. The official deployed at Token Counter will ensure production of following documents by applicant for issuance of Token:-
 - i. Original CNIC alongwith its photocopy (In case the age of applicant is 18 years or above).
 - ii. Original Computerized Form-“B”(CRC)/NICOP alongwith its photocopy (in case of applicant below 18 years of age). The applicant will also produce photocopy of father/mother’s CNIC.
 - iii. **The applicant below 18 years of age will be accompanied by either of his/her parents or legal guardian.**
(**highlights and underlined by us**)

11. On the other hand learned Counsel for the petitioner argued that a new policy introduced which is available on the website shows that, the requirement for a machine-readable passport for the children below the age of 18 years, the presence of both parents are mandatory.

12. There is conflict in the policy/SOPs framed by the Ministry of Foreign Affairs, Government of Pakistan for obtaining a passport below the age of 18 years, in the first policy dated 03.12.2013 the only requirement was that if the applicant is below 18 years of age will be accompanied by either of his/her parents or legal guardian whereas the policy available on the website (a copy is available in the file) which reflect that “for child below the age of 18, presence of both

parents is mandatory for passport processing”. This controversy cannot be decided through writ jurisdiction. In such circumstances, the petitioner is at liberty to file a complaint, if any, before the competent authority for redressal of his grievances.

13. The learned counsel for the petitioner also argued that the minor Taimur Hassan @ Ibrahim shall not be removed from the jurisdiction of Pakistan under any circumstance without the written consent of the Petitioner is concerned; freedom is a fundamental right of every citizen of Pakistan as provided under the Constitution, 1973; and same could not be curtailed even due to dispute between ex-wife and ex-husband. The issuing of passport with the change name, the master Ibrahim Hassan had already travelled abroad and returned to the homeland, simultaneously passport of the ward had been used for travelling purposes meaning thereby same is/was genuine; prima facie the case is pending before the learned trial Court/Family judge Karachi South and such procedure have also been provided under the Law; therefore petitioner ought to have approach before the trial court having jurisdiction for keeping the name of ward Ibrahim Hassan likewise on Exit Control List. Section 25 of the Guardians and Ward Act, 1890 empower a court, if a ward leaves or removed from the custody of a guardian of his person, the court, if it believes that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and to enforce the order may cause the ward to be arrested and to be delivered into the custody of the guardian. In Addition, all power available under section 100 Criminal Procedure Code to a Magistrate, made available to a family court for the purpose. Besides Section 45 of the Guardians and Ward Act, 1890 is also in aid thereof. Thus the presence of the remedy available under the Law i.e. Family Courts Act, 1964 and Guardian and Wards Act, 1890,

not mandated this court to exercise its jurisdiction under Article 199 of the Constitution. As for as placing the name of the minor in Exit Control List is concerned, the family Court is fully empowered to issue directions if required, to the authority concerned. This Court has passed the order on 07.10.2020 put restraint upon master Taimur Hassan Hashmi not to travel on passport No.LF6807661 under the name of Ibrahim Hassan which is anticipatory relief in nature and is not a permanent restraint; therefore for seeking permanent relief, the proper procedure left with the Petitioner is to approach the proper forum i.e. learned trial Court for redressal which may regulate the custody of minor namely master Taimoor Hassan Hashmi [new name "**Ibrahim Hassan**") in the pending Guardian & Ward suit filed by the Petitioner; and at this stage the Constitution Petition is not an adequate remedy.

14. With the above observations, the instant Constitution Petition along with all the pending applications is disposed of in the following terms:-

- i. The custody of minor is now to be regulated by the Family Court in the pending Guardian & Ward Suit which has been revived after the order in appeal as communicated by the learned counsel for the parties therefore petitioner may file proper application to regulate the custody of minor before the Family Court within a period of twenty [20] days; and, if any such application is filed, Family Court shall decide the same after providing ample opportunity of hearing to the parties within twenty [20] days' time. In order to provide equal opportunity to petitioner and respondent No.9. The

interim order passed in this petition shall continue for twenty [20] days and after passing order by the learned Family Judge on the aforesaid application parties may seek appropriate remedy in accordance with the Law.

- ii. In order to resolve factual controversy as to whether the change of name of master Taimoor Hassan Hashmi (new name **“Ibrahim Hassan”**) in the passport and/or Form “B”/CRC was done in accordance with the Law or applicable SOPs / Instructions / Guidelines the petitioner may file respective complaints to Director, Passport, Karachi and Director General NADRA Sindh, if any such application is filed, both authorities after providing right of audience to the petitioner and respondent No.9 shall decide the complaint and pass appropriate order.

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