

Weekly Update: 05/2023-24

Question: Can statement of the Accused be recorded through Power of Attorney holder?

As per, the Indian Criminal Jurisprudence, an accused is the one who must present his case with the assistance of his/her counsel and the accused must appear before the Hon'ble Court on date of every proceeding. However, when the question arises whether statement of the accused can be recorded through Power of Attorney holder, there is no absolute answer. As a general practice, the answer to the above question is a "No".

However, there are exceptions which are highlighted through judgments by the Hon'ble Courts, and also, in those cases where the presence of the accused is dispensed by the court where there can inordinate delay.

By drawing a hint from the landmark judgment of *Lalita Kumari v/s State of Uttar Pradesh & Ors.*, registering an FIR is compulsory in case of a Cognizable offence. However, in offences of matrimonial or commercial nature, the concerned officer can conduct a preliminary inquiry to find out if there is a cognizable offence.

We have seen a deviation from the general practice, especially in the case of matrimonial matters where the parties have reached a settlement.

When it comes to deposing or recording statement on behalf of the accused, in matters related to matrimonial and commercial nature, if opposite party does not have any objections, then Power of Attorney holder can do so. However, it will be for limited purposes only, such as recording of statement before the Magistrate etc.

We, recently, have dealt with a matrimonial dispute, wherein, the estranged spouses had reached a settlement and had approached the Hon'ble Court to quash the case. However, the accused in the matter was living abroad and ensuring his presence before the Hon'ble Court would have led to inordinate delay. Therefore, after mutually agreement between the parties, Power of Attorney was issued in the favour of Accused's father.

It is also relevant to mention that the Hon'ble Supreme Court has issued guidelines for videoconferencing (VC), for all the High Courts in India, whereby the statement of the accused and his examination can also be done through VC.

[For reference: <https://ecommitteesci.gov.in/document/model-rules-for-video-conferencing-for-courts-2/>]

For further discussion or queries on the above mentioned issue , we can be reached at anbay.legal@gmail.com.