

CRM-M-34054-2015 (O&M)

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

**CRM-M-34054-2015 (O&M).
Decided on: November 30, 2015.**

Sunita Punia

..... Petitioner(s)

Versus

Baljit Singh

..... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

**PRESENT Mr.Ravi Malhotra, Advocate,
for the petitioner.**

M.M.S. BEDI, J (ORAL).

The short question which is required to be determined in the present case is regarding the maintainability of the criminal proceedings under Section 138 of the Negotiable Instruments Act, initiated by complainant Baljit Singh who had earlier launched prosecution through his father, a duly appointed power of attorney. His father expired during pendency of the proceedings. The complainant thereafter has executed power of attorney in favour of his brother Malkiat Singh to proceed further in the complaint.

Grievance of the petitioner is that the complaint deserves to be dismissed as the complainant is residing abroad and that the power of attorney placed on record is though attested by Notary but same has not been embossed or endorsed by the concerned Commissioner of Government Agency.

Counsel for the petitioner has vehemently relied

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upon Section 18 of the Indian Stamp Act, 1899, to contend that power of attorney executed outside India cannot be acted upon in India unless and until the same is stamped in India within the time prescribed by a competent authority.

I have heard the learned counsel for the petitioner and I am of the opinion that the plea regarding non-maintainability of the complaint can be raised by the petitioner before the trial Magistrate on the basis of the facts alleged. Non-maintainability of the complaint proceedings being a mixed question of fact and law, I do not deem it appropriate to quash the proceedings in the exercise of powers under Section 482 Cr.P.C.

Counsel for the petitioner has also not been able to satisfy this Court that the defect pointed out by the petitioner actually vitiates the proceedings or would be a mere irregularity which cannot be rectified. He has also not been able to satisfy this Court that the alleged illegality/irregularity is of such a nature that the further proceedings in the complaint under Section 138 of the Negotiable Instruments Act, would be an abuse of the process of the Court or otherwise the exercise of powers under Section 482 Cr.P.C., is required to secure the ends of justice.

The petition is disposed of as pre-mature with liberty to the petitioner to raise all the pleas regarding the maintainability of the complaint on the basis of an instrument which, as per the petitioner, is not a valid and legal authorisation.

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Since the complainant is pending since the year 2011, a direction is issued to the trial Court to expeditiously dispose of the complaint by giving short dates of hearing.

Dismissal of the misc. application filed by the petitioner vide Annexure P3, will not, in any manner, hamper the adjudication of the claim of the petitioner at final stage regarding non-maintainability of the complaint. The said point is left open.

November 30, 2015.
rka

(M.M.S. BEDI)
JUDGE