

**CRM-42818-2018 in/and
CRM-A-2643-MA-2018**

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

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**CRM-42818-2018 in/and
CRM-A-2643-MA-2018
Date of Decision:02.04.2019**

M/S M K FINANCIAL SERVICES (REGD)

...APPLICANT

VERSUS

STATE OF PUNJAB AND ANR

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Vinod Kumar Kaushal, Advocate
for the applicant.

MANOJ BAJAJ, J.(ORAL)

CRM-42818-2018

For the reasons stated in the application, delay of 161 days in
filing the application seeking leave to appeal is condoned.

Application is allowed.

Main Case

The present application against acquittal arises from order
dated 22.01.2018, whereby the learned trial Court proceeded to dismiss the
complaint in default as the complainant had failed to appear.

Learned counsel appearing on behalf of the applicant contends
that inadvertently a wrong date was noticed as 02.02.2018 instead of
22.01.2018. Learned counsel further contends that the absence on the given
date was bona fide and the Court has proceeded to pass the extreme order of
dismissal of the complaint by ignoring the fact that the case was fixed for

cross-examination of prosecution witnesses as recorded in the order dated 16.11.2017, reproduced at page 11 of the petition. According to him, neither the accused was present nor his counsel and, therefore, the appearance of the complainant would have made no difference as no effective proceedings could have taken place in the absence of the accused or his counsel.

The impugned order strictly does not amount to acquittal and, therefore, on the oral request of the applicant, the application is treated under Section 482 Cr.P.C.

At this stage, it may not be necessary to issue notice to the accused, as it may cause burden upon him to contest this application, wherein the prayer is for restoration of the complaint.

This Court finds that the explanation offered for the absence of applicant is reasonable and accepted. It is to be borne in mind that many a times the complainant or counsel can be prevented by sufficient reasons on a given date from putting in appearance before the Court and every such absence necessarily cannot be construed as deliberate or wilful.

Considering the above, the impugned order dated 22.01.2018 is set aside and the complaint is restored to its original number, and the trial Court shall proceed with the complaint in accordance with law.

Disposed off.

02.04.2019
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(MANOJ BAJAJ)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No