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

**CRM-A-2032-MA-2015
Date of decision-04.02.2020**

M/s Narang Card Gallery Sirsa through its Prop. Leelawanti

....Applicant

Vs.

**M/s National Card Gallery, Ludhiana through its Prop.
Sunil Kumar Sharma, and another**

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Rakesh Nagpal, Advocate for the applicant.

Ms. Jagjit Gill, Advocate for respondent No.2.

MANOJ BAJAJ, J.

Applicant has preferred this application under Section 378(4) Cr.P.C. for granting special leave to appeal to challenge the order dated 08.10.2015 passed by the learned Judicial Magistrate First Class, Sirsa whereby his complaint under Section 138 Negotiable Instruments Act, 1881 was dismissed for want of prosecution and accused person was discharged.

Learned counsel appearing on behalf of the applicant contends that inadvertently, the counsel for the complainant noticed wrong date of

hearing i.e. 09.10.2015, instead of 08.10.2015. Learned counsel further contends that the absence of the complainant and his counsel before the trial Court was therefore *bona fide* on the said date and the trial Court proceeded to pass the extreme order of dismissal of the complaint. He further submits that previously the applicant and his counsel were appearing regularly before the trial Court.

On the other hand, learned counsel appearing on behalf of respondent No.2 has opposed the prayer and contended that since the complainant or his counsel were absent on the said date of hearing, therefore, trial Court rightly proceeded to pass the order and discharged the accused. According to him, the petition deserves to be dismissed.

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.

After hearing learned counsel for the parties, this Court finds that the trial which is summary in nature was at an advanced stage and therefore, for solitary absence of the complainant or his counsel, the trial Court proceeded to pass the extreme order of dismissal of the complaint. 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. The explanation offered for the absence of applicant is reasonable and accepted.

Considering the above, the impugned order dated 08.10.2015 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.

Let the parties appear before the trial Court on 27.02.2020.

Petition is allowed.

04.02.2020

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(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No