

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

CRM-M-30660-2023

Date of Decision: 03.07.2023

M/s APG Marketings and another

....Petitioners

Versus

M/s Surya Polyvin Ltd. And another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rajesh Gupta, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for quashing of order dated 29.11.2022 (Annexure P-5) whereby the petitioner was ordered to be summoned by way of proclamation under Section 82 Cr.P.C. and order dated 04.03.2023 (Annexure P-7) whereby the petitioner was declared proclaimed person and proceedings under Section 83 Cr.P.C. were ordered to be initiated.

2. Notice of motion.

3. On the asking of Court, Mr. Dhruv Dayal, Additional Advocate General, Punjab accepts notice on behalf of respondent No.2-State and opposes the petition.

4. Brief facts of the case are that on a complaint of respondent No.1, the petitioner was ordered to be summoned to face trial under Section 138 of Negotiable Instruments Act, 1881.

5. Learned counsel for petitioners would argue that petitioner firm was not existing as the business had been closed due to heavy losses at the given address before inception of corona period since December, 2019. He would further argue that concededly, bailable and non-bailable warrants issued on various occasions also remained unexecuted and the petitioners were never served. As such, the impugned orders are bad in law.

6. Having perused the record, it is not borne out as to how the petitioners were duly served before initiating proceedings under Section 83 Cr.P.C. Such a recourse is not sustainable in law i.e. without recording satisfaction by learned Magistrate as contained under Section 82(3) Cr.P.C. to the effect that Court found that proclamation was duly published. Further, it appears that 30 days' time, as mandated by Section 82 Cr.P.C., was not granted.

7. In the premise, the impugned orders can not be sustained. Consequently, the instant petition is allowed and impugned orders are quashed *qua* petitioner. Further proceedings to continue before the Court below in accordance with law.

8. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 03, 2023
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Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No