

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF APRIL, 2021

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO.10076 OF 2020 (GM-RES)**BETWEEN:**

SRI. NITHYA SHAMBHAVANANDA @
R. NARAYANAN
AGED ABOUT 43 YEARS
S/O N. RAMASAMY
R/O NO.B-11, "SHANTHI APARTMENT"
18/21, E.T.K. ROAD, 1ST CROSS STREET
ALWARPET, CHENNAI-600018

... PETITIONER

(BY SRI. C.V. NAGESH, SR. COUNSEL FOR
SRI. AJAY KADKOL.T, ADVOCATE)

AND:

STATE OF KARNATAKA
BY STATION HOUSE OFFICER
BIDADI POLICE STATION
BIDADI

... RESPONDENT

(BY SRI. V.S. VINAYAKA, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF THE CR.P.C., SET ASIDE THE ORDER DATED 05.06.2020 IN S.C.NO.86/2014 BY THE III ADDL. SESSIONS JUDGE RAMANAGAR ORDERING THE ATTACHMENT OF THE PETITIONERS PROPERTY BEARING SY.NO.251 HEGGADEGERE VILLAGE BIDADI HOBLI RAMANAGAR TALUK, BANGALORE RURAL DISTRICT UNDER SECTION 83 OF THE CODE OF CRIMINAL PROCEDURE WHICH IS PRODUCED AS ANNEXURE-A AND WHICH ORDER CAME TO BE

CONFIRMED VIDE THE ORDER DATED 29.06.2020 PASSED IN THE CASE OF THE APPLICATION FILED BY THE PETITIONER UNDER SECTION 84 OF THE CODE OF CRIMINAL PROCEDURE BY REJECTING THE SAID APPLICATION.

THIS WRIT PETITION COMING ON FOR FURTHER HEARING AND HAVING BEEN RESERVED FOR ORDERS ON 20.01.2021, THIS DAY, PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for certiorari to stay the order dated 5.6.2020 passed in S.C.No.86/2014 by the III Addl. Sessions Judge, Ramanagara ordering the attachment of the petitioner's property bearing Survey No.251, Heggadegere village, Bidadi Hobli, Ramanagara Taluk, Bangalore Rural District under Section 83 of the Code of Criminal procedure (Cr.P.C.), confirmed by order dated 29.06.2020 on an application filed by the petitioner under Section 84 of Cr.P.C.

2. FACTS:

- 2.1. The petitioner claims to have completed his schooling at Lawrence School-Lovedale and is a holder of a graduate degree in Bachelors of

Arts-Economics from the Ramakrishna Mutt Vivekananda College, Chennai. He further claims to be a member of a respectable business community identified as "Chettiars – Nagarathars" in the State of Tamil Nadu. The petitioner is a very affluent person belonging to a high Society business family. The petitioner, along with his other family members, is said to own 500 acres of coffee plantations in the region of Coorg, Karnataka, apart from holding 200 acres of agricultural lands in Pudukottai, Tamil Nadu. The petitioner is also stated to own a business establishment engaged in coffee curing activities catering to over more than ten thousand tons of coffee to the markets not only in India but also beyond the boundaries of the country.

2.2. The petitioner allegedly owns and possesses

several immovable properties that are situated across the State of Karnataka and Tamil Nadu. The petitioner is stated to be involved in philanthropic activities such as providing skill training and employment for the underprivileged, nurturing the educational and social needs, setting up Goshala, distribution of milk and other dairy products free of cost to children and members of economically weaker sections and deserving sections of the society, etc.

2.3. It is contended that one such Goshala Housing more than 300 cows is set up by the petitioner in immovable bearing in Sy.No.251, Heggadegere village, Bidadi Hobli, Ramanagara Taluk, Bangalore Rural District.

2.4. In S.C. No. 86/2014, which is pending on the file of the III Addl. Sessions Judge, Ramanagara, the said Judge by way of his

order dated 5.6.2020 passed under Section 83 of Cr.P.C. is alleged to have called upon the Deputy Commissioner, Ramanagara District to attach the property bearing Sy.No.251, Heggadegere village, Bidadi Hobli, Ramanagara Taluk, Bangalore Rural District, on the ground that the said property was belonging to one Sheelam Gopal Reddy.

2.5. Sheelam Gopal Reddy is accused No.2 in the said case, who had remained absent despite issuance of court notice and order of proclamation against him for the purpose of securing his presence in the said case despite the prosecution being fully aware that the attached property belongs to the petitioner.

2.6. It is contended that the aforesaid property came to be vested in the petitioner vide a registered agreement of sale dated 27.6.2018 executed by Sheelam Gopal Reddy, who was

the erstwhile owner of the property after receiving a total consideration of Rs.2,25,75,000/- through his son and Power of Attorney Yasaswi Sheelam Reddy.

2.7. On the date of the agreement, the entire sale consideration except for a meagre sum of Rs.2,25,000/- which constitutes a minuscule fraction came to be paid by the petitioner to the vendor. Immediately thereafter, i.e., on the very next date of the agreement, the petitioner who is a purchaser of the aforesaid property came to be put in actual physical possession by the vendor of the property by Yasaswi Sheelam Reddy, who is a power of attorney of Sheelam Gopal Reddy and since then the petitioner is stated to be enjoying the property as an absolute owner with the unconditional right, title and interest over the attached property.

2.8. From June 2018 till now the vendor nor anyone else have raised their little finger vis-a-vis the absolute right, title and exclusive possession and enjoyment of the petitioner in respect of the said property. The petitioner has paid the registration charges and stamp duty on the agreement of sale as if it is a sale deed.

2.9. The sale consideration has been paid through a crossed Account Payee Demand Draft issued by the petitioner in favour of the vendor. The letter dated 27.6.2018 addressed to the petitioner by Gopal Sheelam Reddy through his PA holder establishes actual delivery of possession of the property on 27.6.2018. On receipt of the consideration and delivery of possession, said Gopal Sheelam Reddy lost his right, title and interest over the property and the same is transferred to the petitioner.

2.10. All the above facts were to the knowledge of the prosecution, despite which the prosecution filed an application under Section 83 of Cr.P.C. seeking for attachment of the aforesaid property, which came to be allowed on 5.6.2020.

2.11. Coming to know of the same, the petitioner had filed an application under Section 84 of Cr.P.C. for the lifting of the attachment and for recalling/setting aside the order dated 5.6.2020.

2.12. After hearing the said application dated 18.6.2020, III Addl. District and Sessions Judge vide its order dated 5.6.2020 in S.C.No.86/2014 rejected the said application, confirmed the attachment order and directed the communication of the same to the Deputy Commissioner, Ramanagara District. It is

aggrieved by the same that the petitioner is before this Court.

3. Sri.C.V.Nagesh, learned Senior counsel instructed by Sri.AjayKadkol, learned counsel for the petitioner submitted as under:

- 3.1. The accused, Sheelam Gopalam Reddy, has not been proclaimed as an absconder. It is only on such proclamation as an absconder that the property of the accused can be sought for attachment.

- 3.2. For the accused to be an absconder, the accused ought not to have appeared before the concerned Court despite service of notice and despite the accused having been given an opportunity to appear before the concerned Court.

- 3.3. In the present case, Sheelam Gopalam Reddy has not been declared or proclaimed as

absconding. Hence, without such declaration, the accused Sheelam Gopalam Reddy cannot be said to be absconding, and consequently, no attachment of his property could be made under Section 83 of the Cr.P.C.

3.4. Since the accused has not been declared to be absconding, nothing prevented the petitioner from purchasing the property of the accused, and as such, the accused, after conducting due diligence, has purchased the property, and now the petitioner cannot be put to a loss by attaching the property on the ground that the accused is absconding and/or that the property is required to be attached so as to prevail upon the accused to appear before the Court.

3.5. Property that does not belong to the accused person cannot be attached in a criminal case for the purpose of securing the appearance of

such accused before the trial Court;

3.6. That the property having been transferred to the petitioner under a registered agreement of sale whereunder, the entire sale consideration has been received, and possession of the property has been handed over to the petitioner.

3.7. The accused did not have any subsisting right, title or interest in the said property. Therefore, the property could not be attached by the trial Court. The transaction between the petitioner and the accused-absconder had occurred in the year 2018, more so on 20.6.2018, i.e. nearly two years prior to the order of attachment whereunder the said accused/absconder had divested himself of right, title and interest over the property under a registered document as regards which payments were made through normal banking

channel.

3.8. The purpose of attachment of a property is to secure the presence of an accused who has remained absconding or who did not appear before the Court. The said purpose is sought to be achieved by subjecting the property of the accused to attachment and the consequent forfeiture thereof, which could be cause for the absconding accused to be present himself/herself before the Court.

3.9. When the absconding accused having no interest over the property has received the entire sale consideration, the attachment and forfeiture thereof would have no impact on the absconding accused, and as such, the continuance of the attachment and/or forfeiture would not serve any purpose. Therefore, attachment is bad in law.

3.10. Section 83(2) of Cr.P.C. makes use of the

word 'belonging'. The word 'belong' is defined under the Merriam Webster Dictionary "to be a property of a person". Thus, for an order to be passed under Section 83(2) of Cr.P.C., the property was necessarily required to belong to the accused as on the date of attachment.

3.11. Trial Court ought to have considered the right of the petitioner in the property attached without adverting to the right of the petitioner in the property; the attachment order has been confirmed, which he submits is contrary to the applicable law.

3.12. He relies on the decision of the Hon'ble High Court of Delhi in **G.Sagar Suri –v- State and another [2004 Cr.L.J. 212]** at para 14, which is reproduced hereunder:

"14. Section 83 enjoins upon the Court to record the reasons in writing for ordering the attachment of any property belonging to the person who has been proclaimed as an offender under Section 82 Cr.P.C. Even the

order of attachment of property has two pre-requisites. Firstly the Court has to satisfy itself either by affidavit or otherwise that the person in relation to whom the proclamation is to be issued is about to dispose of whole or any part of the property or secondly that he is about to remove whole or part of the property from the local jurisdiction of the Court. Thus the orders passed by learned MM in this regard suffer from gross illegality and inherent infirmity."

3.13. The order of attachment has been made merely on the basis of self-serving statements made by the prosecution inasmuch as they have falsely contended that the property belongs to the accused/absconder. The application is not supported by any affidavit or cogent material to support the claim that the accused No.2 may dispose of the attached property. The necessary encumbrance certificate, etc. have not been produced by the prosecution to establish that the accused continues to have valid and subsisting right in the property inasmuch as the production of encumbrance certificate would disclose that

the registered sale of agreement executed on 27.6.2018 whereunder merely the entire sale consideration had been received by the said absconder. Neither the prosecution has referred to the same, nor the trial court has taken said facts into consideration while confirming the order of attachment vide its order dated 29.06.2020.

- 3.14. The rights of the petitioner in the property has not been recognised, if they had been recognised, the attachment order ought to have been lifted, and the earlier order dated 5.6.2020 ought to have been set-aside. In this regard, he relies on the decision of the Hon'ble Apex Court in the case of ***Hamda Armmal vs Avadiappa Pathar And 3 Others [(1991)1 SCC 715]***.

- 3.15. The petitioner is in possession, occupation and enjoyment of the aforesaid property and

established goshala therein from the year 2018 and therefore, he submits that the order of attachment only affects the petitioner and not the accused/absconder.

- 3.16. The order dated 5.6.2020 puts the cart before the horse inasmuch as the relevant portion of the order reads as under:

"This is main case in SC No.86/2014 and the split up case in SC No.52/2018 (split up as against accused No.2-Gopala Sheelam Reddy alias Nithya Bhakthananda) got advanced to this day at the instance of complainant CID Police by filing proper application through PP.

Accordingly, these matters are taken on board at 3.10 pm on this day.

Heard the learned PP on the application filed seeking necessary orders to attach the immovable property of above mentioned 2nd accused who has been absconding.

The learned PP submits that, the 2nd accused by himself and through his power of attorney has been attempting to sell his immovable property measuring 3.04 acres in Sy.No.251 of Heggadagere village of Bidadi Hobli, Ramanagara Taluk and District and that an attempt is made for registration of documents.

He further submits that, as the accused No.2 has been absconding, the said accused may be procured by attaching his properties if any. If the above property is sold as intended

by the 2nd accused and his power of attorney, then it is difficult to procure the personal appearance of accused No.2. By mentioning so the learned PP seeks necessary orders in this behalf.

It is also submitted by the learned PP that, this court has already issued not only the proclamation as per Sec.82 of Cr.PC vis-a-vis the above said 2nd accused but also issued Open-Ended Warrant.

He further submits that, even Red Notice has also been issued in respect of the said accused No.2.

To substantiate his above submission the learned PP has drawn the attention of this court to the document of copy of Sale Deed.

Perused the same.

The said document indicates that, the 2nd accused Sheelam Gopala Reddy had on 14.02.2007 purchased land measuring 3.26 guntas including an extent measuring 14 guntas of karab land in Sy.No.251 of Heggadagere village of Bidadi Hobli, Ramanagara Taluk and District. Thus, this documents establishes the nexus between the said land and said 2nd accused.

Another document of Sale Agreement dated 27.06.2018 executed by 2nd accused Sheelam Gopala Reddy S/o of Malla Reddy represented by his son and Power of Attorney holder, Yasaswi Reddy Sheelam in favour of Nithya Shambiiavananda (previously known as R.Narayanan) underlines the preparation of 2nd accused to sell the said property.

The RTC Documents issued for the year 2019-20 in respect of land measuring 3.09 acres in Sy.No.251/2 of Heggadagere village of Bidadi Hobli, Ramanagara Taluk and District

does say that the said land stands in the name of 2nd accused.

The above mentioned documents and reasons do underline that, there is no hurdle whatsoever to invoke Sec.83 of Cr.PC and to attach the immovable properties, owned and possessed as on this day by 2nd accused Gopala Sheelam Reddy @ Nithya Bhakthananda.

Therefore, the following:

ORDER

For the reasons aforementioned,

(1) The learned Deputy Commissioner of Ramanagara District is hereby directed either himself/herself or through any responsible officer shall attach the immovable properties,

(a) land measuring 3.26 guntas including an extent measuring 14 guntas of karab land in Sy.No.251 of Heggadagere village of Bidadi Hobli, Ramanagara Taluk and District.

(b) Land measuring 3.09 acres in Sy.No.251/2 of Heggadagere village of Bidadi Hobli, Ramanagara Taluk and District

And all other properties if any situated within the jurisdiction of Ramanagara District, owned and possessed by the above said accused No.2.

(2) The learned Sub-Registrar of Ramanagara is hereby directed not to register any transactions in respect of immovable property,

(a) land measuring 3.26 guntas including an extent measuring 14 guntas of karab land in Sy.No.251 of Heggadagere village of Bidadi Hobli, Ramanagara Taluk and District.

(b) Land measuring 3.09 acres in Sy.No.251/2 of Heggadagere village of Bidadi Hobli, Ramanagara Taluk and District.

And all other properties if any situated within the jurisdiction of Ramanagara District, owned and possessed by the above said accused No.2.

Post the matter for compliance report by 06.07.2020

Office shall furnish the copy of above order to the State by complainant CID Police forthwith".

3.17. Further, the said order dated 5.6.2020 passed under Section 83 of Cr. P.C Act is not even an order of attachment inasmuch as the trial Court has not attached the properties but has directed the Deputy Commissioner, Ramanagara, to attach the properties either by himself or through any responsible officer.

3.18. The powers under Section 83 of the Cr.P.C. cannot be delegated to the Deputy Commissioner; the attachment ought to have been carried out by way of an order passed by the trial court; it could only be an implementation of the order of attachment.

3.19. On the above grounds, he submitted that the order dated 5.6.2020 suffers from severe legal infirmities and, therefore, both the so-called order of attachment dated 5.6.2020 and the order confirming the attachment on 29.6.2020 are required to be set-aside.

4. Per contra Sri.Vinayaka.V.S, learned HCGP for the State submitted that

4.1. Sheelam Gopalam Reddy @ Gopalam Sheelam Reddy @ Nityabhakananda is accused No.2 in S.C.No.86/2014 pending on the file of 3rd Addl. District and Sessions, Ramanagar for the offences under Section 373, 377, 420, 140, 201, 417 r/w 415, 506(1) and 120-B of IPC.

4.2. Subsequently, the case against Sheelam Gopalam Reddy was split by order dated 26.8.2018, and the split case in S.C.No.52/2018 came to be registered against Sheelam Gopalam Reddy under Section 114,

120-B of the IPC.

4.3. Subsequent thereto, NBW was issued on 30.8.2018, which was returned unexecuted on account of accused No.2 having left India as recorded in the order sheet dated. 15.01.2018. Thereafter NBW was reissued through the Superintendent of Police, CID, Bangalore. Since the said NBW returned unexecuted on 7.1.2019, the Superintendent of Police, CID, Bangalore, had filed a request to issue Open-ended warrant in terms of Section 105-E(1) of the Cr.P.C.

4.4. Taking into account that the accused had travelled on an Indian Passport to Orlando in the USA, and taking into account there was an extradition treaty between India and the USA; an open-ended date warrant was issued through the Superintendent of Police, CID, Bangalore. Despite the said warrant being

issued, the same could not be executed as there was a spelling error in the name of the accused, and as such, by way of its order dated 25.06.2019, the Open-ended date warrant was reissued with the correct spelling of the accused on 4.3.2020.

4.5. Taking into account that the warrant was still not executed, the Court directed the CID police to procure the details of the properties of the accused, on 5.6.2020 the matter was advanced by Public Prosecutor, an application under Section 83 for attachment of the immovable property of the accused was filed on the ground that the accused had through his power of attorney attempted to sell his immovable property. If the property is sold, it would be difficult to procure the personal appearance of the accused.

4.6. Learned HCGP contended that the

proclamation as per Section 82 of the Cr.P.C. is issued, and thereafter, an open-ended warrant has also been issued. Taking the same into account, the Court being of the opinion that there was no hurdle to invoke Section 83 of the Cr.P.C, directed the attachment of immovable property owned and possessed as on that date by the accused Gopal Sheelam Reddy and passed the impugned order.

- 4.7. That the accused was evading service of notice, the accused had left the jurisdiction of the Court and was residing in the United States of America and, therefore, had been proclaimed absconding, and as such, there was no embargo in attaching the property of the accused. The fact that there is only an agreement of sale entered into and a substantial amount paid as consideration

would have no bearing on the matter since the property continues to stand in the name of the accused. Mere agreement of sale would not convey any right, title or interest in the property to the petitioner.

4.8. During the pendency of the proceedings in S.C.No.86/2014, after accused No.2 was proclaimed to be an offender, the transaction relating to the property has been carried out on 27.6.2018.

4.9. The petitioner and accused No.2/absconder belong to Nityananda Ashram, criminal proceedings arising out of the proceedings initiated against Paramahansa Nityananda Swamy @ Rajashekharan, the petitioner and accused No.2 are close associates of said Paramahansa Nityananda swamy@ Rajashekharan.

4.10. This fact is also established by reason that Sheelam Gopal Reddy, who was known as Nitya Bhaktananda and the petitioner herein is also known as Nitya Shambhavananda, and the address of the petitioner in the Bank Account statement is shown to be Nityananda Peetam, Nityananda Nagar, Kallugopali, Bidadi, Ramanagara- 562 109.

4.11. The petitioner has wantonly shown a different address in the cause tile to the present petition so as to try and distance himself from the matter.

4.12. The transaction which has been entered into between accused No.2 and the petitioner Nitya Shambhavananda is only to try and safeguard the property of Nitya Bhaktananda, knowing fully well that the State would move towards attachment of the said property on account of the said Nitya Bhaktananda having

absconded.

4.13. On the above grounds, he submits that the order of attachment, as also the confirmation of attachment, is proper and correct and does not require any interference at the hands of this Court.

5. Having heard both the counsels, the points that would arise for consideration by this Court are:

- 5.1. **Who could be declared as a proclaimed offender or a proclaimed absconder?**
- 5.2. **Whether a proclamation of an accused to be an absconder under Section 82 of the Cr.P.C. is a *sine qua non* for the purpose of the exercise of rights and/or powers under Section 83 for attachment of the properties of such absconding person or could a property of a person absconding be attached without proclaiming such person as absconding?**
- 5.3. **When can a property of the accused be attached under Section 83 of the Cr. P.C?**
- 5.4. **Whether while exercising powers under Section 83 of Cr.P.C, the property which would be attached is required to belong to the accused/absconder?**
- 5.5. **Would the word 'belong' used in Section**

83 of Cr.P.C mean merely that the property stands in the name of the said accused/absconder or would the interest of any third party in the said property require to be considered?

- 5.6. What is the mode and methodology of attaching the property, is the order of attachment of the property be passed by the concerned Court or can it be delegated to the jurisdictional Deputy Commissioner to attach the property?**
- 5.7. Can the agreement holder challenge the attachment on the ground that the agreement holder has an interest in the property, i.e. to say would the mere agreement to sell confer an interest on such a person to lodge a claim or objection to the attachment in terms of Section 84 of Cr.P.C.?**
- 5.8. Whether the court passing orders under Section 83 and 84 of Cr.P.C, as also this Court can look into the factum of fraudulent transfer while considering the application under Section 84 of Cr.P.C, or a petition challenging the order passed under Section 84 of Cr.P.C.?**
- 5.9. In the event of the dismissal of a claim or objection of such third party, would the third party be required to file a suit in terms of Section 84(4) of the Act, or could such a person approach this Court by way of the writ petition, more so when there is no dispute as regards the agreement entered into by such third**

party raised by the owner of the property?

5.10. Would the alternative remedy under Section 84(4) be an embargo for such a person to approach this Court by way of a writ petition?

5.11. Whether the orders dated 5.6.2020 and 29.6.2020 suffer from any legal infirmity requiring interference at the hands of this Court?

5.12. What order?

6. Before answering the points, the relevant provisions would have to be considered; they are reproduced hereunder for easy reference:

"82. Proclamation for person absconding.

1. *If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.*
2. *The proclamation shall be published as follows:-*
 - (i) (a) *it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;*
 - (b) *it shall be affixed to some conspicuous part of the house or homestead in which such person*

ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

3. *A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.*

83. Attachment of Property of person absconding.

1. *The Court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person: Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to, be issued,-*
 - a. *is about to dispose of the whole or any part of his property, or*
 - b. *is about to remove, the whole or any part of his property from the local jurisdiction of the Court, it may order the attachment simultaneously with the issue of the proclamation.*
2. *Such order shall authorise the attachment of any property belonging to such person within the District in which it is made; and it shall authorise the attachment of any property belonging to such person without such District when endorsed by the District Magistrate within whose District such property is*

situate.

3. *If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made-*
 - a. *by seizure; or*
 - b. *by the appointment of a receiver; or*
 - c. *by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or*
 - d. *by all or any two of such methods, as the Court thinks fit.*
4. *If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the District which the land is situate, and in all other cases-*
 - a. *by taking possession; or*
 - b. *by the appointment of a receiver; or*
 - c. *by an order in writing prohibiting the payment of rent on delivery of property to the proclaimed person or to any one on his behalf; or*
 - d. *by all or any two of such methods, as the Court thinks fit.*
5. *If the property ordered to be attached consists of live- stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.*
6. *The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908).*

84. Claims and objections to attachment.

1. *If any claim is preferred to, or objection made to the attachment of, any property attached under section 83, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under section 83, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part: Provided that any claim preferred or objection made within the period allowed by this- sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.*
2. *Claims or objections under sub-section (1) may be preferred or made in the Court by which the order of attachment is issued, or, if the claim or objection is in respect of property attached under an order endorsed under sub-section (2) of section 83, in the Court of the Chief Judicial Magistrate of the District in which the attachment is made.*
3. *Every such claim or objection shall be inquired into by the Court in which it is preferred or made: Provided that, if it is preferred or made in the Court of a Chief Judicial Magistrate, he may make it over for disposal to any Magistrate subordinate to him.*
4. *Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (1) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.*

7. **Answer to point No.1: Who could be declared as a proclaimed offender or a proclaimed absconder?**

7.1. Section 204(1) of The Code of Criminal

Procedure, 1973 (CrPC) states that when the Magistrate who is empowered to take cognisance is satisfied that the case is a:

7.1.1. Summons case, then he *shall* issue a summons for the attendance of the person accused.

7.1.2. Warrant case, then he *may* issue a warrant or a summons to present the accused before the Court at a certain time.

7.2. Section 204(5) states that nothing in this section shall affect the provisions of Section 87 of the Code.

7.3. Section 87 empowers the Court to issue warrant in lieu of, or in addition to, summons. A Court empowered to issue a summons for the appearance of any person, may issue, after recording its reasons in writing, a warrant for his arrest-

7.3.1. if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

7.3.2. if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

7.4. Sometimes even after issuance of a warrant the accused is not served or the accused is not capable of being served, the Court would have to take further steps like proclamation etc., to compel the attendance of the accused.

7.5. Many a time, the words “proclaimed offender” and “proclaimed absconder” are used interchangeably, as was done in the present case also during the course of arguments.

Proclaimed Absconder

7.6. An examination of Section 82 of Cr.P.C. would indicate that if any Court has a reason to believe that any person against whom a warrant has been issued has absconded or is concealing himself so that such warrant cannot be executed, the Court could publish a written proclamation requiring such person to appear at a specified place, at a specified time. Section 82 also provides for the manner in which such publication could be made, i.e., in the following manner.

- i. Publicly read in some conspicuous place or village in which such person ordinarily resides;*
- ii. Publicly read in some conspicuous place of the town or village in which such person*

ordinarily resides;

- iii. Affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;*
- iv. Affixed to some conspicuous part of the Courthouse;*

7.7. The Court could also direct the proclamation to be published in a daily newspaper, circulating in the place in which such person ordinarily resides.

7.8. Once such a proclamation is published under Subsection (1) of Section 82, and if such person fails to appear at the specified place and time as required by the proclamation, the Court may, after making such enquiry as is required, pronounce him to be an absconder and make a declaration that such a person is a proclaimed absconder.

Proclaimed Offender

7.9. The Court may, if it deems fit, declare a

person as a 'proclaimed offender' under Section 82(4), when a person fails to appear before the Court as required under the proclamation, if the accused is alleged to have committed offences punishable under the following Sections of the Indian Penal Code of 1860 (IPC):

- 7.9.1. Section 302 – Offence of Murder
- 7.9.2. Section 304– Offense of culpable homicide not amounting to murder.
- 7.9.3. Section 364– Offense of kidnapping or abducting to commit murder.
- 7.9.4. Section 367– Offense of kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc.
- 7.9.5. Section 382– Offense of theft and preparation made for causing death, hurt or restraint in order to the committing of the theft.
- 7.9.6. Section 392– Offense of robbery.
- 7.9.7. Section 393– Offense of attempt to commit robbery.
- 7.9.8. Section 394– Offense of Voluntarily causing hurt in committing robbery.

- 7.9.9. Section 395– Offense of dacoity.
- 7.9.10. Section 396– Offense of dacoity with murder.
- 7.9.11. Section 397– Offense of robbery, or dacoity, with an attempt to cause death or grievous hurt.
- 7.9.12. Section 398– Offense of attempt to commit robbery or dacoity when armed with a deadly weapon.
- 7.9.13. Section 399– Offense of making preparation to commit dacoity.
- 7.9.14. Section 400– Offense of belonging to the gang of dacoits.
- 7.9.15. Section 402– Offense of assembling for the commission of dacoity.
- 7.9.16. Section 436– Offense of mischief by fire or explosive substance with intent to destroy a house, etc.
- 7.9.17. Section 449– Offense of house-trespass in order to commit an offence punishable with death.
- 7.9.18. Section 459– Offense of grievous hurt caused whilst committing lurking house-trespass or house-breaking.
- 7.9.19. Section 360– Offence of Kidnapping from India.
- 7.10. If the offences alleged against such a person

are punishable under the above provisions and if such person fails to appear at the specified place and time as required by the proclamation, the Court may, after making such enquiry as is required, pronounce him to be an offender and make a declaration that such a person is a proclaimed offender, as a corollary, unless the person is accused of having committed offences punishable under Section 302, 304, 364, 367, 382, 392 to 400, 402, 436, 449, 459 or 460 of the IPC, such person cannot be declared a proclaimed offender.

7.11. Thus it can be seen that the scope, ambit and purport of a proclaimed offender is only as regards a particular set of offences and not as regards all offences.

7.12. A reading of Section 82(4) would indicate that only if a person is accused of offences

mentioned in Section 82(4) than a person could be declared a proclaimed offender.

7.13. If the person is charged with offences other than those detailed under Section 82(4), he cannot be declared as a proclaimed offender.

7.14. **I answer point No.1 by holding that the Court could either suo moto or, on an application being made by the prosecutor, issue a proclamation calling upon the accused to appear at a particular time and place, if the accused were not to appear.**

7.15. **If a proclamation is published and the accused were not to appear, the Court could suo motu or on an application being made by the prosecutor declare the accused an absconder.**

7.16. **If the offences are punishable under Section 302, 304, 364, 367, 382, 392 to 400, 402, 436, 449, 459 or 460 of the IPC, he/she can be declared proclaimed offender. Thus a proclaimed absconder is a sub-set of a proclaimed offender.**

8. **Answer to point No.2: Whether a proclamation of an accused to be an absconder under Section 82 of the Cr.P.C. is a *sine qua non* for the purpose of the exercise of rights and/or powers under Section 83 for attachment of the properties of such absconding person or could a property of a person absconding be attached without proclaiming such person as absconding?**

8.1. The discussion on point no.1 details out the manner in which a person can be proclaimed either as an absconder or an offender.

8.2. In terms of Section 83, only the property of the proclaimed person either movable or immovable can be attached. Thus the proclamation under Section 82(3) would be a precondition and/or a *sine qua non* for the

purpose of the exercise of powers under Section 83 of Cr.P.C. for attachment of the properties of such proclaimed person.

8.3. As a corollary, if a person is not a proclaimed absconder/offender and/or the process and procedure under Section 82(2) and 82(3) has not been followed, then in that event, the powers under Section 83 cannot be exercised so as to attach the properties of the accused, who has not been proclaimed to be absconding.

8.4. The only exception provided is by the proviso to Section 83, whereunder the Court could attach the property of the accused at the time of proclamation itself if the Court is satisfied by an affidavit or otherwise that the said person is about to dispose of the whole or any part of the property or is about to remove the whole or any part of the property from the

local jurisdiction of the Court in such cases the attachment of the property could be made simultaneous to the order of proclamation.

8.5. Even this exception does not completely do away with the requirement of proclamation inasmuch as the attachment could be made along with the proclamation not before the proclamation.

8.6. Apart from the attachment of property, such a proclaimed absconder and or offender would also be amenable to further punishment. Section 174-A in the IPC has been inserted by virtue of the Criminal Law (Amendment) Act of 2005 in terms whereof

8.6.1. a proclaimed absconder under section 82(1) of the Cr.P.C, shall be punished with imprisonment for a term that may extend to three years.

8.6.2. A proclaimed offender under section 82(4) of the Cr.P.C shall be punished with imprisonment for a term that may extend to seven years along with fine.

8.7. **I answer point No.2 by holding that a proclamation of an accused to be an absconder under Section 82 of the Cr.P.C. is a *sine qua non* for the purpose of the exercise of rights and/or powers under Section 83 for attachment of the properties of such absconding person.**

8.8. **A property of a person absconding cannot be attached without proclaiming such person as absconding, except in the emergent circumstances prescribed in the proviso to Section 83.**

9. **Answer to point No.3: When can a property of the accused be attached under Section 83 of the Cr. P.C?**

9.1. Section 83 of Cr.P.C deals with the attachment of property of a person absconding.

9.2. The Court which had issued a proclamation under Section 82 may for reasons to be recorded in writing, any time after the issuance of proclamation order the attachment of any property movable or immovable or both belonging to the proclaimed person.

9.3. The proclamation as regards a proclaimed person under 83(1) can therefore only be traced to Section 82(2), once such proclamation is made as regards a person and such person does not appear before the Court at the specified time and specified place, then such person can be termed as a proclaimed absconder and his property could be attached.

9.4. Though there is a difference between a 'proclaimed absconder' and 'proclaimed

offender' for other purposes under the Cr. P.C. For the purposes of attachment of the property, so long as a person is proclaimed the same would be sufficient to attach his property.

9.5. The property of the accused who is proclaimed can be attached and later disposed of in order to compel the accused's appearance in Court. For disobedience of a proclamation the accused would also be liable to be punished under section 174 of the Indian Penal Code. This provision is devised to put additional pressure on the accused by depriving the accused of his/her property, with a view to compel attendance in Court.

9.6. The procedure laid down under section 83 has to be followed strictly. Jurisdiction to pass attachment order cannot be assumed unless a proclamation under section 82 of the code has

been issued. It may be advisable for the Court to wait for a period of thirty days, to enable the accused to appear in terms of the proclamation. The words at any time after the issue of proclamation are not to be interpreted in isolation. The key for gathering the intention of the lawmakers is to be found in section 82 of the code. Section 82 and section 83 are to be read in harmony. Thus, except in cases covered by the proviso to section 82(1) the attachment order has to maintain a distance of not less than thirty days from the date of the publication under section 82. The word at any time in section 83(1) only mean that if after the issue of proclamation, either of the two conditions mentioned in Clauses (a) and (b) of the provision to section 83(1) comes into existence, an order of attachment may be made without waiting for thirty days to expire. Even in such a case the Magistrate

has to record his reasons for arriving at the judicial satisfaction that such conditions as mentioned in the proviso to have come into existence as held in ***Devendra Singh v State of U.P., 1994 CrLJ 1783 (1788)***.

9.7. It is seen that in many cases, the accused though served, remains absent, does not participate in the proceedings and/or conceals himself in such a manner as to avoid service, thereby resulting in a delay in the criminal proceedings, many times resulting in splitting up of the case and the proceedings against the accused who is available. In some cases, the accused who is available would be in custody and on account of the delay caused due to non-availability or on account of one of the accused absconding, entire proceedings get delayed, and the accused available continues to be in custody, essentially the

right to speedy trial of such accused in custody is infringed by the accused absconding.

9.8. It is in order to secure the presence of the accused that various modes of service have been made available to a criminal Court.

9.9. Firstly summons or warrant is issued, if the accused were not to appear, a Non-Bailable Warrant is issued, which if not capable of being served, proclamation could be issued in terms of Section 82 of Cr.P.C. despite which if the accused were not to appear the accused could be declared absconding and thereafter the property of the accused can be attached and brought to sale, so that under the fear of losing the property, the accused may appear before the Court.

9.10. Thus the property of an accused can be attached under Section 83 of Cr.P.C. post the

proclamation and declaration that an accused is absconding by following the procedure under Section 82(2) and 82(3) of the Cr.P.C. whenever the Court comes to a conclusion that the accused is evading or avoiding service of summons, warrant or NBW and this power to be exercised so as to secure the presence of the accused before the Court at the earliest.

- 9.11. In criminal trials it is but required for the Court to exercise these powers as early as possible, it is for the Public Prosecutor to file necessary applications under Section 82, as also under Section 83 of the Cr.P.C., as soon as the reasons and or the conditions of Section 82 and/ or Section 83 as the case may be are satisfied. There is a bounden duty on the part of the Public Prosecutor to immediately file a necessary application under

Section 82 of the Cr.P.C. for proclamation when the service of the warrant and/or NBW is not being affected and/or the accused concealing himself.

- 9.12. Even if the prosecutor were not to file such application/s, Section 82 does not require an application to be made by the Public Prosecutor since it reads 'if any court has reason to believe...', therefore the Court on its own or suo motu could take up the proceedings under Section 82 issue a proclamation, direct its publication and record the due publication of the proclamation. If the accused were not to appear, the Court could also go ahead with attaching the property of the accused and bringing the same for sale. The Court is also duty-bound to exercise power under Section 82 and 83 at the earliest point on time so as not to delay the criminal

trial only for the reason that the presence of the accused could not be secured.

9.13. **I answer point No.3 by holding that a property of the absconder can be attached anytime after the non-appearance of the accused in pursuance of a proclamation, it may, however, be advisable to wait for a period of 30 days from the date on which the accused was required to appear.**

10. **Answer to point No.4: Whether while exercising powers under Section 83 of Cr.P.C, the property which would be attached is required to belong to the accused/absconder?**

And

Answer to point No.5: Would the word 'belong' used in Section 83 of Cr.P.C mean merely that the property stands in the name of the said accused/absconder or would the interest of any third party in the said property require to be considered?

10.1. A reading of Section 83 of Cr.P.C. would indicate that the Court could order the

attachment of property, movable and immovable or both belonging to a proclaimed person and therefore, it is required that the property to be attached belongs to the accused who is absconding. This being so, for the reason that it is only in such cases where such property is attached could there be pressure on the accused to appear before the Court so as to get the orders of attachment lifted on his appearance. Failure thereto would result in attachment of properties being sold and the proceedings thereof being forfeited to the State. This being a powerful weapon in the armoury of the Court to secure the presence of the accused before it.

10.2. Thus unless the property belongs to the accused and/or unless the accused would be adversely affected by the attachment order

and or subsequent sale, there would be no purpose served in attaching the property. Thus if a third party were to have any interest in the said property and/or accused has lost interest in the property, in such circumstances, there would be no purpose served by attaching the property over which accused has no interest and/or that the accused will not get adversely affected by the attachment and/or sale of the said property, so as to secure his/her presence. The Court also needs to be conscious of the fact that the order of attachment should be such that it secures the presence of the accused, towards this end, multiple properties of the accused could also be attached.

10.3. In the above background, it would be but required for the Court to not only ascertain

that the property belongs to the accused and/or owned by the accused, but also to ascertain whether the interest of the accused in the property continues to be subsisting as on the date of attachment or if the said interest has been transferred to any third party, which would come in the way of achieving the purpose of securing the presence of a person absconding.

10.4. Thus, the interest of any third party would also have to be considered if such interest is such that the accused, despite the attachment order, would not appear before the Court since neither the attachment nor subsequent sale by the Court would have any adverse impact on the said accused.

10.5. **I answer point Nos.4 and 5 by holding that it is only the property that belongs to or over which the accused has an interest**

that the property could be attached. The Court could attach multiple properties belonging to the accused so as to secure the presence of the Accused.

11. **Answer to point No.6: What is the mode and methodology of attaching the property, is the order of attachment of the property be passed by the concerned Court or can it be delegated to the jurisdictional Deputy Commissioner to attach the property?**

11.1. In terms of Section 83(1) of the Cr.P.C the Court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issuance of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person. Thus it is clear that the order of attachment has to be passed by the Court.

11.2. The mode and methodology of the attachment has been prescribed under

Section 83(2) of the Cr.P.C. Post the attachment order passed by the Court in terms of Section 83(1), the Court could send the same to the District Magistrate within whose District the said property is situated for carrying out attachment.

11.3. That essentially would mean that the attachment order is required to be passed by the Court and the attachment order be sent to the District Magistrate for the purpose of execution of the attachment order.

11.4. The attachment could be made in case of movables by:

11.4.1. Seizure of the movable;

11.4.2. By appointment of the receiver;

11.4.3. by passing of garnishee order prohibiting delivery of any property of a proclaimed person to the

proclaimed person or any one on behalf of the proclaimed person, etc.

11.5. If the property is immovable property, the same could be attached by :

11.5.1. taking possession;

11.5.2. by appointment of a receiver

11.5.3. by an order in writing prohibiting payment of rent to the proclaimed person or anyone on his behalf, etc.

11.6. **I answer point No.6 by holding that the order of attachment is required to be passed by the concerned Court, and it cannot be delegated to the jurisdictional Deputy Commissioner or District Magistrate. The order of attachment passed by the Court is to be sent to the Deputy Commissioner or District Magistrate for the purpose of**

**execution/implementation of the order
of attachment.**

12. **Answer to point No.7: Can the agreement holder challenge the attachment on the ground that the agreement holder has an interest in the property, i.e. to say would the mere agreement to sell confer an interest on such a person to lodge a claim or objection to the attachment in terms of Section 84 of Cr.P.C.?**

12.1. In terms of Section 54 of the Transfer of Property Act, mere agreement of sale would not convey any right, title or interest in favour of the purchaser. Thus, an agreement holder by himself cannot assert any right over the property. This being the general law, the applicability of Section 54 of the Transfer of Property Act in matters relating to Section 83 and 84 of Cr.P.C. would have to be considered in the context thereto. Since without such context, the meaning, purport and intent of the legislation would be lost. Therefore, there

has to be a purposive interpretation given to the provisions, i.e. Section 83, 84 of the Cr.P.C. and Section 54 of the Transfer of Property Act.

12.2. Attachment of a property is required to be made so as to secure the presence of the absconding accused.

12.3. As aforesaid and repeated, the purpose of proclaiming a person to be absconding and attaching the property of such proclaimed absconder is to secure his presence before the Court. For this purpose, what is to be seen is what is the interest of the proclaimed absconder in the property to be attached or already attached. The attachment of the property and possibility of the sale would in default of the said absconder appearing before the Court on a particular date and time fixed by the Court would have to be

such that such sale should adversely impact the right and interest of the proclaimed absconder. There would be no purpose served by attaching the property, sale of which would have no impact on securing the presence of the proclaimed absconder.

12.4. Thus in the event of the proclaimed absconder having entered into an agreement of sale with a third party and having received substantial consideration therein, though mere agreement of sale would not convey any right, title and interest to such purchaser, the proclaimed absconder having received substantial consideration, the attachment of such property would also not secure the presence of such proclaimed absconder before the Court, hence rendering the entire process of attachment and sale thereto useless and the purport and ambit of

Section 83 of Cr.PC not being achieved.

12.5. Section 84 provides for claims and objections being laid to such attachment. Section 84 is reproduced hereinabove for easy reference.

12.6. Section 84, as could be seen, provides for objections to be laid within six months from the date of attachment by any person other than a proclaimed person on the ground that the said person, i.e. the claimant or objector, has an interest in the property and such interest is not liable to be attached under Section 83 of Cr.P.C.

12.7. Thus insofar as the proceeding under Section 84 are concerned, I am of the considered opinion that a third party, a bonafide purchaser who has paid sufficient consideration under an agreement of sale, such agreement having been entered into prior to the proclamation could object to the

attachment and seek for lifting thereof and the Court could set-aside the attachment in the event of the Court coming to a conclusion that the attachment of sale of the property would not secure the presence of the proclaimed offender but also cause loss to the genuine and bonafide purchaser of the property.

12.8. The attachment and sale of the property as regards which the proclaimed absconder has received substantial consideration would not in any manner secure the presence of such an accused. Hence, the entire process being resorted to by the Court would only be an empty formality and not serve any purpose.

12.9. **Thus, I answer point No.7 by holding that an agreement holder can challenge the attachment on the ground that the agreement holder has an interest in the**

property, so long as the interest is substantial and has been acquired in a bonafide manner and in this regard such a person can lodge a claim or objection to the attachment in terms of Section 84 of Cr.P.C.

13. **Answer to point No.8: Whether the court passing orders under Section 83 and 84 of Cr.P.C, as also this Court can look into the factum of fraudulent transfer while considering the application under Section 84 of Cr.P.C or a petition challenging the order passed under Section 84 of Cr.P.C.?**

13.1. As already held in answer to Point No.6 above, the interest of purchaser of a property, bonafide, in good faith is required to be protected and such interest not to be harmed merely because the proclaimed absconder had an interest in the same and or that he sold the property to such bonafide purchaser.

13.2. The question then would be what is the

status of a fraudulent transfer and/or status of the purchaser who has purchased the same knowing fully well that the property belongs to an accused who has absconded and or is likely to be declared as proclaimed absconder in the future and/or that the very purpose of the purchase of the property is only to safeguard the property from being attached and/or auctioned.

13.3. In the event of such a transfer is not bonafide, then there is no interest of such purchaser, which is required to be protected by a Court of law. The said purchaser is as guilty as the proclaimed absconder, and the sale of such property could have an impact in securing the presence of the proclaimed absconder.

13.4. Thus in my considered opinion, while deciding a matter under Section 84 of

Cr.P.C, the Court should always keep in mind the factum of a fraudulent transfer while considering such an application, the burden of proof thereto being on the agreement holder or third party objector to prove that the transaction is genuine, bonafide and entered into in good faith. The examination of the Court in this regards is only a prima-facie examination and does not require a detailed enquiry.

13.5. I answer Point No.8, holding that the Court can look into the factum of fraudulent transfer while considering the application under Section 84 of Cr.P.C or a petition challenging the order passed under Section 84 of Cr.P.C. the examination of the Court under section 84 is nevertheless prima-facie and does not require a detailed enquiry.

14. **Answer to point Nos.9 and 10:** In the event of the dismissal of a claim or objection of such third party, would the third party be required to file a suit in terms of Section 84(4) of the Act or could such a person approach this Court by way of a Writ Petition, more so when there is no dispute as regards the agreement entered into by such third party raised by the owner of the property?

AND

Would ordinary alternative remedy under Section 84(4) be an embargo for such a person to approach this Court by way of a writ petition?

14.1. Section 84(4) of Cr.P.C. provide for a remedy to such third party claiming to be an objector in the event of his objections under Section 84(1) being disallowed or rejected viz., by filing a suit to establish his rights in respect of the property in dispute within a period of one year from the date of such dismissal of the petition.

14.2. Sri.C.V.Nagesh, learned Senior counsel has contended that filing of a suit would be

necessitated only if a dispute as regards the right of the objector exists. He contends that when there is no dispute as regards the right of the objector, no suit is required to be filed, and such a person could approach this Court under Article 226 read with 227 of the Constitution challenging the dismissal of the claim filed under Section 84(1) of the Cr.P.C.

14.3. As answered in Point No. 6 and 7 above, it is only a genuine, bonafide purchaser of the property in good faith who could maintain a proceeding under Section 84(1).

14.4. If the purchase is malafide, dishonest or with an intention to remove the property from the scope of attachment, i.e. to say that the transaction is fraudulent or collusive, a claim or objection made could be rejected. However, the finding in a proceeding under Section 84(1) is only a prima facie finding.

If a finding of a prima facie fraudulent transfer is issued on a claim under Section 84(1), then such a person would necessarily have to establish his genuineness and bonafides by instituting a suit under Section 84(4) of Cr.P.C.

14.5. Though the execution of the agreement of sale could not be in dispute, the object, reason and motive of such execution of an agreement of sale would be in question, which a competent court of law could only decide after trial by considering the evidence led by both the parties.

14.6. It is only if the right of the third party claimant or objector is not in dispute inasmuch as the Public Prosecutor and/or the State were not to dispute the right of the objector in respect of the property, despite which the claim petition came to be rejected,

then in that event, such third party objector could approach this Court by way of writ petition.

14.7. As stated above, whenever there is any dispute as regards the rights or claims of the third party objector, the same would have to be decided in a properly instituted suit and not by way of a writ petition.

14.8. **Therefore, I Answer Point Nos. 9 and 10 by holding that in the event of the dismissal of a claim or objection of such third party, the third party would be required to file a suit in terms of Section 84(4) of the Act.**

14.9. **It is only when there is no dispute as regards the rights and or claims of a third party that a writ petition can be filed and the alternative remedy under**

Section 84(4) would not be an embargo for such a person to approach this Court by way of a writ petition.

15. **Answer to point No.11: Whether the orders dated 5.6.2020 and 29.6.2020 suffer from any legal infirmity requiring interference at the hands of this Court?**

15.1. In view of the answers to the above questions what is to be ascertained is whether the orders dated 5.06.2020 and 26.09.2020 suffer from any legal infirmity?

15.2. Vide order dated 5.06.2020, the III Addl. Sessions Judge, Ramanagara has called upon the Deputy Commissioner, Ramanagara, to attach the property bearing survey No.251, Heggadegrere village, Bidadi Hobli, Ramanagara taluk, by way of an order dated 29.06.2020, the claim of the petitioner filed under Section 84(1) has been rejected.

15.3. In the facts and circumstances of the case, as could be seen, there is no proclamation as regards the accused, i.e. Sheelam Gopal Reddy, to be an absconder in terms of Section 82 of the Cr.P.C. Such being the case, there being no proclamation, property belonging to such accused could not have been attached under Section 83 of Cr.P.C. Furthermore, the order dated 5.06.2020 does not by itself attach the property; the Court has directed the Deputy Commissioner to attach the property, which is also not permissible or contemplated. Looked at from any angle the order dated 5.06.2020 is not sustainable in law.

15.4. In view of the order dt. 5.6.2020 not being sustainable, the legality of the order dt. 29.06.2020 becomes academic. However, taking into consideration the fact that same

is necessary to bring closure to the same, the petitioner though claims to be a bonafide purchaser for value having paid 95% of the consideration under the registered agreement of sale, it is seen that both the accused and purchaser-petitioner are known to each other and part of Nityananda Ashram, the accused-seller and the petitioner-purchaser are close associates of Nityananda @ Rajashekhara @ Paramahansa Nityananda Swamy who has been accused in the said proceedings.

15.5. The accused Sheelam Gopal Reddy who is also known as Nitya Bhaktananda and the petitioner known as Nitya Shambhavananda and the payment made by Nitya Shambhavananda to Gopal Seelam Reddy @ Sheelam Gopal Reddy is made from Bank account maintained in a

branch situated at Nitya Peetam, Nityanandanagar, Bidadi, the sale of the property is upheld post Gopal Sheelam Reddy having shifted from India to United States under the guise of medical treatment.

- 15.6. The said Gopal Sheelam Reddy has concealed himself so that warrant could not be executed against him. If at all the said Gopal Sheelam Reddy had been declared as an absconder, then the agreement of sale which was entered into between the absconder and petitioner cannot be said to have been bonafide but would have to be said to be malafide since there was no particular purpose for the petitioner to have purchased the property except to preserve the property and take it out the jurisdiction of Ramanagar since the said Gopal Sheelam

Reddy @ Nityabhaktananda having travelled outside India which was only a matter of time before he would be a 'proclaimed absconder, thereby bringing up the property for sale.

15.7. In my considered view the entire transaction being a fraudulent transaction and therefore, the property could have been attached or brought on sale if the procedure under Section 82 Cr.P.C. had been followed by the III Addl. Sessions Judge, Ramanagara before doing so.

15.8. In view thereof, I am of the considered opinion that the orders dated 5.06.2020 and dated 29.06.2020 are not sustainable and they are not in accordance in law and are therefore, required to be set-aside.

16. **Answer to point No.12: What Order ?**

16.1. In the result, the petition is allowed.

16.2. Writ of certiorari is issued setting aside the order dated 5.06.2020 and 29.06.2020 passed in S.C.No.86/2014 by the III Addl. Sessions Judge, Ramanagar, liberty is, however, reserved for the Court to proclaim the petitioner as absconding and proceed therefrom.

**Sd/-
JUDGE**

In