126 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No. M-9629 of 2016 (O&M)
DECIDED ON: AUGUST 03, 2016

MAYANK LAKHANI

.....PETITIONER

VERSUS

STATE OF HARYANA AND ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Jagjot Singh, Advocate
for the petitioner.

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JASPAL SINGH, J

CRM No. 20775 of 2016

Application is allowed, as prayed for.

CRM No. M-9629 of 2016

By virtue of instant petition preferred under Section 482 of the Code of Criminal Procedure (for brevity 'Code'), petitioner has sought the quashing/setting aside of order dated October 23, 2015 passed by learned Judicial Magistrate Ist Class, Faridabad (Annexure P-1) in a criminal complaint No. 24/12, dated January 18, 2012 under Section 138 of the Negotiable Instruments Act (for short 'Act') captioned as ***Mittal Pigments Pvt. Ltd. vs. Lakhani India Ltd and another;*** whereby, an application under Section 83 of the Code moved by respondent No.3 was disposed of with observation that restraining the Registrar of Trademark, Delhi from transferring the trademarks in favour of the petitioner, till further orders.

The contention of learned counsel for the petitioner is that trademarks which are transferred did not belong to respondent No.4. Rather, the same belong to “Laksons Footwear Pvt. Ltd and Lakhani Rubber Udyog Pvt. Ltd”, which are separate entities and are not party to the complaint. As far as trademarks of respondent No.4 are concerned, the same were already transferred in the name of the petitioner on the basis of assignment deeds dated December 15, 2014, January 19, 2015 and March 31, 2015 that much prior to the filing of application. Further more there is no provision for passing any restraining order under the attachment proceedings. Even, otherwise, the petitioner as well as the “Laksons Footwear Pvt. Ltd and Lakhani Rubber Udyog Pvt. Ltd.” have nothing to do with complaint preferred under Section 138 of the Act instituted by respondent No.3. So, on this sole ground, the impugned order is not sustainable in the eyes of law and is liable to be set aside.

This Court has given a deep thought to the submissions made by learned counsel for the petitioner.

Undoubtedly, respondents No.4 and 5 are summoned vide order dated February 18, 2015 in a criminal complaint captioned as “Mittal Pigments Pvt. Ltd. vs. Lakhani India Ltd and another” under Section 138 of the Act. However, respondent No.5 was declared proclaimed offender vide order dated October 16, 2015. While consigning the file under Section 299 of the Code, trial Court had asked about the details of properties of respondent No.5, for attachment. On that day, the complainant did not furnish the list of property of the accused/respondent No.5. However, on October 17, 2015 respondent

No.3/complainant moved an application, which has been disposed of vide impugned order.

Moreover, the petitioner as well as Laksons Footwear Pvt. Ltd and Lakhani Rubber Udyog Pvt, Ltd. were not the party to the complaint filed by respondent No.3. Respondent No.5 was no more the owner of the properties, the list of which was furnished by respondent No.3. Moreover, the grant of injunction restraining the Registrar of Companies respondent No.3 is not legally justified, while dealing with the proceedings under Section 83 of the Code.

In view of above, instant petition is allowed and order dated October 23, 2015 is hereby, set aside.

AUGUST 03, 2016 **(JASPAL SINGH)**
sham **JUDGE**

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No