

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

CRM-M-51415-2023
Date of decision: 11.12.2023

M/s RSG Agro India Private LimitedPetitioner

Versus

M/s Om Parkash and Co. and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Akshay Kumar Jindal, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition was under Section 482 Cr.P.C. is for quashing of order dated 08.08.2023 (Annexure P-3) passed by the learned Judicial Magistrate 1st Class, Karnal, vide which the application filed by the petitioner for attachment of the property of proclaimed person-respondent No.2 has been dismissed.

The petitioner-Company has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act') against respondent No.2. Respondent No.2 was summoned by the learned trial Court, however, he did not appear and as such, the learned trial Court declared him as proclaimed person vide order dated 20.04.2023 (Annexure P-2).

Learned counsel for the petitioner *inter alia* contends that respondent No.2 after institution of the complaint transferred his property vide transfer deed No.10047 on 20.12.2019 in favour of his mother, namely, Meena Devi, only with the purpose of escaping his liability and to circumvent the provision of Section 83 Cr.P.C. The petitioner moved an application for

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attachment of the property registered in the name of the mother of respondent No.2. Learned trial Court took a very hyper technical view and did not appreciate the matter in the right perspective and rejected the prayer made by the petitioner vide order dated 08.08.2023 (Annexure P-3).

Learned counsel for the petitioner further relies upon Section 53 of the Transfer of Property Act, 1882 (in short 'the Act') which defines fraudulent transfer and further emphasised that the use of expression 'attachment of any property' under Section 83 of Cr.P.C. would also include in its ambit the property owned by the mother of the accused/respondent No.2.

Having heard learned counsel for the petitioner and after perusal of the record, this Court finds no force in the arguments advanced by learned counsel for the petitioner. The provisions contained in Section 53 of the Act deals with the transfer of immovable property made within intent to defeat or delay the creditors of the transferor and such transfer shall be voidable at the option of any creditor so defeated or delayed. The present complaint (supra) (Annexure P-1) was filed on 29.10.2019. The property was transferred by respondent No.2 in the name of his mother on 20.12.2019. The list of property as well as the alternative bank account of respondent No.2 was not provided by the complainant and in such a situation, the learned trial Court ordered the attachment of the existing bank account of respondent No.2. The purpose of the attachment of the property of the accused under Section 83 of Cr.P.C. is to secure the presence of the accused who had remained absconded. It is a critical tool to ensure the presence of the accused during trial. The said purpose is sought to be achieved by attaching the property of the accused which would compel the accused to submit himself to the process of Court during the

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pendency of the trial. The property in question was transferred on 20.12.2019 that was much prior to the order dated 20.04.2023 when he was declared as a proclaimed person. Moreover, the provision contained in Section 83 of Cr.P.C. provides for attachment of the property belonging to proclaimed person, does not provide for attachment of property owned by kith and kin of the proclaimed person.

In view of the above, this Court finds no merit in the present petition and the same is dismissed.

(HARPREET SINGH BRAR)
JUDGE

11.12.2023
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No