

**IN THE COURT OF THE III ADDL. DISTRICT AND
SESSIONS JUDGE, RAMANAGARA**

:Present:

Sri.Siddalinga Prabhu., B.Sc., LL.B.,
III Addl. District and Sessions Judge,
Ramanagara.

Dated this the 29th day of June 2020

S.C.No.86/2014

COMPLAINANT :

Bidadi police station,
Ramanagara District.

(By Learned Special Public Prosecutor)

– V/s. –

ACCUSED :

Paramahamsa Nithyananda Swamy
@ Rajashekar and others

(A1 & A2 – Sri.C.V.N/P.N, Adv.
A3 & A5 – Sri.R.B.N/M.M, Adv.
A4 & A6 – Sri.S.G.M/M.M, Adv.)

90th

CLAIMANT/APPLICANT:

Sri.Nithya Shambhavananda
@ R.Narayanan,
S/o. N.Ramaswamy,
Aged about 43 years,
Presently residing at
No.B-11, "Shanthi Apartment"
18/21, E.T.K.Road,
1st Cross Street,
Alwarpet,
Chennai-600018.

(Rept. By Sri.C.V.Nagesh, Adv.)

ORDERS ON IAs BOTH DT 18.06.2020 BOTH FILED U/S
84 CrPC BY Sri.NITHYA SHAMBHAVANANDA @
R.NARAYANAN

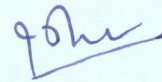
The above application is preferred seeking necessary order to recall/set aside the order of attachment dated 05.06.2020 passed by this court in response to the application filed by State Prosecution, in respect of immovable property of land measuring 3 acres 4 guntas in Sy.No.251 of Heggadagere Village, Bidadi Hobli, Ramanagara Taluk admittedly belonging to the accused



No.2 Gopala Sheelum Reddy @ Nithya Bhakthananda of the case on hand.

2. The facts leading to the present petition are that the State represented, at the outset, by Bidadi Police and later by the CID Police of Karnataka State, has preferred charge-sheet as against accused No.1 Paramahansa Nithyananda Swamy @ Rajashekaran and others in SC No.86/2014 pending for disposal on the file of this court.

3. That since the year 2014, no considerable progress whatsoever has been done in the present case mainly on account of absence of accused persons including the above mentioned accused No.2 Gopala Sheelum Reddy @ Nithya Bhakthananda. That the said accused persons took shelter under bail orders as well as under the relaxed conditions of said bail orders. However, at the instance of prosecution witness CW.1 Sri.Lenin, the matter of prolonged absence of accused persons including accused No.2 went up to the Hon'ble Apex Court by preferring Special Leave Petition (Criminal) No.1870/2020. That after hearing the parties to the said Special Leave



Petition, the Hon'ble Apex Court was pleased to direct this court to make every effort to ensure the presence of accused Nos.1 and 2 at the trial. The relevant portion of Hon'ble Apex Court is as follows:

“However, we direct that the concerned trial court shall make every effort to ensure the presence of accused nos.1 and 2 at the trial.”

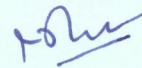
4. That because of the above said direction of Hon'ble Apex Court while disposing of the above said Special Leave Petition, this court basing upon the application of State Prosecution has, for the reasons assigned in the order dated 05.06.2020, passed an order of attachment of immovable property in Sy.No.251 of Heggadagere Village, Bidadi Hobli, Ramanagara Taluk admittedly belongs to accused No.2 Gopala Sheelum Reddy @ Nithya Bhakthananda.

5. That the applicant who preferred the IA under consideration said to have been aggrieved by the said order of attachment dated 05.06.2020 passed by this court, does prefer the IA under consideration on the ground that the second accused had entered into an agreement of sale



dated 27.06.2018 with the applicant and has agreed to sell the above said immovable property (herein after for the sake of brevity referred to as **attached immovable property**) for total sale consideration of Rs.2,25,00,000/-. The applicant further says that the said sale agreement dated 27.06.2018 is a registered agreement, that he has paid almost all the agreed sale consideration except an amount of Rs.2,25,000/-, that the said payment was made by him by Demand Draft. It is his further say that on account of the payment of said sale consideration amount and by virtue of the said registered sale agreement, the applicant has been put in possession of attached immovable property and thus the interest as well as the possession of the attached immovable property has already been transferred to the applicant. Hence, he would have been given an opportunity by this court before passing the impugned order dated 05.06.2020.

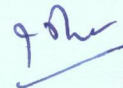
6. He further mentions to the effect that at the attached immovable property, he does have "Goshala" whereat he has been rearing about 150 cows and other domesticating animals. That the impugned order has



caused hardship and inconvenience to the applicant and the same if continued and effected, it would take away the right of applicant besides causing irreparable damage not only to him, but also to the above said animals whose rights are to be protected under Part-IV of Constitution of India.

7. It is his further say that as per the various dictums rendered by the Hon'ble Apex Court and also by the Hon'ble High Court of Karnataka, the above said registered sale agreement coupled with fact of transfer of possession of attached immovable property would amount to absolute sale and as such, the second accused would cease to be an absolute owner of the said property and therefore, that the impugned order deserves to be recalled. By mentioning so along with other facts as described in the petition consisting of 5 pages under consideration, the applicant seeks the above orders.

8. Per contra, the learned Public Prosecutor vide his objections dated 19.06.2020 opposed the petition under consideration by mentioning that the same is not



maintainable either in law or on facts. It is averred to the effect that on account of continuous absence of accused No.2, the State Prosecution was constrained to file an application seeking an order of attachment of property of accused No.2 and that the same has resulted in impugned order. The objection further says that the accused No.2 is well-versed in law as well as in litigation proceedings and in order to escape from the criminal liability, he has been concealing himself. That the agreement referred to in the application is sham and so also the fact of transfer of possession. That the agreement referred to does not extinguish the absolute right and title of accused No.2 upon the attached property.

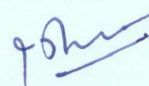
9. It is further mentioned to the effect that the applicant does not mention the source of amount of Rs.2,22,75,000/- said to have been paid by him to the second accused. That the applicant being third party to the proceedings of the present case i.e., SC No.86/2014, he cannot agitate his right over the attached immovable property which belongs to accused No.2 as on this day. That the right of the applicant is not an exclusive and



absolute right. That the IA under consideration is filed with a malafide intention to mislead this court and to have wrongful gain and therefore that the IA be dismissed.

10. That this court has heard the learned designated counsel Sri.C.V.Nagesh, appearing for applicant, through VC. The said learned counsel has drawn the attention of this court to five different documents submitted through E-mail and repeated the grounds of application under consideration. The learned counsel has also drawn the attention of this court to the provisions of Sec.83 and 84 of CrPC. He further submitted that the operative portion of the impugned order is not in terms of Sec.84 of CrPC. Hence on the said ground too, the impugned order, according to the learned counsel deserves to be recalled.

11. The learned designated senior counsel has also relied upon the case law rendered by the Hon'ble Apex Court in the case of Vannarakkal Kallalathil Sreedharan vs. Chandramaath Balakrishnan and another reported in (1990) 3 Supreme Court Cases 291 and submitted that as per the said case law, this court cannot attach the



immovable property of accused No.2 in terms of registered sale agreement mentioned herein above.

12. The learned Public Prosecutor has repeated his grounds of objections in the course of his arguments.

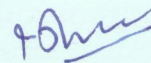
13. On account of the above said rival pleadings and the rival arguments, the following points do arise for consideration of this court:

1) Does the applicant Nithya Shambhavananda @ R.Narayanan prove and establish that the impugned order deserves to be recalled/set aside for the reasons assigned by him in his application under consideration?

2) Does the applicant prove and establish that the impugned order particularly the operative portion of impugned order being not in terms of Sec.83 and 84 CrPC, the same deserves to be recalled/set aside?

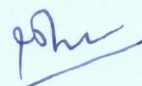
3) What order?

14. This court has perused the pleadings on this IA. Heard the arguments and has gone through the materials available on record. This court assigns the following:



REASONS

15. **POINT No.1:** The five different documents viz., the sale deed dated 08.02.2007 executed by Smt.Siddamma and others in favour of second accused, the document of registered sale agreement dated 27.06.2018 executed by PA Holder of second accused in favour of applicant herein, the document of registered Power of Attorney dated 13.06.2018 executed by second accused in favour of his Attorney authorizing the latter to sell, gift, lease, grant and convey the attached immovable property, the document of letter dated 27.06.2018 addressed to the applicant by the second accused, the document of certificate dated 10.06.2020 issued by M/s Kotak Mahindra Bank Limited, as referred to by the learned designated senior counsel in the course of his arguments do indicate that the second accused being the absolute owner of attached immovable property has, through his Attorney, executed registered sale agreement in respect of attached immovable property for total sale consideration amount of Rs.2,25,00,000/-. That the said document does also say that the said registered sale agreement was



entered into much earlier to the date of impugned order. That a sum of Rs.2,22,75,000/- was paid as advance amount. That the outstanding sale consideration of Rs.2,25,000/- has been agreed to be paid at the time of registration of sale deed.

16. Thus as pointed out by the learned Public Prosecutor, the above said document do indicate that the absolute title of second accused upon the attached immovable property is yet to be conveyed even though the possession of property is said to have been transferred to the applicant. As the absolute sale deed is yet to be executed, in the opinion of this court, the absolute title of second accused over the attached immovable property is not yet transferred and hence, even to this day, the attached immovable property, in the opinion of this court, is nothing but the property belongs to the second accused.

17. It is crystal clear from the averments of para 5 of application under consideration that the applicant does know the purpose of provision of Sec.83 and 84 CrPC. As mentioned herein above, the accused Nos.1 and 2 of the



present case have been remained absent on the pretext of different grounds and consequently, there has been no progress at all in the proceedings of the case on hand and the same has resulted in the direction of Hon'ble Apex Court mentioned in the paras supra. Hence, the very purpose of passing the impugned order is to procure the presence of accused No.2 in trial in terms of order/direction of Hon'ble Apex Court.

18. As mentioned herein above, the learned designated senior counsel has relied upon the case law rendered by the Hon'ble Apex Court in **(1990) 3 Supreme Court Cases 294**. It is most pertinent to reproduce para 2 of the said case law which deal with facts of the cited case. The said para 2 is as follows:

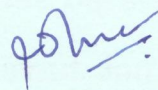
“An extent of 80 cents of land which is in dispute in this appeal was agreed to be sold in favour of the appellant under an agreement dated October 9, 1978. Before the sale deed was executed, a third party in execution of a decree got the property attached on November 16, 1978. The sale deed was executed on November 23, 1978. The question is: Does the sale prevail over the attachment?”



19. It is crystal clear from the above said para 2 of the cited case law that an order of attachment was passed on 16.11.1978. Whereas, absolute sale deed was, pursuant to the sale agreement dated 09.10.1978, executed on 23.11.1978. Thus the sale deed was subsequent to the order of attachment.

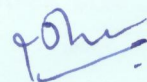
20. But it is not so in the case on hand. In the case on hand, the absolute sale deed is yet to be executed either by the second accused or by the Power of Attorney Holder of second accused after accepting the remaining balance sale consideration of Rs.2,25,000/- from the applicant, in favour of applicant herein. Hence, the sale being not completed, the absolute title is very much with the accused No.2 and hence the attached immovable property, in the opinion of this court, does belong to accused No.2 even to this day.

21. As the absolute sale deed being not executed even to this day in favour of applicant herein, I am, with utmost due respect to the said case law, of the view that the applicant cannot take shelter under the cited case law.



22. The case law relied upon by the applicant aforementioned deals with the dispute between the right of purchaser (applicant) and the right of attaching creditor. In the case on hand, the applicant herein has not become the purchaser and is still proposed purchaser even though the possession is said to have been transferred. That in the case on hand, the dispute confines to the right of State Prosecution in procuring the accused and to the co-relative duty/liability of the second accused to appear before this court in trial and to co-operate with this court till the disposal of the case. As the second accused has not appeared before the court and as the absolute sale deed is yet to be executed, in the opinion of this court, attached immovable property is attached as per law. Therefore, for the reasons afore-mentioned, the subject matter of point No.1 is hereby answered in the **Negative**.

23. **POINT No.2:** As mentioned herein above, the learned designated senior counsel has submitted that this court should not have attached the property in question through the learned Deputy Commissioner of Ramanagara District.



24. It is needless to mention herein that as per Sec.83(4) CrPC, if the property ordered to be attached is immovable property, the attachment u/s 83 CrPC, in case of land paying revenue to the State Government be made through the Collector of the District.

25. It is not at all the case of applicant that the land in question is other than the property of land paying revenue to the State Government. Therefore, the land in question deserves to be attached through the Deputy Commissioner of Ramanagara as per Sec.83(4) CrPC and hence, this court has passed proper order while writing the operative portion by attaching the property in question through Deputy Commissioner. Therefore, the subject matter of point No.2 is also hereby answered in the **Negative** and this court proceeds to pass the following:

ORDER

The application dated 18.06.2020 preferred by the applicant Nithya Shambhavananda @ R.Narayanan u/s 84 CrPC is hereby dismissed.

40/11/20

The immovable property of accused No.2 i.e., land measuring 3 acres 4 guntas in Sy.No.251 of Heggadagere Village, Bidadi Hobli, Ramanagara Taluk, is hereby attached and the Deputy Commissioner of Ramanagara District shall attach the same in terms of Sec.83(4) CrPC.

Office to communicate this order to the learned Deputy Commissioner, Ramanagara District.

The another IA filed under the similar provision of law seeking stay of the impugned order is hereby dismissed as not maintainable in view of above orders.

(Dictated to the Stenographer, thereof transcribed and computerized by her, then corrected, signed and pronounced by me in the open court on this the 29th day of June 2020)

 29.6.2020

(Siddalinga Prabhu)

III Addl. District & Sessions Judge,
Ramanagara.