

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Cr1.R.C.No.1337 of 2015

and

M.P.No.1 of 2015

M/s.Full Moon Industrial Ceramics (P) Ltd.,
Rep. by its Managing Director,
G.Venkatesan,
No.50 A/1, Mudhali Thottam,
Periyasemur, Erode Taluk,
Erode District. ... Petitioner/Complainant

Vs.

T.Babu ... Respondent/Accused

Prayer: Criminal Revision Case filed under Section 397 r/w.
401 of the Code of Criminal Procedure, against the order dated
16.09.2015 made in C.M.P.No.4239 of 2015 in STC No.48 of 2013
on the file of the learned Judicial Magistrate (Fast Track
Court) No.1, Erode, and prays to set aside the same.

For Petitioner : Mrs.C.S.Saravanan

For Respondent : Private Notice served

No Appearance
- - - - -

ORDER

This Criminal Revision Case is directed against the order dated 16.09.2015 passed by the learned Judicial Magistrate, Fast Track Court No.1, Erode, in C.M.P.No.4239 of 2015 in STC No.48 of 2013.

2. The learned counsel for the revision petitioner/complainant would mainly contend that the revision petitioner has filed a complaint under Section 138 r/w.142 of the Negotiable Instruments Act before the learned Judicial Magistrate, Fast Track Court No.1, Erode, against the respondent/accused and the case was taken on file by the learned Magistrate as S.T.C.No.48 of 2013. In the case in S.T.C.No.48 of 2013, the complainant has to produce the cheque No.552326. But it was related to another case in S.T.C.No.49 of 2013. The mistake was due to inadvertence and only at the time of marking the documents alone, the complainant came to know that the cheque concerned in this case was wrongly

produced in some other case. Hence, he filed a petition before the trial Court to return the cheque No.552325, which was marked as Ex.P.3 before the trial Court. The trial Court, without considering the facts and circumstances of the case, erroneously dismissed the application. Hence, the order of the trial Court has to be set aside and the criminal revision case has to be allowed and the cheque No.552325 has to be returned.

3. Even though private notice was served on the respondent and his name is also printed in the cause list, he has not chosen to appear either in person or through counsel.

4. This Court considered the submissions made by the learned counsel for the petitioner and perused the entire records.

5. In this case, on a perusal of the records produced on the side of the petitioner, it is seen that the revision petitioner filed a case in S.T.C.No.49 of 2013 and in his complaint, at para No.4, the complainant has stated as follows:-

"4. on 06.10.2012, both the complainant-accused have arrived a sum of Rs.32,406/- is payable by the accused to the complainant-firm and hence in order to discharge the said liability of Rs.32,406/-, the accused had issued a post dated cheque for the said sum of Rs.32,406/- in favour of the complainant-firm, bearing cheque No.552326, dated 13.10.2012, drawn on Indian Bank, Perundurai Road, Erode."

6. Further, in the statutory notice issued to the accused also, it is clearly stated that the accused issued the cheque No.552326, dated 13.10.2012 for discharge of the loan. But the said cheque was not produced in this case and due to inadvertence, it was produced in some other case. Hence, the present cheque No.552325 is related to S.T.C.No.49 of 2013 and the said cheque was produced by the complainant in the present case in S.T.C.No.48 of 2013. Hence, the present petition is filed to return the cheque No.552325 which was marked as Ex.P.2. Hence, the present cheque No.552325 is not relevant to the case in S.T.C.No.48 of 2013 and the same is connected to S.T.C.No.49 of 2013. In this case, already, the learned counsel for the petitioner himself admitted that the cheque No.552325 is connected to S.T.C.No.49 of 2013. Hence, the trial Court correctly dismissed the application filed by the petitioner to return the cheque which was marked as Exhibit in the present case.

7. In view of the above facts and circumstances of the case, this Court is of the considered view that there is no infirmity or illegality in the order passed by the trial Court which does not warrant any interference by this Court and hence, the criminal revision case is liable to be dismissed.

8. In the result, this Criminal Revision Case is dismissed with a direction to the petitioner to file an application in S.T.C.No.49 of 2013 to call for the cheque No.552325 which is related to S.T.C.No.49 of 2013 from the file of S.T.C.No.48 of 2013 according to law. If any application is filed, the trial Court is directed to dispose the same on merits and in accordance with law. The connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

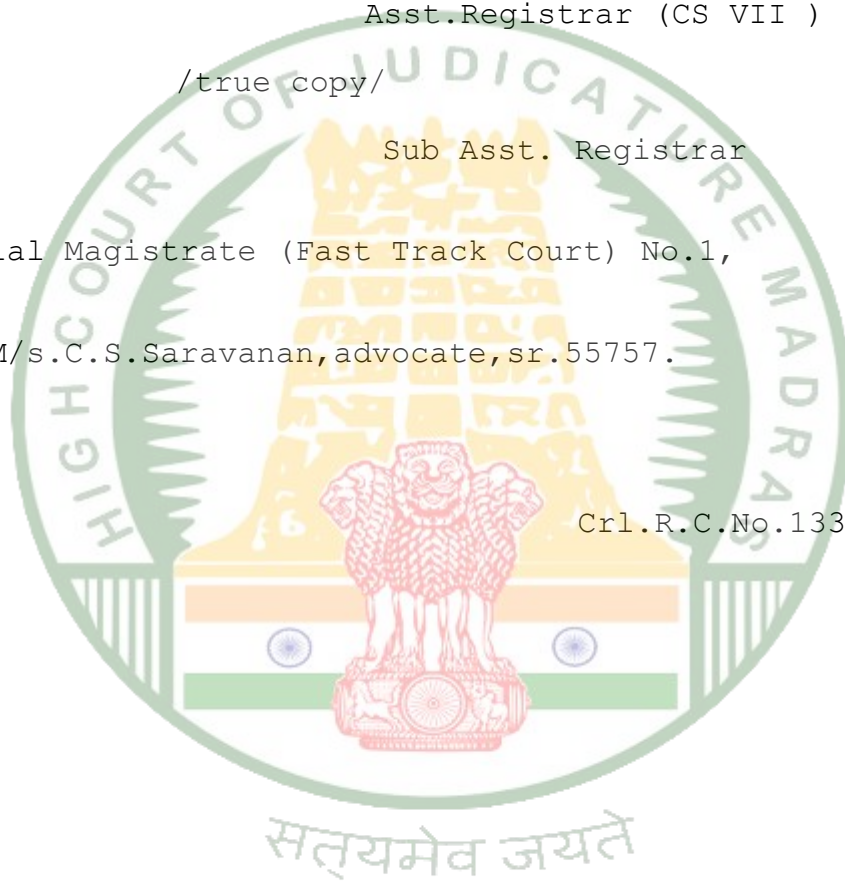
To

The Judicial Magistrate (Fast Track Court) No.1,
Erode.

+1 cc to M/s.C.S.Saravanan, advocate, sr.55757.

Psk(co)
krd 24/10

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