

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

Crl.MC.No. 78 of 2015 ()

**CC 540/2014 of JUDICIAL FIRST CLASS MAGISTRATE COURT-V, (SPL.COURT-
MARKLIST CASES) THIRUVANANTHAPURAM**

PETITIONER/COMPLAINANT :

**G. GANESAN, PROPRIETOR,
SABARI FILMS, SHAMEEES BUILDINGS,
THYCAUD P.O., THIRUVANANTHAPURAM.**

BY ADV. SRI.G.SUDHEER

RESPONDENTS :

**1. MR.KAMALUDEEN
THAMEENS'S RELEASE, 42/1621, THIRUVANANTHAPURAM-14
(RICHU THAMEEN'S RELEASE, KALIYIKKAVILA,
PARASSALA P.O., THIRUVANANTHAPURAM) - 695014**

**2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

R2 BY PUBLIC PROSECUTOR SMT. SAREENA

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 03-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE 1 : TRUE COPY OF THE COMPLAINANT IN CC 540/14 ON THE FILE OF
JFMC V, (SPECIAL COURT FOR MARK LIST CASES),
THIRUVANANTHAPURAM (OLD NO. C.C. 2014)**

**ANNEXURE 2 : TRUE COPY OF THE ORDER SHEET IN CC 540/14 ON THE FILE OF
JFMC V, (SPECIAL COURT FOR MARK LIST CASES)
THIRUVANANTHAPURAM.**

**ANNEXURE 3 : TRUE COPY OF THE ORDER DT.18-3-14 IN CC 540/14 ON THE FILE OF
JFMC V (SPECIAL COURT FOR MARK LIST CASES)
THIRUVANANTHAPURAM.**

**ANNEXURE 4 : TRUE COPY OF THE ORDER IN CMP 674/14 CC 540/14 ON THE FILE OF
JFMC V (SPECIAL COURT FOR MARK LIST CASES)
THIRUVANANTHAPURAM.**

**ANNEXURE 5 : TRUE COPY OF THE ORDER OF THE LEARNED MAGISTRATE
KUZHITHURAI.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

B.KEMAL PASHA, J.

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Crl.M.C. No. 78 of 2015

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Dated this the 3rd day of September, 2015

O R D E R

It is a peculiar situation wherein an unfortunate complainant, who happened to file a complaint alleging an offence under Section 138 of the N.I.Act has been running from pillar to post for getting his complaint adjudicated.

2. It seems that, initially, evidence was recorded as it was a summary trial in the matter. After the recording of evidence and the examination of the accused under Section 313 of the Cr.P.C, the matter was posted for hearing. 19 postings were unnecessarily taken by the then Presiding Officer for the so called hearing. In the meantime, the said Presiding Officer was under the orders of transfer. The new incumbent refused to proceed with the earlier evidence and

wanted the petitioner to adduce evidence afresh. At that stage, the complaint was returned in view of the decision of the Apex Court in **Dashrath Rupsingh Rathod v. State of Maharashtra** [2014 (3) KLT 605 (SC)] for presentation before the Court in Kanyakumari District. The petitioner approached the said Court with the complaint. The same was returned by the said Court through Annexure E order, on the ground that evidence was recorded in the case. Again, the petitioner returned with the complaint and presented it before the court below. The case was re-numbered as C.C.540/2014.

3. Thereafter, the accused filed an application before the court below as CMP No.674/2014 contending that the court below has no jurisdiction to deal with the matter. Again, the court below has passed an order to return the complaint.

4. Much discussion is not required to decide the matter. The court below is directed to entertain the complaint before the court below and record evidence in

the matter and deal with the matter on merits, and dispose of the matter as expeditiously as possible, at any rate, within a period of 'two' months from the date of receipt of a copy of this order.

Sd/-

B.KEMAL PASHA, JUDGE

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