

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

**MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937**

**Crl.MC.No. 3388 of 2014**  
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**C.C.NO.147/2007 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-V,  
(SPECIAL COURT FOR MARK LIST CASES) THIRUVANANTHAPURAM**  
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**PETITIONER(S)/ADDL.COMPLAINANT :**  
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**ARUNA RAVEENDRAN,  
W/O.LATE K.RAVEENDRAN, HOUSE NO.16, KURUP'S LANE,  
SASTHAMANGALAM P.O., THIRUVANANTHAPURAM.**

**BY ADVS.SRI.G.SUDHEER  
SMT.N.P.ASHA**

**RESPONDENT(S)/ACCUSED :**  
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- 1. PRABHULACHANDRADAS M.,  
S/O.G.MADHAVAN NAIR, KODETHARA HOUSE,  
KUDAPPANAKUNNU P.O., THIRUVANANTHAPURAM- 695 001.**
- 2. STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.**

**R2 BY PUBLIC PROSECUTOR SMT.SAREENA.P.GEORGE**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD  
ON 14-09-2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:**

Msd.

**APPENDIX**

**PETITIONER(S)' ANNEXURES :**

- ANNEXURE-A:** TRUE COPY OF PRIVATE COMPLAINT FILED BY K.RAVINDRAN BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM AS C.C.NO.187/2007.
- ANNEXURE-B:** TRUE COPY OF CHIEF AFFIDAVIT AND DEPOSITION OF PETITIONER IN C.C.NO.147/2007 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-V, THIRUVANANTHAPURAM DATED 29.10.2008.
- ANNEXURE-C:** CERTIFIED COPY OF THE ORDER DATED 12.02.2014 IN C.C.NO.147/2007 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT-V, THIRUVANANTHAPURAM.

**RESPONDENT(S)' ANNEXURES :**

**NIL**

**//TRUE COPY//**

**PA.TO JUDGE.**

Msd.

**K. RAMAKRISHNAN, J**

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**Crl. M.C. No.3388 of 2014**  
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**Dated this the 14<sup>th</sup> day of September, 2015**

**ORDER**

This is an application filed by the additional complainant in C.C.No.147/2007 on the file of Judicial First Class Magistrate Court-V, (Special Court for Marklist cases), Thiruvananthapuram, challenging Annexure-C Order under Section 482 of the Code of Criminal Procedure (hereinafter referred as the 'Code').

2. It is alleged in the petition, the petitioner is the complainant in Annexure-A Private complaint filed by him against the respondent alleging offences under Section 138 of the Negotiable Instruments Act. When the accused appeared before the court below, the particular offence were read over and explained to him and he pleaded as not guilty. Thereafter, PW's 1 and 2 were examined in Exts.P1 to P11

were marked on the side of the complainant. After closure of the complainant's evidence, the accused was questioned under Section 313 of the Code and he denied all the incriminating circumstances brought against him in the complainant's evidence. Thereafter, DW's 1 and 2 were examined on the side of the accused and Exts. DW's 1 to 4 were marked. When the case was posted for hearing, the officer who recorded the statement was transferred and Successor Presiding Officer thought that *de novo* trial has to be ordered and so relying on the decision of this Court in **Kanakarajan P. Vs. Vipin K.V. [ILR 2013(4) KER 614]** *suo motu* ordered *de novo* trial. This order is being challenged by the petitioner by filing this petition.

3. Though, notice was ordered on the respondents, he did not appear.

4. Heard the counsel for the petitioner Shri. G. Sudheer and Smt. Sareena P. George, Public Prosecutor representing the second respondent State.

5. The counsel for the petitioner submitted that even at the time when the case was taken on file, the court has decided to proceed with the case as a summons case procedure and detailed evidence was taken. So, under the circumstances merely, because the officer who recorded the evidence has been transferred, it is not necessary to order *de novo* trial in such cases. The learned Public Prosecutor also supported the submissions of the petitioner.

6. It is seen from the impugned order passed by the court below itself that the case was taken on file as C.C.No.147/2007 instead of S.T. (summary trial cases). It is also seen from the order itself PW's 1 and 2 were examined on the side of the complainant and thereafter, DW's 1 and 2 were examined on the side of the accused and documents were also marked on their side. Thereafter, the case could not be disposed of by the officer who recorded the statement of the witnesses. So, the successor Officer thought that *de novo* trial has to be ordered taking into account, the dictum

laid down in decision reported in *Kanakarajan's case(supra)*.

Subsequently, in the decision reported in **Baharuni J.V. and another Vs. State of Gujarat and another [2014(4) KHC 476(SC)]** while considering this question, the Apex Court has held that merely because it was not specifically ordered the trial was conducted as summons case or summary case, it is not to be remanded for that purpose and the Apex Court also distinguished the judgment of the Apex Court in **Nitinbhai Saevatilal Shah and another Vs. Manubhai Manjibhai Panchal and another [2011(3) KHC 840(SC)]** and held that dictum laid down in that decision need not be mechanically applied and Court will have to find out whether the case was tried summarily or detailed evidence was recorded. If the court is satisfied that detailed evidence was recorded and not substance of evidence alone was recorded as required in the case of trying the cases in summary trial cases, then it is not necessary to order *de novo* trial. If the

substance of statement of the witnesses alone were recorded, then it cannot be said that what was recorded by the Presiding Officer is the same statement given by the witness, as the Magistrate is only recording the gist of the evidence is given and not the *verbatim* reproduction of entire evidence given by the witness. That was the reason why in *Nitinbhai Saevatilal's case (supra)*, the Supreme Court has held that in such cases, it is not proper for the successor Officer to proceed with the case on the basis of such evidence recorded by his predecessor as it may cause prejudice to the accused. Further, in the subsequent decision in *Baharuni's case (supra)*, the Supreme Court is held that merely because it was not recorded by the Magistrate that he has decided to try the case as summons case and not as a summary trial case, that alone is not a ground for coming to the conclusion that the only substance of evidence was recorded and *de novo* trial will have to be ordered. The court will have to go through the manner in which the evidence was recorded before ordering

*de novo* trial in such cases.

7. In this case, the copy of deposition of witnesses were produced before this Court. It is seen that chief affidavit was filed by the witnesses examined on the side of the complainant and they were cross-examined at length and on going through recording evidence by the Magistrate, it cannot be said that what was recorded by the Magistrate is only the substance of the evidence given by the witness but it can be seen from the manner in which the evidence was recorded, that it was recorded in *verbatim* reproduction of the evidence given by the witnesses. So, under the circumstances, mechanically relying on the decision in *Kanakarajan's case (supra)* and ordering *de novo* trial by the successor Officer is bad in law in view of the authoritative pronouncement made by the Apex Court in *Baharuni's Case (supra)*. So, the impugned order passed by the Magistrate ordering *de novo* trial has to be set aside and the Magistrate has to be directed to proceed with the case with the evidence

already recorded and dispose of the case in accordance with law. So, the Annexure-C Order passed by the Magistrate ordering *de novo* trial in C.C.No.147/2007 is set aside and the Magistrate is directed to proceed with the case on the basis of evidence already recorded and dispose of the case, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of the order as the case is of the year 2007. With the above directions and observations, the petition is allowed and disposed of accordingly. The office is directed to communicate this order to the concerned court immediately.

Interim Order granted by this Court as per order in Crl.M.A. No. 2582/2015 and extended from time to time is hereby vacated and Crl.M.A. is dismissed.

Sd/-  
**K. RAMAKRISHNAN,**  
**JUDGE**