

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

Crl.MC.No. 4845 of 2015

ST 2366/2010 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, MANANTHAVADY

PETITIONER/COMPLAINANT:

**V.C.ABRAHAM,
S/O. LATE V.J.CHACKO,
VAYALIL HOUSE, ARINCHERMALA P.O.,
PANAMARAM, MANANTHAWADY, WAYANADU.**

BY ADV. SRI.JESWIN P.VARGHESE

RESPONDENT(S)/ACCUSED:

- 1. V.B.SANTHOSH,
S/O. BALAN, VATTATHUNDATHIL HOUSE, MANIMANDIRAM,
KALOOR P.O., BATHERY VIA, WAYANADU - 673 592.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT.MAYA

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 15-12-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

Crl.MC.No. 4845 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES

- A - THE CERTIFIED COPY OF THE ORDER PASSED BY JFCM COURT NO.II,
MANANTHAWADY IN ST NO. 2366/2010 DT. 04.01.2014.**
- B- A TRUE COPY OF THE ORDER PASSED BY JFCM COURT NO.II,
MANANTHAWADY IN S.T NO. 2366/2010 DT. 29.9.2014.**

RESPONDENT(S)' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B. KEMAL PASHA, J.

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Crl.M.C. No.4845 of 2015
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Dated this the 15th day of December, 2015

O R D E R

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Heard learned counsel for the petitioner.

2. ST No.2366/2010 of the Judicial First Class Magistrate's Court-II, Mananthavady is in respect of an offence under Section 138 of the NI Act. On the side of the complainant, PWs 1 and 2 were examined and Exts.P1 to P7 were marked. Thereafter, the accused was examined under Section 313 Cr.P.C. After the examination of the accused under Section 313 Cr.P.C., the accused was called upon to enter on his defence. On the side of the defence, DWs 1 and 2 were examined. Towards final hearing, the parties were heard. Thereafter, the learned Magistrate, who was dealing with the matter, was transferred and a new

incumbent has taken charge.

3. The present learned Magistrate of the court below has decided that the matter squarely falls within the purview of Section 326(3) Cr.P.C. being a summary trial.

4. The learned counsel for the petitioner has produced the copy of the deposition of PW1, which clearly shows that what was taken down by the learned Magistrate as the deposition of PW1 was not the gist of the deposition made by PW1, whereas it is a verbatim reproduction of the deposition made by PW1 before the court below. On going through the matter and perusing the records, it has come out that even though the case was numbered as an ST case, the evidence was being recorded as if the evidence was being recorded in a warrant trial. A summary trial was not made in the case. Matters being so, the court below cannot be permitted to harp upon Section 326(3) Cr.P.C. unnecessarily to have a *de novo* trial in the matter. The courts are over burdened. Unnecessarily, a case before the

court below has been pending for the period from 2010 onwards. Still, the court below, without applying its mind, has unnecessarily ordered a *de novo* trial of the matter. The impugned order is *per se* illegal and is liable to be quashed.

In the result, this Crl.M.C. is allowed and the impugned order is quashed. The court below shall hear both sides and pass judgment in the matter expeditiously. Being an old matter, the court below shall complete such exercise, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this order.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/15/12

// True Copy //

PA to Judge