

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

Crl.MC.No. 7237 of 2014

**C.C.NO.126/2010 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-V,
(SPECIAL COURT-MARK LIST CASES), THIRUVANANTHAPURAM**

PETITIONER(S)/COMPLAINANT :

**R.V.SANAL KUMAR,
S/O.VELAYUDHAN, NALUKETIL VEEDU, KALLUMMOOTIL,
ANAYARA P.O., THIRUVANANTHAPURAM.**

BY ADV. SRI.G.SUDHEER

RESPONDENT(S)/ACCUSED AND STATE :

**1. SAIHUDEEN,
S/O.MUHAMMEDALI LIBBA, SAINA, T.C.13/1247,
BURMA ROAD, KUMARAPURAM, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM- 695 001.**

**2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM- 682 031.**

**R1 BY ADV. SRI.SHAJIN S.HAMEED
R2 BY PUBLIC PROSECUTOR SMT.MAYA**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 03-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

**ANNEXURE A: TRUE COPY OF CERTIFIED COPY OF ORDER
DATED 18.09.2014 IN C.C.NO.126/2010 OF THE COURT OF
THE JUDICIAL FIRST CLASS MAGISTRATE COURT-V
(SPECIAL COURT OF MARK LIST CASES),
THIRUVANANTHAPURAM.**

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

PA.TO JUDGE.

Msd.

B.KEMAL PASHA, J.

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Crl.M.C. No. 7237 of 2014

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Dated this the 3rd day of November, 2015

ORDER

In C.C.No.126 of 2010, in respect of the offence under Section 138 of the Negotiable Instruments Act, the learned Magistrate, who had succeeded the earlier Magistrate, who had recorded substantial portion of the evidence, has ordered the *de novo* trial of the case, as the nature of the trial was a summery trial. As per Section 326(1) and (3) Cr.P.C., when the evidence in whole or in part is recorded by a Magistrate in the case of summery trial, the Magistrate, who succeeds him cannot rely on the evidence so recorded by the earlier Magistrate. In such a case, a fresh trial is required. There is nothing wrong in Annexure-A order. A fresh trial has to be be conducted at the

earliest in the matter. Matters being so, this Crl.M.C. is devoid of merits and is only to be dismissed, and I do so.

In the result, this Crl.M.C. is dismissed.

Sd/-

**B.KEMAL PASHA
JUDGE**

DSV/3/11/15

// True Copy //

P.A. To Judge