

## KERALA HIGH COURT

Rajendran

Vs

Jose

(T.M. Hassan Pillai, J.)

20.08.2001

### ORDER

**T.M. Hassan Pillai, J.**

1. Heard.

2. The grievance highlighted by the learned counsel for the revision petitioner against that part of the judgment impugned (judgment passed by the learned Sessions Judge. Earnakulam in CrI. A.298/98) is that instead of directing the court below to take steps under the provisions of Ss. 431 and 421 Cr.P.C. to recover the compensation awarded the learned Sessions Judge while dismissing the appeal preferred by him directed him to undergo simple imprisonment for a period of 6 months if default is committed in payment of compensation awarded.

3. The contention urged before me by the learned counsel for the revision petitioner very strongly is well merited. S.357(3) Cr. P.C. is an important provision and the power to award compensation is not ancillary to other sentences but it is in addition thereto, it cannot be argued (Counsel for 1st respondent rightly not argued below me) that compensation awarded is fine. It is money other than fine payable by virtue of the order passed by the learned Sessions Judge under S.357(3) Cr.P.C. and no method of recovery of the compensation payable is otherwise expressly provided for in the Code of Criminal Procedure. Thus, it is plainly clear from S.431 Cr.P.C. that compensation awarded is recoverable as if it were a fine. Two ways provided for the recovery of fine under S.421 Cr.P.C. are: (a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender (here in this case, the revision petitioner) and (b) issue warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter. The Court is empowered to recover the compensation awarded by taking action in either or both of the above stated two ways. So, default clause imposed by the learned Sessions Judge is., to undergo imprisonment for six months in case of commission of default in payment of compensation awarded cannot be sustained or salvaged and the court below (trial Magistrate) is to take steps to recover the compensation awarded as provide under SS. 421 and 431 Cr.P.C.

4. The learned Sessions Judge imposed sentence in default on the basis of the observation made by the apex court in Hari Kishan & State of Haryana v. Sukbir Singh, AIR 1988 SC 2127, that

court may enforce the order by imposing sentence in default. It appears that while disposing of that appeal attention of apex court was not drawn specifically to the provisions of S.431 Cr.P.C. providing for recovery of money (other than fine) payable by virtue of any order made under the Criminal Procedure Code. In a later decision (*Balraj v. State of U.P.*<sup>1</sup>, ) the Supreme Court directed that "if the appellant fails to pay this amount within three months from today, the same may be collected as provided under S.431 Cr.P.C. and be paid to PW2. Compensation of Rs. 10000 was awarded by the Supreme Court by way of compensation to PW2. This Court in *Siby v. Vilasini*<sup>2</sup> took the view that "provisions contemplated in SS.431 and 421 Cr.P.C. are conspicuously clear that amount of compensation awarded under S.357(3) can be recovered under the Revenue Recovery Act."

5. The revision is allowed setting aside that part of the order passed by the learned Sessions Judge directing revision petitioner to undergo simple imprisonment for a period of six months in case of his committing default in payment of the compensation awarded (Rs.40,000/-). The learned counsel for the revision petitioner submitted that the revision petitioner has been undergoing imprisonment from 7.7.2001 as he committed default in making payment of the amount awarded as compensation. Revision Petitioner is directed to be released from jail forthwith, if he is not wanted in connection with any other case. Trial court is directed to take steps under SS.421 and 431 Cr.P.C. to recover compensation awarded.

#### Cases Referred.

1 AIR 1995 SC 1935

2(1998 (2) KLT 462)