

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

Crl.Rev.Pet.No. 2079 of 2014 (D2)

**AGAINST THE JUDGMENT IN CRL.A 66/2008 of II ADDL. SESSIONS COURT, THALASSERY
DATED 13-06-2014**

AGAINST THE JUDGMENT IN ST 1854/2006 of J.M.F.C.-II, KANNUR DATED 28-01-2008

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REVISION PETITIONER(S)/RESPONDENT/COMPLAINANT:

**M.D.MATHEW,
S/O.DEVASIA, MANIYAMKULAM HOUSE, KOMBANPARA,
P.O.PARIKKALAM, KANNUR DISTRICT.**

BY ADV. SRI.P.U.SHAILAJAN

RESPONDENT(S)/APPELLANT/ACCUSED & STATE:

**1. THEKKAN OTHAYOTH SURENDRAN,
S/O.MADHAVI, EDOOR, P.O.PAYAM,
KANNUR DISTRICT. 670 704.**

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

**R1 BY ADV. SRI.CIBI THOMAS
R2 BY PUBLIC PROSECUTOR SRI. JIBU P.THOMAS**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
26-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

Crl.R.P. No.2079 of 2014

Dated this the 26th day of May, 2015.

O R D E R

The revision petitioner is the complainant in S.T.C.No.1854/2006 on the files of the Judicial First Class Magistrate's Court-II, Kannur. He was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, the 'N.I. Act'). After trial, he was found guilty of the said offences and convicted thereunder. He was sentenced to undergo simple imprisonment for three months under Section 138 of the N.I. Act and was further directed to pay Rs.1,50,000/- to the complainant as compensation under Section 357(3) of the Cr.P.C. Feeling aggrieved, though the appellant had preferred Crl.A.No.66/2008, after re-appreciating the evidence on record the appellate court also concurred with the findings of conviction as such, but modified the sentence alone

and allowed the appeal in part. The appellant was sentenced to undergo simple imprisonment for one day till rising of the court and to pay a compensation of Rs.1,50,000/- to the complainant under Section 357(3) of the Code of Criminal Procedure. The legality of the modified sentence alone is under challenge in this revision petition.

2.The learned counsel for the revision petitioner drew my attention to the sentence modified by the court below and submitted that no default sentence has been given to the accused on his failure to pay the compensation. According to him, the non inclusion of default sentence for the failure of payment of compensation is illegal. The above view is supported by the decision of this Court in Mahesh M.C. v. Satheesh and another [2010 (3) KHC 436]. The learned counsel for the first respondent/appellant advanced arguments to justify the modified sentence awarded by the appellate court.

3. Indisputably, an order of sentence must be enforceable always. As rightly submitted by the learned counsel for the revision petitioner, on the failure of the accused to pay compensation, in the absence of default sentence, the said direction cannot be enforced. The above view is supported by the decision in Mahesh's case (supra). In this decision, this Court held that in order to enforce the direction ordered under Section 357(3) of the Cr.P.C., imposition of default sentence is inevitable; otherwise there must be sentence of fine and the said fine can be realised by invoking the default sentence also. In that view of the matter, I find that the modified sentence imposed by the appellate court is legally unsustainable and liable to be modified further.

4. Consequently, the respondent/accused will stand sentenced to undergo simple imprisonment for one day till rising of the court and to pay a

compensation of Rs.1,50,000/- to the revision petitioner/complainant under Section 357(3) of the Cr.P.C. within a period of two months from today and in default to undergo simple imprisonment for two more months.

This criminal revision petition is disposed of as above.

Sd/-
K. HARILAL, JUDGE

okb.