

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 27TH MAY 2008 / 6TH JYAISHTA 1930

Crl.Rev.Pet.No. 2196 of 2004(D)

**(CRL.A NO. 421/2002 ON THE FILES OF THE SESSIONS COURT, KOZHIKODE,
CC NO. 418/2000 OF JFCM COURT-II, PERAMBRA)**

REVN. PETITIONER/APPELLANT/ACCUSED

**KUNHIRAMAN NAIR,
S/O.KRISHNAN NAIR, PUTHIYOTTIL HOUSE,
KUTTIADY AMSOM, VATAKARA TALUK.**

BY ADV. SRI.K.B.GANGESH

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE

**1. M.ABDUL LATHEEF, S/O.MOOSA,
CHALAKKARA, PALERI AMSOM,
CHERIYA KUMBALAM DESOM, KOYILANDY TALUK.**

**2. STATE, REP. BY GOVERNMENT PLEADER
AND PUBLIC PROSECUTOR.**

**ADV. SRI.DEVAPRASANTH.P.J. FOR R1
PUBLIC PROSECUTOR SRI. PUZHAKKARA MUHAMMED**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 27/05/2008, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Thottathil B. Radhakrishnan, J.

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Crl.R.P.No.2196 of 2004

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Dated this the 27th day of May, 2008.

ORDER

The revision petitioner stands convicted and sentenced to undergo simple imprisonment for three months for offence punishable under Section 138 of the Negotiable Instruments Act. The appellate court has confirmed the conviction and sentence imposed by the court of first instance.

2. According to the complainant, the accused borrowed a sum of Rs.1,35,000/- on 26-8-2000 and issued a cheque for the said sum, which, on presentation was returned for insufficiency of funds. On demand in terms of the statute, the amount was not paid and hence the complaint was instituted.

3. Exts.P1 to P10 were marked and the

complainant tendered evidence as P.W.1. Neither any defence witness was examined nor documentary evidence tendered by the accused.

4. The courts below did not find any material to disbelieve P.W.1, the complainant, who stated that the complainant and the accused were under an agreement and he has advanced Rs.1,35,000/- as pleaded in the plaint and the accused issued a cheque to him as agreed. On violation of such agreement, the complainant presented the cheque to the bank which was dishonoured. The accused attempted to show that he had borrowed only a sum of Rs.23,000/- and a signed stamp paper was issued as security on an understanding to pay interest of Rs.100/- per every Rs.1,000/- and still further that the amount was repaid through one Raghavan and Narayanan Nair, but yet, the complainant did not return the cheque.

5. The lower appellate court has specifically relied on the testimony of P.W.1 wherein the complainant denied the transaction as projected by the accused. The courts below, on examination of the entire evidence, found that there was no evidence to disbelieve P.W.1. The lower appellate court accordingly sustained the conviction and sentence imposed by the trial court.

Having perused the materials on record, I do not find any legal infirmity or impropriety in the findings sentence or order. No interference is called for in this revision under Section 397 Cr.P.C. Revision petition fails. The same is accordingly dismissed.

**Thottathil B.Radhakrishnan,
Judge.**

s12/6/2008