

**(1994) 03 KL CK 0026**

**In the High Court Of Kerala**

**Case No :** Criminal Revision Petition No. 927 of 1993

Ninan

APPELLANT

Vs

Rufus Olivero

RESPONDENT

**Date of Decision :** 08-03-1994

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 319  
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

**Citation :** (1994) 2 CivCC 295 : (1994) 1 KLJ 811 : (1994) 3 RCR(Criminal) 83

**Hon'ble Judges :** B.M. Thulasidas, J

**Bench :** Single Bench

**Advocate :** S.K. Balachandran and M.N. Raveendran, for the Appellant; T.K. Venugopalan and P.P., for the Respondent

**Final Decision :** Allowed

## Judgement

Thulasidas, J.—Heard.

2. The order passed on Crl.R.P. No. 70 of 1993 of the Fourth Additional Sessions Court, Ernakulam, is under challenge in this revision. Petitioner is the complainant in C.C. No. 707 of 1992 on the file of the Chief Judicial Magistrate, Ernakulam, which is against the first respondent for an offence punishable u/s 138 of the Negotiable Instruments Act, for short the Act. On the complaint, cognisance was taken of the offence against one Francis Olivero, s/o Rufus Olivero, who was shown as the accused. Later by order passed on 2.1.1993, on M.P. No. 28 of 1993 filed by the complaint-revision petitioner, the name of the accused was corrected. Subsequently on a petition by the person who was impleaded as the accused, the question to the maintainability of the complaint was considered as a preliminary point by the Chief Judicial Magistrate, who by order dated 23.8.1993 held the complaint was maintainable against him. But in the above revision, the order was set aside, the legality and propriety of which is under challenge in this revision.

3. Admittedly, the cheque in question was issued by the respondent, who is now

shown as the accused. It was dishonoured when presented for encashment and that was followed by a notice to him intimating the dishonour with a demand for payment of the amount. The respondent received the notice but failed to reply and pay the amount. In the above circumstances, the petitioner had a completed cause of action for a complaint against him under S. 142 of the Act for an offence u/s 138. He filed the complaint also within the prescribed period, where he wrongly described the accused as Francis Olivero, son of Rufus Olivero, where in fact the description would have been in the reverse order. Upon noticing this mistake, he filed a petition for correction, which was allowed by the Chief Judicial Magistrate, who also held that the complaint was maintainable against the respondent. As stated already, the Additional Sessions Judge took a different view and held that the complaint is unsustainable.

4. The observation that courts take cognisance of the offence and not the offender is unexceptionable. The offence alleged is under S. 138 of the Act and cognisance was already taken by the Chief Judicial Magistrate. No doubt, there was a mistake committed while naming the offender in the complaint, which would not have arisen had some care been shown. But then, I should also say that Court took cognisance of the offence without properly considering the documents produced by the petitioner. If the Chief Judicial Magistrate had considered the records in the first instance itself, probably the mistake could have been found out. In my view, the correction became necessary not only on account of mistake committed by the petitioner but also the Chief Judicial Magistrate, who was justified later to order the correction under his limited inherent jurisdiction. It is not possible to agree that the petitioner has sought to file complaint against the first respondent without satisfying the required formalities and beyond the prescribed period. The statutory formalities had been satisfied and the complaint was filed in time on the cause of action the petitioner had against the first respondent, who certainly was not justified to take exception to the maintainability of the complaint for the reasons stated by him.

5. This apart, the order passed on M.P. No. 28 of 1993 was not challenged by the first respondent and it has become final. The complaint is against him and not against the person who was originally shown as the accused. By reason of the order allowing correction of the name of the accused it must be held that the first respondent himself was originally the accused, against whom the petitioner had a valid cause of action for the offence alleged in the complaint.

6. In my view, S. 319 of the Code of Criminal Procedure has no application to the case either on its terms or otherwise.

7. The impugned order passed on Criminal Revision Petition No. 70 of 1993 is unsustainable, and is hence set aside.

8. The Criminal Revision Petition is accordingly allowed.