

KADK310021972023



**IN THE COURT OF THE 1st ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC, PUTTUR, D.K.,**

Present :- Shri. Devaraj. Y.H B.A.L., LLB.,

1st Addl. Senior Civil Judge and JMFC, Puttur, D.K.,

Dated this the 21st Day of July 2026

C.C. No. 1094/2023

<u>Complainant</u>	:	State of Karnataka (By Puttur Rural Police Station) (By Asst. Public Prosecutor)
V/S		
<u>Accused</u>	:	1.Shri. Kiran Kumar. U. S/o Thimmappa.U, Aged 26 years, R/o Ujraguli House, Amchinadka, Kavu post, Mudnoor Village, Puttur Taluk. 2. Shri. Santhosh. U. S/o late Seena, Aged 39 years, R/o Ujraguli House, Amchinadka, Kavu post, Mudnoor Village, Puttur Taluk. 3. Shri. Mohammad Sinan S/o Late. Abdul Khadar,

		Aged 29 years,R/o. 2-354, Aadarsha Nagara House, 34th Nekkiladi, Puttur Taluk. Presently residing at Paiji Residency House 3, Bannur Village, Puttur Taluk. (Rep. By: Advocate Shri. M.P.K)
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1.Date of commencement of offense	;	01.08.2023
2.Date of report of the offense	;	03.08.2023
3.Date of arrest of the accused	;	05.08.2023
4.Name of the Complainant	;	Sri. Vishnu Kalluraya. P.
5.Date of recording evidence	;	08.10.2024
6.Date of closing of evidence	;	27.06.2026
7.Offense complained of	;	Section 457 & 380 of IPC.
8.Opinion of the Judge	;	As per the final Order
9:Complainant represented by	;	Assistant Public Prosecutor
10.Accused represented by	;	Shri. M.P.K Advocate.

(Devaraj.Y.H)
I ADDL. SR. CIVIL JUDGE & JMFC
PUTTUR

JUDGMENT

The Sub Inspector of Police of Puttur Rural Police Station has filed charge-sheet against the Accused No. 1 to 3 for the offenses punishable under section 457 & 380 of IPC.

2. The case of the prosecution in brief is as under:

It is alleged that Accused 1 to 3 conspired to commit arecanut theft for wrongful gain. After confirming that CW-1 was not at home, on 01.08.2023 at 10:00 PM they came in Omni car KA-21-M-6145 belonging to CW-9, driven by Accused 3 along with Accused 1 and 2, to the yard of CW-1's house at Amminadka, Maduru Village, Puttur Taluk, within Puttur Rural PS limits. Accused 1 to 3 stopped the car at CW-1's yard. A2 and A3 got down, and A1 took an iron rod from the car. Using the rod they broke the lock of the arecanut godown, entered and stole 2 quintals of husked dried arecanut in 10 bags and a grass-cutting machine worth Rs. 5,000. They transported it to A1's house at Ujragoli, Padannur and peeled the arecanut. 117 kg of dried arecanut worth Rs. 49,725 was

being transported in the car for sale. The act was done with intent to commit theft and wrongful gain. Hence charge sheeted under Sec. 457, 380 of IPC.

3. Cw-1 lodged written complaint to the Station House Officer/Cw-12 of Puttur Rural Police station on 03.08.2023 of the alleged incident who registered FIR against the unknown accused for the offence punishable under Section 454, 457 and 380 of IPC and later on completion of the investigation the Cw-20/Sub Inspector of Police of Puttur Rural Police Station has filed charge-sheet against the Accused No. 1 to 3 for the offenses punishable under section under Sec. 457, 380 of IPC.

4. The court has taken the cognizance of the offence secured the presence of accused persons & they enlarged on Bail. Copies of the prosecution papers were supplied to the accused persons.

5. On hearing before charges, Charges were framed against the accused persons. They pleaded not guilty and claimed to be tried. Hence the matter posted for the prosecution side evidence.

6. In order to bring home the guilt of the accused persons, prosecution has examined thirteen witnesses as Pw-1 to Pw-13 out of 20 witnesses, and got marked 11 documents as Ex.P-1 to Ex.P-11. On considering the prayer of Assistant Public Prosecutor Cw-7, Cw-13, Cw-15 to Cw-19 were given up from the prosecution side evidence.

7. After completion of the evidence of prosecution statement of the Accused persons as per Sec 313 of Criminal procedure code has been recorded. Incriminating evidence appeared against the Accused persons read over and explained to them, they denied all the incriminating evidence led against them in the prosecution side evidence.

8. Further accused furnished surety in compliance as per Section 437-A of Criminal Procedure Code. Hence the matter posted for arguments.

9. Heard both Assistant Public Prosecutor and counsel for the Accused persons on merits. On hearing the arguments and on perusal of materials on record the following points arisen for my determination.

P O I N T S

1. Whether the prosecution proves beyond on all reasonable doubt that the Accused No.1 to 3 on 01.08.2023 at about 10:00 PM committed house-breaking by night at the arecanut godown situated in the house yard of CW-1 at Amminadka, Maduru Village, by breaking the lock with an iron rod in order to commit theft, thereby committed an offence punishable under Section 457 IPC?

2. Whether the prosecution proves beyond on all reasonable doubts that the accused persons on the same day, place and time, after committing house-breaking as above, committed theft of 10 plastic bags containing approximately 2 quintals of dried arecanut with

husk and one grass-cutting machine worth Rs.5,000/- from the dwelling house of CW-1, thereby committed an offence punishable under Section 380 IPC?

3. What order?

10. My findings to the above said points are as under:

Point No. 1 & 2: In the Negative

Point No.3: As per the final order
for the following.

REASONS

11. **Point No.1 & 2:** Both these points interconnected to each other as such they are taken up together for common discussion to avoid repetition of facts and the evidence.

12. Burden cast on the prosecution to prove the guilt of the accused persons for the offenses punishable under section 457 & 380 of IPC.

13. Pw-1 is the complainant who lodged complaint with regarding to the theft occurred in his house on 01.08.2023. He deposed that 'I live alone in my house. My wife passed away 5

years ago. My son resides in Puttur and my two daughters are married and living in Udupi and Bangalore. I own 4 acres of agricultural land where I cultivate arecanut. Shivaprasad and Narayana Malya do cultivation in my land. On the northern side of my house there is a separate godown where I store arecanut crop and agricultural items. On 19.07.2023 at 10:00 AM I went to my son's house in Puttur after locking both my house and the godown. On 03.08.2023 between 9:00 AM to 10:00 AM when I returned home, I found the lock of the godown broken. On checking inside, I found that 10 bags containing approximately 2 quintals of unshelled dried arecanut worth Rs.70,000/- and a grass-cutting machine worth Rs.5,000/- were stolen. Thereafter I went to Sampya Police Station and lodged a complaint regarding the theft. I signed this document on 03.08.2023 at the godown near my house. After I lodged the complaint, the police came to conduct spot mahazar. I was present at the spot and showed the police the place where the arecanut was stored. Girish and Gopal were also present at the spot. The police seized a broken lock

from a bush at the spot. On 05.08.2023 the police brought two accused persons near the godown belonging to me. One of them gave his name as Kiran Kumar. I do not remember the name of the other person. When the police brought them, the accused persons stated that they had committed theft of arecanut from my godown. The witness identifies the accused Kiran present before the court and the 2nd accused wearing a white shirt. On 05.08.2023 at 11:00 AM the police showed me the stolen arecanut at the police station. I do not know the 3rd accused. My neighbors have informed me that the 3rd accused was moving around with accused No.1 and 2 in an Omni vehicle on the day of the theft. If the stolen unshelled arecanut belonging to me is peeled, it would be approximately 115 Kgs. After lodging the complaint the police examined me twice. Out of the stolen arecanut belonging to me, the police returned 3 bags of peeled arecanut to me at the police station. The said bags contained approximately 35 Kgs and two bags of 40 Kgs each of peeled arecanut. The police also returned the grass-cutting machine which was in their custody to me.’.

14. Pw-1 identified Complaint as per Ex.P-1, Spot Mahazar as per Ex.P-2 and Rough Sketch as per Ex.P-3 & also his signatures on the said documents as per Ex.P-1(a), Ex.P-2(a) & Ex.P-3(a). Pw-1 further deposed that 'Ex.P-4 was prepared at the time when the police returned the peeled arecanut to me'.

15. Pw-1 in his cross examination admits that he came to know about the Omni vehicle and the accused persons for the first time only from the police on 05.08.2023.

16. Pw-2 & Pw-2 are the hearsay witness pertaining to the theft is concerned. They deposed they know CW-1 and they, look after CW-1's arecanut garden. CW-1 has one son who lives in Puttur and two married daughters residing in Bangalore and Udupi. CW-1's wife is deceased and he lives alone. The arecanut yield from CW-1's garden was stored in a separate godown next to his house. On 19-07-2023 at 10:00 AM CW-1 went to his son's house in Puttur. On 03-08-2023 between 9:00 AM to 10:00 AM when CW-1 returned home and checked, he found that the unshelled arecanut stored in the godown had

been stolen and he informed all of us. CW-1 called them to the spot. 10 bags of unshelled arecanut worth Rs.70,000/- and a grass cutter worth Rs.5,000/- were stolen from the godown. The lock was broken. Neighbors said Kiran and Santhosh were seen in Mohammed Sinan's Omni on the day of theft. On 05-08-2023 police brought Kiran, Santhosh and Mohammed Sinan to the spot and during mahazar they admitted the theft'.

17. Pw-4 is one of the panch witness who was present at the time of conducting spot Mahazar and Rough Sketch as per Ex.P-2 & Ex.P-3. In his chief examination he deposed 'about 1.5 years ago I signed Ex.P-2 and Ex.P-3 at CW-1's godown. Police came regarding the theft. CW-1 showed the broken lock spot and inside the godown. Arecanut and a grass cutting machine were stolen. A lock lying on the path near the gate was seized by police. Girish also signed Ex.P-2 and 3 with me'.

18. Pw-4 in his cross examination deposed that 'I go to CW-1's place for work daily. I did not see the lock lying near the gate. Apart from me, Sheshappa and Isubu had signed Ex.P-2 and 3. I do not know what was written in the

documents in which I signed. Other than taking my signature, I do not know what else was done there, and I have no information about the time they were present’.

19. Pw-5 is one of the panch witness who was present at the time of conducting spot Mahazar and Rough Sketch as per Ex.P-2 & Ex.P-3. In his chief examination he deposed ‘In August 2023 I signed Ex.P-2 and 3 at Vishnu Kalluraya’s godown. Police came to the spot that day for mahazar. There was theft in the godown. Police seized the lock from inside by wrapping it in a white cloth. Gopal Moolya also signed Ex.P-2 and 3 with me. I can identify the lock seized by police’.

20. Pw-5 in his cross examination deposed that ‘I go to Vishnu Kalluraya’s house for work daily. I did not see any lock or key lying near the gate before the police came to the spot. I do not know what was written in the documents I signed. I signed the documents at 12:30 PM. I do not know what the police did before that’.

21. Pw-6 is one of the panch witness who was present at the time of conducting Arrest & property seizure Mahazar as

per Ex.P-6 & Property seizure and Spot Mahazar conducted as per the information given by the accused No.1 & 2 as per Ex.P-7. In his chief examination Pw-6 deposed 'On 05.08.2023 at 9:30 a.m. I signed Ex.P-6 about 100 meters ahead of Amchinadka Junction, Madnuru village. While going to hotel, police called me. There was a white Omni van with Santhosh and Kiran inside. The driver had run away. The van had 3 bags of shelled arecanut - 25 kg, 42 kg and 50 kg. They said it was stolen from Vishnu Kalluraya's house. An iron rod used to break the lock was found under the driver seat. Police seized everything to the station. I and Venkatakrishna Bhat signed the mahazar at the spot.

22. On 05.08.2023 at 1:30 PM I went to Sampya Police Station. Venkatakrishna Bhat was also present. After PSI enquiry, we along with accused Kiran went to his house at Ujraguli. There were 6 empty gunny bags, 1 bag of arecanut husk, 1 grass cutting machine and 1 arecanut cutting knife. Police seized them. Later we went to Vishnu Kalluraya's godown and signed Ex.P-7. The accused showed the place of

theft. I can identify the 3 bags of shelled arecanut and the iron rod seized by police in my presence’.

23. In the cross examination, Pw-6 deposed that ‘The print of the document I signed was already taken before I reached the spot. I did not read what was written in it. I do not know who was in the house and I did not go inside. I only saw police bringing arecanut husk from inside. I signed the document 50 meters away from the godown. At 1:30 PM, I and Venkatakrishna Bhat signed together. I do not know what exactly police did near the godown’.

24. Pw-7 is one of the panch witness who was present at the time of conducting property release Mahazar as per Ex.P-4. Pw-7 deposed ‘On 31.08.2023 I signed Ex.P-4 at Puttur Rural Police Station. On that day 3 bags of shelled arecanut and a grass cutting machine were released to CW-1. I signed the release mahazar conducted that day. I can identify the 3 bags of shelled arecanut released to CW-1 in my presence’.

25. Pw-7 deposed in his cross examination that ‘CW-1 is known to me. I went to the police station at 2:00 PM. I do not

know the company of the grass cutting machine. I do not know the weight of arecanut in the gunny bags present before me. I signed in the officer's room inside the police station'.

26. Pw-8 is the owner of the vehicle which was allegedly used by the accused for commission of the theft. Pw-8 deposed in his chief examination that 'I owned an Omni car. I do not remember the registration number. At the time of the incident the car was at my father's house at Bannur. 3rd accused is my brother. I do not know who was using the car. Sec.133 MV Act notice issued by PSI Puttur Rural PS as per Ex.P-8. About 2.5 years ago at Sampya PS the Car was released to me and Ex.P-9 mahazar was done'. Pw-8 identified 4 photos of vehicle KA-21-M-6145 which were marked together as Ex.P-10.

27. Pw-8 was treated as partly hostile witness by the learned APP and in the cross examination, Pw-8 deposed that she was not aware that 3rd accused, her brother, was involved in petty thefts. She stated that on 01.08.2023, the 3rd accused took my Omni car shown in Ex.P-10 and did not return home. On 05.08.2023, he came to know later that

police had seized the said car in connection with the arecanut theft case at Ammchinadka and he gave a statement to the police on 01.09.2023 regarding the above.

28. Pw-8 was cross examined by the Counsel for the accused. In the cross examination, Pw-8 deposed that 'I do not know what was written by the police in the documents I signed. I did not give any statement to police regarding my brother stealing arecanut or regarding seizure of my car. Except my name and address, police did not record any other statement from me'.

29. Pw-9 and Pw-13 are the panch witnesses present at the time of Car release Mahazar as per Ex.P-9. Pw-9 and Pw-13 turned hostile to the case of the prosecution. They identified their signature on Ex.P-9 and deposed that they signed Ex.P-9 at Sampya Police Station. No car was released by police in their presence and they do not know what is written in Ex.P-9'.

30. Pw-10 is the police official who registered FIR on receiving the complaint from Cw-1. He deposed 'While I was the

SHO of Puttur Rural PS, on 03.08.2023 at 11:00 AM, I received the written complaint from the complainant, registered it as Crime No. 73/2023, prepared FIR and submitted it to the Hon'ble Court. Later I handed over the case file to CW-20 for further investigation'.

31. Pw-11 is one of the police officer who in his chief examination deposed that 'On 05.08.2023 at 9:00 AM, while on special duty with CW-20 and staff CW-15 to 19, we received credible information that accused Kiran Kumar was loading stolen property near his house. Accordingly, at Amchinadka on Mani-Mysore NH we obstructed the road with department jeep. The driver of the car coming from opposite side stopped the car and ran away. The two persons in the car, Kiran and Santhosh, on inquiry stated that they were transporting stolen arecanut from CW-1's house for sale. As the theft was confirmed, he issued notice and made Pavan Shekhar and Venkata Krishna who were present at the spot as panchas. Thereafter, the persons were questioned in the presence of panchas. On inquiry they gave their names as Kiran Kumar

and Santhosh. The person who ran away was named as Mohammed Sinan. They stated that on 01.08.2023 they committed theft of arecanut and grass-cutting machine from CW-1's godown and were going in the car to sell the dehusked arecanut. In the car 3 plastic gunny bags were found. On weighing, 1st bag had 25 Kg, 2nd bag 52 Kg and 3rd bag 40 Kg of dehusked arecanut and they were marked as numbers 2, 3, 4 respectively. A Iron rod used to break the lock was found under the driver seat. All these articles were seized by him in the presence of panchas'.

32. In the cross examination Pw-11 deposed that 'On that day we left the PS at 8:00 AM. Ammchinadka is about 11 Km south of our PS. At Ammchinadka, 15 feet east is the road to accused's house, 40 feet south is Hasanabba's house, 60 feet north-west is the road to complainant's house. When shown Ex.P-1 photo, I agreed that no features stated by me are visible in it. It is true to suggest that in Ex.P-12 there are no vehicle brake marks. We ourselves took the weighing scale. We did not take photos when the mahazars were inside the Omni car.

Ex.P-6 document was typed by our staff Lokesh. It is correct that printing at the spot is not mentioned in the Ex.6 document. Arrest procedures of accused were followed at the spot and after 10:00 AM. Voluntary statements of accused were obtained’.

33. Pw-12 is the investigating officer who on completion of the investigation filed charge-sheet against the accused persons. Pw-12 deposed that ‘On 03.08.2023 I received and verified the case file from CW-12. On the same day I conducted spot mahazar as shown by CW-1 and seized one lock, which was attached to the property list and submitted to the Hon'ble Court. On 04.08.2023 I recorded statements of CW-2 and CW-3. On 05.08.2023 I recorded re-statement of CW-1. On the same day at 9:00 AM, while on special duty in department jeep with CW-14 to 19, I received credible information that accused Kiran Kumar was loading stolen property near his house. Accordingly, I proceeded to Ammchinadka on Mani-Mysore NH. On seeing the car coming from opposite side as per information, I obstructed it with department jeep. The driver

stopped the car and ran away. The two persons in the car, Kiran and Santhosh, on inquiry stated that they were transporting stolen arecanut from CW-1's house for sale in the car. As the theft was confirmed, I made Pavan Shekhar and Venkata Krishna who were present at the spot as panchas and issued notice. In presence of panchas, on inquiry they gave names as Kiran Kumar and Santhosh. The person who ran away was named as Mohammed Sinan. They stated that on 01.08.2023 they committed theft of arecanut and grass-cutting machine from CW-1's godown and were going in the car to sell dehusked arecanut. In the car 3 plastic gunny bags were found and the first bag contained dehusked arecanut. On inquiry about the rod found under the driver seat, they stated it was used to break the lock. All those articles were seized by me in the presence of panchas and spot mahazar was conducted. I took the accused into my custody and submitted the seized properties to the Hon'ble Court after entering them in the property list.

34. Further deposed that 'On the same day, at Ammchinadka Ujraguli, near accused Kiran Kumar's house as shown by accused, I seized 1 grass-cutting machine, 5 empty plastic gunny bags, 1 mettu knife and 1 plastic bag of dry arecanut husk, prepared property list and submitted to Hon'ble Court. On 31.08.2023 I conducted property release mahazar for properties mentioned in Property List No. 56 and 57 and released them to CW-1 and obtained receipt. On 01.09.2023 recorded statement of CW-9. On 12.09.2023 recorded re-statements of CW-1 to 3. On 07.10.2023 I filed application before Hon'ble Court to correct the entry in Property List No. 57/2023 from "5 plastic gunny bags" to "6 plastic gunny bags".

35. Further deposed that 'On 01.09.2023 I issued notice u/s 133 IMV Act to registered owner CW-9 regarding the seized car, obtained reply and as per Hon'ble Court order handed over the car to CW-9 on the same day. On 05.08.2023 I conducted arrest and property seizure mahazar of Accused 1 and 2 and obtained their voluntary statements. Accused 3 Mohammed Sinan absconded and later appeared at PS after obtaining bail

from Hon'ble Court. I arrested him, released him on bail as per Court order and obtained his voluntary statement. After completion of investigation I submitted charge sheet against the accused before the Hon'ble Court'.

36. Pw-12 was cross examined by the Counsel for the accused. In the cross examination Pw-12 deposed that 'I left the PS at 9:00 AM. Ammchinadka is 10 Km east of our PS. The panchas met me at Ammchinadka. I did not take photos when the mahazars were inside the car. The vehicle in which the accused were coming was moving at a speed of 60-70 Kmph. In Ex.P-12 photos there are no wheel marks of vehicle braking. I obtained the voluntary statements of accused at the spot itself. But I do not have exact information about the time from which to till which I obtained the voluntary statements. I conducted the arrest procedure at the spot itself. It is correct that printing of Ex.P-6 mahazar done at the spot is not mentioned in the mahazar. CW-19 typed the mahazar. He is not shown as a witness in the mahazar. We brought the weighing scale from the PS. It is correct that at the spot the

accused came in Omni car and we intercepted them with department jeep. It is false that accused and Omni vehicle were already in our custody on 03.08.2023. It is false that we showed mahazar articles to CW-1 at PS at 4:00 AM on 03.08.2023. It is false that we implicated the accused by planting previously seized mahazar articles and filed a false case. It is correct that there are no brake marks in Ex.P-12 to show that accused were in our custody on 03.08.2023 and we arrested them on 05.08.2023. It is correct that the "chakku bandi" shown in Ex.P-6 is not visible in Ex.P-12 photos. It is false that Ex.P-12 photos were taken elsewhere and we are falsely saying they were taken at Ammchinadka. On 01.09.2023 I issued notice u/s 133 IMV Act to registered owner CW-9 regarding seized car, obtained reply and as per Court order handed over the car to CW-9. On 05.08.2023 I conducted arrest and property seizure mahazar'.

37. Heard learned APP for the prosecution and learned counsel for the accused on merits. perused the material particulars placed before this court including oral as well

documentary evidence.

38. It is the specific accusation made against the accused persons that they have committed theft of 2 quintals of husked dried arecanut in 10 bags and a grass-cutting machine worth Rs.5,000/- by break open the door of the godown which belonged to the CW-1 at Ammchindadka of Madnoor Village, Puttur Taluk and thereby they have committed an offence punishable under Sec. 457, 380 of IPC.

39. Burden cast of the prosecution to prove the guilt of the accused beyond on all reasonable doubts. in order to discharged their burden prosecution examined 13 witnesses as PW-1 to PW-13 and also got produced 11 documents as per Ex.P1 to Ex.P11, further got identified four material objects as per MO-1 to MO-4.

40. On perusal of the Exhibit P2, therein it is mentioned that the Investigating Officer/Pw-12 has conducted spot Mahazar and prepared rough sketch as per Ex.P-3 in the place where the alleged incident of theft had been taken place i.e. in

the godown of CW1 at Amchinadka of Maadnur village, Putturu Taluk in presence of one Gopalamulya and Girish. On perusal of Exhibit P2, there in it is mentioned that the said mahazar was conducted on 03.08.2023 at about 12.30 p.m. to 01.30 p.m.

41. In order to prove the contents of the same, Prosecution examined Pw-1/Complainant, Gopala Mulya as PW4 and Girish as PW5 who were the panch witnesses and PW12 who is the Investigating Officer who conducted Ex.P-2 and Ex.P-3.

42. Pw-12 in his chief examination deposed that on 03.08.2023 he went to the place where the alleged incident had been taken place and conducted the spot mahazar in the place which was shown by the CW1 and at that time he seized one lock from the place of the incident in presence of CW1, PW4 and PW5. PW4 and PW5 in their chief examination, identified their signatures on Exhibit P2 spot mahazar and Exhibit P3 rough sketch. However, PW4 and PW5 in their chief examination have not stated the exact date and time when the

spot mahazar was conducted and rough sketch was prepared at the place of the incident.

43. PW4 in his cross examination deposed that ' ನಾನು ಸಹಿ ಮಾಡಿದ ದಾಖಲೆಗಳಲ್ಲಿ ಏನಲ್ಲಾ ಬರೆದುಕೊಂಡಿದ್ದಾರೆ ಮತ್ತು ಏನಲ್ಲಾ ಬರೆದಿದೆ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಅಲ್ಲಿಗೆ ಬಂದವರು ನನ್ನ ಸಹಿಗಳನ್ನು ಪಡೆದದ್ದನ್ನು ಹೊರತುಪಡಿಸಿ ಬೇರೆ ಏನು ಮಾಡಿದ್ದರೂ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಅದೇ ರೀತಿ ಎಷ್ಟು ಹೊತ್ತಿನಿಂದ ಎಷ್ಟು ಹೊತ್ತಿನವರೆಗೆ ಇದ್ದರು ಎಂದು ನನಗೆ ಮಾತಿಹಿ ಇಲ್ಲ'. PW5 in his cross examination deposed that ' ನಾನು ಸಹಿ ಮಾಡಿದ್ದ ದಾಖಲೆಗಳಲ್ಲಿ ಏನಲ್ಲಾ ಬರೆದಿದೆ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನಾನು ದಾಖಲೆಗಳಿಗೆ 12.30 ಕ್ಕೆ ಸಹಿ ಮಾಡಿದ್ದೇನೆ. ಅದಕ್ಕೂ ಮೊದಲು ಪೊಲೀಸರು ಏನಲ್ಲಾ ಮಾಡಿದ್ದರು ಎಂದು ಗೊತ್ತಿಲ್ಲ'. PW1 in his evidence deposed that he put his signature on Exhibit P2 and Exhibit P3 in the godown which is nearby his house at Amchinadka Village on 03.08.2023. He deposed that he has shown the place where the alleged theft had been taken place to the Investigating Officer/Pw-12 who came to the spot to conduct spot mahazar. Further he deposed that at that time PW4 and PW5 were also present at the spot. Even though PW1 stated that the spot mahazar was conducted on 03.08.2023 and the rough sketch was prepared at the place where the

alleged incident had been taken place, he has not stated the exact time when the said spot mahazar and the rough sketch came to be prepared by the Investigating Office/Pw-12.

44. On perusal of the cross-examination of PW4 and PW5 as extracted above, clarifies that they does not know the contents which have been mentioned in Exhibit P2 and Exhibit P3. Further they have specifically stated that they does not know contents mentioned in the Ex.P-2 & Ex.P-3. The testimony of PW4 and PW5 is not cogent and corroborates with the evidence of Pw-1 and Pw-12. Doubts creates with regard to presence of PW4 and PW5 on 03.08.2023 in between 12.30 p.m. to 01.30 p.m when the Exhibit P2 spot mahazar and Exhibit P3 rough sketch was prepared by the Pw-12 allegedly at the place where the alleged incident of theft taken place. Thus this Court prosecution failed to prove that the Investigating Officer/Pw-12 on 03.08.2023 in between 12.30 p.m. to 01.30 p.m. has conducted the spot merger and prepared Exhibit P2 spot mahazar and Exhibit P3 rough sketch in presence of Pw-4 & Pw-5 at the place where the alleged

incident had been taken place.

45. Admittedly, it is the specific case of the prosecution that on 05.08.2023 at Amchinadka of Madnoor Village, Puttur Taluk, in presence of Pawan Shekhar and Venkappa Krishna, PW12 arrested the accused no. 1 and 2 at about 09.30 p.m. and seized dehusked arecanut, weighing to an extent of 25 kg, 52 kg, 40 kg in three separate plastic bag's and also seized one iron rod which was allegedly used by the accused persons to break open the lock of the godown belonged to the CW1, from which they have thefted the husked arecanut and grass-cutting machine. Further, it is the case of the prosecution that on the same day, police have seized Maruthi Suzuki Omni Car bearing registration number KA-21-M-6145, which was allegedly used by the accused persons to transport the thefted husked arecanut and also grass cutting machine from the place where the alleged incident of theft had been taken place. Further it is also the case of the prosecution that by conducting Exhibit P7 on the same day i.e., 05.08.2023, at about 1.30 to 2.30 p.m. Pw-12 seized grass-cutting machine, husk of the thefted

arecanut, three plastic gunny bags which were used for to transport the thefted Arecanut, one Mettu Katti which was used for to remove the husk from the thefted arecanut in the house belonged to the Accused Kiran Kumar at Harijana Colony of Ujraguli and also the place where the alleged theft had been committed by the Accused persons i.e., the house of Pw-1 as per the information given by the Accused No. 1 & 2.

46. There are no eye witnesses to the alleged incident of theft. As per the testimony of PW12, after arresting the accused no. 1 and 2, they have given voluntary statements to him in presence of Pawan Shekhar and Venkappa Krishna. As per the voluntary statements, he came to know that the accused no. 1 and 2 along with accused no. 3 have conducted theft in the godown of CW1 on 01.08.2023, as such burden cast on the prosecution to prove that the accused No.1 and 2 have been arrested by the Pw-12 in presence of Pw-6 and one Venkappa Krishna as well seizure made out as per Exhibit P6 & Exhibit P7 from the custody of the accused persons as per the information given by them.

47. It clarify that as per Exhibit P6 & Exhibit P7/Pawan Shekhar and Venkappa Krishna, were the vital witness to the prosecution in proving Exhibit P6 i.e. arrest of accused no. 1 and 2 and seizure of the material objects from the custody of the accused No.1 and 2 as mentioned in Exhibit P6 and Exhibit P7.

48. Prosecution in order to prove Exhibit P6,& Exhibit P7 examined Pawan Shekhar as PW6 and the investigating officer as Pw-12. Admittedly, PW6 is the vital witness to the prosecution in order to prove the arrest of the accused no. 1 and 2 by the Investigating Officer/Pw-12 and also seizure of dehusked arecanut, weighing to an extent of 25 kg, 52 kg, 40 kg in three separate plastic bag's, one iron rod and Maruthi Suzuki Omni Car bearing registration number KA-21-M-6145, grass-cutting machine, husk of the thefted arecanut, three plastic gunny bags which were used for to transport the thefted Arecanut, one Mettu Katti which was used for to remove the husk from the thefted arecanut from the custody of the accused no.1 & 2.

49. Pw-12 in his testimony deposed regarding conduct of Exhibit P2 by him in presence of PW6 and one Venkappa Krishna as well arrest of accused no. 1 and 2, recording of voluntary statement of accused no. 1 and 2, seizure of the de-husked areca nuts, iron rod, and also the Omni-Car which were mentioned in Exhibit P6 from the custody of accused no. 1 & 2 and seizure of grass-cutting machine, husk of the thefted arecanut, three plastic gunny bags which were used for to transport the thefted Arecanut, one Mettu Katti which was used for to remove the husk from the thefted arecanut as per the infromation given by the accused no.1 in his house and the place of the incident as shown by the accused no.1 and 2 as per Exhibit P7 by conducting the same in presence of Pw-6 & Venkappa Krishna.

50. PW6 in his chief examination supported the case of the prosecution and he identified his signatures on Exhibit P6 and Exhibit P7. Further he deposed in his presence on 05.08.2023 police have seized Omni Car, Arecanuts weighing 25 kg, 42 kg and 50 kg in 3 plastic bags, 1 iron rod, and also

the conduct of Exhibit P6 in his presence as well conduct of Exhibit P7 at the place which was shown by accused Kiran at Ujira Goli wherein grass cutting machine, metto katthi & husk of the arecanut seized and also Further deposed regarding conduct of spot mahazar in the godown of CW1 inthe place was shown by accused no. 1 and 2. Further he identified the iron rod as per material object no. 1, Mettu Katti as material object no. 2, plastic bags and husked areca nut as per Material Object No. 3 and 4 respectively. Further he identified the accused no. 2 at the time of recording his evidence.

51. PW6 was cross examined by the counsel for the accused. In the cross examination, he totally deposed contrary to the statement given by him in the chief examination. his cross examination portion is extracted herein below.

"ನಾನು ಸ್ಥಳಕ್ಕೆ ತಲುಪಿದಾಗ ಬೆ. 9.30 ಆಗಿತ್ತು. ನಾನು ಸ್ಥಳಕ್ಕೆ ಹೋದಾಗ ಸುಮಾರು 5-6 ಜನ ಇದ್ದರು. ಅಲ್ಲಿಗೆ ಪೊಲೀಸರು ಎಷ್ಟು ಗಂಟೆಗೆ ಬಂದಿದ್ದರು ಎನ್ನುವ ವಿಚಾರ ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಓಮ್ಮಿವಾಹನ ಯಾವ ದಿಕ್ಕಿನ ಕಡೆಗೆ ಮುಖಮಾಡಿ ನಿಂತಿತ್ತು ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನಾನು ಸ್ಥಳಕ್ಕೆ ಹೋಗುವ ಮೊದಲೇ ನಾನು ಸಹಿ ಮಾಡಿದ್ದ ದಾಖಲೆಯ ಪ್ರಿಂಟ್ ತೆಗೆಯಲಾಗಿದೆ. ನಾನು ಸಹಿ ಮಾಡಿದ ದಾಖಲೆಯಲ್ಲಿ ಬರೆದಿರುವ ಅಂಶಗಳನ್ನು ನಾನು

ಓದಿ ನೋಡಿಲ್ಲ. ಆ ದಾಖಲೆಯಲ್ಲಿ ಪೊಲೀಸರು ನಿಖರವಾಗಿ ಏನೆಲ್ಲಾ ಬರೆದಿರುತ್ತಾರೆ ಎಂದು ನನಗೆ ಹೇಳಲಾಗುವುದಿಲ್ಲ. ಸ್ಥಳದಲ್ಲಿ ಇದ್ದ ಮನೆಯಲ್ಲಿ ಯಾರೆಲ್ಲಾ ಇದ್ದರು ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನಾನು ಮನೆಯ ಒಳಗೆ ಹೋಗಿಲ್ಲ. ಮನೆಯ ಒಳಗಿಂದ ಅಡಿಕೆ ಸಿಪ್ಪೆಯನ್ನು ಪೊಲೀಸರು ತೆಗೆದುಕೊಂಡು ಬಂದದ್ದು ಹೊರತುಪಡಿಸಿ ಬೇರೆ ಏನೂ ನಾನು ನೋಡಿಲ್ಲ. ಸ್ಥಳದಿಂದ ಸುಮಾರು 50 ಮೀಟರ್ ದೂರದಲ್ಲಿ ಗೋಡೋನ್ ಇತ್ತು ನಾನು ಗೋಡೋನ್ ಹತ್ತಿರಕ್ಕೆ ಹೋಗುವ ಮೊದಲೇ ನಾನು ಸಹಿ ಮಾಡಿದ ದಾಖಲೆ ಬರೆಯಲಾಗಿತ್ತು. ನಾನು ಗೋಡೋನ್ ಹತ್ತಿರ ಸಹಿ ಮಾಡಿದ ದಾಖಲೆಯಲ್ಲಿ ಏನು ಬರವಣಿಗೆ ಮಾಡಲಾಗಿತ್ತು ಎಂದು ಗೊತ್ತಿಲ್ಲ. ಒಂದೇ ಸಮಯದಲ್ಲಿ ನಾನು ಮತ್ತು ವೆಂಕಟಕೃಷ್ಣಭಟ್ ದಾಖಲೆಗಳಿಗೆ ಸಹಿ ಮಾಡಿದ್ದೇವೆ. ಪೋ ರಾಣಿಯಲ್ಲಿ ನನ್ನ ಸಹಿಗಳನ್ನು ಪಡೆದಿಲ್ಲ. ಗೋಡೋನ್ ಹತ್ತಿರ ಸಹಿ ಮಾಡಿದಾಗ ಸಮಯ ಮ 1.30 ಆಗಿತ್ತು, ಅದೇ ಸಮಯದಲ್ಲಿ ವೆಂಕಟಕೃಷ್ಣಭಟ್ ರವರು ಕೂಡಾ ದಾಖಲೆಗಳಿಗೆ ಸಹಿ ಮಾಡಿದ್ದಾರೆ. ಗೋಡೋನ್ ಹತ್ತಿರ ಬಂದ ಪೊಲೀಸರು ನಿಖರವಾಗಿ ಏನೆಲ್ಲಾ ಮಾಡಿದರು ಎಂದು ಗೊತ್ತಿಲ್ಲ ಮುಖ್ಯ ವಿಚಾರಣೆಯಲ್ಲಿ ತಿಳಿಸಿದ ಎಲ್ಲಾ ಅಂಶಗಳು ಸುಳ್ಳು ಎಂದರೆ ಸರಿಯಲ್ಲ. 1 ಮತ್ತು 2 ನೇ ಆರೋಪಿಗಳನ್ನು ಇದೇ ಪ್ರಥಮವಾಗಿ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ನೋಡುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿ".

52. On perusal of the cross examination of PW6, it clarifies that his testimony is not cogent and corroborative with the evidence of PW12. The statement given by PW6 in his chief examination is contrary to the deposition which he given in the

cross examination, which was conducted by the counsel for the accused. Since the evidence of PW6 is contrary to the evidence of PW12, doubt creates with regard to arrest of accused no. 1 and 2 by PW12 at Amchinadka on 05.08.2023 at 09.30 a.m. in presence of PW6 as well seizure of the material Object No. 1 and 2 from the accused no. 1 and 2 in the place which is mentioned in Exhibit P6 and seizure of material object No.3 and 4 Exhibit P7. Doubt arises regarding to conduct of the arrest and seizure measure of Exhibit P6. And property seizure measure and the spot measure as per the information given by the accused as per Exhibit P7 in presence of PW6 and one Venkappa Krishna. Admittedly the evidence of PW6 is not trustworthy and doubt arises with regarding to presence of PW6 at the time of conduct of Exhibit P6 and Exhibit P7 by the PW2. Prosecution failed to examine another panch witness i.e. Venkappa Krishna in order to prove Exhibit P6 and Exhibit P7. There were no material witnesses examined by the prosecution in order to prove the arrest of accused No.1 and 2 and seizure of material objects as per conducting Exhibit P6 and Exhibit

P7. Thus the prosecution failed to prove the arrest and seizure mahazar as per Ex.P6, property seizure mahazar and spot mahazar in the place as shown by the accused as per Ex.P7 and thereby seizure of the material Object No. 1 to 4 from the custody of the accused No. 1 and 2 and material Object No. 3 and 4 from the house of accused no. 1 as per the information given by him to the PW12 in presence of PW-6 and one Venkappa Krishna.

53. Further more on perusal of cross examination of PW-1 he deposed "ದಿ. 3.8.2023 ರಂದು ಪೊಲೀಸರು ಒಬ್ಬ ಆರೋಪಿಯನ್ನು ತಕ್ಷೀರು ನಡೆದ ಸ್ಥಳಕ್ಕೆ ಕರೆದುಕೊಂಡು ಬಂದಾಗ ಸ್ಥಳದಲ್ಲಿ 117 ಕೆಜಿ ಅಡಿಕೆ ಸಿಕ್ಕಿದೆ ಎಂದು ತಿಳಿಸಿರುತ್ತಾರೆ ", PW-2 deposed in his cross examination "ದಿ. 3.8.2023 ರಂದು ಪೊಲೀಸರು ಮಹಜರು ಮಾಡಲು ಬಂದಾಗ ನಾನು ಸ್ಥಳದಲ್ಲೇ ಹಾಜರಿದ್ದೆನು. ಆ ದಿನ ಪೊಲೀಸರು ಆರೋಪಿತರ ಪೈಕಿ ಒಬ್ಬರು ವ್ಯಕ್ತಿಯನ್ನು ಸ್ಥಳಕ್ಕೆ ಕರೆದುಕೊಂಡು ಬಂದಿದ್ದರು" and PW-3 deposed in his cross examination "ದಿ. 3.8.2023 ರಂದು ಪೊಲೀಸರು ತಕ್ಷೀರು ಸ್ಥಳಕ್ಕೆ ಬಂದಾಗ ನಾನು ಸ್ಥಳದಲ್ಲಿ ಹಾಜರಿದ್ದೆನು. ದಿ. 3.8.2023 ರಂದು ಪೊಲೀಸರು ಆರೋಪಿತರ ಪೈಕಿ ಒಬ್ಬ ಆರೋಪಿಯನ್ನು ತಕ್ಷೀರು ಸ್ಥಳಕ್ಕೆ ಕರೆದುಕೊಂಡು ಬಂದಿದ್ದರು. ದಿ. 1.8.2023 ರಿಂದ 3.8.2023 ರ ಅವಧಿಯಲ್ಲಿ ಚಾಸಾ-1 ರವರ ಮನೆಯ

ಗೇಟಿನ ಪಕ್ಕದಲ್ಲಿ ಮುಮಾ-1 ನ್ನು ನಾನು ನೋಡಿದ್ದೆ ". On peursal of cross examination of pW-1 to 3 as extracted above clarifies that on 03-08-2023, when the police appears to be visited the spot where the alleged incident of theft had been taken place, they went with one of the accused of this case. But on perusal of the case putforth by the prosecution through PW-12/investigating officer who arrested the accused no.1 and 2, it discloses as per Ex.P6 accused no.1 and 2 have been arrested by the PW-12 in presence of PW-6 and one Venkappa Krishna on 05-08-2023. Thus it creates doubts whether the PW-12 arrested the accused no.1 and 2 on 05-08-2023 or 03-08-2023 and if one of the accused is arrested on 03-08-2023 why the same has not been disclosed by police officials of Puttur Rural Pllice Station to the court at the proceedings of crime stage itself. the unequivocal testimony of PW-1 to 3 clarifies that the investigating officer suppressed the true material facts regarding arrest of accused persons of concerned moreover PW-6 who is one of the vital witness to the prosecution in proving the arrest and

property seizure mahazar as per Ex.P6 has not supported the case of the prosecution in his cross examination . Thus prosecution failed to prove the arrest of accused no.1 and 2 and seizure of properties from their custody which were allegedly stolen from the house of PW-1. Thus doubt creates with regarding to commission of theft of 117 KG of areca nut by accused no.1 to 3 from the house of PW-1 as on the date as mentioned in the charge sheet. the evidence of rest of the prosecution witnesses is not enough to prove the guilt of the accused persons within the ambit of Sec.457 and 380 of IPC as per the accusation made in the charge sheet. accused are entitled for benefit of doubt, as such they are liable to be acquitted in this case. with all these discussions i proceed to answer point no.1 and 2 in the negative.

54. **Point No.3:** As I discussed above in Point No.1 and 2, since the prosecution failed to prove the guilt of the accused persons as per the contents of the charge-sheet, I proceed to pass the following.,

ORDER

On exercising power under U/s 248(2) of Cr.P.C. Accused no.1 to 3 is hereby acquitted for the offences punishable under Section 457 and 380 of IPC.

Material object no.1 ie., iron rod, material object no.2 ie., ಮೆಟ್ಟುಕತ್ತಿ are valuable properties as such the same is confiscated to the state. Material object no.3 and 4 are the husk of areca nuts are worthless as such the office is directed to destroy the same after the appeal period.

Bail bonds and surety bonds executed by the accused persons is ordered to be continued for about 6 months from the date of this order in compliance of Sec.437A of Cr.P.C.

(Typed on the Laptop by me, corrected, signed and then Judgment pronounced by me in the open court, this the 21st Day of July 2026)

(Devaraj.Y.H)
**I ADDL. SR. CIVIL JUDGE & JMFC
PUTTUR**

ANNEXURE**1) List of Witnesses examined on behalf of prosecution:**

PW-1: Shri. Vishnu Kalluraya

PW-2: Shri. Narayana Moolya C. H.

PW-3: Shri. Shivaprasad

PW-4: Shri. Gopala Moolya

PW-5: Shri. Gireesh

PW-6: Shri. Pavan Shekhar

PW-7: Shri. Lakshminarayana Bhat

PW-8: Smt. Kamarubhanu

PW-9: Shri. Shamshuddeen

PW-10: Shri. Vasanta Gowda

PW-11: Shri. Murugesh

PW-12: Shri. Dhananjaya B. C.

PW-13: Shri. K. Ashraf

2) List of documents marked on behalf of prosecution :

Ex.P-1: Complaint

Ex.P- 1(a): Signature of Pw-1

Ex.P- 1(b): Signature of Pw-10

Ex.P-2 : Spot Mahazar.

Ex.P-2(a): Signature of Pw-1

Ex.P-2(b): Signature of Pw-1

Ex.P-2(c): Signature of Pw-5

Ex.P-2(d): Signature of Pw-12

Ex.P-3 : Draft sketch

Ex.P-3(a): Signature of Pw-1

Ex.P-3(b): Signature of Pw-4

Ex.P-3(c): Signature of Pw-5

Ex.P-4 : Property seizure mahazar

Ex.P-4(a): Signature of Pw-1

Ex.P-4(b): Signature of Pw-7

Ex.P-5: Photographs

Ex.P-6: Property seizure mahazar

Ex.P-6(a): Signature of Pw-6

Ex.P-6(b): Signature of Pw-11

Ex.P-6(c): Signature of Pw-12

Ex.P-7: Mahazar

Ex.P-7(a): Signature of Pw-6

Ex.P-8: Notice issued under Sec.133 of IMV Act

Ex.P-8(a): Signature of Pw-8

Ex.P-9: Property release mahazar

Ex.P-9(a): Signature of Pw-8

Ex.P-9(b): Signature of Pw-9

Ex.P-9(c): Signature of Pw-13

Ex.P-10: Photographs

Ex.P-11: FIR

Ex.P-11(a): Signature of Pw-10

3) List of materials objects on behalf of prosecution.

MO-1: Iron rod

MO-2: ಮೆಟ್ಟುಕತ್ತಿ

MO-3 & 4: Husk of areca nuts

**4) List of witness/ documents marked on behalf of
accused:**

-Nil-

(Devaraj.Y. H)
I ADDL. SR. CIVIL JUDGE & JMFC
PUTTUR