

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-1
HARIPAD**

Present: Smt. Drisya Balakrishnan, Judicial First Class Magistrate

Dated this the 25th day of March 2026

CALENDAR CASE. No. 980/2024

Complainant	:	State represented by the Sub Inspector of Police, Kareelakulangara Police Station in Crime No. 469/2024 <i>(By Priya Rachel Abraham, APP Grade I, Haripad)</i>
Accused	:	Subair <i>(By Advocate Smt. Remya M Sudarsan legal aid counsel)</i>
Charge	:	Offences punishable U/Ss. 457, 380 and 461 of Indian Penal Code, 1860.
Plea	:	Not guilty
Finding	:	Not guilty
Sentence	:	Accused is found not guilty of offences punishable U/Ss. 457, 380 and 461 of Indian Penal Code, 1860 and he is acquitted u/s.271(1) of BNSS.

Description of accused:-

Sl. No.	Name of Police Station and the Crime No. of the offence	Name	Father's Name	Occupation	Residence	Age
1	Kareelakulangara Police Station in Crime No. 469/2024	Subair @ Pakki	S/o Haneefa		Kuzhivila vadakkathil veedu, Sooranad south muri, Kollam district	49/24

Date of

Occurrence	Complaint	Apprehension	Release on bail	Commitment	Commencement of trial	Close of trial	Sentence of order	Service of copy of judgment or finding on accused	Expln. of delay
20.06 2024	13.12 2024	23.8 2024	7.10 2024	NA	6.10 2025	25.03 2026	25.03 2026	-	-

This case having been finally heard on today the court on the same day delivered the following :-

J U D G M E N T

1. This case arose on the final report filed by the Sub Inspector of Police, Kareelakulangara in Crime No.469/2024 of his police station. The offences alleged are punishable u/ss 457, 461 & 380 of the Indian Penal Code ,1860.
2. The case of the prosecution is the following: On 20.06.2024 at 12.00 a.m. the accused with the intention of committing theft and thereby making unlawful gain, the accused broke open the kitchen door of the house bearing No VI 133 situated at Pathiyoor Village and committed theft of Rs 10,000/- kept in Almirah. Thereby the accused had committed offence punishable U/ss 457,461 & 380 of the Indian Penal Code,1860.
3. Pursuant to the filing of the final report cognizance was taken for the offences punishable U/ss 457, 461 & 380 r/w 34 of the Indian Penal Code,1860. The accused were produced before this court as he remain in Judicial custody. The accused was defended by the counsel engaged from free legal aid. The accused was given copies of the relevant prosecution records in due compliance of s.230 BNSS. After brief hearing the learned Assistant Public Prosecutor and

the counsel for the accused on charge, charge punishable U/ss 457, 461 & 380 of the Indian Penal Code,1860.was framed, read over and explained to him, to which he pleaded not guilty. The prosecution has examined PWs 1 to 5 and got marked Exhibits P1 to P5 & MO1 to MO3 to prove its case. The accused was examined u/s 351(1) (b) of BNSS with reference to the incriminating circumstances appeared against him in evidence. He denied all such evidence and reiterated innocence. No evidence was adduced from the side of defense .

4. Heard both sides.

5. The points arise for consideration are:

1. Whether the accused persons in furtherance of their common intention on 20/06/2024 at 1200 a.m. broke open the kitchen door of the house for the purpose of committing theft and is liable to be punished u/s 457 r/w 34 of the Indian Penal Code ,1860?

2. Whether on the said date and the said time the accused broke open the Almirah and committed theft and is liable to be punished u/s 461 r/w 34 of the Indian Penal Code ,1860?

3.Whether on the said date and at the said time the accused committed theft and is liable to be punished u/s 380 of the Indian Penal Code ,1860?

4.In the event of finding the accused guilty of any such offence, what shall be the proper punishment?

6. **Point Nos 1-3:-** These points can be considered together since the offences covered in these points were allegedly committed during the course of the same transaction. The prosecution relies on the oral testimony of PW1 to speak about the incident of theft. As per the evidence of PW1 theft was committed at his house and identified his signature in Ext P1 FIS. PW2 the wife of PW1 deposed that when they reached home she saw all doors were open .PW2 identified MO1 window shield MO2 broken glass pieces and MO3 lock. All these witnesses have no direct knowledge with regard to the alleged incident.

They only deposed about the commission of theft in the said place. PW2 & PW3 admitted their signature in Ext P2 mahazar. PW5 is the investigating officer through him Ext P3 FIR, Ext P4 name and address report, Ext P5 property list. PW5 further deposed the stolen cash was not recovered.

7. Let me now deal with each aspect of the prosecution case in seriatim. The Prosecution miserably failed to recover the articles stolen from the possession of the accused. There is no link evidence to connect the accused with the alleged theft. The only version of the Investigating officer is that the accused was formally arrested on the basis of confession. As per section 23 (1) of the Bharathiya Sakshya Adhinayam confessions made in police custody cannot be used as evidence against the accused. The Prosecution failed to prove the case beyond reasonable doubt. In view of the above infirmities in the prosecution evidence I find it unsafe to hold the accused guilty of the offences alleged against him. In the result Point Nos 1 to 3 is found against the prosecution. After hearing both the sides in detail and after a careful appraisal of the oral and documentary evidence, I am of the view that the prosecution has not succeeded in bringing home the guilt of the accused.
8. **Point No:4** : Inevitable consequence of the finding on point number 1 to 3 is that the prosecution failed to prove that the accused had committed any of the offences alleged against him. He is liable to be acquitted. In the result, the accused is not found guilty for the offence punishable U/ss 457,461 & 380 r/w of the Indian Penal Code,1860 and he is acquitted u/s 271(1)BNSS .MO1 to MO3 is found to be valueless. It is liable to be destroyed after the appeal.

[Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me, in open court, on this the 25th day of March 2026]

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Judicial Magistrate of First Class-1
Haripad

APPENDIX**I. List of Prosecution/Defence/Court Witnesses****A. Prosecution witnesses**

PW1	Harikumar	FI statement witness
PW2	Manjula Devi	Occurrence witness
PW3	Venu	Mahasar witness
PW4	Soman	Mahasar witness
PW5	Visal	I.O

B. Defence witnesses: Nil

C. Court witnesses : Nil

II. List of Prosecution/Defence/Court Exhibits**A. Prosecution Exhibits:**

1	Ext.P1/PW1	FI statement
2	Ext.P2/PW3	Scene mahasar
3	Ext.P3/PW5	First Information Report
4	Ext.P4/PW5	Report (address)
5	Ext.P5/PW5	Property list (TR 457/24)

B. Defence Exhibits : Nil

C. Court Exhibits: Nil

D. Material objects:

1	MO1	Piece of window glass
2	MO2	Hook
3	MO3	Lock