

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE -II,
KANJIRAPPALLY**

Present: Niyatha Prasad,
Judicial First Class Magistrate – II, Kanjirappally

Thursday, the 04th day of June, 2026
(14th day of Jyaishta, 1948)

CC No. 212/2021

Complainant : State of Kerala represented by the Sub-Inspector
of Police, Erumely PS in **Crime 555/21**.

(By Sri. Shajahan K.S, APP-II, Kanjirappally)

Description of accused

Sl. No.	Name	Father's Name	Age	Occupation	Residence
A1.	Biju	Gopalan	44/21	Coolie	Vettukallamkuzhi (H), Vattakathara Bhagam, Chenappady Kara, Erumely South Village.
A2.	Sunny Varghese @	Thomas	50/21	Coolie	Poovathanikkunel (H), Vattakathara Bhagam, Chenappady Kara, Erumely South Village.
A3.	Sanoshkumar @ Ullas	Gopi	43/21	Coolie	Karottuthakidiyil (H), Cheruvally Estate Bhagam, Kanakappalam Kara, Erumely South Village.

(By Adv. Sri. D. Biju)

Offence : Under sections 427 & 447 r/w 34 of IPC.

Plea : Not Guilty.

Finding : Not Guilty.

Sentence/Order : The accused 1 to 3 are acquitted u/s. 255(1) of
Criminal Procedure Code 1973.

Dates of :-

Offence	Complaint	Apprehension	Release on bail	Commitment	Commencement of trial	Commencement of evidence
15.06.21	29.06.21	24.06.21	24.06.21	...	25.10.22	04.09.24

Close of trial	Sentence or order	Service of copy of judgment or finding on accused	Explanation of delay	Period of detention undergone during investigation, inquiry or trial for the purpose of Section 428 Cr.P.C
01.06.26	04.06.26	...	No delay	

This case was finally heard on 01.06.2026, and today this Court delivered the following:-

J U D G M E N T

This is a case charge-sheeted by the Sub Inspector of Police, Erumely Police Station, against accused 1 to 3, alleging commission of offences punishable under sections 447 & 427 r/w 34 of the Indian Penal Code (herein after referred to as “IPC”).

2. The prosecution case in brief is as follows:- On 15.06.2021, at 06.00 p.m, the accused, in furtherance of their common intention, criminally trespassed into the property of Hindustan College of Pharmacy situated in Ward No. III of Erumeli Grama Panchayath, in Chenappady Kara, Erumeli South Village, where CW1 is working as the principal, demolished the compound wall with the intention of widening the pathway, causing a loss of Rs. 50,000/-. The accused had thereby committed the offences punishable under sections 447 & 427 r/w 34 IPC.

3. Final report was filed before the court, and the case was taken on file as C.C. 212/2021. Upon receipt of the summons, accused 1 to 3 appeared before the court and were released on bail. Copies of all relevant prosecution records were furnished to the accused, and thereby the mandate under section 207 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') was complied with. Particulars of the offence were read over and explained to the accused 1 to 3 under section 251 Cr.P.C., for

offences punishable under sections 447 & 427 r/w 34 IPC, to which the accused persons pleaded not guilty and claimed to be tried.

4. From the side of the prosecution, PW1 to PW8 were examined. Ext.P1 to Ext.P6 were marked. Since there were incriminating circumstances against the accused 1 to 3, they were examined under section 313 (1)(b) Cr.P.C. The accused persons denied all incriminating circumstances against them and maintained their plea of innocence. Neither oral nor documentary evidence was adduced from the side of the accused.

5. Heard both sides. Perused the records.

6. Points that arise for consideration are:-

- (i) Whether the accused 1 to 3, in furtherance of the common intention of all, trespassed into the property of Hindusthan College of Pharmacy and thereby committed the offence punishable u/s.447 r/w 34 of the IPC?
- (ii) Whether the accused 1 to 3, in furtherance of the common intention of all committed mischief and thereby committed the offence punishable under section 427 r/w section 34 IPC?
- (iii) If found guilty, order as to sentence?

7. **Point Nos. (i) & (ii):-** Since these points are interconnected, they are considered together for the sake of brevity and to avoid repetitions. Prosecution case started when PW8 registered Ext. P4, First Information Report on the basis of the statement given by PW1. The investigation of the case was conducted by PW8, and after the completion of the investigation, the final report was also filed by him. The learned Assistant Public Prosecutor (APP) argued that the prosecution has proved the case against the accused 1 to 3 beyond a reasonable doubt, and hence the accused are liable to be punished for the alleged offences. *Per contra*, the learned counsel for the accused argued that the prosecution failed to prove the case against the accused and, hence, they are entitled to a clean acquittal.

8. In order to bring home an offence punishable under section 447 IPC against the accused, the prosecution has to prove that the accused persons entered upon the

property in the possession of Hindusthan College of Pharmacy with the intent to commit an offence or to intimidate, insult or annoy anyone who is in possession of the property. PW1 deposed that on 15.06.2021, he was working as the Principal of Hindusthan College of Pharmacy, Chenapadi. On the said day, around 06.00 p.m., the accused persons criminally trespassed onto the college's property and demolished the compound wall situated in Survey No. 270/5-1 in Erumeli Grama Panchayath. By the acts of the accused, the college suffered a loss of ₹ 50,000/-. Hence, he gave a statement to the police, which is marked as Exhibit P1. He deposed that Exhibit P1 was given on 17.06.2021, and there was a delay of 2 days in lodging the FIR, as the accused had discussed about reconstructing the demolished compound wall. The learned APP argued that there was no serious delay in lodging Ext.P4, and the same is not fatal to the prosecution's case. The learned counsel for the accused counter-argued that the delay is not properly explained and, hence, is fatal to the prosecution's case. The Honourable Apex Court in **Tara Singh & Ors. v. State of Punjab**, reported in **AIR 1991 SC 63** held that *“There is no mathematical formula by which an inference may be drawn either way merely on account of delay in lodging of the FIR”*. It is settled that a delay in giving the FIR by itself cannot be a ground to doubt the prosecution's case. But the first information report in a criminal case is an extremely vital and valuable piece of evidence for corroborating the oral evidence adduced at trial. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them, as well as the names of eye witnesses present at the scene of occurrence. A delay in lodging the first information report often results in embellishment, which is a creature of afterthought. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained by the prosecution. In the instant case, it is to be seen that PW1 deposed before this court that since there were some discussions with the accused, there was a delay in giving Ext. P1 occurred, which is a satisfactory explanation for the delay caused.

9. PW2, PW4 and PW5 are the alleged occurrence witnesses. All of them turned hostile to the prosecution case by deposing that they neither saw the incident nor gave

any statement to the police. PW8 is the Investigation Officer. He deposed that on 17.06.2021, he was working as a Sub Inspector of Police at Erumeli Police Station. On the basis of Exhibit P1 given by PW1, he registered Erumeli Police Station Crime No. 555/2021 under Section 447, 427, 34 of IPC. The said FIR is marked as Exhibit P4. On the same day at 04.00 p.m., he visited the place of occurrence and prepared Exhibit P2, the scene mahazar, in the presence of PW3. On 24.06.2021, the accused persons were arrested and released on Exhibit P5 bail bonds. He identified the accused persons who were present in the dock. Exhibit P6 is the complete address report of the accused, and Exhibit P3 is the possession certificate prepared by PW7. After the completion of the investigation, the final report was filed by him.

10. The honorable High Court of Kerala in **Anila Kumari v. State of Kerala** reported in **ILR 2019(3) Ker. 71** held that; *“another offence alleged to have been committed by the petitioner is punishable under S.447 I.P.C. S.441 of the Indian Penal Code defines the offence of criminal trespass. It provides that whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit 'criminal trespass'.* On perusal of the evidence on record, it can be seen that the ingredients necessary to constitute the offence of trespass are absent in this case.

11. The accused persons are also alleged to have committed the offence punishable under section 427 IPC. Wrongful loss, as defined in section 23 IPC, means loss by unlawful means of property to which the person losing it is legally entitled. It is relevant to note that section 427 is not attracted where the accused persons are not alleged to have committed any act with the intent to cause or knowing that they are likely to cause wrongful loss or damage to the college.

12. The honorable Apex Court of India in **Krishna Gopal Singh v. State of UP** reported in **2000 SCC (Cri.) 96** held that *“Similarly, the offence under S.427 also cannot be pressed into service as none of the appellants is alleged to have committed any act "with intent to cause or knowing that he is likely to cause, wrongful loss or*

damage to the public or to any person". The offence of mischief as defined in S.425 can be established only with strength of the allegations covering the ingredients enumerated in the said section." But in this case, the prosecution failed to prove the necessary ingredients for proving the offence under section 427 IPC.

13. Even though the prosecution had cited 8 witnesses in this case, that was not found sufficient to prove the case against the accused persons. It is settled that in the matter of the appreciation of evidence of witnesses, it is not the number of witnesses but the quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. It is to be concluded that the prosecution had failed the above test. Hence, point Nos.(i) and (ii) are found against the prosecution.

14. **Point No. (iii):** In the view of point Nos. (i) and (ii), this point does not arise for consideration. Hence, the accused 1 to 3 are found not guilty for the offences punishable under sections 427 & 447 r/w 34 IPC, and they are liable to be acquitted for the said offences.

In the result:-

The accused 1 to 3 are acquitted U/s.255(1) Cr.PC for the offences punishable under sections 427 & 447 r/w 34 IPC. Bail bonds executed by the accused 1 to 3 stand cancelled, and they are set at liberty.

(Dictated to Adalat Ai software, corrected by me and pronounced in open court on this the 4th day of June, 2026.)

Sd/-

**JUDICIAL FIRST CLASS MAGISTRATE-II
KANJIRAPPALLY**

APPENDIX

List of Prosecution /Defence/Court Witnesses

A. Prosecution witnesses

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical Witness, other witness
PW1	Dr. K Sujith	Informant
PW2	C. M Babu	Occurrence witness
PW3	Rahul M. O	Mahazar witness
PW4	Priya Prabhakaran	Occurrence witness
PW5	Sheeba Suneesh	Occurrence witness
PW6	Joseph Devasia	Mahazar witness
PW7	Haris T	Village officer
PW8	Aji Jacob	Investigation officer

B. Defence Witness

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical Witness, other witness
	Nil	

C. Court Witness

Rank	Name	Whether Eye Witness, Police Witness, Expert witness, Medical Witness, other witness
	Nil	

List of Prosecution/Defence/Court Exhibits

A. Prosecution Exhibits

Sl.No	Exhibit Number	Description
1.	Ext P1/PW1	FIS dated 17.06.2021
2.	Ext P2/PW3	Scene mahazar dated 17.06.2021
3.	Ext P3/PW7	Possession certificate dated 29.06.2021
4.	Ext P4/PW8	FIR dated 17.06.2021
5.	Ext P5/PW8	Bail bond dated 24.06.2021
6.	Ext P6/PW8	Address report dated 24.06.2021

B. Defence Exhibits

Sl.No	Exhibit Number	Description
	Nil	

C. Court Exhibits

Sl.No	Exhibit Number	Description
	Nil	

D. Material objects

Sl.No	Material object	Description
	Nil	

Sd/-

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