

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

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

Saturday, the 04th day of April, 2026
(14th day of Chaithram, 1948)

CC No. 364/2022

Complainant : State of Kerala represented by the Deputy
Range Forest Officer, Placherry Forest Station
in OR 04/21.

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

Description of accused

SL. No.	Name	Father's Name	Age	Occupation	Residence
A1	Reji Mathew	Mathew	45/21	...	Thundathil, Pallikkunnu P. O, Kuttikkanam.
(By Adv. Sri. D. Muraleedharan)					
A2	Al Ameen	Abdul Jabbar	32/21	...	Panayil (H), Vettoor P. O, Varkkala.

(By Adv. Sri. P. A Muhammed Shemeer)

Offence : Under sections 2(31)(b), 39(b), 49(b) and 51 of
Wildlife Protection Act 1972.

Plea : Not Guilty.

Finding : Not Guilty.

Sentence/Order : Both accused are acquitted u/s.248(1) of
Criminal Procedure Code 1973.

Dates of :-

Offence	Complaint	Apprehension	Release on bail	Commitment	Commencement of trial	Commencement of evidence
22.07.21	22.07.21	22.07.21	A1: 03.08.21 A2: 06.08.21	...	28.04.25	25.11.24

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
31.03.26	04.04.26	...	Intervening holiday

J U D G M E N T

This is a complaint preferred by Deputy Range Forest Officer, Forest station, Placherry against the accused alleging the commission of offences punishable under sections 2(31)(b), 39(b), 49(b) and 51 of Wildlife Protection Act 1972 numbered as OR.04/2021 of Placherry Forest Station.

2. Prosecution case in brief is as follows: On 22.07.2021, the accused persons were found in illegal possession of ivory intended for sale, in violation of the provisions of the Wildlife Protection Act, 1972, thereby committing the offences punishable under sections 2(31)(b), 39(b), 49(b) and 51 of Wildlife Protection Act, 1972.

3. On issuance of summons, the accused persons appeared before the court. Copies of all the relevant prosecution records were served to the accused persons and thereby the mandate u/s 207 of Code of Criminal Procedure (hereinafter referred to as Cr.P.C) was complied with. Thereafter the prosecution was directed to adduce pre-charge evidence u/s 244 of Cr.P.C. PW1 to PW5 were examined and Exts.P1 to P5 were marked. Material objects MO1 to MO8 were marked. Ongoing through the said evidence and complaint and on hearing the

prosecution and the accused, it was found that there were sufficient grounds to presume that the accused persons have committed the offences punishable under sections 2(31)(b), 39(b), 49(b) and 51 of Wild Life Protection Act, 1972 which are triable and adequately and punishable by this court. Accordingly, a written charge was framed against accused persons and it was read over and explained to both the accused persons which they pleaded not guilty and claimed to be tried.

4. PW1 to PW5 were recalled and cross examined. CW2 was given up by the learned APP. After completion of evidence, since there were incriminating circumstances against the accused persons, they were personally given an opportunity to explain the same u/s.313(1)(b) of Cr.P.C. The accused persons maintained the plea of innocence and submitted that they are innocent in this case. Both accused submitted additional statement u/s. 313(5) Cr.P.C and contended that they have no knowledge with regard to MO1 to MO8.They also stated that they never gave any confession statement to any forest official or were questioned by anybody. No oral or documentary evidence was adduced from the side of defence.

5. Heard both sides. Perused the records.

6. The following points arise for determination.

- (i) Whether the accused persons were found in illegal possession of ivory for the purpose of sale and thereby contravened the provisions of Wildlife Protection Act 1972 and thereby committed the offence alleged?
- (ii) If found guilty, what is the punishment to be imposed?

7. **Point No. (i):** PW1 deposed that on 22.07.2021, he was working as a Beat Forest Officer at Vandanpathal Forest Station. Upon receiving secret information from the vigilance officer in Tiruvannanthapuram that some persons were trying to sell ivory, he, along with members of the Flying Squad in Idukki, reached Thavalakuzhi Bhagam. They went through MC Road to Pattithanam and

saw two people standing near the roadside in a suspicious manner; hence, they were stopped and questioned. On enquiry, they revealed their name as Al-Ameen and Reji. There was a shoulder bag with one of them, and when it was opened, three Ivory pieces and their splinters were found. On enquiry, it was revealed that the same was brought for sale to a person named Nikhil. Since illegal possession of elephant tusks (ivory) is an offence punishable under the Wildlife Protection Act, 1972, the articles, along with the accused persons, were taken into custody. On further investigation, it was revealed that the ivory originally belonged to the father of the first accused, and upon his death, it came into his hands. Regarding the incident, Exhibit P1 mahazar was prepared. The ivory obtained from the custody of the accused persons was marked as MO1 to MO3, and the bag in which it was stored was marked as MO4.

8. PW2 deposed that on 22.07.2021, he was working as a Section Forest Officer at Flying Squad Mundakayam. While so, on receiving secret information from the Forest Intelligence Cell that two persons were trying to sell ivory, they reached Thavalakuzhi Bagam near Ettumanoor along with Vandanpathal Forest station staff. One kilometre away from Pattithanam on MC Road, they found two persons standing along with a bag. Hence, the vehicle was stopped near them, and on enquiry, they revealed their names. Thereafter, the shoulder bag was opened and perused, and inside that, three pieces of ivory, along with some splinters, were found. Hence, the accused persons, along with the contraband articles, were taken into custody. From the custody of accused no. 1, a golden-coloured Titan watch and a purse containing ₹ 1,250, an Aadhar card, a driving licence, a PAN card, and an ATM card were taken from the custody of the second accused. With respect to the same Exhibit P1, the mahazar was prepared. He identified MO 1 to MO 4. Through him, the splinters, black purse, the documents and watch were marked as MO5 series, MO6 and MO7 series and MO8.

9. PW3, on the basis of the incident, prepared Form 1 in this case, which

is marked as Exhibit P2. The articles seized from the custody of the accused persons were produced before this court as per Exhibit P3 property list. He also identified MO1 to MO8. PW4 had recorded the confession statement of the accused persons while he was working as the Range Forest Officer at Flying Squad Mundakkayam. The confession statements are marked as Exhibit P4 and Exhibit P5. After completion of the investigation, Form II was submitted by PW5.

10. The first and foremost contention of the accused is that there is ambiguity in the place of occurrence. As per the evidence of PW1, the incident occurred 1 kilometre away from Pattithanam on the MC road. According to PW2, the alleged incident occurred 1 kilometre from Tavalakuzhi towards Ernakulam on the MC road. The learned counsel for the accused submitted that the two places are entirely different, and since the prosecution could not prove the exact place of the incident, it is unable to determine whether this court has jurisdiction to try this offence. The same is relevant because during the chief examination, PW1 stated that the right side of MC Road at Ettumanoor - Pattithanam Bhagam falls within the jurisdiction of Vandanpathal forest station, whereas the place of occurrence falls within the limits of Placherry forest station. The learned counsel for the accused submitted that, going by the evidence of PW1 and PW2, it cannot be ascertained whether the incident happened within the limits of Vandanpathal forest station or Placherry forest station. Interestingly, the prosecution has produced no notification to show that the place of occurrence falls within the limits of Plachery Forest Station. The learned counsel also submitted that PW1 and PW2, who are signatories to Exhibit P1 mahazar, do not have clear knowledge of the place of occurrence. Upon reviewing the evidence of PW1 and PW2 during cross-examination, it is also apparent that they are not on the same page regarding the location of the alleged incident.

11. Another contention raised by the learned counsel for the accused concerns species identification. The learned counsel for the accused submitted that

it is mandatory to conduct species identification to ascertain whether MO1 to MO3 and the MO5 series are, in fact, ivory. The same is admitted by PW3 to PW5 during cross-examination. The importance of species identification becomes relevant because MO3 is doubtful to be ivory based on the prosecution's case. Further MO5 series which are the splinters can also be termed as ivory only after conducting species identification. Admittedly, no such species identification test was conducted in this case.

12. The prosecution mainly relies on Exhibit P4 and Exhibit P5 confession statements alleged to have been given by the accused persons to PW4. The learned counsel for the accused submitted that as per Section 50(8) of The Wildlife Protection Act, an officer not below the rank of Assistant Conservator of Forest is empowered to record the confession statement, and hence the confession statement alleged to be given by the accused persons to PW4 is a nullity and hence cannot be relied upon. The learned counsel for the accused referred to the decision of Hon'ble High Court of Kerala in **Prakashan v State of Kerala** (bail application no.9174 of 2022 dated 27.01.2023). It was observed that as per section 50 of Wildlife Protection Act 1972, any officer not below the rank of an Assistant Director of Wildlife Preservation or an officer not below the rank of Assistant Conservator of Forests authorized by the state government in this behalf shall have no power to do any acts provided as (a) to (d) and if anything done by the officer below the rank is a nullity and has no legal effect. That being so the confession record by the Forest Ranger is a nullity and the same has no legal effect. Similar contention was pointed out by the Hon'ble High Court in **Arunkumar @ Manu v State of Kerala** and **Sreekumar v State of Kerala**. In the decision of **Narayanan v Stated of Kerala** reported in **2023(4) KLT 700** the Hon'ble High Court of Kerala after perusing the entire evidence held that "even on a cursory reading of the above legal provisions, it is clear that at the time of passing the Wild Life (Protection) Act, sub-section (8) was not there. However, by way of amendment introduced with effect from Act 16 of 2003, the Assistant Director of Wild Life

Preservation was authorized to issue a search warrant; to enforce the attendance of witnesses; to compel the discovery and production of documents and material objects; and to receive and record evidence. Thereafter, by way of amendment introduced by amendment Act 44 of 1991, Assistant Conservator of Forest was authorized by the State Government in this behalf also was given the power to do the said exercise since Section 50 (8) authorizes an officer not below the rank of Assistant Director of Wild Life Preservation or Assistant Conservator of Forests to receive and record evidence. Any officer not below their rank cannot have the power to do any acts provided as (a) to (d) and if anything done by the officer below the rank is a nullity and has no legal effect. So the legal question is emphatically clear that the competent persons to record confession statement, i.e to record and receive evidence are (1) Assistant Director, Wild Life Preservation or (2) Assistant Conservator of Forests authorized by the State Government in this behalf and no other officer/officers below their rank. Therefore, the confession statement relied on by the prosecution to array the accused in the crime, only be found as a statement recorded by an incompetent officer and the same has no legal sanctity". Hence, this Court is of the view that solely on the basis of Exhibit P4 and P5, the accused persons cannot be held guilty. On overall perusal of the evidence in hand, this Court is of the view that by not conducting the Species Identification Test and by not properly proving that the place of occurrence falls within the limits of the Placherry forest station, the prosecution has failed to prove the guilt of the accused. Considering the evidence on record by yardstick of probabilities, its intrinsic worth and animus of witnesses, this court is of the view accused person is entitled to get the benefit of doubt in his favour. Hence point No.(i) is found against the prosecution.

13. **Point No.(ii):** In view of point No.1 this point does not arise for consideration. Hence, the accused persons are found not guilty for the offences punishable under sections 2(31)(b), 39(b), 49(b) and 51 of Wild Life Protection Act, 1972 and accused persons are liable to be acquitted for the said offence.

In the result:-

The accused persons are acquitted U/s. 248(1) Cr.P.C for the offences punishable under sections 2(31)(b), 39(b), 49(b) and 51 of Wild Life Protection Act, 1972. Bail bond executed by the accused persons stand cancelled and they are set at liberty.

The material object produced and marked as MO1 to MO3 are confiscated and shall be entrusted to Government after the expiry of appeal period and if no appeal has been preferred or that any appeal presented has been disposed of.

MO4 & MO5 shall be destroy after the expiry of appeal period and if no appeal has been preferred or that any appeal presented has been disposed of.

MO6, MO7 series & MO8 shall be returned to its respective owners after the expiry of appeal period and if no appeal has been preferred or that any appeal presented has been disposed of.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the open court on this the 04th day of April 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	K. S Rajesh Babu	Occurrence/Mahazar witness
PW2	Paulson George	Occurrence/Mahazar witness
PW3	Veji P. V	Official witness
PW4	Siby K. E	Investigation officer
PW5	S. Kannan	Official witness

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	Mahazar dated 22.07.2021
2	Ext P2/PW3	Form I dated 23.07.2021
3	Ext P3/PW3	Property list dated 22.07.2021
4	Ext P4/PW4	Confession statement of the first accused
5	Ext P5/PW5	Confession statement of the second accused

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
1	MO1	Ivory
2.	MO2	Ivory
3.	MO3	Ivory
4.	MO4	Bag
5.	MO5	Pieces of ivory
6.	MO6	Purse
7.	MO7 series	Aadhar card of both first & second accused, Driving license of the second accused, PAN card of second accused, ATM card of second accused

8.	MO8	Watch of first accused
----	-----	------------------------

Sd/-

**JUDICIAL FIRST CLASS MAGISTRATE-II
KANJIRAPPALLY**