

**IN THE COURT OF THE JUDICIAL MAGISTRATE OF THE FIRST
CLASS, ERATTUPETTA**

Present:- Sri. Krishna Prabhan. R,
Judicial Magistrate of the First Class, Erattupetta

Thursday, 19th day of March, 2026 / 28th day of Phalguna, 1947

CC 504/2018

Complainant	:	State represented by the S.I of Police, Erattupetta Police Station, in Crime No. 1131/2016
		(By APP, Erattupetta)
Accused	:	George Varkey, Aged 57 S/o. Varkey, Poovathinal (H) Thidanadu Kara, Kondoor Village
		(By Adv. Martin Mathew)
Offences	:	Punishable u/s. 447, 506(ii), 201 of IPC & Sec.17 of Kerala Money Lenders Act.
Plea	:	Not guilty
Finding	:	Not guilty
Sentence or order	:	Accused is found not guilty of the offences punishable u/s. 447, 506(ii), 201 of IPC & Sec.17 of Kerala Money Lenders Act. Hence he is acquitted under section 248 (1) of Cr.P.C.

Description of Accused

Name	Age	Father's name	Calling	Residence	Taluk
George Varkey	57	Varkey	Agriculture	Kondoor	Meenachil

Dates of

Occurrence	Complaint	Apprehension	Release on bail	Commencement of trial	Close of trial	Sentence or order
03/07/16	13/07/18	02/04/19	02/04/19	10/11/21	19/03/26	19/03/26

This case having been finally heard on this day, the Court delivered the following:-

J U D G M E N T

1. This is a case instituted on a police report filed by the S.I of Police, Erattupetta Police Station in Crime No. 1131/16 alleging that the accused had committed the offences punishable u/s. 447, 506(ii), 201 of IPC & Sec. 17 of Kerala Money Lenders Act.

2. The case of the prosecution in nutshell is as follows:

In the month of June 2013, the accused, who had no license or permit to conduct money-lending activities, lent a sum of ₹5,00,000 to PW2 at an interest rate of 60%. As security for the said loan, the accused obtained 12 cents of property from PW2 by managing to execute a sale deed in his favour. The accused also collected signed cheque leaves and blank papers affixed with revenue stamps from PW2. Further, they executed an agreement for sale with respect to 3 cents of property at Pala and another property measuring 1 acre and 90 cents situated at Thidanadu, which were owned by PW2. As PW2 was unable to pay the exorbitant interest demanded, on 03-07-2016 the accused came to the house of PW2, abused

him using obscene words, and thereafter destroyed the evidence. Accused thereby committed the aforesaid offences.

3. On receipt of summons, accused appeared before the Court. Copies of all relevant records furnished to him. After hearing both sides, charge has been framed for the offences punishable under sections 447, 506(ii), 201 of IPC & Sec. 17 of Kerala Money Lenders Act which was read over and explained to him and he pleaded not guilty and claimed to be tried. The case was posted for prosecution evidence. On the prosecution side, PW1 to PW6 were examined and Exhibits P1 to P6 were marked.
4. On closing of the prosecution evidence, accused was examined u/s 313(1)(b) of the Code of Criminal Procedure, 1973 regarding the incriminating circumstances made out against him in the prosecution evidence. He denied the allegations levelled against him and pleaded his innocence. He contended that he had purchased 12 cents of property situated near the house of the de facto complainant. According to him, PW2 attempted to trespass into the said property by demolishing the boundary marks. When the accused restrained PW2 from doing so, PW2 filed the present false case against him with the intention of grabbing the said property and preventing the accused from exercising his rights over it. Eventhough sufficient opportunities had given, no evidence adduced from the side of defence.
5. Heard both sides.

6. The following points arise for determination:-

1.	Whether on 03/07/2016 at Thidanadu accused committed criminal trespass as alleged?
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2.	Whether on the same date, time, and place, the accused committed criminal intimidation against PW2 as alleged?
3	Whether the accused caused disappearance of evidence of offence as alleged?
4.	Whether the accused lent money without any valid license as alleged?
5.	In the event of conviction, what is the sentence to be awarded upon the convicted accused?

7. **Point Nos.1 to 4:-** For the sake of convenience, these points are taken up together for determination.
8. The case of the prosecution is that the accused had advanced a sum of ₹5,00,000 to PW2 at an exorbitant rate of interest and had obtained certain documents including a sale deed relating to 12 cents of property as security. According to the prosecution, when PW2 failed to pay the interest demanded, the accused came to the house of PW2 on 03-07-2016, pushed open the gate, trespassed into the compound, abused PW2 using filthy language and threatened to kill him if the money was not paid. The defence version is that accused had lawfully purchased 12 cents of property situated near the house of PW2. According to him, PW2 attempted to trespass into the said property by demolishing the boundary marks. When the accused restrained him, PW2 filed the present case falsely with the intention of grabbing the property and preventing the accused from exercising his rights over it.
9. I have perused the evidence in detail. PW1 would say that on 05.08.2016

while he was working as grade S.I and was holding general diary charge duty at Erattupetta Police Station, he registered Exhibit P1 FIR based on Exhibit P2 complaint received from District Police Chief, Kottayam. PW2, the first informant, deposed that the incident occurred on 03-07-2016 at his house at Thalappulam. On that day, George Varkey and T.K. Cherian came in a Maruti van and stopped in front of the gate of his house. During a discussion regarding a financial transaction, George Varkey abused him verbally, pushed open the gate and entered the compound, while T.K. Cherian remained outside. George Varkey threatened him saying that if the money was not paid by that evening he would kill him and that nothing would happen to him even if he did so. PW2 stated that he became frightened and that his wife, daughters and mother who were present in the house also became frightened on hearing the threats. Since he feared that the accused might return again, he attempted to lodge a complaint at the Erattupetta Police Station. However, according to him, the police did not accept his complaint despite visiting the station several times. He therefore approached the Superintendent of Police at Kottayam and on 05-08-2016 submitted a typed complaint at the SP Office.

10. PW2 also deposed that the dispute arose out of a financial transaction between him and the accused. George Varkey had agreed to lend him ₹10,00,000 at an interest rate of 5% and as security he executed a document transferring 12 cents of property adjoining his house in favour of George Varkey along with certain advance agreements. However, only ₹5,00,000 was initially paid and later he was given ₹4,35,000 after deductions. He repaid the loan amount with interest over a period of about two years, but the accused refused to reconvey the property and demanded additional

money. Thereafter, on 03-07-2016, the accused came to his house, abused him and threatened him. He also identified the copy of the complaint submitted before the SP Office and stated that he had paid more than ₹13,00,000 to the accused on various occasions.

11. PW3, the wife of PW2, deposed that the incident occurred on 03-07-2016 at about 7.30 a.m. in front of their house at Thalappulam. George Varkey and T.K. Cheriyan came to their house in a white van and stopped near the gate. Her husband went outside and spoke with them. After a short conversation, George Varkey pushed open the gate and entered the compound while the other person remained outside. She stated that George Varkey abused her husband using obscene language and threatened that even if he assaulted or killed them nothing would happen to him and that he would evict them from the property. At that time her mother-in-law and children were present in the house. She came out to the courtyard when the incident occurred and became distressed on hearing the threats. When her younger child started crying, the accused persons left the place in their vehicle. Thereafter her husband attempted to lodge a complaint at Erattupetta Police Station but the police did not register the case. Later she accompanied him to the Kottayam District Police Office. She identified the copy of the complaint shown to her which was marked as Ext. P2. According to PW3, the incident arose out of financial dealings between her husband and the accused persons.

12. During cross-examination, PW3 stated that she was not sure whether the complaint submitted at the SP Office mentioned the earlier attempts made to approach the police station. She did not have full knowledge about the financial transactions of her husband and that she was not aware of the

details of the property documents or the alleged transactions between her husband and the accused. There was a gas godown opposite their house. PW4 would say that he had no knowledge about the incident forming the basis of the case. he had no complaint against the accused. He was not aware whether there were any transactions between PW2 and the accused.

13. PW5, the daughter of PW2, deposed that the incident occurred on 03-07-2016 at about 7.30 a.m. in the courtyard near the gate of their house. She was standing in the kitchen yard from where the gate was visible. A white Maruti van came and stopped near the gate and two persons got down from the vehicle. One of them pushed open the gate and entered the compound while the other person remained outside. She identified the person who entered the compound as George Varkey and the other person as T.K. Cheriyan. According to PW5, George Varkey abused her father and threatened that he would kill them and that no one would question him. She became frightened on witnessing the incident and that her younger sister started crying. Later her father told her that the dispute arose out of a financial transaction relating to money borrowed from George Varkey. She also identified the accused present in the dock as the person who had come to their house on that day.

14. During cross-examination, PW5 stated that she did not have knowledge about the financial transactions between her father and the accused and that she was not aware of the details regarding the property or documents relating to the alleged transaction. There was a gas agency godown opposite their house and that she had sometimes seen workers there in the morning. The gate of their house was usually not locked and that the latch was loosely fastened.

15.PW6, the Investigating Officer, deposed that at the relevant time he was working as the Additional Sub-Inspector at Erattupetta Police Station. Based on the complaint submitted before the Kottayam District Police Office, the FIR in this case was registered and forwarded to the court. He thereafter took over the investigation, examined the witnesses and recorded their statements. On 07-10-2016 he conducted a search at the house of the accused after obtaining a search warrant from the court and prepared the search list, which was marked as Ext. P3. Nothing was recovered during the search. Later he submitted a report deleting the second accused from the case, which was marked as Ext. P4, and another report deleting Section 34 IPC and adding Section 201 IPC, which was marked as Ext. P5. Since the accused had absconded, he could not be arrested. After completing the investigation, he submitted the final report before the court. As the original complaint was not available, he produced an attested copy along with the charge sheet and also submitted a report regarding the non-availability of the original complaint, which was marked as Ext. P6. During cross-examination, PW6 stated that the original complaint might be available at the SP Office and that an application had been submitted to obtain it. He admitted that the statements of the witnesses were recorded about one month after the occurrence and that no documentary records were produced during the investigation. There was an HP Gas Agency opposite the place of occurrence but no neighbouring witnesses were examined and that the witnesses examined in the case were close relatives of the complainant. He categorically deposed that the complainant had not directly submitted any complaint at the police station and that no investigation was conducted regarding the alleged financial transactions. The title deed relating to the

alleged twelve cents of property had not been recovered during the investigation.

16. The case of the prosecution is that the accused had advanced a sum of ₹5,00,000 to PW2 at an exorbitant rate of interest and had obtained certain documents including a sale deed relating to 12 cents of property as security. According to the prosecution, when PW2 failed to pay the interest demanded, the accused came to the house of PW2 on 03-07-2016, pushed open the gate, trespassed into the compound, abused PW2 using obscene words and threatened to kill him if the money was not paid. In order to prove the occurrence, the prosecution mainly relies on the testimony of PW2, the first informant, and the evidence of his wife and daughter who were examined as PW3 and PW5 respectively. PW2 deposed that on the date of the incident the accused came to his house in a Maruti van along with another person, stopped near the gate and during the course of a discussion regarding financial transactions, the accused pushed open the gate and threatened him with dire consequences if the money was not paid. PW3 also deposed that the accused entered the compound and threatened her husband and that she and her family members were frightened by the conduct of the accused. PW5, the daughter of PW2, also stated that she witnessed the accused entering the compound and threatening her father.

17. However, the evidence of these witnesses requires careful scrutiny since all of them are close relatives of the complainant and therefore interested witnesses. Though the evidence of related witnesses cannot be discarded merely on that ground, the court must look for corroboration from independent circumstances. One important circumstance that creates doubt regarding the prosecution case is the delay in lodging the complaint. The

fact whether FIR has been lodged belatedly is always a question of fact and the effect and consequence of such delay has to be assessed by the Court bearing in mind the facts and circumstances of each case, the explanation if any offered by the prosecution and how far the explanation so offered is acceptable on the given facts (**Sanjay Oraon v. State of Kerala, 2021 (5) KHC 1**).

18. According to the prosecution, the occurrence took place on 03-07-2016, whereas the complaint was submitted before the District Police chief only on 05-08-2016. Thus there is a delay of more than one month in setting the criminal law in motion. PW2 attempted to explain the delay by stating that he had approached the Erattupetta Police Station earlier but the police did not register the complaint. However, no convincing material has been produced to substantiate this explanation. Even the investigating officer admitted that the complainant had not directly submitted any complaint at the police station. Here the explanation of PW2 that the delay was occurred due to inaction of police seems not believable. Another important aspect is that no independent witnesses have been examined by the prosecution. The investigating officer admitted during cross-examination that there was an HP Gas Agency situated opposite the place of occurrence and that neighbouring houses were present in the locality. Despite the availability of such independent persons, no one from the locality was examined as a witness. The only independent witness cited by the prosecution, namely PW4, did not support the prosecution case and was declared hostile. Thus the prosecution version regarding the incident rests solely on the testimony of the complainant and his close family members

19. To attract the offence of criminal trespass, the property entered into by the

offender must be in possession of another. What is relevant under S.441 IPC is possession and not ownership. In other words, the property into which the offender entered must not be in his possession. Further the prosecution has to establish that there has been unlawful entry upon a property which is in the possession of another and that such unlawful entry was with an intent to commit an offence. The ultimate question for decision being whether an act was done with a particular intention all the circumstances including the natural consequence of the action have to be taken into consideration. It is legitimate to think also that when S.441 speaks of entering on property "with intent to commit an offence, or to intimidate, insult or annoy" any person in possession of the property it speaks of the main intention in the action and not any subsidiary intention that may also be present. (**In Mathri and Others v. State of Punjab, AIR 1964 SC 986**).

20. In the decision reported in **Kunjan Ammini v. State of Kerala, 1967 KHC 216** honourable High Court of Kerala held that to justify a conviction of criminal trespass it must be proved that some criminal intent was present in the mind of the accused, and it does not at all follow that because an act is unlawful and is one that the civil law will restrain, or for which it will compensate the injured party in damages, it is necessarily criminal. Even if the entry is unlawful and might sustain a civil action for damages it cannot be treated as criminal and in the absence of evidence to show that the intention of the accused was to intimidate, insult or annoy the complainant the prosecution will not lie. It was also held that mere unlawful entry in another man's house without proof of intention to commit an offence and mere knowledge that such action would cause insult or annoyance to the inmates of the house are not sufficient to constitute

criminal trespass. The aforesaid decisions are applicable in this case. Here in the case at hand, the evidence adduced shows that the accused entered the property following an altercation. Further no evidence adduced to prove that PW2 was in possession over the property.

21. Another allegation is that the accused committed criminal intimidation. In **Parminder Kaur v. State of Punjab, (2020) 8 SCC 811** honourable Apex Court held that a reading of the definition of "criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. The aforesaid principles are also squarely applicable to the case at hand.

22. The prosecution has also alleged that the accused was conducting money lending business without licence and had obtained several documents from PW2 including a sale deed and blank signed papers. However, no documentary evidence relating to the alleged financial transaction has been produced before the court. The investigating officer admitted that no documents relating to the alleged property transaction were recovered

during the investigation and that no investigation was conducted regarding the financial dealings between the parties. In the absence of any documentary evidence, the allegation that the accused was conducting money lending business without licence remains unsubstantiated. From the evidence of PW2 itself, it is clear that there existed a financial dispute between the parties.

23. In **Vimal v. State of Kerala and Others** reported in **2015 KHC 2395** honourable High Court of Kerala has held that *the mere fact that the accused was found in possession of some cheque leaves or some other documents will not prove a business transaction. Lending money to a person under one or more documents will not by itself constitute the offence of unauthorised money lending meant under the Kerala Money Lenders Act.* Here in this case, no items seized from the possession of accused. The defence version that the accused had purchased property and that the present case was filed due to disputes relating to the property cannot therefore be completely ruled out. It is well settled that if two views are possible on the evidence on record, the view favourable to the accused must be adopted.

24. In order to attract the offence punishable under S.201 IPC, it has to be established that the accused, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false. There is absolutely no evidence to prove an offence under section 201 IPC. Considering the delay in lodging the complaint, the absence of independent witnesses, the lack of

documentary evidence regarding the alleged financial transaction and the admitted existence of disputes between the parties, I am of the view that the prosecution has not succeeded in establishing the guilt of the accused beyond reasonable doubt. Consequently, the accused is entitled to the benefit of doubt. The abovesaid points are found against the prosecution.

25. **Point No.5** :- In the result of the above said findings, I have no other option other than to acquit the accused. Accused is found not guilty of the offences punishable u/s. 447, 506(ii), 201 of IPC & Sec.17 of Kerala Money Lenders Act. Hence he is acquitted under section 248 (1) of Cr.P.C. His bail bond stands cancelled and he is set at liberty.

Dictated to the Confidential Assistant transcribed and typed by her, corrected by me and pronounced in the open Court on this day, the 19th day of March , 2026.

**JUDICIAL MAGISTRATE OF THE FIRST CLASS
ERATTUPETTA**

<u>APPENDIX</u>	
<u>Witnesses examined for the prosecution:-</u>	
PW1	P K Madhu
PW2	Jollychen P Joseph
PW3	Usha Jollychen
PW4	Cheriyam
PW5	Joshma
PW6	M R Saji

<u>Exhibits marked for the prosecution:-</u>		
P1	06/08/16	FIR proved by PW1
P2	05/08/16	Complaint proved by PW1
P3	07/10/16	Search List proved by PW6
P4	12/10/16	Report proved by PW6
P5	12/10/16	Section adding report proved by PW6
P6	-	Report proved by PW6
Witnesses examined for the defence		Nil
Exhibits marked for the defence		Nil
Material objects marked		Nil

**JUDICIAL MAGISTRATE OF THE FIRST CLASS,
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