

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

Present:- Smt. Neema Noor Mohamed, Judicial Magistrate of First Class.

Wednesday, this the 8th day of April, 2026/ 18th day of Chaithra, 1948 S.E.

Calendar Case No. 655/2014.

State represented by the Sub Inspector of Police, Pattambi Police Station in crime No. 338/2013. (By Smt. Resmi.V.S, Gr. II A.P.P)		Complainant
Muhammed Shahal @ Shahal, aged 22/13 years, S/o. Ameer, Kinattingal House, Karuvarakundu, Chunkam, Malappuram. (By Adv. Sri. P.K. Saji)		Accused
Offence	Punishable under sections 381, 461 IPC.	
Plea	Not guilty	
Finding	Not guilty	
Sentence or order	The accused is found not guilty for the offences punishable under sections 381, 461 IPC and is acquitted of these offences under sections 248(1) Cr.P.C. The bail bond executed by the accused stands cancelled and he is set at liberty forthwith. The interim release of properties vide CMP 1403/2016 is hereby made absolute.	

DATE OF

Offence	Complaint	Apprehension	Release on Bail	Commencement of Trial	Close of Trial	Order	Explanation for delay
01/11/12 to 30/11/12	23/03/13	09/02/17 28/10/22 30/03/26	16/02/17 28/10/22 31/03/26	27/02/25	31/03/26	08/04/26	No sitting

DESCRIPTION OF ACCUSED

Name	Father's Name	Age	Residence
Muhammed Shahal @ Shahal	Ameer	22/13	Karuvarakundu

J U D G M E N T

This is a case instituted upon the final report submitted by the Sub Inspector of Police, Pattambi Police Station in crime No. 338/2013 against accused alleging the commission of offence punishable under sections 381 and 461 of the Indian Penal Code.

2. The summary of the prosecution case is as follows: The accused who was the employee of the ice manufacturing company operated by CW1 at the shop bearing No. X/310 at Nambram Kadavu without the consent of CW1 removed three RC books kept in the table desk of the shop room. Thus the accused alleged to have committed the aforesaid offences.

3. Pandikkad Police arrested the accused in Crime 164/2013 and on his confession statement, Crime 171/2023 was filed. Thereafter the case was transferred to Pattambi police station. On receipt of the same this crime was re-registered and after completion of investigation PW2 submitted the final report before the court.

4. The accused was appeared before the court and he was released on bail. He was represented though a counsel of his choice. Copies of all relevant prosecution records were furnished to the accused under section 207 of Cr.P.C. After hearing both parties and perusing the records, charge for the offence punishable under sections 381 and 461 IPC was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

6. In order to prove the prosecution case, the Investigating Officer cited 8 witnesses. Out of which PW1 to PW3 were examined and Exts. P1 to P5 were

marked. After closure of prosecution evidence, the accused was questioned under section 313(1)(b) Cr.P.C as to the incriminating evidence brought out against him in prosecution evidence. He denied all that evidence and repeated the plea of innocence.

7. Accused was then called upon to enter upon his defence and produce evidence. He did not adduce any oral or documentary evidence.

8. Heard both sides.

9. After hearing both sides the following points arise for consideration;

1. *Whether the accused committed theft of 3 RC books from his office as alleged by the prosecution to commit offence under section 381 IPC ?*
2. *Whether the accused break open the table desk as alleged by the prosecution to commit offence under section 461 IPC ?*
3. *Whether the accused committed any of the above offences with which he is charged ?*
4. *If the accused is found guilty what should be the proper sentence or order?*

10. **Point Nos. 1 to 3** : For the sake of convenience these points can be considered together. PW1: He is the police witness who deposed that while working as SHO at the Pandikkad police station, when the accused was implicated for the crime 171/2013 of Pandikkad police station, the accused had given confession to the effect that he has kept in possession of three RC books of motorbike. The same was then seized. As the place of occurrence lies within the Pattambi police station limit, the file was transferred to Pattambi police station. Thereafter, the investigation was

done by Pattambi police. The form 15 was marked as Ext. P1. The FIR registered at the Pandikkad police station was marked as Ext. P2. The confession extract “എന്നെ കൂട്ടിക്കൊണ്ടുപോയാൽ RC book സൂക്ഷിച്ച് വെച്ച സ്ഥലം കാണിച്ചുതരാം എന്നും ആയത് എടുത്ത് ഹാജരാക്കി തരാമെന്നും പറഞ്ഞു” was marked as Ext. P3. This witness was duly cross-examined.

13. PW2: He is the investigating officer of the case, who deposed while he was at Pattambi Police Station as Additional SI on 24/03/2013, he inspected the spot and prepared scene mahazar Ext. P4. He had recorded the statements of witnesses. On knowing that the accused was in judicial custody at the sub jail, Perinthalmannna, he did the formal arrest. The arrest memo was marked as Ext. P5. Thereafter, on completion of investigation, he filed the charge sheet. During cross-examination, he deposed he has not received any information as to the loss of the RC books of this case.

14. PW3, he is the independent witness to the scene mahazar Ext. P4. He was duly cross-examined.

15. The offence charged against the accused are under sections 381 and 461 IPC.

Section 381 IPC reads thus:

Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 461 IPC reads thus:

Whoever dishonestly or with intent to commit mischief, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

16. The prosecution allegation is that the accused, being an employee under CW1 in an ice manufacturing unit, had removed three RC books kept in the table drawer of the shop room without consent. In order to bring home the guilt, the prosecution was bound to prove, firstly, the relationship of employer and employee, secondly, the factum of possession of the RC books by CW1, thirdly, their dishonest removal, and lastly, the nexus of the accused with the alleged act.

17. At the outset, it is to be noted that CW1, the alleged victim and the pivot of the prosecution case, has not been examined. Despite taking coercive steps against CW1 and CW4, both these prosecution witnesses did not turn up. Hence these witnesses had to be dispensed. In the absence of CW1's testimony as well as any documentary evidence there is absolutely nothing to prove that the accused was employed under CW1, nor is there any material to show that the RC books were kept in the shop room or that they were missing. This omission strikes at the root of the prosecution case, as the very basis of access and opportunity is left unproved. The investigating officer himself admitted he has not received any information as to loss of alleged RC books.

18. It is further significant that no petition was lodged by CW1 regarding the alleged theft. The absence of a petition from the person who is said to have suffered

the loss renders the prosecution version inherently doubtful and casts a serious shadow on the genuineness of the occurrence itself.

19. The prosecution relies heavily on the confessional statement allegedly given by the accused to PW1 who is a police officer in connection with another crime. It is well settled that a confession made to a police officer is inadmissible in evidence, except to the limited extent permitted under the law relating to discovery. In the present case, the prosecution has a case that subsequent recovery was effected pursuant to such statement. However, even in respect of such recovery, the evidentiary value is extremely limited. The recovery under law can only prove that the accused had knowledge of the place from which the articles were recovered; it does not by itself prove the commission of theft, unless it is clearly established that the recovered articles are the very same stolen properties. In this case, the prosecution has failed to establish that the recovered RC books belonged to CW1. In the absence of the evidence of CW1, there is no identification or proof of ownership of the alleged recovered articles. Thus, the recovery loses its incriminating character and does not advance the prosecution case in any meaningful manner.

20. The other witnesses examined are only police officials and a mahazar witness, whose evidence is formal in nature and does not touch upon the core ingredients of the offence. There is no independent evidence connecting the accused with the alleged occurrence. Thus, the prosecution has failed to prove that the accused was an employee under CW1, that CW1 was in possession of the RC books, that the said RC books were dishonestly removed, and that the recovered articles

were the stolen properties belonging to CW1.

21. It is a settled principle of criminal law that suspicion, however strong, cannot take the place of proof, and the prosecution must establish its case beyond reasonable doubt by cogent and reliable evidence. The benefit of every reasonable doubt must necessarily go to the accused. In the present case, the cumulative effect of the above infirmities creates substantial doubt regarding the prosecution version, and the evidence on record falls far short of the standard required for conviction. Hence the accused is found not guilty and is acquitted of the offences alleged, giving him the benefit of doubt. The points are found accordingly.

22. **Point No. 4** : In view of my findings on foregoing points, this points are does not require any consideration.

In the result

1. ***The accused is found not guilty for the offences punishable under sections 381, 461 IPC and is acquitted of these offences under sections 248(1) Cr.P.C.***
2. ***The bail bond executed by the accused stands cancelled and he is set at liberty forthwith.***
3. ***The interim release of properties vide CMP 1403/2016 is hereby made absolute.***

Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court, this the 8th day of April, 2026.

Sd/-
Judicial Magistrate of First Class,
Pattambi.

APPENDIX

Witnesses examined for the Prosecution:-

1.PW1:	SHO Chandran.K.T, aged 64 years, S/o. Unnimakan.K.T, Manjery, Ernad.	Police witness CW7
2. PW2:	Add. SI Ravindran.C, aged 66 years, S/o. Madhavan Nair, Nellaya, Pattambi.	Police witness CW8
3. PW3:	Muhammed Musthafa, aged 48 years, S/o. Khalid, Thrithala, Pattambi.	Scene mahazar witness CW2

Witnesses examined for the Defence:- **NIL**

Exhibits marked for Prosecution:-

- P1 : 19/03/2013 Form 15 Property list (PW1)
- P2 : 30/11/2012 FIR in Cr. 171/2013 of Pandikkad PS (PW1)
- P3 : 18/03/2013 Extract of confession statement (PW3)
- P4 : 24/03/2013 Scene mahazar (PW2)
- P5 : 04/04/2013 Arrest memo (PW2)

Exhibits marked for Defence:- **NIL**

Sd/-

Judicial Magistrate of First Class,
Pattambi.

// True Copy //

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Pattambi.