

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

Present:- Smt. Sabah Usman.
Judicial I Class Magistrate-II.

Dated this the 29th day of April 2026

Calendar Case No.1475/2016

Complainant	:	State of Kerala, Represented by the Sub Inspector of police, Kazhakuttom in crime No.1049/2015 (By Asst.Public Prosecutor, Attingal)
Accused	:	1. Nandakumar, S/o. Sreekumar, Kaliyil Veedu, Chattambiswamy Nagar, Kannammoola, Vanchiyoor Village. <p style="text-align: center;">By Adv. Sri. Siju K Unnithan</p> 2. Vishnu, S/o. Mohanan Nair, Chithira, Kumaranasan Nagar, Akkulam road, Ulloor, Cheruvakkal Village. <p style="text-align: center;">By Adv. Sri. B S Anilkumar</p>
Charge	:	u/s. 379 r/w.34 of Indian Penal Code 1860
Plea	:	Not guilty
Finding	:	Not guilty
Sentence/Order	:	Accused Nos. 1 & 2 are acquitted u/s.248(1) of Criminal Procedure Code 1973.

Date of						
Offence	Complaint	Apprehen- sion	Release on bail	Commenc ement of trial	Close of trial	Sentence/ order
02/09/15	23/08/16	14/06/22	14/06/22	08/07/22	25/04/26	29/04/26

DESCRIPTION OF ACCUSED				
Name	Father's name	Calling	Residence	Age
1. Nandakumar	Sreekumar	...	Vanchiyoor Village	19/15
2. Vishnu	Mohanan Nair	...	Cheruvakkal Village	20/16

This case having been finally heard on 25/04/26 and the court on 29/04/26 delivered the following:

JUDGMENT

This is a case in which final report has been filed by Sub Inspector of Police, **Kazhakuttom** Police Station in Crime No.1049/2015 against accused alleging commission of offences punishable U/S.379 r/w.34 of Indian penal Code 1860.

2. The prosecution case in brief is as follows: The accused no. 1 to 3 in furtherance of their common intention, committed theft of motorcycle of CW1 bearing number KL-22G-1439, Bajaj Pulsar which was parked at the courtyard of Thadathirikath House, Pangapara on 02.09.2015 at 01.15 a.m. The accused thus committed the offence as alleged.

3. On appearance of the accused Nos. 1 & 2, they were released on bail and copies of all relevant prosecution records were furnished to them u/s. 207 Cr.P.C. After hearing both sides, charge was framed U/S. 379 r/w.34 of IPC were read over and explained to the accused, who are facing trial, to which they pleaded not guilty and claims to be tried.

4. Prosecution cited CW1 to CW8 and examined PW1 to PW6. Ext.P1 to P5 were marked. CW2 was given up by the learned APP. After the closure of the prosecution evidence the accused Nos. 1 & 2 were examined U/s.313 (1) (b) Cr.P.C about the incriminating circumstances brought out in the prosecution evidence against them.

5. Heard both sides.

6. The points that arose for consideration are:-

1) Has the accused committed theft of motorcycle of PW1 bearing number KL-22G-1439 which was parked at the courtyard of Thattathirikathu house, Pangapara on 02.09.2015 at 01.15 a.m and thereby committed the offence punishable under Section 379 r/w 34 of IPC?

2) Sentence or Order ?

7. **Point No. 1:-** The informant was examined as PW1. He testified that he has parked his motorcycle bearing number KL-22G-1439 at his uncle's house. On the next day when he went to take the bike, he came to know that it was stolen by someone. According to him, the value of the motorcycle was Rupees 94,500. According to him, he suspected a person named Akshay, who is a native of the place. The statement he had given to police was marked as Exhibit P1. During cross-examination, he testified that he gave statement to police after 10 days of the incident. He also admitted that he gave statement to police that he doesn't know who committed theft.

8. PW2 testified that while he was working as Additional Sub Inspector at Kazhakottam Police Station, he has recorded the statement of PW1 at the police station on 10.09.2015. FIR was registered by the Station House Officer. He conducted investigation in the case, visited the place of occurrence and prepared Exhibit P2 scene mahazar. He testified that during investigation, he found out that the accused persons who were arrested in Crime No. 1054 / 2015 are the accused persons of this crime also. Hence those persons were arrested in this case also. The address report of accused to persons were produced before court. Since one of the accused persons was a juvenile, a separate application was filed before the

Juvenile Justice Board. He testified that the motorcycle could not be recovered since the accused persons did not cooperate with the investigation. During cross-examination he admitted that no evidence is produced before court to show that the accused person committed the offence.

9. PW3 testified that his brother's motorcycle was subjected to theft . According to him, he saw the accused person at the police station. PW4 turned hostile to the prosecution stating that he doesn't know who committed theft of the motorcycle.

10. PW5 testified that he has signed on the scene mahazar prepared by the police and it was marked as Exhibit P2. PW6 testified that he has registered FIR in the case. During cross-examination, he testified that there is a delay of 9 days in lodging FIR in the case and according to PW1, he had a discussion with his family before giving complaint to the police. PW7 testified that while he was working as Sub Inspector of Police at Kazhakottam Police Station, he verified the investigation in the case and filed charge sheet before court.

11. On perusal of the entire evidence on record, it can be seen that there is no recovery of the motorcycle which is alleged to have subjected to theft. There are no eyewitnesses to the incident. There is a delay of 9 days in giving complaint by PW1 to the police from the date of alleged incident. According to PW1, the delay occurred as he had doubt on a person named Akshay, who is a native of his place. The Officer who has registered FIR in the case testified that the delay occurred since PW1 thought of having discussion with his family before lodging complaint

before the police. The delay is not explained by the prosecution.

12. The motorcycle is not recovered from the accused persons. The accused persons who were arrested in one crime is simply arrested in this crime without any evidence. The Investigating Officer admitted that the accused persons were arrested to this crime without any evidence. Thus absolutely there exists no evidence to connect accused no. 1 and 2 to the crime and hence they are entitled for an acquittal.

13. **Point No.2** :-

In light of the findings in point No. 1, I am of the view that the prosecution has failed to prove that the accused 1 & 2 have committed the offence alleged against them.

In the result, the accused Nos. 1 & 2 are found not guilty for the offences punishable U/S. 379 r/w.34 of IPC and he is acquitted of the said offences u/s. 248(1) Cr.P.C. Their bail bonds stand cancelled and they are set at liberty.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this, the 29th day of April 2026.

Judicial First Class Magistrate-II,
Attingal.

APPENDIX

List of Prosecution/Defence/Court Witnesses

Prosecution Witnesses:-

Sl. No.	Rank	Name	Whether Eye witness, Police witness, Expert witness, Medical witness, Other witness
1	PW1	Shiju	Informant
2	PW2	A Chandrarajan	Police witness
3	PW3	Sibi	Other witness
4	PW4	Gopan	Other witness
5	PW5	Abhilash	Other witness
6	PW6	S Sreejith	Police witness
7	PW7	Sunil G	Police witness

B. Defence Witnesses:

Nil

C. Court Witnesses:

Nil

List of Prosecution/Defence/Court Exhibits

A. Prosecution Exhibits:

Sl. No.	Exhibits	Description	Date
1	P1/PW1	FIS	12/09/2015
2	P2/PW2	Seizure Mahazar	10/09/2015
3	P3/PW2	Arrest memo	...
4	P4/PW2	Address report
5	P5/PW6	FIR	10/09/2015

B. Defence Exhibits: Nil

C. Court Exhibits: Nil

Material Object marked : Nil

Judicial First Class Magistrate-II,
Attingal.