

...for 30 days each. Bail
Bail of the accused stands cancelled.

<u>Description of the Accused</u>						
Sl. No.	Name	Father's name	Occupation	Residence	Age	
1	Relief Clinic and Nursing Home	-	-	Meppayyur		
2	Dr. Mohamamad	-	Doctor	Meppayyur		
3	Ashif	Moidees	Pharmacist	Iringath	38/16	

Date of

Offence	Report	Appearance	Release on bail	Commencement of trial	Close of Trial	Sentence or Order.
09.11.10	-	08.07.16		19.01.12	15.10.16	21.10.16

Explanation for delay : No delay.

JUDGMENT

This is a complaint filed by the complainant, Pharmacy Inspector against the accused three in numbers, alleging commission of offence punishable U/s.42 of the Indian Pharmacy Act, 1948.

2. It is alleged by the complainant that on 09.11.2010 at 11.30am he had visited accused No.1, "Relief Clinic and Nursing Home" functioning in door No.VII/55 Meppayyur Panchayath, of which 2nd accused is the doctor. At the time of inspection of the clinic, 3rd accused was found dispensing medicines on the prescription of the doctor.

receiving cash from the patients by issuing cash bills of the firm. On enquiry it was found that 3rd accused was not a registered Pharmacist. Hence the accused persons are alleged to have committed the alleged offences.

3. Accused entered appearance on summons and were released on bail. Copies of all relevant records proposed to be relied on by the complainant were furnished to the accused persons. When the substance of the accusation was read over and explained, the accused persons pleaded to be not guilty.

4. To prove the case PW1 to 3 were examined and Ext.P1 to P5 were marked. On the closure of the complainant's evidence, the accused were questioned as provided U/s.313 (1) (b) of Code of Criminal Procedure. They denied all incriminating circumstances and submitted that they have not committed any offence. Heard the learned counsel for the complainant and the accused.

5. The following points were raised for consideration.

1. Whether accused No.3 had dispensed medicine from accused No.1, "Relief Clinic and Nursing Home" with out any pharmacy license as alleged?

2. Sentence or order?

6. Point No.1:-

The Pharmacy Inspector who visited accused No.1 clinic, "Relief Clinic and Nursing Home" was examined as PW1. Ext.P1 is the photo copy of the order of his appointment to the Pharmacy Inspector. Ext.P1 was challenged by the accused on the ground that it was photocopy and hence it was marked subject to proof. PW1 during his chief examination has stated that the original of Ext.P1 is in his possession. PW1 has no explanation as to w

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The original of Ext.P1 is not produced before the court. Hence I find that Ext.P1 is not admissible in evidence.

7. PW1 testified before the court that on 09.11.2010 as a part of his duty, he visited "Relief Clinic and Nursing Home" situated near to Meppayyur Bus stand. According to him it was accused No.2, Doctor Muhammad, who was examining the patient from the clinic and prescribing the medicines to the patients. He had also seen a room near to the consulting room wherein a board has been displayed as "Pharmacy" and accused No.3 was dispensing medicine from the said room. PW1, after disclosing his designation and address, requested accused No.2 and 3 to co-operate with the inspection. Thereafter PW1 entered the room wherein accused No.3 was dispensing medicine and enquired his name and address. On enquiry he stated his name as Ashif and stated that he does not have any qualification to dispense medicine and that he is not a registered pharmacist. PW1 also found that no other registered pharmacist was working in the said clinic. Thereafter he prepared Ext.P2, mahazar and Ext.P3, inspection report. When PW1 asked accused No.2 to furnish him the copy of the cash bill and medicines, the doctor(accused No.2) refused to furnish the same and directed accused No.3 not to give anything to PW1. PW1 further stated that accused No.2 also directed the patients not to give any statement against him. PW1 later sent Ext.P2 and P3 mahazar and inspection report to the Registrar, Pharmacy council for obtaining prosecution sanction. The said prosecution sanction was marked as Ext.P4. Ext.P5 is the complaint filed after obtaining the sanction.

8. PW3, is the pharmacy council inspector who accompanied PW1 for inspection of the alleged day of the incident. He testified before the court that on 09.11.2010 at 11.30 a.m. he along with PW1 and one Abhilash Jayaram inspected "Relief Clinic and Nursing Home" situated near Meppayyur Bus stand. He saw doctor Muhammad, accused No.2 examining the patient and issuing prescription to the patient. He also saw accused No.3, Ashif, dispensing medicine from the pharmacy. PW1 and 3 after introducing themselves to the doctor, enquired as to who was the registered pharmacist.

accused No.3 was dispensing medicine to the patients. He further stated that though the doctors in general have the right to dispense the medicine to patient, he came to know that it was not the doctor, accused No.2, who was dispensing medicine from the above mentioned clinic. He further stated that accused No.3 did not have pharmacist registration and that the consulting room and pharmacy was functioning in two different rooms. On getting convinced about the said fact, PW1 prepared Ext.P2 mahazar and Ext.P3 inspection report. He further testified that though PW1 requested the doctor to hand over the copy of the cash bill of medicine they did not obey the orders of PW1.

9. PW2 is the registrar of the Kerala State Pharmacy council. He testified before the court that the Ext.P3 inspection report and Ext.P2 mahazar submitted by PW1 was laid before executive committee of the Kerala State Pharmacy council and as per the decision arrived on 02.12.2010, prosecution sanction was accorded to PW1. He also identified Ext.P4 prosecution sanction.

10. PW1 and 3 were cross examined at length by the defence. The learned counsel for the accused have vehemently contended that Ext.P2, Mahazar, does not state about the existence of pharmacy board near to the consultation room of accused No.2. On perusal of Ext.P2 mahazar it is mahazar does not mention about the pharmacy board displayed outside the room. But Ext.P2 would go to show that both the consulting room and pharmacy room were functioning in two different rooms. From the evidence tendered by PW1 and 3 coupled with Ext.P2 mahazar I find no reason to disbelieve the case of the complainant. The defence has not challenged the presence of accused No.3 in the clinic at the time of inspection. The defence also have no explanation for the presence of accused No.3 in the clinic. Accused No.2 does not have a case that accused No.3 was one among his patient present at the time of inspection of PW1. Solely for the reason that PW1 has failed to produce his appointment order, I do not find it just and proper to disbelieve the case of the complainant. From the available evidence on records, I find that complainant has succeeded in establishing the charges levelled against the accused. Hence I find the accused guilty for the offence punishable U/s. 42 of the Pharmacy Act, 1948.

Point No.2:- In view of finding on point No.1. I find the accused persons guilty for the offence U/S.42 of the Indian Pharmacy Act, 1948 and accordingly they are convicted U/s.255 (2) Cr.PC and sentenced to pay fine of Rs.1,000/- each. U/s.42 of the Indian Pharmacy Act, 1948. In default of payment of fine they shall undergo simple imprisonment for one month each.

(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in Open Court on this the 21st day of October, 2016.)

Vandana R.
Vandana R,
Judicial First Class Magistrate.

APPENDIX

Prosecution Witnesses :

PW1(CW1) - Gireesan
PW2(CW2) - Radhakrishnan Nair
PW3(CW3) - Robert