IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, TRIPUNITHURA

Present: Miss. Athira R S Panicker, Judicial First Class Magistrate

Saturday, the 31st day of May, 2025/10th day of Jyeshta, 1947.

CC No.868/2018

Complainant : State of Kerala represented by the Drug Inspector (Intelligence Branch), Office of the Assistant Drugs Controller, Ernakulam.

(By Assistant Public Prosecutor)

Accused :
1. Maria Medical Stores,Statue Junction, Tripunithura,Ernakulam District, rep., by its Managing Partner M.V.Peter.
2. M.V.Peter, Aged:57/02, S/o.Varkey (Late) Managing Partner of Maria Medical Stores, residing at Marokkil House, Karingachira, Cochin Palace P.O., Ernakulam District.
3. Pramod Peter, Aged:25/02,S/o.M.V.Peter, Working Partner of Maria Medical Stores, residing at Marokkil House, Karingachira, Cochin Palace P.O., Ernakulam District.

(By Adv. C.Anilkumar)

Offences : Rules 65(9)(a) and 65(3)(1) of the Drugs and Cosmetics Rules, 1945 r/w s.18(a)(vi) of the Drugs and Cosmetics Act, 1940 punishable under section 27 (d) of the Act.

Plea : Not guilty

Finding : Guilty

Sentence or Order : Accused Nos. 2 and 3 are found guilty of the offences under Rules 65(9)(a) and 65(3)(1) of the Drugs and Cosmetics Rules, 1945 r/w s.18(a)(vi) of the Drugs and Cosmetics Act, 1940 punishable

under section 27 (d) of the Act, and they are convicted u/s.255(2) of the Cr.P.C. Accused Nos.2 and 3 are sentenced to undergo imprisonment for a period of 1 year each and shall pay fine of Rs. 10,000/- each for the offence under Rule 65(9)(a) of the Drugs and Cosmetics Rules, 1945 r/w s.18(a)(vi) and 27 (d) of the Drugs and Cosmetics Act, 1940. In default of payment of fine, the accused shall undergo imprisonment for a period of one month. They shall further undergo imprisonment for a period of 1 year each and shall pay fine of Rs. 10,000/- each for the offence under Rule 65(3)(1) of the Drugs and Cosmetics Rules, 1945 r/w s.18(a)(vi) and 27 (d) of the Drugs and Cosmetics Act, 1940. In default of payment of fine, the accused shall undergo imprisonment for a period of one month. Substantiative sentences shall run concurrently.

DESCRIPTION OF ACCUSED

Sl. No.	Name	Father's/ Husband's Name	Age	Calling	Residence
1.	Maria Medical Stores	----	---	----	Maria Medical Stores, Statue Junction, Tripunithura, Ernakulam District, rep., by its Managing

					Partner M.V.Peter.
2.	M.V.Peter	Varkey (Late)	57/02	----	Managing Partner of Maria Medical Stores, residing at Marokkil House, Karingachira, Cochin Palace P.O., Ernakulam District.
3.	Pramod Peter	M.V.Peter	25/02	----	Working as Partner of Maria Medical Stores, residing at Marokkil House, Karingachira, Cochin Palace P.O., Ernakulam District.

DATES OF

Offence	Compla-int	Apprehension/ appearance	Released on bail	Commencement of trial	Commencement of evidence	Close of trial	Order	Explan-ation for delay	Period of detention undergone during investigation, inquiry or trial for the purpose of Sec. 428 Cr.P.C
12.08.2002	17.10.2002	05.03.2010	05.03.2010	16.01.2012	28.02.2012	28.05.2025	31.05.2025	--	--

This case came up for final hearing on 28.05.2025 and the Court on 31.05.2025 delivered the following:-

J U D G M E N T

The accused are put on trial on the basis of the complaint filed by the Drug Inspector (Intelligence Branch), Office of the Assistant Drugs Controller, Ernakulam U/S.32 of Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'D and C Act'), for the offences under Rules 65(9)(a) and 65(3)(1) of the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as 'D and C Rules') r/w s.18(a)(vi) of the D and C Act punishable under section 27 (d) of the D and C Act.

2. **The complainant's case is as follows**:- Accused No.1 is a

partnership firm executed between its partners on 24.05.2002, having drug licenses vide No.7-189/20/2002 and 7-190/21/2002 dated 05.06.2002. Accused No.2 is the Managing Director of the firm and is authorized to represent the firm. Accused No.3 is the working partner of the firm. Accused Nos.2 and 3 are the persons responsible for the day-to-day affairs of accused No.1 firm. Upon receiving a complaint from one Mr.Madhu V.G, stating that the accused had substituted 'SERVACE 5mg' against the prescription given for his father Mr.Gopalan and later on he died, the complainant who is the Drug Inspector had inspected the accused No1.Firm and found that Schedule H drugs were sold by the accused firm without a prescription and also failed to record the name and address of the patient, prescriber and signature of the registered Pharmacist in the Cash Memo Book. Thereby the accused had committed the above mentioned offences.

3. This case was originally filed before the Hon'ble Additional Chief Judicial Magistrate Court, Ernakulam and is taken on file as CC No.2451/2004. Thereafter the case is transferred to this court and is taken on file as CC No. 868/2018, the present case.

4. On issuance of summons, the accused persons had appeared before the court and bail was granted to them. They had engaged a counsel of their own choice to defend their case.

5. On appearance of the accused persons, the copies of all relevant prosecution records were furnished to the accused persons as provided u/s. 207 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C').

6. The particulars of the offences under Rules 65(9)(a) and 65(3)(1) of the D and C Rules, 1945 r/w s.18(a)(vi) of the D and C Act punishable under section 27 (d) of the D and C Act were read over and explained to the accused and to which they pleaded not guilty and claimed to be tried.

7. To prove its case, the prosecution had examined CW1 to CW7 and CW9 as PW1 to PW8 and marked Exts. P1 to P26. Remaining witness; CW8 was given up by the learned Assistant Public Prosecutor. Hence the prosecution evidence is closed.

8. On completing the prosecution evidence, the accused were examined u/s. 313 (1) (b) of the Cr.P.C., during which they denied all the incriminating circumstances appearing in the prosecution evidence against them. Accused No.3 stated that he has no role in the day-today affairs of the medical shop.

9. No defence evidence.

10. Heard both sides and perused the records.

11. The points that arise for consideration are:-

1. Whether the accused sold drugs containing substances specified in Schedule 'H' of the D and C Rules and thereby committed an offence under Rule 65 (9)(a) of the D and C Rules r/w s.18(a)(vi) of the D and C Act, which is punishable u/s. 27(d) of D and C Act ?
2. Whether the accused supplied any drug without entering necessary particulars in the cash memo book as per rules and thereby committed offence under Rule 65(3)(1) of the D and C Rules r/w s.18(a)(vi) of the D and C Act, which is punishable u/s. 27(d) of D and C Act ?
3. Whether the accused are to be convicted, if so what is the sentence?

12. **Point Nos. 1 & 2**:- Since the evidence on these points are common, they are taken together for consideration.

13. The complainant's case is that upon receipt of a complaint from PW2- Madhu V.G, that the accused had sold a drug namely 'SERENACE' instead of 'SERVACE' prescribed for his father by PW7- Dr.Jyothy Sreekumar on 12.08.2002, the inspection was initiated. According to the prosecution, Mr.Gopalan - father of PW2 was thereafter treated in RCM, Hospital, Tripunithura and was died on 17.09.2002. According to the complainant, accused No.1 is the medical shop which is run on

partnership basis and accused No.2 and 3 are its partners. Accused also does not deny the same, and the version of accused No.3 in his statement u/s.313 of the Cr.P.C, as to denial of his role in the day -to -day affairs of accused No.1 firm, clearly show the admission of himself as to the working partner of accused No.1 firm as he had not denied to be the same. Moreover, accused Nos.2 and 3 does not have such a case that accused No.1 is not their Medical Shop in partnership and they have not sold any medicines to PW2. Ext.P25 series- copies of licenses also show that accused No.2 is the Managing Partner of accused No.1 - firm. Moreover, Ext.P6 - copy of Indenture establishes that accused Nos.2 and 3 are the partners of accused No.1 and are responsible for the day-to-day business of accused No.1. Thus accused Nos.2 and 3 are found liable for the act of sale of drugs by accused No.1 -medical shop.

14. Supporting the case of the complainant, PW2 testified that he had purchased medicines from accused No.1- medical shop for his father. His testimony shows that, his father Mr. Gopalan was under the treatment of PW7- Dr.Jyothy Sreekumar of Anugraha Clinic, Choorakkad for heart problems and PW7 had prescribed SERVACE, PARANAC, NITROVAS etc for his father. Since his father got developed discomfort after 20 days of consuming medication purchased from accused No.1, they consulted PW7 and on checking the medications, PW7 informed them that instead of the

medication named "SERVACE", "SERENACE" was given by the medical shop. Thus his father got admitted to RCM Hospital, Tripunithura and thereafter, on 17.09.2002, his father got expired. He admitted to have given Ext.P19- complaint before the Drug Inspector, Kakkanad. Thereafter, Ext.P17- Prescription and Ext.P18- Discharge Summary were seized from him.

15. PW7- Dr.Jyothy Sreekumar had admitted to have issued Ext.P17- prescription for the patient namely Gopalan on 12.08.2002. The testimony of PW7 shows that Mr.Gopalan was having Asthma, Diabetes, COPD, Ischemic heart disease and Left ventricular dysfunction. The testimony of PW7 coupled with Ext.P7 shows that she had prescribed the following medications to Mr.Gopalan.

1. SERVACE- 5MG

2. ALSOSTIX

3. NITROVAS SR 60MG

4. GLYLOX M

5. PIOZULIN 30MG

6. THEOASTHALIN SR

7. CECURE

16. The deposition of PW7 shows that SERVACE is a medication prescribed for a patient with heart failure for regulating blood pressure

and the chemical compound in it is Ramipril 5 mg. She further testified that SERENACE is an Anti psychotic drug with the chemical compound Haloperidol.

17. PW1-Rajathan K.V. and PW3- P.M.Jayan- the then Drug Inspectors (Intelligence Branch), Office of the Assistant Drug Controller, Ernakulam had conducted the inspection and investigation in this case. They were appointed as per Exts.P1 and P2 - orders by the State Government as the Drug Inspectors of Ernakulam. Hence they are having jurisdiction over the place in which accused No.1- firm is located.

18. PW1 had conducted the initial inspection of accused No.1 firm on 21.10.2002 and also recorded Ext.P4- statement of PW2 and obtained Ext.P5- letter of PW7. PW1 was accompanied by PW6- S.Prabhakumar- Assistant Drug Controller and PW6 had deposed akin to PW1 as to the procedures done at the time of inspection. Upon inspection, PW1 found that a drug namely "SERENACE" was sold by Bill No.73157 dated 12.08.2002. He had seized Ext.P8- Book of carbon copy of bills which contains Ext.P8(a)- the bill by which the said drug was sold to PW2 and prepared Ext.P6- mahazar and produced the same before the court along with Ext.P7- Form-16. PW1 had also visited the house of PW2 and seized Ext.P17- Prescription and Ext.P18- discharge summary from there and prepared Ext.P15- mahazar. PW4 to PW6 and PW8 are the attestors to the

mahazars. They had admitted to have witnessed the inspection and the seizure and they identified their signatures in the respective mahazars.

19. As per Ext.P8(a)- the medication named ALDOSTIX, PIOZULIN, SERENACE, PARANAC, BRUGESIC etc were sold by accused No.1 - medical shop. According to PW1, Ext.P9- original bill was produced by accused No.2 before him. PW3, upon transfer of PW1 took charge of the inspection and investigation and issued Ext.P21- Letter to the accused, to which accused No.2 had given Ext.P22- reply along with Ext.P23 - bill of purchase. PW3 categorically deposed that the accused had sold Schedule 'H' drugs without prescription and had not made the necessary entries in the Cash Memo Book and thus filed the complaint before the court.

20. The testimonies of PW2 and PW7 coupled with Ext.P17 clearly show that the medications prescribed by PW7 to the father of PW2 were SERVACE, ALSOSTIX , NITROVAS, GLYLOX, PIOZULIN, THEOASTHALIN and CECURE. Exts.P8(a) and P9 clearly show that 'SERENACE' is sold to PW2 instead of 'SERVACE' and another medication namely BRUGESIC-400 was also sold by the same bill. According to the complainant SERENACE and BRUGESIC-400 are Schedule 'H' drugs and sale of which without prescription is violative of Rule 65(9)(a) of D and C Rules. The learned counsel for the accused argued that those two drugs were purchased by PW2 by showing another prescription which is given for his

mother. PW2 stated that he had purchased some medications for his mother as well from accused No.1- firm. However, he categorically deposed that he purchased the same by showing the cover of the tablets and there was no other prescription. This testimony of PW2 makes it clear that, there were no other prescriptions produced by him before accused No.1- firm for purchasing the medications. Moreover, even though those drugs which are described as Schedule 'H' were purchased by PW2 for his mother, the sale of which without prescription is violative of Rule 65(9) (a) of the D and C Rules. Thus the contention of the learned counsel for the accused is found to be untenable.

21. S.18(a)(vi) of the D and C Act states as follows:-

Prohibition of manufacture and sale of certain drugs and cosmetics. From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—

(a) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale or distribute—

(vi) any drug or cosmetic in contravention of any of the provisions of this Chapter or any Rule made thereunder;

22. Rule 65(9)(a) of the D and C Rules, 1945 states as follows:-

Substances specified in Schedule H and Schedule H1 or Schedule X

shall not be sold by retail except on and in accordance with the prescription of a Registered Medical Practitioner and in the case of substances specified in Schedule X, the prescriptions shall be in duplicate, one copy of which shall be retained by the licensee for a period of two years.

23. Thus as per Rule 65(9)(a) of the D and C Rules, 1945 r/w s.18(a)(vi) of the D and C Act, sale of any medication which contains substances specified in Schedule H of the D and C Rules without prescription is violative of law. In the instant case, the complainant alleges that, the drugs namely SERENACE and BRUGESIC-400 comes under the Schedule 'H' of the D and C Rules, were sold by the accused, and thus the accused had violated Rule 65(9)(a) of the D and C Rules. The testimony of PW7 clearly show that SERENACE is a medicine containing the chemical compound HALOPERIDOL. Item No.237 of the Schedule H of the D and C Rules is HALOPERIDOL. In addition to that, the chemical compound in BRUGESIC-400 is IBUPROFEN, which is item No.244 of the Schedule H. Thus it is clear that as per Ext.P8(a)- Bill bearing No.73157 dated 12.08.2002, Schedule 'H' drugs were sold by the accused and hence they are found to be liable for the violation of Rule 65(9)(a) of the D and C Rules r/w 18(a)(vi) of the D and C Act and thereby they are punishable u/s.27 (d) of the D and C Act.

24. It is also the case of the complainant that the accused had sold the drugs without making necessary entries in the Cash Memo Book and thereby acted in violation to Rule 65(3) (1) of the D and C Act.

25. Rule 65(3) (1) of the D and C Act read as follows:-

The supply of any drug other than those specified in Schedule X on a prescription of a Registered Medical Practitioner shall be recorded at the time of supply in a prescription register specially maintained for the purpose and the serial number of the entry in the register shall be entered on the prescription. The following particulars shall be entered in the register:

(a) serial number of the entry,

(b) the date of supply,

(c) the name and address of the prescriber,

(d) the name and address of the patient, or the name and address of the owner of the animal if the drug supplied is for veterinary use,

(e) the name of the drug or preparation and the quantity or in the case of a medicine made up by the licensee, the ingredients and quantities thereof,

(f) in the case of a drug specified in Schedule C or Schedule H and Schedule H1 the name of the manufacturer of the drug, its batch number and the date of expiry of potency, if any,

(g) the signature of the registered Pharmacist by or under whose supervision the medicine was made up or supplied.

Provided that in the case of drugs which are not compounded in the premises and which are supplied from or in the original containers, the particulars specified in items (a) to (g) above may be entered in a cash or credit memo book, serially numbered and specially maintained for this purpose.

26. The evidence on the part of the complainant clearly show that, Ext.P8 is the Bill Book copy i.e., the Cash Memo Book and Ext.P8(a) is the copy of the bill by which the medications were sold to PW2. According to the complainant, Ext.P9 is the original of Ext.P8(a) produced by accused No.2 before him. The testimony of PW2 makes it obvious that the original bill in his hand was lost from him. However, since Ext.P8(a) is the carbon copy of the bill, it is found acceptable in evidence.

27. As per the case of the complainant, accused had not entered the name and address of the prescriber, address of the patient, full name of the manufacturer, full batch name of the Schedule H drugs sold and the signature of the registered Pharmacist in the Cash Memo Book. Ext.P8(a) is the copy of the bill contained in Ext.P8- Cash Memo Book through which medications were sold to PW2. According to PW1 and PW3, Ext.P9- original of Ext.P8(a) does not possess the name of the prescriber and

signature of the Pharmacist but the same are entered in Ext.P8(a) using another carbon paper, which is also violation of law. A mere perusal of Ext.P8 clearly show that the above mentioned necessary particulars are not entered in it as per law. Moreover, the prescriber of the medications sold as per Ext.P8(a) is PW7- Dr.Jyothy Sreekumar, but the name entered in Ext.P8(a) is Alex, who is not the original prescriber of those medications. Hence, the accused are found liable for making wrong entries as well.

28. It is also pertinent to note that, accused No.2 had given Ext.P12-Letter to the Drug Inspector by stating that instead of SERVACE, SERENACE was mistakenly sold by a sales girl in the medical store and also the name and address of the prescriber, address of the patient etc were not entered in the bill bearing No.73157 dated 12.08.2002, by which the medications were sold for Mr.Gopalan. It is also stated that, the name of the doctor and the signature of the Pharmacist were entered in the carbon copy of the bill using another carbon paper. This letter issued by accused No.2 shows a clear admission of himself as to the commission of the offence by the accused. Thus the accused are found to have committed the offence under Rule 65(3)(1) of the D and C Rules.

29. Thus on meticulous analysis of the evidence, this court find that the accused are liable for violation of Rules 65(9)(a) and 65(3)(1) of the

D and C Rules r/w s.18(a)(vi) of the D and C Act and thereby they are punishable u/s.27 (d) of the D and C Act. In this matter, the Maria Medicals, a partnership firm which is a medical store is arrayed as accused No.1. A Medical shop does not have a separate legal entity and it is an incorrect description of accused. As it is not a natural person, the Medical Store cannot be punished as per law. Hence accused Nos. 2 and 3 who are the partners of accused No.1 are found liable to be punished under Rules 65(9)(a) and 65(3)(1) of the D and C Rules, 1945 r/w s.18(a)(vi) and 27 (d) of the D and C Act. These points are thus found in favour of the complainant.

30. **Point No. 3**:- In view of the findings in Point Nos. 1 and 2 , this court find that the accused Nos.2 and 3 are guilty of the offences under Rules 65(9)(a) and 65(3)(1) of the D and C Rules, 1945 r/w s.18(a)(vi) of the D and C Act punishable under section 27 (d) of the D and C Act and convicted them u/s.255(2) of the Cr.P.C.

31. Considering the facts and circumstances of the case this is not a fit case to invoke the benevolent provisions of the Probation of Offenders Act. On conviction, the accused Nos.2 and 3 are sentenced to undergo imprisonment for a period of 1 year each and shall pay fine of Rs. 10,000/- each for the Rule 65(9)(a) of the Drugs and Cosmetics Rules, 1945 r/w s.18(a)(vi) and 27 (d) of the Drugs and Cosmetics Act, 1940.

In default of payment of fine, the accused shall undergo imprisonment for a period of one month. They shall further undergo imprisonment for a period of 1 year each and shall pay fine of Rs. 10,000/- each for the Rule 65(3)(1) of the Drugs and Cosmetics Rules, 1945 r/w s.18(a)(vi) and 27 (d) of the Drugs and Cosmetics Act, 1940. In default of payment of fine, the accused shall undergo imprisonment for a period of one month. Substantiative sentences shall run concurrently.

(Dictated to the Confidential Assistant, taken down and transcribed by her, corrected and pronounced by me in the open court on the 31st day of May, 2025.)

Sd/-
Athira R S Panicker
Judicial First Class Magistrate
Tripunithura

APPENDIX

Witnesses examined for the Prosecution:-

PW1	:	T.V.Rajathan, Drug Inspector, (Intelligence Branch), Office of the Assistant Drug Controller, Ernakulam
PW2	:	Madhu V.G., S/o.Gopalan
PW3	:	P.M.Jayan, Drug Inspector, (Intelligence Branch), Office of the Assistant Drug Controller, Ernakulam
PW4	:	Hariharan, S/o. Gopalan
PW5	:	BinulLa K., S/o.Karunakaran
PW6	:	S.Prabhakumar, Drug Inspector, (Intelligence Branch), Office of the Assistant Drug Controller, Ernakulam
PW7	:	Dr.Jyothy Sreekumar, MD(CIS), Anugraha Health Care and ECG Lab, Choorakkad.
PW8	:	T.N.Omanakuttan, S/o.C.K.Nanappan

Exhibits marked for the Prosecution:-

Ext. P1 : Transfer order dated09.04.2003
marked through PW1 on 28.02.2012

Ext. P2 : Proceedings of the Drug Controller dated 21.05.2001
marked through PW3 on PW1 on 28.02.2012

Ext. P3 : Complaint by Madhu dated 17.10.2002
marked through PW1 on 28.02.2012

Ext. P4 : Letter to Drug Inspector dated 21.10.2002
marked through PW1 on 28.02.2012

Ext. P5 : Doctors letter to Drug Inspector dated 21.10.2002
marked through PW1 on 28.02.2012

Ext. P6 : dated 15.08.2018
marked through PW1 on 28.02.2012

Ext.P7 : Form.16 dated 24.10.2002
marked through PW1 on 28.02.2012

Ext.P8 : Bill Book dated 15.07.2022
marked through PW1 on 28.02.2012

Ext.P8(a) : copy of Bill Book dated 15.07.2022
marked through PW1 on 28.02.2012

Ext.P9 : Original Bill dated 12.08.2002
marked through PW1 on 28.02.2012

Ext.P10 : Letter of S/o. Gopalan as to receipt of Rs.6,000/-
dated 07.09.2002 marked through PW1 on 28.02.2012

Ext.P11 : Invoice of Swathy Agencies dated 04.05.2002
marked through PW1 on 28.02.2012

Ext.P12 : Statement of Maria Medical Stores dated 24.10.2002
marked through PW1 on 28.02.2012

Ext.P13 : Statement of Pharmacist dated 24.10.2002

marked through PW1 on 28.02.2012

Ext.P14 : Statement of Sales girl dated 24.10.2002
marked through PW1 on 28.02.2012

Ext.P15 : Mahazar dated 13.11.2002
marked through PW1 on 28.02.2012

Ext.P16 : Form No.-16 (Receipt) dated 13.11.2002
marked through PW1 on 28.02.2012

Ext.P17 : Prescription dated 12.08.2002
marked through PW1 on 28.02.2012

Ext.P18 : Discharge Summary dated 06.09.2002
marked through PW1 on 28.02.2012

Ext.P19 : Letter from Madhu dated 13.11.2002
marked through PW1 on 28.02.2012

Ext.P20 : P19 is same

Ext.P21 : Letter from Drug Inspector dated 23.06.2003
marked through PW3 on 06.10.2022

Ext.P22 : Letter from M.V.Peter (Maira Medical Stores) dated 16.07.2003, marked through PW3 on 06.10.2022

Ext.P23 : Invoice (E.P.Agencies) dated 09.05.2002,
marked through PW3 on 06.10.2022

Ext.P24 : Statement of EP Agencies dated 19.10.2004
marked through PW3 on 06.10.2022

Ext.P25 (a): Form No.20 (License) dated 05.06.2002
marked through PW3 on 06.10.2022

Ext.P25 (b): Form No.20 (License) dated 05.06.2002
marked through PW3 on 06.10.2022

Ext.P26 : Indenture Certificate dated 24.05.2002
marked through PW3 on 06.10.2022

Ext.P27 : Recovery Mahazar dated 24.10.2002
marked through PW4 on 23.11.2022

Witnesses examined for the Defence:- Nil
Exhibits Marked for the Defence :- **Nil**
Material Objects:-Nil

Sd/-
Judicial First Class Magistrate
Tripunithura

// True copy//

Judicial First Class Magistrate
Tripunithura