

			bail		convicted		for the purpose of section 428 of IPC
A-1	Sri Nabin Ch. Kalita			U/S 15(1) of the Assam Health Establishments Act, 1993	Acquitted	N/A	N/A

APPENDIX-13

Date of offence	N/A
Date of FIR	11/09/2015
Date of charge-sheet	30/11/2015
Date of O.E.	04/08/2016
Date of commencement of evidence	23/05/2017
Date on which judgment is reserved	26/09/2022
Date of judgment	26/09/2022
Date of the Sentencing Order, if any	N/A

(J U D G M E N T)

- 1.** The prosecution case in brief as unfolded from the 'ejahar' filed by the informant Sri Chittaranjan Pathak, Joint Director of Health Service is that Institute "Dr. B.R. Ambedkar Memorial Hospital & Research Centre" has been functioning without any Valid permission, License from the competent authority. The so called License produced by Shri Nabin Ch. Kalita has lost its validity. The matter was enquired into by the SDM & H.O., Mukalmua BPHC and an EAC from the Office of the Deputy Commissioner, Nalbari. However, the report states that the institute does not fulfill the requirements which are essential for a Hospital or Medical Research Centre. Hence, as per the direction of the Deputy Commissioner, Nalbari he closed the institute and lodged a complaint in Mukalmua Police Station.
- 2.** The Officer-in-charge, Mukalmua Police station, on receipt of the Ejahar registered Mukalmua P.S. Case No. 277/15, under section 420 of IPC R/W Section 15(1) the Assam Health Establishments Act, 1993 and endorsed the concerned I/O for investigation. After completion of the investigation, the concerned I/O submitted charge sheet against the accused Sri Nabin Ch. Kalita under Section 420 of IPC, R/W Section 15(1) The Assam Health Establishments Act, 1993.
- 3.** In due course, the accused appeared before the Court and the copies of relevant documents were furnished to him as per section 207 of Cr.P.C. Particulars of offence u/s 15(1) the

Assam Health Establishments Act, 1993 were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

4. The prosecution side examined six (06) witnesses. The Learned Assistant Public Prosecutor prayed to close the PW evidence. The PW evidence is closed as per the submission of the Ld. APP.
5. The statements of the accused person under section 313 of Cr.P.C. is recorded wherein he took the plea of innocence and false implication. Defence side examined no witnesses.
6. I have heard the arguments advanced by the Learned Counsels for both sides.

7. POINTS FOR DETERMINATION:-

- (i) *Whether the accused established and maintained a health establishment namely "Dr. B.R. Ambedkar Memorial Hospital & Research Centre" without any Valid permission, License from the competent authority and thereby committed an offence u/s 15(1) the Assam Health Establishments Act, 1993 ?*

DISCUSSION, DECISION AND REASONS THEREOF:

8. The accused is facing trial on charge of commission of offence u/s 15(1) the Assam Health Establishments Act, 1993. Particulars of offence u/s 15(1) the Assam Health Establishments Act, 1993 were read over and explained to the accused person on 04-08-2016. 15(1) the Assam Health

Establishments Act, 1993 says that no person shall establish or maintain a health establishment without registration and a licence granted therefor under this act.

9. The informant (PW-1), Dr. Chittaranjan Pathak exhibited the FIR as Exhibit 1 and Exhibit 1(1) is his signature. PW-1, the Joint Director of Health Services, Nalbari lodged this case against the accused with allegation that "Dr. B.R. Ambedkar Memorial Hospital & Research Centre" has been functioning without any Valid permission, License from the competent authority. The so called License produced by Shri Nabin Ch. Kalita has lost its validity. The matter was enquired into by the SDM & H.O., Mukalmua BPHC and an EAC from the Office of the Deputy Commissioner, Nalbari. However, the report states that the institute does not fulfill the requirements which are essential for a Hospital or Medical Research Centre. Hence, as per the direction of the Deputy Commissioner, Nalbari he closed the institute and lodged a complaint in Mukalmua Police Station.

10. The evidence of PW-1 (informant) says that he was Joint Director of Health Services, Nalbari on 11-09-2015. He lodged one FIR on that day itself against the accused. He along with Circle Office, Barkhetri Raktim Baruah, SDM&HO, Mukalmua Block PHC Dr. Manoj Goswami, CM&HO (CD) Nalbari, Dr. Bhulaneswar Dutta, Police Officer from Mukalmua P.S. went to Dr. B.R. Ambedkar Hospital. On the basis of report submitted by SDM&HO, Mukalmua Block PHC, the

District Magistrate asked the SDM&HO, Mukalmua Block PHC to inquire whether the hospital i.e., Dr. B.R. Ambedkar has license, trade license, NOC from Director of Fire Service, NOC from Gaon Panchayat, Certificate from ASEB, appointment of doctor, certificate of appointment of radiographer nurse, certificate from Pollution Control Board etc. SDM&HO said that the aforesaid conditions were not fulfilled. The accused was given opportunity to fulfill the condition. But as the conditions were not fulfilled the hospital was given closure notice on 7.8.15. The closure notice was received by Ananta Kumar Deka. But as after giving 15 days time, the hospital was not closed, then on 11.9.15 they closed the hospital and lodged the FIR. When they went to the hospital of the accused they saw that there is no proper accommodation to keep the patient. No laboratory. There is Nurse Training Centre at the hospital but no tutor is available. There were no proper facilities in the hospital, but still it was running. When the license expired then the FIR was lodged. Exhibit 1 is the FIR and Exhibit 1(1) is his signature. Police recorded his statement. Police seized Inspection report of Health Establishment under Mukalmua BPC. Exhibit 2 is seizure list and Exhibit 2(1) is his signature. Material Exhibit 'A' Inspection Report of Health Establishment under Mukalmua Block PHC prepared by EAC Nirali Phangchupi.

- 11.** During cross-examination PW-1 says that the hospital is situated in an interior village. He heard that the

land was given by some of the donors. Material Exhibit 'A' was given by one EAC. While EAC inspection was done he was not present. As the license of Dr. B.R. Ambedkar hospital expired so he told that he has not got any valid documents in the FIR. What requirements are not fulfilled is not narrated in the FIR. Presently the hospital is closed. If the minister opened the hospital now he does not know. He was not given any written direction by D.C., Nalbari to file the FIR.

12. Now, from Exhibit 1 it is found that Deputy Commissioner, Nalbari directed the SDM & H.O., Mukalmua BPHC and an EAC to make an enquiry regarding validity of the license. Material Exhibit 'A' is the Inspection Report of Health Establishment under Mukalmua Block PHC prepared by EAC Nirali Phangchupi.

13. According to informant (PW-1), he found that the license has been expired. But no license is seized in connection with this case. The license is not been exhibited by the prosecution side in connection with this case. The Deputy Commissioner who has given the direction has not been examined in this case. The Inspection Report of Health Establishment under Mukalmua Block PHC prepared by EAC Nirali Phangchupi has not been examined in connection with this case.

14. The Medical Officers who along with the informant (PW-1) inspected the hospital are examined as PW-4 and PW-5.

15. According to PW-4, Dr. Satyendra Nath Sarma in the month of September, 2015 as per instruction of Dr. Chittaranjan Pathak, Joint Director, Health Service, Nalbari he accompanied him along with Dr. Bhubaneswar Dutta, Circle Officer of Barkhetri Revenue Circle and police personnel of Mukalmua P.S. visited the Dr. B.R. Ambedkar Memorial Hospital and Research Centre, No.2 Joysagar for inspection whether all the documents as per the Health Establishment Act were maintained by the hospital. Police seized some documents. Exhibit 2 is the seizure list and Exhibit 2(2) is his signature. Police recorded his statement. During cross-examination he says that as per the Health Establishment Act the criteria specified therein are required to be fulfilled by a hospital. The required documents are to be submitted to the office of the Joint Director, Health Service, Nalbari. The accused submitted some documents to the office of the Joint Director, Health Services, Nalbari. As per the Act the Joint Director, Health Services is to give a notice to the concerned authority of the institution if the required documents are not submitted. He does not know whether there was any direction from the Hon'ble Gauhati High Court for renewal of the license of the establishment of the accused. The establishment was a voluntary organisation. He does not know whether the government was associated with the finance of the establishment. He saw that the establishment was newly setup.

16. PW-5, DR. Bhubaneswar Dutta says in his evidence that he does not remember the date of incident. He was working as the Chief Medical Officer, Nalbari at that time. He along with Chittaranjan Pathak, Joint Director of Health, Nalbari went to Dr. B.R. Ambedkar Hospital, Joysagar. Accused Nabin Ch. Kalita was the proprietor of the Hospital. They had not find mattress on the beds in the hospital. The required instruments were not found functional in the OPD. They had not found any patient in the hospital. Police also accompanied them. Police seized some documents and took his signature in the seizure list. Exhibit 2 is the seizure list and Exhibit 2(3) is his signature. Police sealed the hospital in their presence as the required facilities were not available. Police recorded his statement. During cross-examination he says that he does not remember the date on which he visited to the Hospital. He visited the place of occurrence as per order of D.C., Nalbari. He does not remember whether any notice was issued to the hospital authorities prior to their visit to the hospital. Permission is required to be obtained by a hospital from the office of Joint Director of Health before opening of the hospital. At that time the B.R. Ambedkar hospital had the required permission for running the hospital. The seized articles were specified by the Joint Director of Health Department. He only accompanied him. He knows that the accused approached the Hon'ble Gauhati High Court. He has not heard whether the Hon'ble Gauhati High Court allowed

the hospital to renew the permission as he now not associated with the office. He has not seen the seized documents in court. He does not know whether the retired Joint Director of Health Department was also the Director of the B.R. Ambedkar Hospital. He denied defence suggestion that the hospital maintained all the formalities and procedures but the hospital was closed due to which the public and the institution suffered loss.

17. From the evidence of PW-4 and PW-5 there is nothing on record regarding the allegation made in the FIR.

18. PW-2, Md. Haser Ali is the local person who says that accused has taken the land from him and promised to give job to his three sons namely Hafiz Ali, Hakim Ali and Saifuddin. His sons started working in that hospital. But his sons hardly got any salary. After two years of running, the Director of Nalbari went and locked the hospital. But he does not know the reason why the hospital was locked. During cross-examination it is found that he has not lodged any complaint to Sub-Register regarding non receipt of money. He is not a part of the Hospital Management Committee.

19. From the evidence of PW-3 nothing related to this case could be gathered. The allegation made against the accused has not been supported by this piece of evidence.

20. PW-4, Md. Saiful Ali is a businessman who has a shop near the hospital. During his examination he also stated that the hospital was shut down two years ago. But he does

not know the reason that why the hospital was closed. Presently hospital is not running. One day police came and locked the hospital.

- 21.** From the evidence of PW-1, PW-2, PW-3, PW-4 and PW-5 it is found that their evidences do not prove the guilt of the accused to corner the accused. Moreover, the said license is not produced before this court.
- 22.** PW-6, Md. Abul Kalam Azad is the I/O of this case. He stated regarding the investigation of the case.
- 23.** During cross-examination I/O (PW-6) says that when he visited Dr. B.R. Ambedkar Memorial Hospital and Research Center, Jaysagar, Mukalmua, no license of the center was submitted before him. In the statement of the accused u/s 161 CrPC, the accused stated that he received permission to run the medical establishment. He denied defence suggestion that copy of the license is handed over to him by the accused. He had gone through the bail order passed by Hon'ble Gauhati High Court in favour of the accused by allowing him to go on anticipatory bail. In the bail order dated 14-10-2015, in criminal petition no. AS 3033/2015, Hon'ble Gauhati High Court, no mention of the fact that the license of the accused has been expired. He does not have any knowledge regarding the fact that Hon'ble Gauhati High Court made observation that the accused has to apply for renewal of the license before the state health department and the concerned department will consider the

same after verification. He also has no knowledge regarding the fact that if the accused applied for renewal of the license and received an order in his favour. At the time of his visit, the Dr. B.R. Ambedkar Memorial Hospital and Research Center, Jaysagar, Mukalmua, was locked. The seized material is not produced before him on the day of his deposition in the court and he cannot say the content of the seized material now. The finding of the report prepared by EAC, Niramala Phangsho has not been submitted with this charge sheet. As the accused failed to submit the license and permission, so he submitted the charge sheet. He denied defence suggestion that the allegation against the accused is that he has not renewed the license. He does not know whether Dr. B.R. Ambedkar Memorial Hospital and Research Center, Jaysagar, Mukalmua, is a NGO / charitable trust or profit making institute or not. He knows the criteria / requirement for running the health establishment like Dr. B.R. Ambedkar Memorial Hospital and Research Center, Jaysagar, Mukalmua. A permission in the form of a license issued by DC is required to run such health establishment. No sanction to submit charge sheet in the case is issued by DC. He denied defence suggestion that he has not followed the procedure stipulated by notification of the health department to investigate this case.

24. The cross-examination of PW-6 (I/O) reveals that the finding of the report prepared by EAC, Niramala Phangsho

has not been submitted with this charge sheet. The seized material is not produced before him on the day of his deposition in the court and he cannot say the content of the seized material now.

25. The evidence of the prosecution side was closed as per the prayer of the Ld. APP. Moreover, in this case the essential documents on the basis of which the allegation against the accused was made has not been produced before the court to prove the case.

26. Situated thus, in my considered opinion the prosecution side has failed to bring home the guilt of the accused person Under Section 15(1) the Assam Health Establishments Act, 1993.

CONCLUSION

The prosecution side failed to prove its case that accused person has committed offence u/s 15(1) the Assam Health Establishments Act, 1993.

ORDER

In the light of aforesaid discussions and reasons, it is seen that the prosecution side failed to prove the guilt of the accused person beyond reasonable doubt.

Accordingly, the accused Sri Nabin Ch. Kalita is acquitted from the offence under section 15(1) the Assam Health Establishments Act, 1993 and he is set at liberty forthwith.

The bail bond of the accused person and his surety shall remain in force for a period of 6 months from today as per amended Cr.P.C. The seized materials (if any) to be disposed of as per law.

Given under my hand and seal of this court on this 26th day of September, 2022.

Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari

APPENDIX-14**LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES****A. Prosecution witness**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Dr. Chittaranjan Pathak	Informant
PW-2	Md. Haser Ali	Other witness
PW-3	Md. Saiful Ali	Other witness
PW-4	Dr. Satyendra Nath Sarma	Other witness
PW-5	Dr. Bhubaneswar Dutta	Other witness
PW-6	Md. Abul Kalam Azad	Police witness

B. Defence witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH
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		WITNESS, OTHER WITNESS)
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C. Court witnesses, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE
		(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Exhibit 1	FIR
2.	Exhibit 2	Seizure list
3.	Exhibit P-3	Sketch map
4.	Exhibit P-4	Charge sheet

B. Defence: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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C. Court Exhibits: NOT APPLICABLE

Sr. No.	Exhibit Number	Description
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D. Material Objects:

Sr. No.	Exhibit Number	Description
1.	Material Exhibit A	Inspection Report of Health Establishment under Mukalmua Block PHC prepared by EAC Nirali Phangchupi

Sri Jayanta Kumar Saikia
Addl. Chief Judicial Magistrate
Nalbari