

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Cr. Misc Appl No. 740 of 2024

[Dr. Khamiso Altaf Hussain & others.....v.....The State]

Date of Hearing : 21.05.2025

Applicants through : Mr. Muhammad Ayoub Chandi,
Advocate

Respondents through : Mr. Shahryar Shar, Advocate for
complainant.

Mr. Shawak Rahore, Deputy Prosecutor
General.

ORDER

Miran Muhammad Shah, J:- Through instant Criminal Misc. Application, the applicants sought indulgence of this court to quash the proceedings arising out of crime No.37 of 2023, lodged under Section 319 PPC, at P.S. Bhattai Nagar, Hyderabad, after their rejection of an application moved under the prescriptions of Section 265-K Cr.P.C by the learned trial court vide order dated 16.10.2024.

2. The allegation against the applicants are that they being Doctors by profession committed medical negligence owing to which, the daughter of the complainant namely baby Silla aged about 12 years lost her breath in the hospital owned by the applicants.

3. Learned counsel representing the applicants articulated that the Sindh Health Care Commission (“**Commission**”) could not opine the negligence on the part of the applicants, therefore, the charge is groundless and there is no probability of conviction of the applicants if trial is proceeded with. He further contended that the complainant has already been advised to get the deceased admit in a public managed hospital but on the insistence of complainant, the deceased

was operated successfully and such fact can also be confirmed from the report submitted by the Liaquat National Hospital to the Commission. He further contended that the doctors are performing their duties diligently without any complaint from public at large. He further contended that the negligence, if any, is on the part of the complainant as he first got examined the deceased by other hospitals/clinic, therefore, the burden of negligence cannot be shifted on the shoulders of applicants/accused. He lastly contended that report of Liaquat National Hospital being an individual inquiry forum unequivocally renders the applicants not liable for any negligence, hence the proceedings pending before the learned trial court are liable to be quashed and further there is no probability of conviction of the applicants if trial is proceeded with as the charge is groundless.

4. Conversely, learned DPG assisted by learned counsel for the complainant under the prescriptions of Section 493 Cr.P.C premised his case on the arguments that it has become an order of the day that public at large is losing their life owing to the negligence on the part of the doctors who are not performing their duties honestly and same was the case in which the applicants negligently treated and examined the deceased, therefore, they are liable to be treated in accordance with law.

5. I have heard learned counsel for the litigating parties and perused the material made so available.

6. It is apparent from the above observation the board was enimical towards Dr. Shoukat (respondent No.2) and has focused

entirely upon one doctor and did not deliberate much upon case in hand. Hence the report of Board does not transpire any confidence.

7. Apart from above, the Province of Sindh enacted an statute with the name of Sindh Health Care Commission Act, 2013 and its preamble articulates that it is expedient to make provisions for the improvement of access, equity and quality of healthcare services. The definitions of healthcare services and healthcare service providers are worth reproduction and the same is illustrated hereunder:-

(xvi) "healthcare services" means services provided for diagnosis, treatment or care of persons suffering from any physical or mental disease, injury or disability including procedures that are similar to forms of medical, dental or surgical care but are not provided in connection with a medical condition and includes any other service notified by Government;

(xvii) "healthcare service provider" means an owner, manager or incharge of a healthcare establishment and includes a person registered by the Pakistan Medical Dental Council, National Council, pharmacy service provider;

8. Under the prescriptions of Sindh Health Care Commission Act, 2013, a Board was constituted by the Commission which after thorough consideration imposed liability of medical negligence upon the applicants and it is considered expedient to reproduce the relevant excerpt of order of the Commission and the same is reproduced hereunder:-

"Order by Sindh Healthcare Commission:-

After gathering all the facts, analysis and recommendations of medical experts, a formal report was presented to the CMC (constituted by BoC U/s 9(3) on 08.08.2024. Based on the recommendations of the CMC, the following order is being passed u/s 4 (e) of the SHCC Act (2013).

1.Administration of Memon Medical Center/Hospital administration is hereby instructed as follows:-

I. To pay a fine of PKR 200,000/- under Section 28(1) of the SHCC Act 2013 due to gaps in healthcare delivery system and maladministration described above.

II. To stop carrying out major surgeries under general anesthesia without establishing properly equipped recovery room alongwith ICU.

III. To implement patient care services according to laid down standards by the SHCC and according to the defined scope of services by getting SHCC Registration and then Licensing.

IV. to develop Standard Operating Procedure (SOPs) and Guidelines along with its dissemination to relevant process owner(s) for the following:

*.Clinical documentation and informed consent.
.PreOp assessment & anesthesia fitness and emergency management*

.Effective communication and counselling of the patient/family

.Foolproof mechanism to ensure proper system of referral to one level up facility at the time of need.

V. To make sure availability of trained & competent human resources, equipment and infrastructure compatible to the allowed scope of services the HCE.

2. Surgeon Dr. Khamiso Altaf Hussain Talpur is hereby instructed as follows:

i. To pay a fine of PKR 50,000/- under Section 28(1) of the SHCC Act 2013 because he as primary surgeon and his team did not adequate resuscitate/optimize the patient pre-operatively.

3. Dr. Shaukat Ali Mangrio, has 30 years of experience of providing supervised and unsupervised anesthesia care in public and private hospitals, but has no formal postgraduate qualification, he is hereby instructed as follows:-

I. To pay a fine of PKR 100,000/- under Section 28(1) of the SHCC Act 2013

II. To refrain from practicing as independent anesthetist but can work under supervision of a qualified anesthetist in future & compliance shall be submitted on an affidavit as evidence.

9. In such circumstances and in light of new law such must be dealt under the Sindh Health Commission and not under criminal liability.

10. The law requires the malafide and means rea in case of negligence. I place my reliance on 2011 CLC 463, which states the following;

“No means rea or motive for criminal negligence on the part of the practitioner was noticed---Special enactment always prevailed over the general law; and in the present case, special law to deal with the negligence of the practitioners being available, without exhausting that remedy, no criminal proceedings could be initiated--Once it was held by the Pakistan Medical and Dental Council that practitioner was guilty of negligence and professional misconduct, criminal law as well as civil law could be set into motion against them”

11. In such circumstances brining the applicants back to the accused box would be a case of double jeopardy. After being penalized once for an offence under the special law for medical negligence the matter cannot be dealt under the criminal law separately. I therefore, allow present Cr. Misc Application No.S-740 of 2024 and set-aside the order of learned trial Court.

JUDGE