

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Misc. Application No. 520 of 2024

Applicant : Afshan Iqbal
W/o. Muhammad Umair Khan
Through: Mr. Muhammad Ilyas
Khan Tanoli, advocate

Respondent No.1 : Zohaib Jabbar
son of Abdul Jabbar
Through: Mr. Irshad Ali Bhatti,
advocate

Respondents 2 to 5 : The State
Through: Mr. Sharafuddin Kanhar,
A.P.G. Sindh

Date of hearing : 14.09.2026.

Date of Order : 14.09.2026.

ORDER

Jan Ali Junejo, J:-- Through this Criminal Miscellaneous Application under Section 561-A, Cr.P.C., the applicant namely Afshan Iqbal W/o. Muhammad Umair Khan has called in question the order dated 13.05.2024 (hereinafter referred to as the "Impugned Order") passed by the learned Additional Sessions Judge-IV, Karachi West in Cr. Misc. Application No.1253 of 2024, whereby the SHO concerned was directed to record the statement of Respondent No.1 and, if cognizable offence is made out, to register FIR in accordance with law against the applicant.

2. Succinctly, the case of Respondent No.1 is that he is the brother of deceased Zainab D/o Abdul Jabbar, who was married to Arslan S/o Muhammad Athar on 07.03.2024. According to Respondent No.1 on the relevant date he admitted his sister Zainab to "Zainab Clinic Health Welfare Care Center", Karachi, for delivery, where the treatment was allegedly being conducted by one Dr. Afshan, who according to him, was neither a qualified doctor nor a surgeon. It is alleged that Dr. Afshan initially informed Respondent No.1, the husband and the parents of the deceased that the delivery case was normal; however, after about one hour, she allegedly operated upon the deceased without the presence or supervision of any senior doctor, as a result whereof Zainab expired.

Respondent No.1 further alleges that the fact of her death was not immediately disclosed to him, her husband or her parents and that her death occurred due to the alleged negligent and unlawful acts of Dr. Afshan and other proposed accused persons. It is further the case of Respondent No.1 that he submitted a written application before the respondent/SHO and higher authorities seeking registration of an FIR against the proposed accused persons; however, despite disclosure of cognizable offences, the respondent/SHO allegedly failed/refused to register the FIR. Having no other adequate and efficacious remedy, Respondent No.1 approached the learned trial Court by invoking its jurisdiction under Section 22-A, Cr.P.C., which was allowed vide the impugned order.

3. Learned counsel for the applicant contends that the impugned order is contrary to law and facts and has been passed without proper application of judicial mind. He submits that the learned Ex-Officio Justice of Peace failed to appreciate the mechanism prescribed under Section 23 of the Sindh Health Care Commission Act, 2013, whereby a complaint against a health-care service provider is required to be made in writing by the aggrieved person or, in case of death, by the legal representative, before the Sindh Healthcare Commission, which is competent to investigate the matter in accordance with law; therefore, the learned Ex-Officio Justice of Peace had no jurisdiction to direct registration of an FIR by the SHO in respect of the alleged medical negligence. He further submits that the applicant is a qualified lady who neither owns nor administers the subject health-care centre, nor was she responsible for the delivery or C-section of the deceased, as the said procedure was allegedly conducted by Dr. Shoaib, Surgeon, while the centre is stated to be owned/administered by Mr. Tanveer Ahmed; the applicant was merely performing reception/data-related duties and had no role in the medical treatment of the deceased. Learned counsel further submits that there are two apparently conflicting orders passed by the learned Ex-Officio Justices of Peace, one in favour of the applicant and the other in favour of Respondent No.1, which aspect was also not properly considered. He contends that Respondent No.1 has not lodged any complaint against the alleged surgeon or owner/administrator and is selectively seeking to implicate and harass the applicant, who is innocent and has been subjected to pressure and harassment without lawful justification. It is further argued that the impugned direction was issued without proper

inquiry and without considering the applicant's contention that the matter falls within the statutory jurisdiction of the Sindh Healthcare Commission. Learned counsel, therefore, submits that the impugned order is unsustainable, has caused serious prejudice to the applicant, and is liable to be set aside, with a further direction that no FIR be registered against the applicant and that any complaint relating to the alleged medical negligence be dealt with by the competent forum in accordance with the Sindh Health Care Commission Act, 2013.

4. Learned counsel for Respondent No.1 opposes the instant application and submits that the allegations contained therein are false, misleading and denied, except to the extent of the admitted facts. He contends that when the deceased Zainab, who was pregnant developed labour pains, she was taken to the clinic being run by the applicant, where Respondent No.1 was subsequently called; according to him, the applicant herself dealt with the deceased, assured the family that it was a case of normal delivery, took her to the labour room, demanded Rs.36,000/- and thereafter called a male doctor, following which the operation was commenced. After about an hour, the applicant allegedly informed the family that a baby girl had been born and that the mother was in good condition, but they were not permitted to meet the deceased. Subsequently, a ward boy allegedly disclosed that the deceased was in a serious condition and that the clinic had no ICU facility, whereupon she was shifted by ambulance to Murshid Hospital, where she was declared dead. Learned counsel submits that when Respondent No.1 returned to the applicant's clinic, it was found locked, and alleges that the applicant has attempted to shift responsibility upon Dr. Shoaib and the alleged administrator without producing any supporting material or proof of any such referral or inquiry. He further submits that the Sindh Healthcare Commission Act, 2013 does not bar recourse to the criminal law and that, although Section 23 prescribes the procedure for complaints before the Commission and Section 4(2)(e) empowers it to inquire into malpractice and failures in the provision of healthcare services, Section 26(2) itself contemplates reference of a matter to the concerned governmental authority or law-enforcement agency where action under any other law is warranted. It is therefore contended that the learned Ex-Officio Justice of Peace was competent to issue appropriate directions to the concerned SHO under Section 22-A, Cr.P.C. He further submits that the applicant

herself allegedly failed to comply with the statutory requirement of registration/licensing under the Sindh Healthcare Commission Act, 2013 and cannot take advantage of her own alleged non-compliance. Learned counsel maintains that the impugned order was passed after due consideration of the material placed before the Court and contains no illegality or ambiguity warranting interference. He further disputes the applicant's claim that she was merely performing reception or data-related duties, asserting that she was running the clinic, dealing with the patient, assuming responsibility for her treatment and receiving the medical charges, and that the applicant has failed to produce any documentary material substantiating her alleged limited role or the responsibility of Dr. Shoaib or any other administrator. He submits that Respondent No.1 has merely availed the legal remedy available to him for protection of his rights and for seeking appropriate action regarding the death of his sister, and that the allegations raised by the applicant regarding harassment, compromise with other persons and mala fide are unsupported by any material. Learned counsel, therefore, submits that the applicant has failed to establish any illegality or jurisdictional defect in the impugned order and prays that the instant Cr. Misc. Application be dismissed with compensatory costs.

4. On the other hand, learned A.P.G. Sindh for the State fully supports the impugned order, adopts the arguments advanced by learned counsel for Respondent No.1, and opposes the instant application.

5. I have heard the learned counsel for the applicant, learned counsel for Respondent No.1 and learned A.P.G. Sindh for the State and have gone through the available record with their assistance.

6. The principal grievance of the applicant is that the learned Ex-Officio Justice of Peace, while passing the impugned order, failed to appreciate the statutory mechanism provided under the Sindh Healthcare Commission Act, 2013 and directed registration of an FIR against her without first obtaining an expert determination regarding the alleged medical negligence. The contention, however, does not warrant interference in the inherent jurisdiction of this Court. The jurisdiction under Section 561-A, Cr.P.C. is extraordinary and is to be exercised sparingly to prevent abuse of the process of law or to secure the ends of justice; it does not ordinarily permit this Court to undertake a detailed

appreciation of disputed facts or to determine, at this stage, the ultimate culpability of a person in respect of allegations which require investigation.

7. In the present case, Respondent No.1 has leveled specific allegations regarding the treatment of his deceased sister at the subject healthcare establishment, including that she was admitted for delivery, an assurance of normal delivery was allegedly given, an operative procedure was thereafter undertaken and, subsequently, she was shifted to another hospital where she was declared dead. The applicant on the other hand, disputes her role and asserts that she was merely performing reception/data-related duties and that the medical procedure was conducted by Dr. Shoaib, while the healthcare establishment was owned/managed by another person. These are disputed factual questions which cannot appropriately be conclusively determined in proceedings under Section 561-A, Cr.P.C. at this stage. Whether the applicant had any role in the treatment of the deceased, whether the medical procedure was properly performed, whether the healthcare establishment possessed the requisite facilities and whether the death was attributable to any act or omission constituting medical negligence are matters requiring proper investigation and, where necessary, expert medical assessment.

8. The argument that the Sindh Healthcare Commission Act, 2013 provides a specialized mechanism for dealing with allegations of malpractice, failure in the provision of healthcare services and medical negligence is, to that extent, well-founded. The Act empowers the Commission to inquire into and investigate allegations of maladministration, malpractice and failures in the provision of healthcare services, while its statutory scheme also provides for inspection and investigation of healthcare establishments. The Act further contemplates that, where circumstances warrant action under any other law, the matter may be referred to the concerned governmental authority or law-enforcement agency. However, the existence of such a statutory mechanism, in the circumstances of the present case, does not justify quashing the impugned order at the threshold, particularly when the allegations made by Respondent No.1 disclose a matter requiring lawful investigation. At the same time, the specialized expertise of the Commission ought to be utilized for determination of the medical aspect of the allegations.

9. It is also relevant that Section 19 of the Sindh Healthcare Commission Act, 2013 specifically deals with medical negligence, while the statutory definition of medical negligence concerns injury or death resulting from improper treatment in a healthcare establishment. The statutory framework therefore demonstrates that the question whether the death of the deceased was occasioned by medical negligence cannot appropriately be determined merely on the basis of competing assertions of the parties and requires consideration of the relevant medical record and expert material.

10. In these circumstances, I find that the applicant has failed to point out any patent illegality, jurisdictional defect or abuse of the process of Court in the impugned order warranting exercise of the extraordinary jurisdiction under Section 561-A, Cr.P.C. The allegations of mala fide, harassment and false implication raised by the applicant are disputed questions of fact and, in the absence of unimpeachable material establishing the same, cannot furnish a ground for quashing the impugned order at this stage. Likewise, the defence plea that the applicant was merely a receptionist or data-entry employee and had no role in the treatment of the deceased is a matter to be examined during investigation on the basis of the available record and other evidence. The impugned order merely directs the police to record the statement of Respondent No.1 and, if a cognizable offence is disclosed, proceed in accordance with law; it does not constitute a final determination of the applicant's guilt or liability.

11. Consequently, the instant Criminal Miscellaneous Application is found to be devoid of merit and is accordingly dismissed. However, keeping in view the nature of the allegations and the specialized statutory mechanism available under the Sindh Healthcare Commission Act, 2013, the concerned Investigating Officer/Investigating Agency shall, during investigation, refer the allegations relating to the treatment and alleged medical negligence resulting in the death of deceased Zainab to the Sindh Healthcare Commission for examination and expert determination in accordance with law, along with the relevant medical record and other material collected during investigation. The Investigating Officer shall extend full cooperation to the Commission and provide such record/material as may be required for the purpose of its inquiry. Upon completion of such proceedings, the report/findings of the Sindh

Healthcare Commission shall be obtained and made part of the investigation record, and the same shall be duly considered by the Investigating Officer while submitting the final report under Section 173, Cr.P.C., strictly in accordance with law.

JUDGE