

**ORDER SHEET**

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.

C.P. No. D – 1938 of 2017.

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DATE	ORDER WITH SIGNATURE OF JUDGE
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09.06.2017.

FOR KATCHA PESHI.

Mr. Zulfiqar Ali Samo, Advocate for the petitioner.

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Through instant petition the petitioner has impugned the order dated 5.5.2017, passed by the IVth Additional Sessions Judge, Shaheed Benazirabad in Criminal Miscellaneous Application No.656 of 2017, whereby the application filed under section 22-A(6)(i) Cr.P.C. by the petitioner has been dismissed.

Learned counsel for the petitioner submits that learned Justice of Peace was not justified to dismiss the application of the petitioner as the cognizable offence was reported therefore, the learned Justice of Peace was under legal obligation to issue direction to the concerned S.H.O. to lodge an F.I.R. against the proposed accused.

We have heard the learned counsel for the petitioner, perused the record as well as impugned order dated 5.5.2017, passed in the instant case which reflects that the complainant has expressed his grievance against the proposed accused on the allegation that he did not provide proper medical attention to his servant who had suffered brain hemorrhage whereafter he was taken to Civil Hospital Nawabshah. It has been further alleged that the patient remained in the Hospital for three days when the proposed accused i.e. Dr. Shams Brohi being Incharge People's Medical College Nawabshah, did not examine the patient even for once and therefore, patient was shifted to Zohaib Medical Center (Private Medical Center) where he was examined by the aforesaid doctor. Charged the initial amount of Rs.50000 for the surgery however, did not carry out such surgery and demanded further amount for such purpose. The learned Justice of Peace after having called the report from the concerned S.H.O. and examining the record has formed an opinion that allegations as contained in the application do not refer to any cognizable offence whereas, the complainant never

approached the concerned S.H.O. for lodging the F.I.R. nor approached the Management of the said Hospital complaining the negligence on the part of the proposed accused. It has been further observed by the learned Justice of Peace that no material evidence whatsoever was produced by the complainant to support the allegation of gross negligence by the proposed accused.

We do not find any error in the findings as recorded by the learned Justice of Peace in the instant matter, as prima facie, it appears that in the complaint filed by the petitioner under section 22-A Cr.P.C. no specific cognizable offence has been reported whereas, vagueness of the allegations and uncertainty of occurrence of the incident, which otherwise requires inquiry and probe into such allegation of gross negligence or professional misconduct, would not prima facie justify for issuing direction for registration of F.I.R. or a criminal case against the proposed accused who is a doctor by profession. We may further observed that protection under the Medical Practitioner's Act or the P.M.D.C. Ordinance, available to a professional doctor can be challenged if there is some concrete material on record evidence regarding negligence or professional misconduct is available and unless it is established that some gross violation, misconduct or professional negligence has been committed by a doctor while dealing with his patient, his conduct on vague and baseless allegation cannot be subjected to criminal proceedings by filing an application under Section 22-A Cr.P.C. Moreover, complainant is at liberty to seek proper remedy as may be available under the relevant law including the remedy of filing a direct complaint or to approach the P.M.D.C. by lodging a proper complaint regarding professional misconduct and negligence on the part of the doctor provided there is some incriminating material available with the petitioner.

Accordingly, we do not find any merit in the instant petition which is dismissed in limine.

***Judge***

***Judge***

A.