

ORDER SHEET
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

C.P. No.D- 787 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing of main case.

13.01.2021

Mr. Muhammad Jameel Ahmed, Advocate for Petitioners.
Mr. Jehangir Khan Pathan, Advocate for respondent No.1.
Mr. Muhammad Ismail Bhutto, Additional Advocate General,
Sindh.
Ms. Rameshan Oad, A.P.G.

ORDER

KHADIM HUSSAIN TUNIO, J:- Through this petition, petitioners have challenged / sought quashment of F.I.R No.81 of 2020, which was lodged on the complaint of respondent No.1 as a consequence of order of Justice of Peace under Section 22-A & B Cr.P.C.

2. Facts of the case in brief, are that petitioner No.1 is doctor by profession and running a clinic under the name and style of Al-Shafa Clinic, situated at Unit No.5 Latifabad, Hyderabad, showing himself as Child Specialist. Respondent No.1 in the F.I.R has alleged that due to lack of knowledge of doctor / pediatric, his daughter Baby Anabia was not provided proper treatment and she died. Respondent No.1 has tried to register F.I.R. which was not registered by police and therefore he filed an application under Section 22-A & B Cr.P.C, which was dismissed by learned Ex-Officio Justice of Peace, Hyderabad vide order dated 30.11.2019 with the following observations:-

“ In view of above circumstances and report of SP Complaint Cell Hyderabad, it is appropriate that the matter was ought to be challenged before medical board but applicant has failed to challenge the same, applicant has failed to approach Sindh Health Care Commission and he directly appeared before the Court. Therefore, I find no merits in the instant application, hence the same is hereby dismissed. Applicant is at liberty to approach Sindh Health Care Commission, if he so desires. Accordingly, the criminal petition stands disposed of.”

3. In compliance of the aforementioned directions of the learned Additional & Sessions Judge, respondent No.1 approached the Sindh Health Care Commission by means of an application, which was thoroughly proceeded in accordance with the rules and in their findings the Sindh Health Care Commission had made certain observations against the petitioner, which we do not want to produce here as it may prejudice the case of respondent No.1 and/or the petitioners themselves. After the aforesaid report, the complainant / respondent No.1 again filed an application under section 22-A & B Cr.P.C. (copy is available at page-27 of Court file). The petitioners contested the said application and subsequently the F.I.R. was registered in terms of the impugned order.

4. Learned counsel for petitioners submits that subject F.I.R. is liable to be quashed in terms of Section 29 of the Sindh Health Care Commission Act, 2013. In support of his contention he places reliance on the cases reported in (1) **PLD 2019 Lahore 429 (Dr. Riaz Qadeer Khan v. Presiding Officer, District Consumer Court, Sargodha and others)**, (2) **2016 SCMR 447 (Director General, FIA and others v. Kamran Iqbal and others)**, (3) **PLD 2010 Karachi 134 (Muhammad Aslam v. Dr. Imtiaz Ali Mughal & 4 others)** and (4) **2020 PCr.LJ 1583 (Amjad Ali v. Dr. Taqdees Naqaish and others)**.

5. On the other hand learned counsel for respondent No.1 vehemently opposed the contentions so advanced by learned counsel for Petitioners and relied upon the case law reported as **PLD 2018 Lahore 903** and **2015 PCr.LJ 1628**.

6. We have heard the learned counsel for the parties and perused the material available on record as well as case laws cited by the learned Counsel for the petitioner.

7. In order to make our mind convenient, Section 29 is reproduced as under:-

“29. No suit, prosecution or other legal proceedings related to provision of healthcare services shall lie against a healthcare service provider except under this Act.”

8. The gist of the case is that whether the subject F.I.R can be quashed. In our view, without exhausting remedy no criminal proceedings can be initiated. Once the petitioners were found guilty of the negligence and professional misconduct by Sindh Health Care Commission after

thorough inquiry conducted on the complaint of the respondent and fine was also imposed upon the petitioner. Thereafter, the respondent approached the Ex-Officio Justice of Peace after exhausting the remedy available to him under the Sindh Health Care Commission Act, 2013 through an application under Section 22-A&B Cr.P.C which was allowed after providing full opportunity of hearing to the parties including the petitioners through impugned order and thereby F.I.R was registered showing that the impugned order has been complied with in its letter and spirit and after thorough investigation, the case against the petitioners was challaned before the Court having jurisdiction. As such, criminal as well as civil law can be set into motion simultaneously. Furthermore, the contents of instant petition and that of the F.I.R put in juxtaposition to each other which bring the case of the parties within the area disputed question of facts and law and such factual controversy cannot be taken into consideration by this Court through present petition which requires proper probe and investigation as well as evidence of the parties, which is the absolute duty of the trial Court. If the petitioners/accused are feeling aggrieved of the cognizance took by the learned Magistrate concerned then the proper and alternate remedy for them is to make an application under Section 249-A or 265-K Cr.P.C as the case may be. To this effect, the reliance is placed upon the case of MUHAMMAD FAROOQ v. AHMED NAWAZ JAGIRANI & others (PLD 2016 Supreme Court 55).

9. So far the case law referred to by the learned Counsel for the petitioners is concerned, there was no complaint made to the Sindh Health Care Commission and action was initiated by filing a complaint at the Police Station, which was assailed and declared without lawful authority. More particularly, in case of RIAZ QADEER KHAN (*supra*) the private respondents filed complaint against the petitioners for their alleged medical negligence and the petitioners filed application for rejection of the complaint on the ground that after promulgation of Punjab Health Care Commission Act, 2010, the consumer Court has lost jurisdiction to adjudicate upon the matter. In case of DIRECTOR GENERAL FIA & others (*supra*) the dispute was in between two private individuals, which was purely in respect of business transaction, therefore, it was opined that the F.I.A had no jurisdiction in the matter. In cases of MUHAMMAD ASLAM and AMJAD ALI (*supra*), the acquittal appeals filed by the complainants/appellants against the orders passed by the learned trial

Court under Section 249-A Cr.P.C and 265-K Cr.P.C respectively the respondents/accused were acquitted by the learned trial Court and acquittal appeals filed by the appellants/complainants against their acquittal were dismissed. Therefore, the present case is not hit by the judgments referred to by the learned Counsel for the petitioners for the reasons that the respondent No.1 at the first instance made complaint before the Sindh Health Care Commission where disciplinary proceedings were initiated against them by imposing the fine amount.

10. In view of above facts and circumstances, the petition being meritless is hereby dismissed, however, this Court is leaving the petitioners at liberty to approach the trial Court by filing appropriate application for their pre-mature acquittal if they choose so.

JUDGE

JUDGE

Shahid