

ORDER SHEET**IN THE HIGH COURT OF SINDH AT KARACHI**

Before:

Mr. Justice Ahmed Ali M. Shaikh, CJ

Mr. Justice Yousuf Ali Sayeed

CP No.D-1763 of 2016

Directions: of the Respondent No.7

1. For orders on MIT II Report dated 11.02.2019
2. For orders as to maintainability of the petition.

30.08.2021

Mr. Shahnawaz Khan, Advocate for petitioner Anees son of Abdul Karim

Mr. Salman Talibuddin, Advocate General, Sindh.

Mr. M. Nadeem Khan, Assistant Attorney General.

Mr. Azhar Ejaz, Advocate for Respondent No.7, Muhammad Farooq Sanka.

AHMED ALI M. SHAIKH, CJ.- By invoking the extra-ordinary Constitutional Jurisdiction of this Court, petitioner has sought following relief(s) in captioned petition:-

- (a) To direct the respondent No.1 constitute a enquiry committee for making enquiry in subject matter and further be directed to them to submitted report before this Hon'ble Court within two months without failure.
- (b) To direct the Respondent No.3 and 5 to submit report status of registration of degrees and entitlement for practice as orthopaedic (sic) surgeon to the respondent No.7 and further be pleased to direct the respondent No.3,5 and 6 to assist this Hon'ble Court for qualification as practitioner orthopaedic (sic) surgeon.
- (c) To direct the respondent No.1 to constitute special medical board under supervision of orthopaedic (sic) specialists of reputed orthopaedic hospitals for medical examination of the petitioner and submitted report before this Hon'ble Court.
- (d) To direct the respondent No.1 to constitute special investigation team for investigation of subject matter accordingly and submitted report before this Hon'ble Court.
- (e) To direct the respondent No.2 to 5 to examine the documents and physical inception of the so-called Orthopaedic (sic) Trauma Centrea (sic) situated plot No.772, Block-3, F. B. Area, Karachi and submitted report this Hon'ble Court.
- (f) To restrain the respondent No.7 to introduce as orthopaedic (sic) surgeon to anyone and further be pleased to seal so-called Orthopaedic (sic) Trauma Centrea (sic) situated plot No.772, Block-3, F. B. Area, Karachi till final decision of this petition.

Any other relief(s), which this Hon'ble Court may deem fit and proper according to the circumstances of the case.”

2. Briefly stated, the case as set up in instant Petition is that in June, 2014 Petitioner while in Bangkok (Thailand) slipped and fell in the bathroom resulting in the dislocation of his right elbow. After receiving first aid, he was suggested minor operation. As his stay in Thailand was on temporary basis, Petitioner came back on 03.07.2014 and next day consulted the Respondent No.7, practising as Orthopaedic Surgeon at Orthopaedic Trauma Centre, FB Area, Karachi. The Respondent No.7 after conducting the operation of the dislocated right elbow discharged the Petitioner on 06.07.2014. On subsequent visits he was advised physiotherapy for six months, which he followed but all in vain. Later he contacted Professor Dr. Shahid Noor and Dr. Shah-e-Azam, of Liaquat National Hospital and TO Clinic, Gulshan-e-Iqbal, Karachi, respectively, who, as per averments, opined that the Respondent No.7 had not provided the medical treatment properly. The Petitioner then approached the Respondent No.7 who instead of accepting his guilt started abusing him. The Petitioner, inter alia, approached the Ministry of Health, Pakistan Medical and Dental Council and SHO Azizabad Police Station, Respondents No.2, 3 and 8 but to no avail. The Petitioner filed petition bearing No.871/2015 and pursuant to the orders passed by the V Additional District Judge, Central Karachi, FIR No.291/2015 under Sections 336, 468 and 322 PPC was registered against the Respondent No.7. However, the Respondent No.9, I.O., submitted interim challan suggesting disposal of the case in 'A' class but the concerned Magistrate ordered disposal of the case in 'C' class.

3. The learned counsel for the Petitioner submitted that the Respondent No.7, being MBBS registered as a General Physician, was not entitled to portray himself as an Orthopaedic Surgeon. He submitted that the Respondent No.7, thus has been playing with the lives of the general public and obtaining a pecuniary advantage by way of such deception. He further submitted that the Petitioner approached the Respondents No.1 to 5 i.e. the Ministry of Health, Pakistan Medical and Dental Council, Executive District Officer (Health) for taking action against the Respondent No.7 but to no avail. He prayed that the official Respondents be directed to constitute a special medical board to examine and verify the educational certificates/degrees of the Respondent No.7 and the Orthopaedic Centre being run by him.

4. The learned Advocate General, Sindh, submitted that the controversy involved in the instant cannot be resolved by this Court under Article 199 of

the Constitution. He further submitted that in fact the Petitioner has been pursuing remedy before wrong forum and his remedy, inter alia, lies under the Sindh Health Care Commission Act, 2013 and the Rules framed thereunder. He further submitted that even the FIR lodged against the Respondent No.7 at the instance of the Petitioner was disposed in 'C' class. He prays that the instant Petition be dismissed in the circumstances.

5. Mr. Azhar Aijaz Siddiqui, learned counsel representing the Respondent No.7 submitted that Dr. Muhammad Farooq Sanka was working as a Senior Orthopaedic Surgeon (BS-19) and later promoted as Chief Orthopaedic Surgeon (BS-20) with the Government of Sindh. He further submitted that as the Petitioner has lodged FIR against the Respondent No.7 on false and fabricated evidence, the same was rightly disposed of in 'C' class by the learned Magistrate way back in April, 2016.

6. We have heard the learned counsel for the Petitioner, Advocate General, Sindh and learned Counsel for the Respondent No.7 and with their able assistance scanned the material available on record. Perusal of the order sheets reveals that the Respondent No.7 has filed a Suit bearing No.03 of 2017 seeking recovery of Damages and Defamation of Rs.1,48,00,000.00, against the Petitioner herein, which is pending adjudication before the learned V Additional District Judge, Karachi Central. On our directions, the learned MIT II of this Court has placed before us the photocopies of the plaint of aforesaid suit and the civil suit No.898 of 2020, filed by the Petitioner against the Respondent No.7, which suit is pending adjudication before the V Senior Civil Judge, Karachi Central. Therefore, in view of availability of alternate and efficacious remedy to the Petitioner, which he so elected, the Petition in hand merits no consideration and is liable to be rejected on this score alone.

7. During hearing learned counsel submits that the Petitioner has been running from pillar to post and approached the official respondents for taking action against the Respondent No.7, inter alia, verifications of his degrees, constitution of enquiry committee to investigate the matter, physical inspection of so-called Orthopaedic Trauma Centre, FB Area, Karachi. In our opinion, in the case in hand, after enactment of the Pakistan Medical Commission Act, 2020, Sindh Healthcare Commission Act, 2013 and its Rules, 2017 framed thereunder, Petitioner's remedy, if any, lies before the said forums. The Pakistan Medical Commission Act, 2020, inter alia, provides punishment to (i) whoever falsely gets registered with the Authority as a registered medical or

dental practitioner without possessing recognized medical or dental qualifications or attempts to get registered with the Authority as a registered medical or dental practitioner without possessing recognized medical and dental qualifications; and (ii) whoever falsely pretends to be registered under this Act as a medical practitioner or dentist and uses with his name any title or words or letters representing that he is so registered with the Authority or uses the word “doctor” or any other nomenclature or designation without legal basis, irrespective of whether any person is actually deceived by such pretence or representation or not. Under the Sindh Healthcare Commission Act, 2013, the Commission, inter alia, has the powers to revoke and suspend the license, undertake investigation and enquire into the allegations of maladministration, malpractice or failure on the part of a healthcare service provider or any employee of the healthcare service provider, etc on a complaint filed by aggrieved person within the prescribed period.

8. This being so coupled with the fact that both the Petitioner and Respondent No.7 have already preferred Suits against each other, pending before two different civil Courts, we are of the firm view that the Petitioner has an alternate efficacious remedy for redressal of his grievances and petition is not maintainable.

For the foregoing reasons, instant Petition stands dismissed.

Judge

Chief Justice