

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Crl. Misc. Application No. 147 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGES
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1. For hearing of main case
2. For hearing of MA No.3096/2019

16-05-2023

Mr. Shoukat Hayat, Advocate for applicants.
Mr. Maroof Hussain Hashmi, Advocate for respondent No.3
Mr. Zahoor Shah, DPG.

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Omar Sial, J: F.I.R. No. 406 of 2016 was registered under sections 319 and 34 P.P.C. at the New Town police station on 25.12.2016 on the complaint of one Fazal Ahmed. Fazal reported that his son Ahmed Raza had a toothache. He was taken to Ziauddin Hospital from where he was referred to Patel Hospital. The doctors at Patel Hospital operated upon Ahmed and then after a week of in-patient care, was discharged with the instructions that he should come back a week later for a follow up check-up. When Ahmed went for the check-up, he was informed that he needed radiation/chemotherapy. Radiation treatment was given to Ahmed which caused burn wounds on his face. Fazal complained to the doctors that they had burnt his son's face. The doctors then told him that a tumor had developed again and that Ahmed will need further treatment at the Aga Khan Hospital. Fazal alleged that at the Aga Khan Hospital the surgeons who operated upon Ahmed i.e. Dr. Fazal-ur-Rehman and Dr. Mubashir Ikram (the two applicants in these proceedings) removed the tumor which had re-developed and told Fazal that in three to four months Ahmed would be better. Unfortunately, four months later, Ahmed expired due to the cancer. Fazal lodged the aforementioned F.I.R.

2. An 8 member board was set up by the Sindh Healthcare Commission which on 09.03.2017 reviewed the entire medical records of Ahmed and concluded its inquiry by stating "Sarcomatoid poorly differentiated Squamous cell carcinoma is the most lethal variety of such cancers. The nature of the cancer is as such that it responds sometime poorly to the

surgery and radiation but we could not find any unethical or wrong treatment on the part of any doctor, who can be held responsible for the cause of death as in the entire course of treatment the patients general condition and the disease kept on deteriorating, which eventually could not succumb to his ailment.” While the English of the author of the report may not be stellar, the conclusion is clear i.e. there was no negligence on the part of the doctors. The Board also noted that all stages of treatment the family of the deceased was informed of the morbidity and mortality of the illness Ahmed had.

3. Not being satisfied with the report of the SHCC, the applicants moved an application (Criminal Misc. App No. 147 of 2019) in this Court pursuant to which the SHCC conducted another inquiry and submitted its report on 28.10. 2019. The SHCC, once again, came to the conclusion that Ahmed was provided care and treatment as per international protocols and that there was no evidence of medical negligence found on part of the doctors.

4. The only ground agitated by the learned counsel was that the doctors knew nothing about what they were doing and could not tell the difference between a toothache and a mouth cancer. The criticism of the learned counsel is completely unjustified. The record shows that both doctors are well qualified and experienced in their lines of work with an impressive array of qualifications.

5. It would be the rarest of rare doctors who would intentionally want to kill his patient. It appears from the record that a distraught father, having lost a young son to cancer, being overwhelmed with grief and emotion, may have not accepted the unfortunate truth and instead blamed the doctors who had treated his son. Nevertheless, in light of the inquiry conducted and reports issued by the SHCC, it is clear that the doctors cannot be criminal culpable in this present case.

6. The impugned order is set aside and proceedings against the applicants quashed.

JUDGE