

ORDER SHEET

IN THE HIGH COURT OF SINDH CIRCUIT COURT, LARKANA.

Cr. Misc. Application No.S-378 of 2023.

DATE	ORDER WITH SIGNATURE OF HON'BLE JUDGE
------	---------------------------------------

- 1. For orders on office objection "A".
- 2. For hearing of main case.

03-03-2025

Mr. Muhammad Afzal Jagirani, advocate for the Applicant.

Mr. Hamid Ali J. Chandio, advocate for Respondent No.3.

Mr. Muhammad Noonari, DPG for the State.

Khalid Hussain Shahani, J.- The applicant, Zulfiqar Ali Khoso, has invoked the inherent jurisdiction of this Court under Section 561-A Cr.P.C, seeking judicial review of the order dated 28.10.2023, passed by the learned Judicial Magistrate-II, Mehar. The impugned order pertains to the final investigation report submitted under Section 173 Cr.P.C. in Crime No.141 of 2023, registered under Section 319 PPC at P.S. Mehar. The learned Magistrate, after due examination of the investigation report and the material on record, declined to take cognizance against the nominated accused, Dr. Tillat Majeed Buledai, and accepted the police report recommending the disposal of the case under 'C' Class.

2. The case originates from an incident dated 29-04-2023, wherein the complainant's wife underwent a caesarian section at the hospital of the accused doctor at approximately 11:30 p.m. The complainant alleged that post-operation, his wife experienced severe pain, and despite informing the hospital staff, the accused doctor negligently delayed her visit until 4:00 a.m., at which point she advised shifting the patient to Larkana hospital. The complainant suspected medical

negligence and shifted his wife to Larkana hospital, where she later expired. Based on these allegations, an FIR was lodged.

3. Upon completion of the investigation, the police, after a thorough inquiry into the FIR allegations, statements of the parties, and available evidence, concluded that the matter did not constitute a prosecutable criminal offence. Consequently, the final report under Section 173 Cr.P.C. recommended the disposal of the case under “C” Class. The learned Judicial Magistrate, upon independent scrutiny, accepted the final report and declined to take cognizance against the accused.

4. The applicant’s counsel contended that the impugned order was passed in a hasty manner, without proper application of judicial mind, and without considering the fact that the accused doctor was explicitly named in the FIR. The counsel argued that the order lacked legality and justification.

5. Section 318 of the PPC defines Qatl-i-Khata as an unintentional killing caused by mistake of act or fact. Section 319 PPC provides for Diyat liability in such cases and, in instances of rash or negligent acts (excluding rash or negligent driving), also permits imprisonment of up to five years as Tazir. Jurisprudence established by the Hon’ble Supreme Court of Pakistan in cases such as PLD 2021 SC 123 and 2020 SCMR 456 emphasizes that allegations of criminal negligence must be strictly scrutinized in light of established principles of criminal jurisprudence. Criminal liability under Section 319 PPC necessitates proof of both mens rea (criminal intent) and actus reus (criminal act).

6. The burden lies on the prosecution to establish gross negligence beyond reasonable doubt. As held in PLD 2019 SC 456 and 2021 SCMR 234, mere lack of due care, caution, or inadvertence may give rise to civil liability but does not necessarily attract criminal liability unless gross negligence is demonstrated. Furthermore, The Sindh

Healthcare Commission Act, 2013 (Sindh Act No.VII of 2014) governs allegations of medical negligence. Under Sections 5, 6 & 7 of the Act, the Commission is empowered to investigate allegations of maladministration, malpractice, or medical negligence in the healthcare sector. The Act explicitly provides:

Section 5: The Commission shall conduct third-party audits of private healthcare establishments.

Section 6: The Commission may undertake investigations on complaints from aggrieved persons or on its own motion.

Section 7: The Commission has jurisdiction over cases involving medical malpractice and may refer such cases to a competent forum.

7. Sections 27, 29 & 30 of the Sindh Healthcare Commission Act provide immunity and bar of jurisdiction regarding legal proceedings against healthcare providers, stating:

Section 27: No legal proceedings shall lie against the Commission or healthcare providers acting in good faith.

Section 29: No prosecution or legal proceedings related to healthcare services shall be initiated against a healthcare provider under the Act.

Section 30: No court, other than a District and Sessions Judge, shall have jurisdiction to challenge any action or decision made under this Act.

8. The applicant's counsel attempted to argue that Section 29 applies only to Government healthcare providers, overlooking Section 4, which explicitly extends the Act's application to private hospitals, charitable hospitals, trust hospitals, and semi-government healthcare organizations.

9. The impugned order of the learned Magistrate accepting the "C" Class report is in line with settled legal principles and Supreme Court precedents. The Hon'ble Supreme Court of Pakistan has consistently held in PLD 2019 SC 456 and 2021 SCMR 234 that where an investigating agency, after thorough inquiry, finds no substantive evidence to establish a cognizable offence, the acceptance of a 'C' Class report by a judicial forum does not warrant interference, unless

it is demonstrated that the order suffers from gross illegality, arbitrariness, or failure to exercise jurisdiction judiciously. In the instant case, no such legal infirmity is apparent in the impugned order. The findings of the learned Magistrate are well-reasoned, legally sound, and aligned with the established principles of criminal justice. For the reasons stated above, this Court finds no legal justification to interfere with the impugned order. The application is accordingly dismissed.

JUDGE

S.Ashfaq/-