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

Criminal Miscellaneous Application No. S-484 of 2026
Mst. Amna v SSP Tando Muhammad Khan and others

Applicant	:	Mst. Amna, present in person, through Mr. Sagar Ali Sathio, Advocate.
Respondent No.4	:	Dr. Ambreen Khatti, through Mr. Muhammad Ali Rind, Advocate.
The State	:	Through Mr. Shawak Rathore, Deputy Prosecutor General, Sindh, assisted by PC Naveed of Police Station Tando Muhammad Khan. Mr. Abdul Ghaffar Memon, Admin Officer, Memon Charitable Hospital and Maternity Home, Tando Muhammad Khan.
Date of Hearing	:	19.10.2026
Date of Judgment	:	23.10.2026

ORDER

Muhammad Humayon Khan, J.: Through this application under section 561-A Cr.P.C., the applicant Mst. Amna challenges the order dated 03.07.2026 passed by the learned 2nd Additional Sessions Judge/Ex-Officio Justice of Peace, Tando Muhammad Khan, in Criminal Miscellaneous Application No. 406 of 2026. By that order, the learned Justice of Peace dismissed her application under sections 22-A and 22-B Cr.P.C. for a direction to the police to register an FIR against respondent No. 4, Dr. Ambreen Khatti, and the staff and administration of Memon Charitable Hospital, Tando Muhammad Khan (respondents Nos. 5 to 9). The applicant prays that the order be set aside and that the police be directed to record her statement under section 154 Cr.P.C.

2. The applicant's case is as follows. On 09.01.2025 respondent No. 4 performed an emergency caesarean section on her at Memon Charitable Hospital, and a baby girl was delivered alive. She was discharged on 11.01.2025 but later developed abdominal pain. A CT scan at Indus Hospital, Tando Muhammad Khan, on 13.03.2025 revealed a second foetus, which had died, in her abdomen. She underwent surgery at Liaquat National Hospital, Karachi, at considerable expense, and the foetus was removed. She alleges that respondent No. 4 negligently left one of her twin babies in her abdomen, endangering her life. She says the police refused to register her complaint.

3. This is the applicant's second application to the Justice of Peace on the same facts. Her first application, Criminal Miscellaneous Application No. 173 of 2025, was disposed of by the learned Sessions Judge/Ex-Officio Justice of Peace, Tando Muhammad Khan, by order dated 14.05.2025. That order held that the matter fell within the purview of the Sindh Healthcare Commission. It noted that the applicant had already complained to the Commission, and left her at liberty to approach the competent forum if the Commission found negligence.

4. The Commission registered Complaint No. 412/SHCC/DC, made by the applicant's aunt, Advocate Nayyar Sultana Shaikh. It inspected the hospital on 14.07.2025 and heard the parties on 31.07.2025. At that hearing, respondent No. 4, the hospital staff, and Dr. Maria Jabeen, the consultant who operated on the applicant at Liaquat National Hospital, appeared before it. It obtained the opinions of three clinical experts: a Professor of Obstetrics and Gynaecology at Dow University of Health Sciences, an Associate Dean and Assistant Professor of Obstetrics and Gynaecology at the Aga Khan University Hospital, and a Professor of Radiology at Dow University.

5. By order dated 16.10.2025, issued under section 4(2)(e) of the Sindh Healthcare Commission Act, 2013, the Commission made the following findings:

- This was a case of heterotopic pregnancy, in which one pregnancy lies inside the uterus and another outside it. The experts described the condition as very rare, occurring in about one in thirty thousand pregnancies.
- The extra-uterine foetus had probably died in the first half of the pregnancy, and the condition could have been detected only by an early ultrasound, which the applicant did not have.
- During the caesarean section, respondent No. 4 found a mass behind the uterus. She informed the patient and the family member present, showed him the mass, and advised a CT scan and further evaluation after the post-partum period.
- It was not advisable to operate on the mass at the time. The consultant at Liaquat National Hospital confirmed that the primary surgeon had acted correctly in not doing so.
- The applicant did not return for follow-up until she developed pain eight or nine weeks later.

6. The Commission held that no medical negligence was established against respondent No. 4, and described the complaint as frivolous. It directed the hospital to obtain a regular licence and to develop standard operating procedures, including for clinical documentation. The order informed the parties of their right of appeal within thirty days under sections 30(a) and 31(1) of the Act. Nothing on record shows that any appeal was filed.

7. The applicant then filed the second application, Criminal Miscellaneous Application No. 406 of 2026, and the learned Justice of Peace called for reports from the police. By the impugned order he dismissed the application, giving the following reasons:

- the matter had been examined by the Commission;
- an offence of qatl-i-khata in the context of professional negligence requires gross negligence, as this Court held in Muhammad Aslam v Dr. Imtiaz Ali Mughal PLD 2010 Karachi 134;
- under section 41 of the Pakistan Medical and Dental Council Act, 2022, cognizance of offences under that Act lies with the Medical Tribunal on a complaint by the authorised officer of the Council; and
- the applicant remained at liberty to pursue her remedies under the Sindh Healthcare Commission Act, 2013 or the Pakistan Medical and Dental Council Act, 2022.

8. By order dated 12.10.2026, this Court called for a report from the hospital. The Admin Officer of the hospital has submitted it with supporting documents, and it has been taken on record.

9. Mr. Sagar Ali Sathio, learned counsel for the applicant, contended that the learned Justice of Peace passed the impugned order in haste on the basis of the police reports. He argued that the order overlooked the applicant's suffering, the expense of a second operation, and the cognizable nature of the offences committed by the private respondents. He submitted that the police reports did not deny the applicant's allegations, and that respondent No. 4's licence had been suspended by the Pakistan Medical and Dental Council, yet she continued to practice at the District Headquarters Hospital and in a private clinic. In his submission, section 154 Cr.P.C. obliges the police to record information of a cognizable offence. He argued that the learned Justice of Peace was wrong to treat the matter as one confined to the regulatory forums.

10. Mr. Muhammad Ali Rind, learned counsel for respondent No. 4, opposed the application. He argued that the specialised statutory body, after an inquiry with three clinical experts and a hearing of both sides, found no negligence on the part of respondent No. 4, and that its order was never appealed. He said the applicant's condition was a rare heterotopic pregnancy, which respondent No. 4 detected during surgery and disclosed to the family with advice for further investigation. He submitted that this was the applicant's second attempt on the same facts, after the first application had been disposed of in deference to the Commission.

11. Mr. Shawak Rathore, learned Deputy Prosecutor General, supported the impugned order, submitting that no cognizable offence was disclosed in view of the expert findings.

12. The report submitted by the Admin Officer of the hospital, with its documents, has been taken on record and considered.

13. I have heard learned counsel(s) and the learned Deputy Prosecutor General, and have examined the record, including the order of the Sindh Healthcare Commission and the report of the hospital.

14. An Ex-Officio Justice of Peace dealing with an application under section 22-A(6) Cr.P.C. does not act as a post office. He performs a quasi-judicial function, as the Supreme Court held in *Younas Abbas v Additional Sessions Judge, Chakwal PLD 2016 SC 581*. He must examine whether the information placed before him discloses a cognizable offence, because only such information obliges the police to register an FIR under section 154 Cr.P.C. The inherent jurisdiction of this Court under section 561-A Cr.P.C. is exercised sparingly, to prevent abuse of process or to secure the ends of justice. It is not an appeal on facts. The Supreme Court in *Muhammad Farooq v Ahmed Nawaz Jagirani PLD 2016 SC 55* counselled restraint in such jurisdiction where the statutory scheme provides its own remedies. The question here is therefore whether the learned Justice of Peace acted unlawfully, perversely or without jurisdiction in declining a direction for an FIR.

15. I should make clear at the outset that the law confers no immunity on medical practitioners, and I do not endorse the impugned order to the extent it may be read as saying that an FIR can never be registered against a doctor for professional negligence. Where the information discloses a cognizable offence, it must be registered and investigated whoever the accused may be. A Division Bench of this Court in *Dr. Sheeraz-ur-Rehman v Province of Sindh 2020 CLC 2037* contemplated exactly that sequence in medical cases. Under that sequence, an FIR is followed by investigation, and the matter is referred to the Sindh Healthcare Commission so that its expert findings can be placed before the trial Court with the report under section 173 Cr.P.C. Nor is the general exception in section 88 PPC, on which the learned Justice of Peace also relied, the decisive consideration in this case.

16. What the law does require is that a criminal charge in a medical case rest on criminal negligence, not merely on an adverse outcome or a difference of clinical judgment. In *Muhammad Aslam v Dr. Imtiaz Ali Mughal PLD 2010 Karachi 134*, this Court held that a doctor accused of professional negligence commits the offence of qatl-i-khata only if he acted with gross negligence, or with reckless

disregard of or indifference to the consequences of his act. The same standard of culpability necessarily governs allegations of hurt caused by negligent treatment. That negligence must also be causally connected with the harm alleged. Whether these elements exist is a technical medical question. The Islamabad High Court made this point in *Dr. Saiqa Yousaf v The State 2024 P.Cr.L.J. 1852* and in *Dr. Farhat Ullah Bakhsh v Ex-Officio Justice of Peace PLD 2025 Islamabad 106*, holding that criminal law should be applied to healthcare allegations only after competent expert scrutiny of the treatment.

17. In Sindh, that expert scrutiny is entrusted to the Sindh Healthcare Commission under the Sindh Healthcare Commission Act, 2013 (Sindh Act No. VII of 2014). The relevant provisions are the following:

- section 4 confers the Commission's functions, including inquiry into complaints of malpractice and failure in healthcare services;
- section 19 deals with medical negligence, and section 19(2) excludes recognised and known complications of treatment;
- section 23 provides the procedure for investigating complaints;
- section 26(2) allows the Commission to refer a case to the law enforcement agencies where the circumstances warrant action under another law;
- section 28 provides for regulatory fines;
- section 29 governs proceedings relating to healthcare services; and
- sections 30 and 31 provide a right of appeal against the Commission's orders.

18. This Court has repeatedly given effect to that scheme. In *Dr. Khair Muhammad Sahowal v Province of Sindh 2022 YLR 63*, it recognised the Commission as the appropriate forum for expert inquiry into such allegations. In *Ms. Tabinda Ashraf v The State, Criminal Miscellaneous Application No. S-51 of 2023, decided on 27.10.2023* at Mirpurkhas, it upheld a reference to the Commission and fresh consideration of the police report in the light of its findings.

19. This is exactly the course that was followed here. Rightly, the learned Sessions Judge did not decide the matter himself on 14.05.2025. He left it to the Commission, and left the applicant free to approach the competent forum if negligence was found. The Commission conducted a thorough inquiry. It inspected the hospital, examined the medical record of both hospitals, heard both sides with an opportunity to cross-examine, heard the consultant who performed the second operation, and obtained the opinions of three independent clinical experts in obstetrics, gynaecology and radiology.

20. Its findings answer the applicant's allegation on two separate grounds. On the first, the allegation that a twin was negligently left in her abdomen rests on a medical misunderstanding. The experts found that this was a heterotopic pregnancy. One foetus was inside the uterus and was delivered alive. The other was outside the uterus, in the abdominal cavity, and had probably died in the first half of the pregnancy, long before the caesarean section. The condition could have been detected only by an early ultrasound, which the applicant did not have.

21. On the second, the Commission found as a fact that respondent No. 4 did detect the mass during surgery. She disclosed it to the patient and to the family member present, showed it to her, and advised investigation by CT scan after the post-partum period. The consultant who later operated at Liaquat National Hospital confirmed that it was correct not to operate on the mass at the time of the caesarean section. The applicant did not return for follow-up until she developed pain some weeks later.

22. On those findings there was no negligence at all, let alone gross negligence. Nor was there any causal connection between anything respondent No. 4 did and the death of the extra-uterine foetus, which had occurred long before. The shortcomings the Commission did identify concerned the hospital's documentation, standard operating procedures and licensing. It dealt with those by regulatory directions. It made no referral under section 26(2) for action under the criminal law.

23. The Commission's order of 16.10.2025 expressly informed the parties of their right of appeal under sections 30(a) and 31(1) of the Act, and no appeal was filed. That order has attained finality. The applicant's second application to the Justice of Peace was, in substance, an attempt to obtain through the criminal process what she could not obtain from the statutory forum, without challenging that forum's decision in the manner the Act provides.

24. The decisions of this Court on criminal proceedings after an inquiry by the Commission support this conclusion:

- In *Dr. Shahid Karim v Chief Executive Officer, Sindh Healthcare Commission PLD 2024 Sindh 320*, the Commission had penalised the hospital for maladministration but attributed no specific role of negligence to the doctors, and this Court quashed the criminal proceedings against them under sections 322 and 34 PPC.

- In *Heeramani v Province of Sindh, C.P. No. D-408 of 2025*, decided on 04.12.2025 by a Division Bench at Hyderabad, an FIR under sections 322

and 34 PPC was quashed after the Commission's inquiry resulted only in regulatory penalties, without any finding warranting criminal prosecution.

- The contrary case of *Dr. Mubeenuddin v Khurram Shahzad 2022 P.Cr.L.J. 1447* shows the other side of the same principle. There the Commission had found negligence and professional misconduct, and quashment was refused because disputed facts remained for trial.

25. The present case is stronger than Shahid Karim and Heeramani. There, regulatory penalties were imposed on the institution. Here, the Commission found affirmatively that the doctor was not negligent. If criminal proceedings already registered could not continue in those cases, the registration of a new FIR cannot be directed in this one.

26. Learned counsel for the applicant relied on photocopies said to show that the Pakistan Medical and Dental Council took disciplinary action against respondent No. 4 and suspended her licence. The nature and basis of that action are not clearly established from the photocopies. In any event, disciplinary proceedings concern professional conduct and registration. They do not by themselves disclose a cognizable offence under the Pakistan Penal Code. As the learned Justice of Peace rightly noted, section 41 of the Pakistan Medical and Dental Council Act, 2022 provides that cognizance of offences under that Act may be taken only by the Medical Tribunal established under the Medical Tribunal Act, 2020, on a complaint in writing by the authorised officer of the Council. If the applicant believes that respondent No. 4 is practicing in breach of a suspension, her remedy lies with the Council and the Tribunal under that Act, not in an FIR under section 154 Cr.P.C.

27. The impugned order also has to be seen in the light of the earlier proceedings. The applicant's first application was disposed of on 14.05.2025 on the footing that the Commission would decide whether negligence had occurred, and that the applicant could approach the competent forum only if it had. That order was not challenged. The condition on which further recourse depended was not fulfilled: the Commission found no negligence. The second application, on the same facts and for the same relief, therefore stood on no better footing than the first. The learned Justice of Peace was right to decline it.

28. Some of the observations in the impugned order are broader than necessary. Its conclusion is nonetheless correct. On the material before him, which included the reasoned finding of the specialised statutory body that no medical negligence was established, the information did not disclose a cognizable offence by respondent No. 4 or by the other private respondents. The Supreme Court in *Ayesha*

Tayyab v Station House Officer, Police Station Cantt., Sialkot 2025 SCMR 1117 recognised that criminal proceedings may be quashed where the facts disclose no offence. It follows that a Court should not direct an FIR to be registered where the facts disclose no offence. No illegality, perversity or abuse of process has been shown that would justify interference under section 561-A Cr.P.C.

29. The dismissal of this application does not leave the applicant without remedy. This Court held in *Muhammad Faraz Kasbati v South City Hospital (Pvt.) Ltd., Suit No. 51 of 2021*, decided on 24.02.2025 (*2025 SHC KHI 644)*, that the regulatory scheme does not oust the ordinary civil jurisdiction in claims arising from medical treatment. Any civil claim the applicant may wish to bring for damages is unaffected by this order, as are her remedies under the Pakistan Medical and Dental Council Act, 2022. Nothing in this order shall be construed as a finding on any such claim.

30. For the foregoing reasons, Criminal Miscellaneous Application No. S-484 of 2026 is dismissed. The order dated 03.07.2026 passed by the learned 2nd Additional Sessions Judge/Ex-Officio Justice of Peace, Tando Muhammad Khan, in Criminal Miscellaneous Application No. 406 of 2026 is maintained, for the reasons given in this order. The applicant's remedies under the Pakistan Medical and Dental Council Act, 2022, and any civil remedy available to her in law, remain unaffected.

31. The report submitted by the Admin Officer of Memon Charitable Hospital and Maternity Home, Tando Muhammad Khan, stands disposed of. The Commission has directed the hospital to obtain a regular licence and to develop standard operating procedures for clinical documentation. Nothing in this order relieves the hospital of its duty to comply with those directions.

JUDGE

APPROVED FOR REPORTING

***ABDULLAH**