

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

C.P No. D-408 of 2025
[Heeramani & others v. Province of Sindh & others]

Before:
JUSTICE ADNAN-UL-KARIM MEMOM
JUSTICE RIAZAT ALI SAHAR

Counsel for Petitioners: Mr. Saiff Ali Akbar, Advocate
Mr. Unaib Kamal, Advocate.

Counsels/ Representatives for Muhammad Rafique, complainant.
Respondents: Mr. Rafique Ahmed Dahri, A.A.G.
Sindh along with DSP Abdul Reman
Brohi, SDPO City Hyderabad
Mr. Siraj Ahmed Bijarani, A.P.G.
Sindh.

Date of Hearing: 04.12.2025

Date of Judgement: 04.12.2025

JUDGMENT

RIAZAT ALI SAHAR, J: - Through this Constitutional Petition, the Petitioners contend that the registration of FIR No. 159 of 2024 under Sections 322 and 34 PPC registered at PS Baldiya, Hyderabad against healthcare professionals is patently illegal, unconstitutional and without lawful authority, having been lodged in blatant violation of the statutory immunity guaranteed under Section 29 of the Sindh Healthcare Commission Act, 2014 and in disregard of the exclusive jurisdiction of the Sindh Healthcare Commission to inquire into and determine allegations of medical negligence; that the continuation of police investigation and the constitution of a so-called Special Medical Board by Respondent No. 3 are without legal mandate and amount to an abuse of process; and that the entire matter, if at all, is required to be examined by the Sindh Healthcare Commission strictly in accordance with law. Thus, seeking the following reliefs:

- a) *Declare that FIR No: 159 of 2024 lodged on 31/10/2024 at Police Station Baldia under Sections 322 and 34 of the Pakistan Penal Code, 1860, is illegal,*

unconstitutional and in violation of Section 29 of the SHCC, 2014 as FIR No. 159 of 2024 has been lodged against medical health professionals who have been granted immunity;

- b)** *Quash FIR No. 159 of 2024 as lodging of this FIR is an exercise of abuse of powers and process of law, as Respondent No.5 has lodged FIR despite immunity being granted by SHCC, 2014;*
- c)** *To declare the investigation conducted by Respondent No. 4 illegal, void and unconstitutional since only SHCC has the legal mandate to investigate and look into matters of alleged negligence done by medical health providers;*
- d)** *To suspend the investigation being conducted by Respondent No. 4 initiated in consequence of FIR 159 of 2024;*
- e)** *To declare the Special Medical Board constituted on the Directions of Respondent No. 3 illegal, void and unconstitutional since only SHCC has the legal mandate to constitute a medical board and to investigate and look into matters of alleged negligence done by medical health providers;*
- f)** *To suspend and stay proceedings of the Special Medical Board constituted by Respondent No. 3 initiated in consequence of FIR No. 159 of 2024;*
- g)** *To transfer the investigation of FIR No. 159 of 2024 to the SHCC under Section 4 (6) of the SHCC, 2014;*
- h)** *Restrain the Respondents from causing harassment to Petitioners;*
- i)** *Any other relief this Hon'ble Court deems fit and proper in view of the facts, grounds and circumstances."*

2. Timeline and sequence of events leading to the filing of the instant Constitutional Petition may be succinctly explained as follows: The mother of the deceased neonate was admitted to Aga Khan Maternal & Child Care Centre, Hyderabad in October 2024 and delivered an extremely premature baby girl at approximately 24–25 weeks of gestation, who was managed in accordance with the limited facilities available at the said secondary-level healthcare establishment. The family was repeatedly counselled regarding the poor prognosis of the neonate and the urgent need for early referral

to a tertiary care facility with NICU support; however, the decision to shift was delayed by the attendants. Upon deterioration of the baby's condition and after due clinical assessment, the neonate was declared dead and handed over to the family. Subsequently, the baby was taken to Civil Hospital Hyderabad, where she remained on artificial life support and was ultimately declared dead on 31.10.2024. Thereafter, on 31.10.2024, Respondent No. 1 lodged FIR No. 159 of 2024 at Police Station Baldia, Hyderabad, under Sections 322 and 34 PPC against the Petitioners, without first approaching or obtaining any determination from the Sindh Healthcare Commission, as mandatorily required under the Sindh Healthcare Commission Act, 2014. The police initiated coercive investigation, issued notices and attempted arrests, compelling the Petitioners to seek and obtain pre-arrest bail from the learned Sessions Court. Despite repeated requests by the Petitioners to refer the matter to the Sindh Healthcare Commission, the investigating authorities proceeded to constitute a Special Medical Board without lawful mandate. Ultimately, due to the continuation of an unlawful investigation, parallel proceedings and persistent harassment, coupled with the clear statutory bar and exclusive jurisdiction of the Sindh Healthcare Commission, the Petitioners were left with no alternate efficacious remedy but to invoke the constitutional jurisdiction of this Court through the present petition.

3. Learned counsel for the Petitioners argued that the registration of FIR No. 159 of 2024 and the continuation of criminal proceedings against the Petitioners are *ex facie* illegal, unconstitutional and without lawful authority, as the same have been initiated in blatant disregard of the mandatory scheme of the Sindh Healthcare Commission Act, 2014. It was contended that the Petitioners, being registered healthcare professionals and a healthcare establishment, enjoy statutory immunity under Section 29 of the SHCC Act, and in the absence of any prior inquiry or finding of medical negligence by the Sindh Healthcare Commission under Sections 4 and 19 thereof, the direct lodging of an FIR by the

police is void ab initio. Learned counsel submitted that allegations of medical negligence involve complex medical questions which cannot be examined by police authorities lacking technical expertise and that the exclusive jurisdiction to determine such issues vests with the Sindh Healthcare Commission alone.

4. It was further argued that the constitution of a Special Medical Board on the directions of Respondent No. 3, as well as the continuation of investigation by Respondent No. 4, is wholly without jurisdiction and contrary to the express provisions of the SHCC Act, 2014. Learned counsel maintained that the invocation of Section 322 PPC is misconceived, as the facts disclosed do not *prima facie* constitute any criminal offence and, at most, relate to recognized complications of medical treatment expressly excluded from the definition of medical negligence. It was urged that the continuation of such proceedings amounts to harassment and abuse of process, warranting intervention by this Court under Article 199 of the Constitution read with Section 561-A Cr.P.C. to quash the impugned FIR, suspend all consequential proceedings and refer the matter to the Sindh Healthcare Commission for lawful determination.

5. Conversely, the answering Respondents contended that the impugned FIR has been lawfully registered on the basis of specific allegations disclosed by the complainant, which, according to them, *prima facie* constitute the commission of a cognizable offence under Sections 322 and 34 PPC, thereby justifying police intervention and investigation. It was argued that the allegations pertain to gross negligence resulting in the death of a newborn child and, as such, cannot be brushed aside at the threshold without a thorough and impartial investigation. The answering Respondents maintained that the police are duty-bound under law to register and investigate a cognizable offence once information disclosing such offence is received. It was further contended that the protection and immunity envisaged under Section 29 of the Sindh Healthcare Commission Act, 2014 is not absolute and does not bar the registration of an FIR or the initiation of criminal proceedings in

cases involving serious allegations of criminal negligence causing death. The answering Respondents asserted that the constitution of a Medical Board was a lawful and necessary step to ascertain the cause of death and to assist the investigating agency in reaching a just conclusion and that the investigation is still at a preliminary stage, during which interference by this Court would be premature. They, therefore, prayed for dismissal of the petition.

6. In the better interest of justice and for the proper adjudication of the controversy, this Court deemed it appropriate to call for an independent expert inquiry from the Sindh Healthcare Commission, Karachi, being the statutory authority vested with exclusive jurisdiction to examine allegations of medical negligence under the Sindh Healthcare Commission Act, 2013. Pursuant thereto, a comprehensive report through its Chief Executive Officer vide report dated 05.11.2025 was submitted, wherein the entire medical record, clinical course, conduct of healthcare professionals, service delivery standards, expert opinions, and institutional facilities were thoroughly examined. The said report was submitted before this Court and forms part of the judicial record.

Accordingly, in exercise of powers under Section 4 (2) (e) of the Sindh Healthcare Commission Act, 2013, the Commission ordered as follows:

“i. A fine of PKR 100,000/- was imposed upon the Aga Khan Maternal & Child Care Centre, Hyderabad, on account of compromised clinical documentation, non-availability of required equipment, and non-compliance with prior SHCC directives.

ii. The healthcare establishment was directed to upgrade its facilities, obtain regular SHCC licensing, and submit compliance reports within the stipulated period.

iii. No direction was issued for initiation of criminal proceedings against the treating doctors; instead, the

matter was disposed of within the statutory framework of the SHCC Act, with liberty of appeal provided under Sections 30 and 31 of the Act.”

7. Heard learned counsel for the petitioner doctors as well as learned counsel for the respondents. The report dated 05.11.2025 of the Sindh Healthcare Commission (SHCC) and all material on record have been perused. This constitutional petition calls in question the registration of an FIR against the petitioners (medical professionals) for alleged medical negligence in the treatment of an extremely premature newborn. The nub of the petitioners’ case is that the FIR was lodged despite a comprehensive inquiry by the SHCC, a statutory body established under the Sindh Healthcare Commission Act, 2013, which inquiry resulted only in regulatory action and **no** recommendation of criminal proceedings. The Court has examined the SHCC’s findings alongside the parties’ submissions.

8. Before examining the merits, it is necessary to note that the Sindh Healthcare Commission Act, 2013 is a special and self-contained statute enacted to regulate healthcare services and address medical malpractice in Sindh through a specialized mechanism. The Act establishes the Sindh Healthcare Commission as the primary and autonomous forum empowered, under Sections 4 (2) (e) and 4 (6), to inquire into and investigate allegations of maladministration, malpractice and failures in healthcare services, with overriding effect notwithstanding any other law. The statutory scheme envisages that such inquiries are to be conducted through expert medical evaluation, including inspection teams comprising highly qualified specialists under Section 22, thereby ensuring that allegations of negligence are assessed by professionals possessing relevant expertise. The Commission is further authorised to issue regulatory directions, impose penalties and fines, and only where circumstances so warrant, to refer a matter to law-enforcement agencies under Section 26 (2). The legislative intent is thus unambiguous: allegations of medical negligence must first be

examined and determined by the SHCC and recourse to criminal law can only follow upon its findings or recommendation, thereby preventing arbitrary or uninformed criminal proceedings against medical professionals and ensuring that healthcare disputes are addressed within a specialized, expert-driven framework.

9. The SHCC's inquiry report dated 05.11.2025 is central to this case. The Commission's investigation was thorough and multidimensional. It included an inspection of the hospital's facilities, examination of medical records (including treatment charts and hospital protocols) and hearings in which the complainant (the infant's father) and the respondent doctors were given opportunities to present evidence and explain the circumstances. The inquiry also involved obtaining expert medical opinions regarding the standard of care provided to the premature neonate. After this detailed process, the SHCC's report did not conclude that the doctors committed any gross negligence or willful misconduct. No direct causative lapse rising to the level of a crime was established. Instead, the Commission identified certain regulatory and procedural deficiencies in the hospital's handling of the case. The material findings of the SHCC report can be summarized as follows:

- The hospital failed to perform a confirmatory test (such as an ECG or ECHO) to officially certify the newborn's death. Proper protocol requires confirmation of death via appropriate medical instruments, especially in cases of neonatal critical care. The absence of such confirmation was noted as a violation of standard procedure, leaving ambiguity in the exact time and certainty of death.
- The facility did not have a Neonatal Intensive Care Unit (NICU) or functional ventilator available, which was a serious gap given the baby's condition. This was found to be in contravention of the SHCC's own directives and minimum service standards for hospitals. In effect, the hospital was not adequately equipped to handle extremely premature infants in

critical condition, a systemic deficiency rather than an individual doctor's fault.

- The patient's medical records were poorly maintained. Notably, the "SAMA" form (Sign Against Medical Advice), which should record the guardian's consent if a patient is taken home or discharged against medical advice, was incomplete and unsigned. Such documentation lapses breached the prescribed record-keeping protocols and reflected administrative negligence at the hospital level.
- The Commission did not direct initiation of any criminal proceedings. Nowhere did the report suggest that the doctors' conduct was reckless or grossly negligent to a degree warranting penal action. The issues were categorized under regulatory non-compliance rather than criminal homicide or malpractice. In essence, the SHCC found no mens rea or gross carelessness by the petitioners that could be termed a crime; the failings were of a regulatory nature requiring remedial measures.

Upon completion of its inquiry, the SHCC exercised its statutory enforcement powers under Section 4 (2) (e) read with Section 28 (1) of the SHCC Act by imposing a monetary fine and issuing remedial directions to address identified regulatory deficiencies, such as gaps in facilities and documentation, after due process. Significantly, the Commission did not make any reference for criminal prosecution under Section 26 (2), thereby demonstrating that, despite noting certain lapses, it did not find the case to involve gross negligence or professional misconduct warranting criminal action. Consequently, the matter stood concluded within the regulatory framework of the SHCC, with accountability exhausted through administrative penalties and corrective measures, and the expert determination clearing the doctors of criminal culpability forms the decisive factual context for assessing the legality of the impugned criminal proceedings.

10. One of the cornerstones of the SHCC Act is the statutory immunity it confers upon healthcare providers, insulating them from external legal proceedings in matters of medical negligence. This is explicitly codified in Section 29 of the Act, which enacts a bar in the following terms: -

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

In plain language, a doctor or healthcare establishment cannot be sued or prosecuted in relation to a healthcare matter unless the action is taken under the mechanism provided in the SHCC Act. The intent is to prevent the circumvention of the special law by invoking general civil or criminal laws. As legal commentary confirms, the SHCC Act, being a special law, *“provides immunity to healthcare service providers from any civil suit, criminal prosecution, or legal proceeding concerning healthcare.”* The only route for redress in such cases is through the Commission’s process.

11. The statutory immunity provided under the SHCC Act is conditional and procedural in nature, intended not to shield negligent doctors absolutely but to ensure that allegations of medical negligence are first subjected to expert scrutiny by the Commission. The legislative scheme mandates that unless and until the SHCC, after due inquiry, finds gross negligence or malpractice and refers the matter for further action under Section 26 (2), healthcare professionals are protected from independent criminal proceedings such as FIRs. This policy choice is grounded in public interest, recognizing that medical practice inherently involves risk and emergency decision-making and that indiscriminate criminalization of adverse outcomes would foster defensive medicine, deter doctors from handling critical cases and undermine effective healthcare delivery. The SHCC thus operates as a necessary filter to distinguish genuine cases of culpable negligence from non-criminal or regulatory lapses, ensuring that only those matters warranting prosecution proceed further on expert recommendation. In the present case, the

allegations arise squarely from the provision of healthcare services and therefore fall within the exclusive initial jurisdiction of the SHCC, rendering any parallel or premature police action contrary to the statutory framework.

12. In view of the foregoing, the registration of the impugned FIR, prior to and irrespective of the SHCC's determination, is patently unlawful and without jurisdiction. The SHCC Act's special procedure was not just the preferred avenue; it was the mandatory avenue for handling this incident. The police's action of proceeding with a criminal case on its own effectively bypassed the statutory body specifically empowered to deal with the situation. This runs afoul of the doctrine that when a special law provides a particular procedure, that procedure must be followed to the exclusion of any other (general) procedure. Here, the SHCC had taken cognizance of the matter and was seized of the inquiry; in such circumstances, initiating an FIR on the same facts amounted to a parallel prosecution, which the law does not countenance. At the time the FIR was lodged, the SHCC had neither referred the case to police nor made any finding of criminal negligence. In fact, as discussed, the SHCC ultimately found no gross negligence on part of the doctors and did not direct any criminal action. Thus, the condition precedent for involving the criminal law, a finding of malpractice by the competent medical body, was not met. Lodging the FIR regardless was not only premature but in contravention of Section 29's bar on external proceedings. The continuation of the FIR in the face of the SHCC's exoneration of the doctors is even more untenable; it amounts to proceeding in defiance of the special statute.

13. This Court has underscored the primacy of the Commission's findings in such situations. In Dr. Shahid Karim v. CEO, Sindh Healthcare Commission (PLD 2024 Sindh 320), a case notably similar in context, it was observed that "*Doctors must be judged by their peers. The SHCC, constituted of experienced and wise doctors, have cleared the doctors of criminal liability. The recommendations of the Commission have to be given weight in cases*

of medical negligence.”. Moreover, Dr. Khair Muhammad Sahowal V. Province Of Sindh (2022 YLR 63) determined as follows: -

“the test of medical negligence has been laid down in a case reported as “Bolam v. Firern Hospital Management Committee” reported in 1957(2) All England Law Reports 118, wherein the House of Lords formulated the Bolam Test which is as under:–“A medical professional is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in the particular art.”

Where the competent statutory forum has examined the matter and exonerated healthcare professionals from criminal culpability, its findings cannot be disregarded without defeating the legislative scheme. In the present case, the SHCC’s report negates the foundation of the FIR by confirming that the identified lapses were regulatory in nature and did not constitute gross negligence or recklessness warranting criminal prosecution. The FIR was thus registered in clear disregard of the mandatory requirements of the SHCC Act, resulting in an impermissible invocation of general criminal law in a field governed by a special statute. Continuation of such proceedings would amount to an abuse of process, undermine the authority of the expert Commission, and violate legislative intent; consequently, this Court is not inclined to allow a prosecution to proceed which lacks lawful footing and is rendered a nullity by the controlling special law.

14. The action of the police in independently constituting a so-called “medical board” after registration of the FIR is legally unsustainable and contrary to the statutory scheme of the SHCC Act. The Act vests exclusive jurisdiction in the Sindh Healthcare Commission to constitute expert panels, conduct inquiries into alleged medical negligence and render authoritative findings through a specialized, expert-driven process. There is no provision in criminal

law that authorizes the police to bypass or parallel this mechanism and any ad hoc medical board formed by the investigating agency lacks legal sanction, prescribed standards of expertise and statutory legitimacy. Permitting such parallel inquiries would inevitably lead to conflicting determinations and institutional chaos, a scenario the legislature consciously sought to avoid by centralizing jurisdiction in the SHCC and barring other proceedings under Section 29 until the Commission's process is exhausted. In the present case, where the SHCC has already conducted an inquiry and found no criminal negligence, the police's unilateral exercise amounts to usurpation of statutory functions and is ultra vires; consequently, any report or opinion generated through such a board is legally inconsequential and cannot validate or sustain an otherwise unlawful FIR.

15. It is a settled principle that this Court, in exercise of its constitutional jurisdiction under Article 199, may quash an FIR and consequential proceedings where the same are initiated without lawful authority or amount to an abuse of process, particularly where a statutory bar or jurisdictional defect is evident. While the inherent powers under Section 561-A Cr.P.C. are limited, the Honourable Supreme Court has clarified that the High Court is fully competent, in writ jurisdiction, to quash an FIR at the pre-trial stage if the investigation is without legal sanction or founded on a misapplication of law, as authoritatively held in **FIA through Director General v Syed Hamid Ali Shah PLD 2022 SC 265**. The standards for such intervention are well defined: an FIR may be quashed where it discloses no cognizable offence, where admitted facts negate criminal liability, where proceedings are *mala fide* or oppressive, or where prosecution is launched in breach of a mandatory legal condition. The present case falls squarely within this latter category, as the SHCC Act imposed a statutory bar on criminal prosecution absent the Commission's determination, which was violated. Permitting continuation of proceedings in defiance of a special statute and contrary findings of the competent authority would constitute a classic abuse of process, and where the criminal

law is invoked without jurisdiction, it is incumbent upon the Court to arrest such illegality at the threshold rather than allow an unjust prosecution to proceed.

16. In view of the analysis above, the petition is **allowed**. It is held that the impugned FIR registered against the petitioner doctors, relating to the treatment and death of the premature neonate, is **without lawful authority and of no legal effect**. The initiation and continuation of criminal proceedings in the face of the SHCC's contrary determination constitute an abuse of process. Accordingly, the said FIR, as well as all investigative or other proceedings arising therefrom, are hereby **quashed**. The respondents (police and prosecution) are directed to refrain from taking any further coercive action against the petitioners in respect of the allegations set forth in the quashed FIR.

17. Before parting with this judgment, the Court observes that nothing herein should be taken as diluting the mechanisms for genuine accountability of medical professionals. The SHCC remains the competent forum to oversee and enforce medical standards and in appropriate cases to make referrals for criminal action. Our decision today upholds the legislative scheme ensuring that such matters are dealt with in the correct forum and manner, rather than bypassing it.

There will be no order as to costs. The pending miscellaneous applications, if any, stand disposed of.

JUDGE

JUDGE