

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
Cr. Misc. Application No. 189 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on MA No. 3328 of 2021.
2. For orders on office objection a/w reply at flag "A".
3. For orders on MA No. 3329 of 2021.
4. For hearing of main case.
5. For orders on MA No. 3330 of 2021.

26-03-2021

M/s. Liaquat H. Merchant and Hassan Arif, Advocates for the Applicants.

1. Urgency granted.
3. Exemption granted subject to all just exceptions.

2, 4 & 5. By application under section 561-A Cr.P.C., the Applicants, who are doctors, have invoked the inherent jurisdiction of this Court to quash a private complaint filed by the Respondent No. 2 before the Magistrate under section 200 Cr.P.C. which complaint alleges that the Applicants committed *qatl-i-khata* (sections 318 and 319 PPC) of his wife while treating her at a local hospital. Since quashment has been sought without invoking the remedy before the Magistrate under section 249-A Cr.P.C., the office has raised an objection to the maintainability of this application in view of the case of *Muhammad Farooq v. Ahmed Nawaz Jagirani* (PLD 2016 SC 55).

2. In *Muhammad Farooq*, the Supreme Court of Pakistan had set aside an order passed by the High Court to quash a private complaint in exercise of section 561-A Cr.P.C. which application had been moved directly to the High Court without resort to the remedy available before the trial Court under section 249-A Cr.P.C. While relying on the cases of *Maqbool Rehman v. State* (2002 SCMR 1076) and *Bashir Ahmed v. Zafar-ul-Islam* (PLD 2004 SC 298), the Supreme Court reiterated the circumstances in which the High Court could exercise inherent jurisdiction under section 561-A Cr.P.C. and held

that the remedy thereunder was not an alternate or a substitute of the express remedy provided before the trial Court by sections 249-A Cr.P.C. or 265-K Cr.P.C.; that where two Courts have coextensive or concurrent jurisdiction, then in ordinary circumstances the rule of propriety demanded that the jurisdiction of the lower Court be invoked first; and that in such cases the inherent jurisdiction of the High Court should not be exercised as a routine but only in extraordinary circumstances which warrant the exercise of such jurisdiction by bypassing the alternate remedy available.

3. Learned counsel for the Applicants submitted that quashment of the private complaint is being sought on the ground that the same has been filed after 8 years of the incident, and when a civil suit under the Fatal Accident Act, 1855 filed by the Respondent No.2 against the Applicants is already pending before this Court. On the query why an application under section 249-A Cr.P.C. cannot be moved by the Applicants before the trial Court to agitate the same point, learned counsel submit that by way of the instant application under section 561-A CrPC, the Applicants also seek a direction to the Sindh Healthcare Commission to constitute a medical board to determine whether the Applicants were negligent in treating the deceased patient, and that such direction can only be given by a superior Court under section 4(6) of the Sindh Healthcare Commission Act, 2013 which provides that :

“4(6) Notwithstanding anything contained in any other law, the Commission may –

- (a) on a complaint by any aggrieved person; or
- (b) on a complaint by any aggrieved healthcare service provider;
- (c) on a reference by Government or the Provincial Assembly of Sindh; or
- (d) on a motion of the Supreme Court of Pakistan or the High Court made during the course of any proceedings before it, undertake investigation into allegations of maladministration, malpractice or failures on the part of a healthcare service provider, or any employee of the healthcare service provider.”

4. Section 4(6) of the Sindh Healthcare Commission Act, 2013 shows that apart from a motion by a superior Court under sub-clause (d) thereof, a request to the Sindh Healthcare Commission to undertake investigation into allegations of maladministration,

malpractice or failures on the part of a healthcare service provider, can also be made under sub-clause (b) thereof by way of a complaint by an 'aggrieved healthcare service provider' which the Applicants claim to be. It is not the case of the Applicants that they made such a complaint to the Sindh Healthcare Commission. Per the memo of petition, the private complaint pending before the Magistrate is at the stage of final arguments after evidence has been recorded. Any request now to constitute a medical board, be that under the Sindh Healthcare Commission or otherwise, is essentially a request to lead further/additional evidence. Suffice to say that this is no occasion to consider such request when it is not the case of the Applicants that any evidence sought to be produced by them was shut out by the learned Magistrate.

5. Thus, the case in hand does not bring forth any extraordinary circumstance that may convince this Court to exercise inherent jurisdiction to quash the private complaint when the remedy under section 249-A Cr.P.C. has not be invoked by the Applicants before the trial Court. Therefore, this application is dismissed in *limine*.

JUDGE

*PA/SADAM