

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

C.P.No.D- 3058 of 2017

C.P.No.D- 3366 of 2017

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.

Mr. Justice Adnan-ul-Karim Memon.

Date of hearing: 31.01.2019, 13.03.2019, and 21.03.2019

Date of decision: \_\_\_\_\_.03.2019

Syed Tariq Ahmed Shah, Advocate for petitioners.

Mr. Qadir Bux Ghirano, associate of Mr. Ali Ahmed Palh, Advocate for respondent No..

Mr. Allah Bachayo Soomro, A.A.G.

Syed Meeral Shah A.P.G. for the State.

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**ORDER**

**MUHAMMAD IQBAL KALHORO. J:** - By means of this common order we dispose of both the listed petitions. In C.P.No.D- 3058 of 2017 petitioners are seeking quashment of FIR bearing crime No.95 of 2017 registered u/s 322 PPC at P.S A-Section, Tando Allahyar against them, whereas in C.P.No.D- 3366 of 2017 prayer for transfer/ re-investigation of said F.I.R. has been made by them.

2. Precisely facts of the case are that respondent Dildar Ali after obtaining an order dated 28.08.2017 from Ex-Officio Justice of Peace Tando Allahyar lodged above F.I.R. alleging therein that on 18.08.2017 at about 1pm he brought his brother namely Manthar Ali having asthmatic problem in emergency ward of Civil Hospital Tando Allahyar for treatment where duty doctor Dr. Rasheed Shaikh/petitioner No.2 was not available and he was sitting in the office of Medical Superintendent. He went there and pleaded him to provide oxygen to his brother otherwise he would lose his breath. But he said doctor replied that oxygen was available in ambulance. Although ambulance was available but driver of ambulance was not available. Then Dr. Rasheed Shaikh advised complainant get his brother examined from private hospital of Dr. Khair Muhammad Sahowal/petitioner No.1. Although his duty was at Civil Hospital but he was available at his private clinic where he performed ECG of his brother and disclosed that there was some wrong in one vessel/artery of his heart and he was required to be administered one injection which was not available there. He advised complainant to shift the patient to Hyderabad. The complainant came back to civil

hospital and asked administration to provide him an ambulance and first aid. But neither ambulance was provided to him nor was first aid given to the patient. Then complainant took his brother on his own towards Hyderabad but he expired on the way. Ultimately complainant registered the FIR as above. Thereafter petitioners approached this court through these petitions and vide order dated 27.09.2017 passed in C.P No.D-3058 of 2017 this court while issuing notices to the respondents stayed the proceedings emanating from above F.I.R.

The petitioners, who are doctor by profession and posted at civil hospital district Tando Alahyar besides agitating merits of FIR and denying to have committed any criminal negligence causing death of brother of complainant, have mainly based their case for quashing of aforesaid FIR and proceedings arising therefrom on the ground that the same are violative of provisions of The Sindh Healthcare Commission Act, 2013(2013 Act) whereby any suit, prosecution or other legal proceedings related to provision of healthcare services against a healthcare provider except under the said act has been specifically barred. In support of such contention, learned counsel has relied upon case law reported in 2017 P Cr. L J Note 192 and a common judgment by learned Lahore High Court in Writ Petitions No. 29246/2017 (Naseem Akhtar v. Ex-Officio Justice of peace etc.) and 29468/2017 (Dr. Mudassar Rasool v. Ex-Officio Justice of peace etc.)

As against it learned counsel for respondent No.2 Dildar Ali, the complainant, has contended that after due investigation the challan against petitioners has been filed in the competent court of law which has taken cognizance of the offense; that petitioners have an adequate alternate remedy u/s 249A or 265K CrPC which they may avail before the trial court instead of seeking quashing of FIR directly from this court; that after acceptance of the challan and cognizance of the offense being taken, only limited scope is left for this court to quash FIR or consequent proceedings. He relied upon the case law reported in 1994 SCMR 2142 and 2005 YLR 2461 in support of his contentions.

We have considered above submissions and read the record including the case law cited at bar.

JUDGE

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