

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

CrI. Misc. Application No.S-24 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For orders on M.A No.143/2023.
3. For hearing of main case.

17.10.2023

Mr. Mir Muhammad Nohri, Advocate for the applicant.

Mr. Muhammad Asif Zai, Advocate for the respondent No.6.

Mr. Aziz Ahmed Laghari, Advocate for the respondent No.5.

Mr. Ali Hassan Chandio, Advocate for the respondents No.4, 7 & 8.

Mr. Kamran Bhatti, Advocate for the respondents No.9 & 10.

Mr. Shahzado Saleem, Additional Prosecutor General for the State.

ORDER

Shamsuddin Abbasi, J. Applicant Muhammad Hussain is complainant in F.I.R. No.26/2023 of P.S Women, for offence U/S 319 and 34 P.P.C. alleging there in that wife of complainant Mst. Khairan was having pregnancy of eight months and in emergency she was shifted to Gaya Trust Hospital, Mirpurkhas for treatment, where she was operated by accused/respondent/Dr. Naheed Naz with the assistance of O.T staff but she did not survive. Complainant further alleged in the F.I.R. that due to medical negligence of accused/Dr. Naheed Naz and other staff of hospital caused death of his wife. After usual investigation, S.H.O/I.O submitted challan/ final report U/S 173 Cr.P.C against respondents/accused before the learned Civil Judge & Judicial Magistrate-III, Mirpurkhas. Learned Magistrate did not agree with the final report submitted by I.O and disposed of case under "C"

Class with direction to the complainant to approach Sindh HealthCare Commission for the reason that Commission is a proper forum to investigate and enquire into the matter related to medical negligence.

Learned counsel for the applicant contends that applicant/complainant has approached to Sindh Health Care Commission and filed complaint on 31.07.2023 but his complaint was not entertained due to pendency of instant case/F.I.R. He further contends that the learned Magistrate has wrongly passed order for disposal of the case under cancel "C" Class for the reason learned Magistrate is competent to issue direction to the Commission to entertain his complaint during pendency of the case or this case/ F.I.R. may be returned to I.O to place this case/F.I.R as complaint before Sindh Health Care Commission for inquiry/investigation into the matter. Learned counsels for the respondents and the learned Additional Prosecutor General have recorded no objection on the proposal.

Heard learned councils for the respective parties and perused the material available on the record.

It is admitted position that Sindh HealthCare Commission Act, 2013 provides solution in respect of controversies related to medical negligence. Applicant/ Complainant has approached to the Commission after lodging of F.I.R and submitted application but it was not considered due to pendency of this case/F.I.R. I have gone through the letter dated 02.08.2023, issued by the Director Sindh HealthCare

Commission to the complainant, relevant portion of letter is reproduced here as under:

"45. Procedure for lodging a complaint

(9) the commission shall not entertain the complaint if:

(d) the subject matter is sub-judice before a court of competent jurisdiction on the date of receipt of the complaint.

For SHCC to imitate investigation into your case, it is necessary that the concerned Court or Investigation Officer may forward your case to SHCC directly for conducting the investigation.

You are therefore advised to take up this matter before the concerned Court or Investigation Officer as this case can be forwarded to SHCC for further investigation".

From perusal of provision cited in the above letter reveals that Commission is competent to entertain any complaint related to matter pending in court subject to recommendation of court or I.O. In my humble view only Sindh HealthCare Commission is competent forum to resolve the controversy involved in the present case and I also do not see any embargo to recommend this case/FIR as complaint to Sindh Health Care Commission for enquiry/investigation. Learned counsel for the respondents and the learned Additional P.G have also extended no objection on the proposal made by learned counsel for the applicant. In view of above, impugned order dated 24.08.2023 is set aside with direction to the learned Magistrate to recommend copy of F.I.R as complaint to Sindh Health Care Commission with direction to decide complaint strictly in accordance with law. The instant Criminal Misc. application is disposed of in above terms.

JUDGE