

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Misc. Appln:No.S-842 of 2024

Applicants: Kanwal & others through nemo.

Respondent: Imtiaz through Mr. Waqar Ahmed Bhurgri,
Advocate.

The State: through Mr. Irfan Ali Talpur, APG for the State.

Date of hearing: **13.01.2025**

Date of Order: **13.01.2025**

O R D E R

AMJAD ALI SAHITO, J:- Through this Criminal Misc. Application filed under Section 561-A Cr.P.C, the applicant has impugned the order dated 25.11.2024, passed by the learned Sessions Judge/Ex-officio Justice of Peace, Badin in Criminal Miscellaneous Application No.1751 of 2024 Re: Imtiaz vs proposed accused Lady Doctor Mehak RHC Nindo & others wherein the allegation against the applicant was that the wife of respondent No.1 namely Mst. Naila was pregnant. On 26.09.2024 the wife of respondent No.1/complainant felt labour pain and he brought her to RHC Nindo where she was admitted and given birth to one son, however, said boy was expired. Thereafter, he approached to the Ex-officio Justice of Peace for registration of FIR, same was allowed with direction to the SHO concerned to record the statement of the complainant as per verbatim and same be incorporated in FIR.

2. Per grounds so agitated in the instant application are infact the SHO concerned has no jurisdiction to register the FIR and appropriate remedy is available with the complainant that he should

first approach to Sindh Healthcare Commission and if, it is proved and demonstrates any negligency on the part of proposed accused, the FIR can be registered however, in the instant case respondent No.1 Imtiaz never approached to the Healthcare Commission and straightaway filed application for registration of FIR, as such, this order may be set-aside.

3. On the other hand, learned counsel for respondent No.1/ complainant Imtiaz stated that the proposed accused has committed the offence, as such learned Ex-officio Justice of Peace has rightly passed the order by directing SHO concerned to record statement of complainant, which is his fundamental right. He further submitted that the Sindh Healthcare Commission will not support the complainant and being colleagues they may support their doctors, as such, it will be futile exercise. He lastly prayed for dismissal of instant application.

4. While, learned A.P.G for the State has supported the impugned order

5. Heard & perused.

6. From perusal of record it reflects that the allegation against lady doctor and others are that after the birth of a boy due to their negligency subsequently he passed away, as such, SHO is competent to lodge FIR. In such view of the matter, if, there is any negligency on the part of doctors is proved, first the aggrieved party may approach to the Health Care Commission. The medical negligence is defined under the Sindh Health Care Commission Act 2013, wherein section-2(xxii) means a case where a patient sustains injury or dies as a

result of improper treatment in a healthcare establishment and, in case of death, determined on the basis of the medical autopsy reports, wherein Section 23(2) provides that a complaint shall be made on solemn affirmation or oath and in writing addressed to the Commission by a person aggrieved or, in the case of his or her death, by the legal representative and shall be lodged in person at the office or handed over to the Chief Executive Officer of the Commission in person or sent by any other means of communication to the office, as such, in view of above position it will be decided by the Healthcare Commission whether there is any negligency on the part of the doctor or not. Once it is decided that any negligency is made on the part of doctor, then the complainant is at liberty to approach before a competent forum for redressal of his grievance.

7. In view of above, instant application is allowed and the impugned order dated 25.11.2024, passed by the learned trial Court is hereby set-aside.

JUDGE

Ahmed/Pa,