

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. JUDICIAL DEPARTMENT.

W.P. No.743/2020

Muhammad Safdar

versus

Additional District Magistrate & 2 others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(01)	05.03.2020	Mr. Waqar Hanif Abbasi, Advocate for petitioner.

Through this writ petition, the petitioner has called in question order of the Additional District Magistrate, ICT, Islamabad, dated 17.02.2020, whereby application filed by the petitioner for constitution of Medical Board has been dismissed.

2. Brief facts referred in the instant writ petition are that the petitioner got registered FIR No.5, dated 01.01.2020, under Section 506(ii), 452, 447, 511, 148, 149 PPC, P.S. Bhara Kahu, Islamabad against Muhammad Raziq (Respondent No.2) and two others, however the said Respondent No.2 by self implicating injury has malafidely registered his cross version against the petitioner. Both the parties i.e. the petitioner and Respondent No.2 filed their respective applications for constitution of a Medical Board, however the application filed by Respondent No.2 was accepted, while the other one filed by the petitioner was dismissed vide impugned order dated 17.02.2020. Hence, the instant writ petition.

3. Learned counsel for petitioner contends that the impugned order has been passed without hearing the petitioner, which is against the settled principles of law that "no one can be condemned unheard"; that the Additional District Magistrate has erred in appreciating the law and facts of the case, rather

resorted to passing of the impugned order in hasty manner, which is liable to be set-aside and direction may be issued for constitution of a Medical Board.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner is mainly aggrieved with order dated 17.02.2020, passed by Additional District Magistrate, ICT, Islamabad, whereby application filed by the petitioner for constitution of a Medical Board regarding MLR No.6, dated 01.01.2020, issued in favour of Muhammad Raziq (Respondent No.2) by the Federal Government Services Hospital, Islamabad in case FIR No.5, dated 01.01.2020, under Section 506(ii), 452, 447, 511, 148, 149 PPC, P.S. Bhara Kahu, Islamabad has been dismissed. The Additional District Magistrate on receiving the views from District Attorney fixed the matter and issued notices to both parties as well as to Investigating Officer of this case, however Muhammad Raziq/respondent No.2 put his appearance, but the petitioner had failed to put his appearance on the date and time fixed by the Additional District Magistrate, ICT, Islamabad, which resulted into dismissal of the application filed for constitution of a Medical Board for non prosecution.

6. Pursuant to thorough scrutiny of the record, this Court deems it appropriate to hold that the Additional District Magistrate has rightly dismissed the application filed by the petitioner as the constitution of a Medical Board for the purpose of re-examination of any person is not an order which is to be passed in routine and that too blindly and mechanically as sometimes such applications are moved to frustrate the process of law or to delay the procedure in trial. Although,

sometimes it is noticed that either due to lack of knowledge or experience or on account of other consideration, the correct medical data is not brought on record, while in some cases the self-inflicted and fabricated injuries are managed, therefore, the Courts by virtue of their very purpose of constitution are obliged to be at their toes while dealing with such like cases. Due to these reasons, the learned Additional District Magistrate has rightly dismissed the application for non prosecution and at this stage, this Court in process of judicial review in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is not in a position to pass any order as the authority itself has not yet applied its mind in the given circumstances.

7. In view of above, the instant writ petition is **DISMISSED**. However, the petitioner may approach afresh the District Magistrate, ICT, Islamabad, if so advised.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.