

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

No. IHC/Judl.Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. W.P. 1049-Q-2013

Titled. Dr. Tag/dees Naqash. vs. S.S.P. etc.

- a) Judgment approved for reporting Yes/No
- b) Judgment any comment upon the conduct of the Judicial officer for quality of the impugned judgment Is desired to be made. Yes/No

(In case the answer is affirmative separate confidential note may be sent to the Registrar drawing his attention to the particular aspect).

Initial of the Judge.

- NOTE.
1. If the slip is used, the Reader must attach on top of first Page of the judgment.
 2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for reporting of any comment is to be made about the judicial officer / quality of judgment.
 3. This slip is only to be used when some action is to be taken.

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

WRIT PETITION NO.1049-Q/2013

DR. TAQDEES NAQAISH
VERSUS.
SENIOR SUPERINTENDENT OF POLICE & OTHERS

DATE OF HEARING: 15TH APRIL, 2015.
PETITIONER BY: MR. ZAHEER BASHIR ANSARI LEARNED
ASC.
RESPONDENTS 1 & 2: MR. FAZAL-UR-REHMAN KHAN NIAZI
LEARNED D.A-G WITH FALAK SHER SI.
RESPONDENT NO.3: CH. ABDUL AZIZ LEARNED ASC.

JUDGMENT
MUHAMMAD ANWAR KHAN KASLCJ:

Before dilating upon controversy, it will be imperative to have a glance of background which led to filing of present petition.

2- Respondent No.3 [Amjad Ali] on 19.05.2012 moved a written application to the Registrar, PM&DC, which reads as under:-

"I, Amjad Ali, consulted Dr. Taqdees Naqash, on Thursday 17.05.2012 at around 10:00 am, after pregnancy related pain to my wife Waheeda Khan [MR No. 94]. After a brief meeting with her at Shifa International Hospital, she decided to go for caesarean. My wife gave birth to twin daughters. The doctors reported her condition after the operation stable. She was shifted to a private room at 1:00 pm the same day. However, my wife was continuously complaining of severe pain in her back and vomiting. She was also having difficulty in breathing. Ms. Rabia (staff), Ms. Soha (staff) and Dr. Sehrish (medical Officer) of the hospital kept on giving her pain killers without checking her urine bag or condition of bleeding. Ms. Waheeda's condition kept getting worse and worse and she was restless. I called the duty staff and doctor (namely Ms. Rabi and Ms. Sehrish) for the last time at around 5:15 am on Friday 18.05.2012 and complained about their casual behaviour and worsening condition of my wife. They then checked her and told me

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that Ms. Waheeda needed to be shifted to Labour Room for better care. In the meantime, I was kept in the dark about her condition. I was never told why she was shifted to Labour Room or from there to HDU. Similarly, ICU could not be arranged for at least seven-eight hours and it was only around 01:00 pm on Friday 18.05.2012 that Ms. Waheeda was shifted to ICU. However, by that time it was too late and her condition kept on worsening and ultimately she was announced dead at 5:20 pm on Saturday 19.05.2012.

Since then, I have been requesting the hospital administration and doctors to provide me the detailed file and cause of death of Ms. Waheeda. However, they have been delaying the same on one pretext or the other. It was only on my insistence and regular visits that I was provided with a document titled "Case Summary" dated 28.05.2012 (copy enclosed). Medical file or inquiry report of the Medical Board constituted on request of PEMRA has still not been provided despite several requests.

Grounds of Complaint

- i. The staff of the Shifa International Hospital did not exercise due care and my wife was not given proper post-op care. Pertinently, my wife was not kept under observation after the operation neither specialist doctor came to see her after the operation despite several requests/complainants.
- ii. That despite repeated requests, the staff of Hospital did not properly attend my wife; even her urine output was not checked nor mentioned in the Case Summary.
- iii. That Dr. Taqdees Naqaish did not bother to come to see her patient after the operation despite receiving three calls as she told;
- iv. That even when my wife's critical condition was reported, the Hospital did not provide necessary medical care immediately and ICU was arranged only after my continuous struggle of almost seven hours i.e 5:30 am to 01:00 pm;
- v. That the Hospital has been withholding the actual cause of death of my wife and is not even providing her medical file or sharing findings of the medical board constituted on request of PEMRA.
- vi. That the case summary provided by the Hospital is devoid of factual position. I believe that the Hospital and the said doctors have created this false case summary in order to avoid their responsibility.



M/s Shifa International Hospital (Pvt) Ltd, Dr. Taqdees Naqaish, Anesthetist, Dr. Sehrish and Ms. Rabia of Shifa International Hospital are involved in murder of my wife through their extreme professional negligence. It is requested that they may kindly be proceeded against as per law and appropriate legal action may be taken against them by cancelling the licences of the

Hospital as well as the doctors involved in murder of my wife through their gross negligence and imposition of any other penalty as provided in the law.

3- Besides lodging the above complaint, he moved petition under Section 22-A Cr.P.C to the learned Ex-Officio JOP for registration of a criminal case against the petitioners which was allowed and in consequence thereof, FIR No. 83, dated 19.05.2013, Under-Section 322 PPC was registered at PS Industrial Area Islamabad, which is being assailed through the present petition.

4- Learned counsel, on the strength of Judgment cited as “Shifa International Hospital Vs. PM&DC” [2011 CLC 463 Islamabad] pressed this petition, inter alia, on the grounds that jurisdiction under special law vests with PM&DC, which under regulations of 2008 has the power to adjudge professional negligence or misconduct on the part of medical practitioners and only after such determination under special law, criminal as well as civil law can be set in motion. According to learned counsel, until & unless gross or criminal negligence is made out, FIR cannot be registered against any medical Doctor.

5- Learned counsel further contended that no ‘*mense rea* or vindictiveness’ or *malafides* had been alleged or stated in the FIR by which an offence is constituted.

6- Elaborating his viewpoint, learned counsel averred that the ratio set in referred Judgments provides a mechanism, contained in Sections 19 to 30 of Pakistan Registration of Medical & Dental Practitioners Regulations 2008, which shall determine professional negligence of responsible guilty doctors whose names would then be removed from appropriate register or to censure him/them. To constitute an offence, complainant has to show negligence or

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rashness to such a degree as to indicate a mental state which can be described as totally hypothetical towards the patient. The facts alleged do not constitute any such state of mind which could constitute criminal professional negligence making it per se actionable.

7- It is concluded that special enactment always prevails over the general law and without exhausting that remedy, no criminal proceedings can be initiated. In support of his submissions, learned counsel referred case laws titled as “Yasmin Gul Khanani & Another Applicants Vs. Tariq Mehmood & 2 Others” [2013 YLR 2716 Sindh], “Aftab Ahmed Vs. The State & 4 Others” [2014 MLD 795 Peshawar], “Ret. Brig Ijaz Akbar & Another Vs. The State & Anothr” [2013 MLD 250 Peshawar].

8- Learned counsel for respondent No.3, on the other hand, vehemently repelled the above submissions. It is contended that the referred case law does not extend any help to the petitioners due to having distinct facts & circumstances. It is further submitted that facts & circumstances of this case clearly indicate it to be a case of severe carelessness and criminal negligence, therefore, normal course, at this stage, cannot be halted as it may result in irreparable loss to the complainant.

9- Learned counsel next argued that the Court while exercising constitutional jurisdiction cannot go into deeper appreciation to judge the authenticity or otherwise of the complaint filed by respondent No.3. According to him, petitioners, in due course, have already been held guilty by PM&DC, therefore, proceeding further pursuant to FIR in question would be in the interest of justice, rather same will be in compliance with ratio set in case of “Shifa International Hospital Vs. PM&DC” [2011 CLC 463] relied by the petitioners.

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10- In support of his submissions, learned counsel placed reliance upon case laws titled as “Col. Shah Sadiq Vs. Muhammad Ashiq & Others” [2006 SCMR 276], “Dr. Sher Afgan Khan Niazi Vs. Ali S. Habib & Others” [2011 SCMR 1813] and “Muhammad Aslam Vs. Dr. Imtiaz Ali Mughal & 4 Others” [PLD 2010 Karachi 134].

11- Learned Deputy Attorney-General submitted that pursuant to orders of learned Ex-Officio JoP, FIR in question was registered and proceedings of investigation were commenced thereafter it was stopped due to injunctive order issued by this Court and that further proceedings would be in accordance with the direction, if any.

12- After giving due consideration to the submissions advanced by both the sides, record available on file has also been minutely examined.

13- The pivotal question is as to whether FIR in question can be quashed by following the ratio set in case of Shifa International [supra]. It was held in that Judgment that special enactments always prevail over the general laws and without exhausting that remedy, no criminal proceedings can be initiated. It was further observed that once it is held by the PM&DC that practitioner was guilty of negligence and professional misconduct, criminal as well as civil law can be set into motion.

14- It is noteworthy that in the referred case law, there was no complaint before the PM&DC and action was initiated by filing a complaint directly at the Police Station which was assailed and declared to be without lawful authority and set aside, whereas in the present case, respondent No.3-complainant, initially moved the PM&DC through a written complaint, reproduced above, wherein an inquiry was conducted and Disciplinary Committee vide Decision dated 19th February, 2014, held the petitioners negligent and were

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issued 'CENSURE' with further direction to the Hospital to improve their system.

15- In view of above, case is not hit by referred Judgment for the reasons that respondent No.3 at the first instance moved the PM&DC where disciplinary proceedings were initiated against the petitioners and they were awarded penalty of "CENSURE".

16- Next question would be as to whether this Court while exercising constitutional jurisdiction can go into the details to ascertain the degree/density of negligence on the part of petitioners. Guidance is implored from case of "Dr. Sher Afgan Khan Niazi Versus Ali S. Habib and others [2011 SCMR 1813] wherein it has graciously been laid down by the Hon'ble Apex Court that factum of 'malafides' or 'mens rea' could not be proved without recording evidence or collecting incriminating material but not in exercise of jurisdiction under Article 199 of the Constitution read with Section 561-A Cr. PC, therefore, question is answered in negative.

17- After holding the inapplicability of the referred Judgment to present case and the fact that malafide or mense rea cannot be proved in constitutional jurisdiction, the result would be that in circumstances of present case relief sought for cannot be granted for reasons that initially respondent No.3 moved PM&DC through a written complaint against petitioners, and matter had been dealt with under special law at the first instance, therefore, there is no impediment to initiate criminal or civil action thereafter as held in referred citation and that too in case when petitioners were found guilty to some extent and were awarded penalty of CENSURE. In addition to this, there are specific allegations in the complaint which require probe & investigation to ascertain factum of malafide or mense rea.

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18- Having regard to all circumstances, it is not a fit case to exercise discretion for reasons stated above and normal procedure provided in Criminal Procedure Code could not be halted. Resultantly, petition being devoid of merits is dismissed.

CHIEF JUSTICE

Announced in Open Court, on this 30th day of June, 2015.

CHIEF JUSTICE

M.A. Baig

APPROVED FOR REPORTING

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