

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. W.P. No 4631 of 2000

Titled SKifa International Hospital. Vs P.M.D.C.

- (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 the 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.

Issued :-
Dispatch No. - 1282
Date: 29/01/00

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

CASE NO.: WRIT PETITION NO.4631 OF 2010

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SHIFA INTERNATIONAL HOSPITAL

VERSUS

P.M.D.C ETC.

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DATE OF HEARING: **17.01.2011**

PETITIONER BY:- M/s Mohammad Akram Sheikh & Natalia Kamal
Advocates.

RESPONDENTS BY: Mr. Mujeeb-ur-Rehman Kiyani Advocate for
respondent No.4,
Malik Qamar Afzel Advocate for respondent No.4,
Qazi Rafee-ud-Din Babar, learned D. A-G,
Haris Nadeem complainant in person,
Hameed ul Haq SI, PS Industrial Area with record.

MUHAMMAD ANWAR KHAN KASL. J.

This petition arises out of complaint submitted by the respondent No.4 to the Chief Commissioner, ICT with the allegation that his father was not treated properly and due to negligence and careless attitude of the petitioner hospital staff and inexperienced doctors he died after thirteen days in ICU on 19.06.2010.

2- On the basis of this written complaint, a report was lodged by police station Industrial Area Islamabad on 18.08.2010.

3- The petitioner being aggrieved by the lodging of this report invoked the jurisdiction of this Court under Article 199 of the Constitution for declaring the request and inquiry to be illegal, coram non judice and of no legal effect. It is submitted that the petitioner is a renowned hospital in the medical field where quality and dedication services are provided. It was registered as



Public Limited Company on 12.10.1999. According to the petitioner, one Khurshid (late) aged about 84 years was admitted in the hospital in Intensive Care Unit (ICU). He had a previous history of heart ailments and hypertension etc. He passed away on 19.06.2010 and after his death, the patient's son (respondent No.4) submitted an application to the Chief Commissioner, ICT, who forwarded it to the police whereupon a report was lodged and inquiry started.

4- The learned counsel for the petitioner argued that he has got his all sympathies with the legal heirs of the patient, but the procedure adopted by the respondent is not legal as the application for such complaints can be dealt with by the disciplinary committee of PMDC. It is mentioned that in this regard Section 19 to 30 of the Pakistan Registration of Medical and Dental Practitioners Regulations 2008 are clear and the procedure is defined. If such professional negligence is established, the responsible guilty doctor's name would be removed from the appropriate register or to censure him. The counsel further submitted that the negligence for criminal liability is attracted only when the complaint can show negligence or rashness of such a degree as to indicate a mental state which can be described as totally hypothetic towards the patient. He argued that if such complaints are entertained by the police, then the doctors would be at their mercy and no doctor would like to provide medical treatment and care to a serious patient. He mentioned that all the doctors of petitioner's Company are highly qualified, experienced and competent enough to deal with serious matters. Had there been a unregistered medical practitioner, the police could have initiated proceedings under the criminal law. He lastly argued that in presence of special law, general law looses the field and special law over-powers. Learned counsel for the petitioner relied upon following authorities:-

1. AIR 2004 SC 4091,
2. PLD 2005 SC 99,
3. PLD 2010 Karachi 134,
4. PLD 1974 SC 151,
5. 2002 SCMR 1076 and
6. 2008 SCMR 1118.

6- According to AIR 2004 SC 4091 it is held that every careless act of the medical man cannot be termed as criminal. It can be termed criminal only, when the medical man exhibits a gross lack of competence or inefficient or inaction and wanton indifference to his patient safety and which is found to have arisen from gross ignorance or gross negligence. Mere inadvertence or some degree of want of adequate care and caution might create civil liability and would not suffice to hold him criminally liable.

7- In PLD 2005 SC 99, it is held that for establishing tortuous negligence, contents of application should specify the act of negligence, otherwise it becomes a case of civil negligence.

8- The case reported in PLD 2010 Karachi 134, specifies that gross negligence can attract when there is negligence or rashness of high degree to indicate a mental state, described as absolutely unsympathetic towards the patient.

9- PLD 1974 SC 151 is about verdict where vindictiveness and malafides are apparent on the face of complaint and abuse of process of law can be quashed at any stage.

10- In Maqbool Rahman's case reported in 2002 SCMR 1076 the IO had suggested the constitution of a medical board to clarify the controversy regarding the medical negligence. In this way, quashing of proceedings was upheld by the Hon'ble Supreme Court as abuse of process of law.

11- 2008 SCMR 1118 is about a case where it was held that no distinction between civil and criminal liability is serious misuse of powers.

12- On the other hand, learned counsel for the respondent No.4 submitted that petition is premature as no FIR has been lodged and the matter is at inquiry stage which cannot be interfered with in constitutional jurisdiction. Relying upon 1999 P. Cr. LJ 1117, he submitted that the court should not interfere with the police or other investigation agency in matters, which are within their domain and into which when the law

imposes upon them, the duty of inquiry as functions of the court and of the police are complementary not overlapping. He relied upon following authorities:-

1. 2010 SC 1969
2. PLD 1994 SC 281
3. PLD 1994 SC 2142
4. PLD 1993 SC 399 and
5. PLD 1971 SC 677.

13- The authority reported in 2010 SC 1969 emphasis upon the point where alternate remedy is conveniently available, jurisdiction under Article 199 of the Constitution cannot be exercised. According to this, question of guilt or innocence could not be decided by the High Court in exercise of constitutional jurisdiction.

14- It is held in PLD 1994 281 that the court cannot be went, preclude or otherwise interfere with the powers of police in the matter of registration of the case and investigation thereof.

15- The case law reported in PLD 1994 SC 2142 held that the powers under Article 199 of the Constitution is a great weapon in the hands of judges, but the judges must observe the constitutional limits and must take care not to intrude upon the domain of the other branches of the government.

16- The case reported in PLD 1999 SC 399 held that the revisional powers under section 439 Cr. PC are wider in scope than powers in the writ jurisdiction. When there is finding by the court of competent jurisdiction on the revisional side, then it has attained finality and constitution petition would not be maintainable on the same question.

17- PLD 1971 SC 677 lays down that the High Court, neither under the Constitution nor under the Cr. PC had any jurisdiction to interfere with the investigation conducted by the officers competent by the Cr. PC.

18- It is further argued that SP, Industrial Area, Islamabad, addressed a letter No.8788/R, dated 02.11.2010 to SSP Islamabad suggesting therein that request be made to the concerned quarters through District Administration to constitute Medical Board either by Pakistan Medical and Dental Counsel or by the

Ministry of Health to probe into the matter thoroughly and submit the report, so that legal action can be taken against the delinquent doctors of Al-Shifa International Hospital Ltd accordingly.

19- It is mentioned that since the police has requested for constitution of medical board to find out the ingredients of negligence and liability of the concerned doctors, the petition is thus not maintainable.

20- He also argued that general law in respect of criminal proceedings shall prevail and special law has no relevancy in the present case.

21- Learned counsel for the respondent No.1 adopted the arguments of learned counsel for respondent No.4 and opposed the petition. He added that judicial review at this stage is not permissible. He further submitted that police had ample powers to inquire into the matters under section 157 and 160 Cr. PC.

22- Learned Law Officer appearing on behalf of the State also opposed the petition by expressing the same views.

23- Heard and record perused.

24- The first point involved in the case is about the jurisdiction under Article 199 of the Constitution, suffice it to say that the High Court can exercise the powers in any matter where there is no efficacious alternate remedy is available and abuse of process of law is found.

25- In the instant case, the petitioner is a Company providing medical facilities and treatment to the patients and is registered with PMDC under the statutory act. The affairs of such organization are being controlled/run by specially enacted laws known as "Pakistan Registration of Medical and Dental Practitioners Regulations 2008" which provides procedure for action against the negligent behaviour and infamous conduct of the registered practitioners. The disciplinary committee and the Council have ample powers under section 30 & 31 of the Regulations 2008 to de-register such practitioners and to take other legal actions.

26- In the present case, the patient remained admitted in Intensive Care Unit for thirteen days, but the

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complainant, according to record, never expressed any dissatisfaction or no confidence over the hospital staff. There does not seem any mense rea or motive for criminal negligence on the part of the practitioner.

27- It is worth mentioning that sometimes despite best efforts, the treatment of a doctor fails and sometimes despite best efforts of a surgeon the patient dies. It does not mean that the doctor or the surgeon must be held to be guilty of medical negligence unless there is strong evidence to suggest that he is. Because if the doctors are left at the mercy of police on every death of a patient, then there would be chaos in the society and the doctors would refrain to provide medical aid to the serious patients, to save their own skins from being involved in criminal cases.

28- It is also established principle of law that special enactments always prevail over the general laws and in the present case, special laws to deal with the negligence of the practitioners is there and, therefore, without exhausting that remedy, no criminal proceedings can be initiated. Once it is held by the PMDC that practitioner was guilty of negligence and professional misconduct, criminal law as well as civil law can be set into motion against them.

29- The case laws relied upon by the learned counsel for the petitioners support his contention as far as the definition of criminal negligence is concerned, while the cases cited by the learned counsel for the respondent No.4 are about alternate remedy only and are not relevant.

30- Be that as it may, the disciplinary committee under the Regulations 2008 have powers to find out the guilt or innocence of the practitioners. Therefore, in the present case, the complaint of respondent No.4 should be forwarded to the PMDC for proper legal action under the law within two months without being prejudiced by any observations of the police or the Court.

31- In view of above, the petition is allowed. In consequence thereof, report dated 19.08.2010 registered by PS Industrial Area Islamabad and proceedings

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initiated there-under are declared illegal, without any lawful authority and are set-aside. No orders as to costs.

(MUHAMMAD ANWAR KHAN KASI)
JUDGE

Announced in Open Court on this 27th day of January, 2011.

(MUHAMMAD ANWAR KHAN KASI)
JUDGE

M. Suhail

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