JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

1. Writ Petition No.384 of 2026

Dr. Muhammad Arshad Chohan

Versus

IG, Islamabad and others

2. Writ Petition No.1449 of 2026

Dr. Aniq ur Rehman

Versus

IG, Islamabad and others

Petitioners by:	Sardar Abdul Raziq Khan and Mr. Umair Shafique Mughal, Advocates. (In W.P No.384/2026) Barrister Lamia Niazi, Advocate (In W.P No.1449/2026)
Respondents No.1 to 4 by:	Mr. Naveed Hayat Malik, Advocate General, ICT, M/s Absar Salaheen, Ms. Memmona Sagheer, Mr. Farooq Azam and Mudassar Rizwan, State Counsels along with Zafar Iqbal, ASI. (In both Writ Petitions)
Respondent/Complainant by:	Ms. Urooj Fatima Advocate. (In both Writ Petitions)
Date of Hearing:	**22.07.2026.**

INAAM AMEEN MINHAS, J. Through this single judgment, I shall decide the above titled writ petitions, as in these petitions, the petitioners have prayed for quashing of FIR No.985, dated 26.11.2025, u/s 322, 419, 34, PPC, registered at Police Station Lohi Bher, Islamabad.

2. Brief facts, which necessitated filing of the titled writ petitions are that petitioner in W.P No.384/2026 is a retired Brigadier doctor from Pakistan

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Army, who is running a hospital i.e Medicent Hospital Bahria Phase-IV Islamabad and provides medical services to the citizens. The petitioner in W.P No.1449/2026 is also a doctor (anesthetist) by profession and works in the hospital of the petitioner in W.P No.384/2026. Both the petitioners have experience of more than four decades in medical field and there is no complaint against them or the hospital. On 25.06.2025, the six-year-old daughter of the respondent No.5/complainant, underwent throat surgery at the said Hospital. The child died during the operation where after the complainant approached the Islamabad Healthcare Regulatory Authority **("Authority")** on 30.06.2025 and filed an application complaining the death of his daughter in OT of the hospital after administering anesthesia for surgery. IHRA after thorough inquiry did not find any criminal negligence and did not recommend registration of an FIR, however, imposed fine of Rs.10,00,000/- each on the hospital and the petitioner in W.P No.1449/2026, who had administered anesthesia. The hospital deposited the fine and also filed an appeal before the Federal Secretary Health. The complainant also filed an appeal before the Federal Secretary Health. Despite the order of the Authority, the above mentioned FIR was registered against the petitioners.

3. The learned counsels for the petitioners submitted that Islamabad Healthcare Regulation Act, 2018 **(IHRA, 2018")** is a special statute that establishes a complete regulatory mechanism for matters of medical negligence in the Islamabad Capital Territory, and that the initial determination of any allegation of medical negligence falls exclusively within the jurisdiction of the Authority. They argued that the Authority having investigated the complaint, heard all parties, imposed penalties on the hospital and the anesthetist, and consciously chose not to recommend criminal proceedings against the petitioners. They further submitted that the police has no independent authority u/s 154 Cr.P.C. to register a criminal case against the petitioners on the same subject matter. The learned counsels placed reliance on Dr. Saiqa Yousaf vs. The State (2024 P.Cr.L.J. 1852), and submitted that only the Authority is competent to determine medical negligence, while the police cannot substitute the opinion of medical experts. The learned counsel for the petitioners further contended that the

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FIR was registered with *mala fide* intent, without any evidence of the petitioners' involvement, despite their cooperation in the investigation and production of documentary and CCTV evidence. Lastly, the learned counsels submitted that after imposition of fine by the Authority, the registration of FIR is in violation of Article 13 of the Constitution and Section 403 Cr.P.C and that from bare perusal of the FIR, no cognizable offence is made out, therefore, the FIR is liable to be quashed.

4. Conversely, the learned Advocate General and the learned counsel for the complainant resisted the arguments of the learned counsel for the petitioners while contended that section 32 of IHRA, 2018 and section 3, 6 and 15 of the Medical Tribunal Act, 2020 do not bar registration of the FIR on the medical negligence and prayed for dismissal of the writ petitions.

5. I have heard the learned Counsels for the parties and carefully examined the record with their able assistance.

6. The facts of the matter have been set out in sufficient detail above and need not to be recapitulated. The principal question that falls for determination is as follow:-

> *whether, in matters relating to alleged medical negligence, the police possess independent authority under section 154 Cr.P.C. to register an FIR and initiate criminal investigation, or whether such matters fall within the exclusive initial jurisdiction of the Authority under the IHRA 2018, and whether the exercise of police jurisdiction without a referral from the Authority is, in the circumstances of this case, without lawful authority.*

I. THE STATUTORY SCHEME OF IHRA, 2018

7. Before examining and deciding the legal question involved in the present case, it is necessary to first consider the scheme and relevant provisions of the IHRA 2018, which is a special statute enacted by the legislature for the specific purpose of creating a comprehensive regulatory framework for the healthcare sector in the Islamabad Capital Territory. It empowers the Authority to prescribe, implement, and enforce quality standards for healthcare establishments and medical professionals, to regulate their functioning, and to ensure compliance with the law. It further

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establishes a complete mechanism for dealing with complaints of medical negligence, malpractice, and maladministration. Being a special statute enacted for a specific field, its provisions must be given full effect, and questions falling within its domain must be dealt with through the procedure it prescribes. Therefore, before addressing the legality of the impugned FIR, it is essential to examine the statutory scheme of the IHRA 2018, as the rights, duties, and jurisdiction of the parties are to be determined within the framework of this special legislation.

8. Section 2 of the IHRA, 2018 contains the relevant definitions which explain the scope and application of the law. In particular, the expressions "healthcare establishment" and "healthcare professional" have been defined under Sections 2(xv) and 2(xvi), while the term "medical negligence" has been specifically defined under Section 2(xxiv). These definitions clearly indicate the legislative intent to regulate allegations of medical negligence within the framework of this special statute. For ready reference and a proper understanding of the issue involved, the definition of "medical negligence" as provided in Section 2(xxiv) of the Act is reproduced below:-

> *"(xxiv) "medical negligence" means any negligence by an act or omission of a healthcare professional in performing his duty. In medical negligence cases it has to be established that----*
> *(a) there was a duty which the healthcare professional owed to the patient.*
> *(b) there was a breach of duty,*
> *(c) the breach resulted in injury to the patient, and*
> *(d) the injury resulted in causing damage or death"*

9. From the above referred definition, it is evident that "medical negligence" is defined as any negligence by an act or omission of a healthcare professional in performing his duty, subject to the establishment of four elements: a duty owed to the patient; a breach of that duty; injury resulting from the breach; and damage or death resulting from the injury. The breadth of this definition is deliberate since it encompasses every form of negligence that may be committed by a healthcare professional, including misdiagnosis, surgical error, administration of wrong medication or dosage, failure to obtain informed consent, and any other departure from the

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accepted standards of medical practice that causes harm to a patient. This legislative choice of a comprehensive definition reflects the legislative's intention that the entire field of healthcare-related negligence be governed by the Act, and not by the general criminal law in the first instance. It is, however, equally important to note what medical negligence is not. Not every unsuccessful treatment, adverse medical outcome, or surgical complication amounts to medical negligence. A healthcare professional cannot be held negligent merely because the desired clinical result was not achieved. Negligence arises only where the treatment provided was below the accepted standard of medical care or arises where the act directly caused injury or damage to the patient. This can also be examined from the lens of *"the standard of the ordinary competent practitioner"*. This test was enunciated in the case of ***Bolam vs. Friern Hospital Management Committee [1957] 2 All ER 118,*** wherein the Court observed that, *"The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill: It is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art. In the case of a medical man, negligence means failure to act in accordance with the standards of reasonably competent medical men at the time. There may be one or more perfectly proper standards, and if he confirms with one of these proper standards, then he is not negligent."* The observation in the cited case is material, since it means that the assessment of any given conduct constitutes medical negligence is inherently a technical and expert question, not one that can be resolved by the ordinary process of police investigation. Unlike the general criminal law, which is primarily concerned with the investigation and prosecution of criminal offences, the IHRA 2018 establishes a specialized statutory framework for dealing with matters relating to healthcare services and medical negligence. The legislature has intentionally entrusted these matters to a specialized Authority comprising persons with the necessary medical knowledge, technical expertise, and professional experience to properly assess issues relating to medical treatment, standards of medical care, professional conduct, and compliance with healthcare regulations. Such questions often involve complex medical

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and scientific considerations that cannot ordinarily be determined without expert evaluation. The Act, therefore, provides a complete statutory mechanism for examining these issues through the competent Authority.

10. Moreover, medical negligence is, in this respect, qualitatively distinct from general negligence. The determination of general negligence arising, for instance, from negligent driving or failure to maintain safe premises involves facts and circumstances ordinarily within the competence of an investigating officer and a Court to assess without specialist assistance. Medical negligence, by contrast, involves questions of diagnosis, surgical judgment, anesthetic dosage, professional protocol, and accepted medical practice that cannot be resolved without expert evaluation by persons possessing the necessary medical knowledge. It is for this precise reason that the legislature enacted a specialized framework and entrusted the initial determination of such matters to the Authority, rather than to the police or to the ordinary criminal Courts acting in the first instance. The legal consequences of the two forms of negligence go to the root of the matter. General negligence ordinarily gives rise to civil liability for compensation and, in appropriate cases involving gross negligence or recklessness, may also attract criminal liability under the general criminal law. Medical negligence, on the other hand, does not automatically result in criminal prosecution merely because a patient has suffered injury or death. A medical practitioner may first be subjected to professional or regulatory proceedings for violation of medical standards, and civil liability may arise where the patient is entitled to compensation for the loss suffered. Criminal liability can arise only in exceptional cases where the negligence is so gross, reckless, or culpable that it satisfies the ingredients of the relevant penal law. Therefore, every act of medical negligence does not constitute a criminal offence, and every allegation against a healthcare professional cannot be the basis for directly registering an FIR. The distinction maintained by the legislature is intended to protect patients by ensuring accountability while simultaneously protecting medical professionals from unwarranted criminal prosecution for *bona fide* errors of professional judgment that do not amount to gross or criminal negligence.

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II. THE EXCLUSIVE JURISDICTION OF THE AUTHORITY

11. At this juncture it is appropriate to examine the jurisdiction of the Regulatory Authority, and to what extent such jurisdiction may lawfully and legitimately be exercised. The determination of this, must be guided by the object and scheme of the respective statutes, read in conjunction with the settled principles of statutory interpretation that govern the resolution of conflicts between competing enactments. The foremost principle is the doctrine of *lex specialis derogat legi generali*, namely, that a special law prevails over a general law. Jurisprudentially and in practice, this principle postulates that where two enactments govern the similar situation, the statute dealing with a particular subject-matter *(lex specialis)* overrides the statute, which addresses the subject in more general terms *(lex generalis)*. In ***Sui Northern Gas Pipeline Limited (SNGPL) vs. Director (Legal), President Secretariat (Public), (PLD 2018 Islamabad 51)*** this Court held that:-

> *"18. In view above discussion on two special laws, it can safely be concluded that when two special laws deal with similar situation, then question of jurisdiction has to be seen in the light of its nature, object, scope and remedial portion provided therein in ordinary meaning which is called as literal approach of reading a statute to understand its true legislative intent. It is also settled proposition of law that special statute prevails over general statute and similarly, general provisions and special provisions in same statute would have different effect, when the plain and simple meaning of a provision of law is clearly understandable without any ambiguity then nothing is to be presumed or imported from outside. Reliance is placed upon 2014 SCMR 671 (The State v. Syed Ali Baqar Naqvi and others). Even otherwise, the Courts have to decide any question in accordance with law and every citizen has right to be dealt in accordance with law under Article 10-A of the Constitution of Islamic Republic of Pakistan 1973. It is also settled proposition of law that in construing and interpreting a special law, the Court has to look at the reasons and background, which influenced the mind of the legislature in enacting the special law and the history of events, which had occurred preceding the enactment of the special law. Similarly, in construing and interpreting Statute, the fundamental principle is to discover the true intent of the legislature enacting a particular law to meet a particular situation and to confront a specific emerging threat or*

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situation. Reliance is placed upon 2017 5CMR 1572 (Waris Ali and 5 others v. The State).”

12. Similarly, in the case of ***Messrs Federal Bank for Cooperatives, Islamabad vs. Commissioner of Income Tax, Companies Zone, Islamabad (2021 PTD 1203, Islamabad),*** a Division Bench of this Court, while construing the meaning of seemingly conflicting provisions between special laws, formulated the following principles of interpretation:-

“i. While applying seemingly conflicting provisions of two statutes a court must seek to interpret them in a manner that affords harmonious construction and prevents the emergence of a conflict between their provisions. It is to be assumed that in the event the legislature wished to override an existing law it would do so explicitly and thus the doctrine of implied repeal is not to be readily or mechanically invoked.

ii. Special law prevails over general law. And in a conflict between two special laws the one later in time will ordinarily prevail for being an embodiment of the latest expression of the legislature intent. But, as aforesaid, this principle is not to be mechanically applied as being aware of an earlier special law, the legislature could override the same through explicit language in a subsequent special law if it is so wished.

iii. In the event that there is contradiction between the provisions of two statutes it is to be presumed that the statute within the provision of which the legislature has included a non-obstante clause is to be given overriding effect over provisions of the other statute that it is in conflict with, in order to give effect to expressed legislative intent. In the event that both statutes contain nonobstante clauses, the special law will prevail over general law, and the law later in time will ordinarily prevail in case of conflict between two special laws). However, a non-obstante clause is also not to be given overriding effect in a mechanical fashion as the underlying object of the interpretive project undertaken by the court is to discover the meaning of words used by the legislature: a non-obstante clause is usually employed to suggest that the provision referred to in the non-obstante clause is to prevail over other provisions of the statute, but repugnancy between nonobstante clause and other clauses is not to be presumed and overriding effect is to be accorded only in case of irreconcilable conflict.

iv. In the event that harmonious construction cannot be accorded to the provisions of two special statues without giving tortured meaning to the words used in the text, the

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> *object, purpose and policy of the statutes is to be borne in mind in order to discover the legislative intent regarding which statute is to be given overriding effect and to be treated as the special law with overriding effect over another special law. It is possible that a law is to be treated as a special law vis-a-vis one enactment and general law vis-a-vis another enactment."*

13. A thorough examination of the IHRA 2018 reflects that it is a comprehensive law within its purpose, scope, object and a significant portion provides for the penalties and offences relating to medical negligence. For ease, the preamble of the Act is reproduced below:-

> *"Whereas it is expedient to provide a regulatory framework to ensure provision of quality health care services, by implementing quality standards by the healthcare sector, to residents of the Islamabad Capital Territory and where as it is expedient to establish the Islamabad Healthcare Regulatory Authority for aforesaid purpose and to provide for matters connected therewith and ancillary thereto;"*

14. Section 32 of the Act provides for the specific procedure for initiating judicial proceedings, as under:-

> *"32. Cognizance by court. (1) Save as provided in this Act, no court other than the court of Sessions assume jurisdiction under this Act unless a complaint in writing is filled before the aforesaid court by the Authority"*

15. The above referred section clearly shows that the legislature has prescribed a specific procedure for initiating judicial proceedings relating to matters arising under the Act. The provision expressly confers jurisdiction upon the Court of Sessions to take cognizance of such matters only when a written complaint is filed before it in accordance with the provisions of the Act. Thus, the jurisdiction of the Court of Sessions is not automatic; rather, it becomes exercisable only after the mandatory statutory requirement of filing a written complaint has been fulfilled. The use of the expression "complaint in writing" in Section 32 is deliberate and leaves no room for any other mode of initiating proceedings. It follows that, in the absence of such a written complaint, neither lawful proceedings can be commenced, nor can the Court assume jurisdiction to entertain or try the matter. This clearly reflects the legislative intent that allegations relating to medical negligence

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must first pass through the statutory mechanism established under the Act before any judicial proceedings are initiated. The requirement of a written complaint is, therefore, a mandatory condition precedent for invoking jurisdiction of the Court of Sessions, and any proceedings initiated in disregard of this statutory requirement would be without lawful authority and of no legal effect.

16. Section 33 of the Act clearly states that the Authority shall investigate the matter upon a complaint relating to a healthcare establishment, healthcare professional and medical negligence, which is reproduced as under:-

> *"33. Complaints. (1) The Authority shall investigate the complaints relating to healthcare establishment, healthcare professional, healthcare services and medical negligence.*
> *(2) The Authority shall define:-*
> *(a) kinds of complaints;*
> *(b) categories or different kinds of medical negligence; and*
> *(c) mal-administration, malpractice and failure in provision of healthcare services."*

17. The legislature has specifically provided that complaints relating to healthcare establishments, healthcare professionals, healthcare services and medical negligence shall be made before the Authority. The language employed by the legislature leaves little room for doubt that the initial determination of allegations involving medical negligence falls within the exclusive statutory domain of the Authority. The purpose behind such legislative arrangement is obvious. Questions relating to diagnosis, treatment, surgical procedures, anesthesia, accepted medical practice, and professional negligence require expert medical evaluation, which cannot ordinarily be undertaken by investigating police officers with no technical medical expertise.

18. Under this section the legislature has conferred exclusive statutory powers upon the Authority to examine, investigate, and determine allegations of medical negligence. This section also authorizes the Authority to identify and classify the different kinds of medical negligence and to assess, on the basis of expert evaluation, whether the conduct of a healthcare

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professional amounts to negligence and, if so, the nature and extent of such negligence. This statutory scheme makes it clear that the Authority is the specialized body having exclusive jurisdiction to first examine complaints relating to medical negligence before any question of criminal or civil liability can arise. The law recognizes that every allegation of medical negligence does not automatically amount to a criminal offence. A medical error, an unsuccessful treatment, or an adverse medical outcome does not by itself justify criminal prosecution. Therefore, until the competent Authority conducts the necessary inquiry and reaches a finding in accordance with the Act, the ordinary law enforcement agencies have no lawful jurisdiction to directly assume cognizance of such matters by registering an FIR or initiating criminal proceedings. Any contrary approach would defeat the object of the special law, bypass the statutory mechanism created by the legislature, and expose medical professionals to criminal prosecution without the expert scrutiny and safeguards specifically provided under the Act. Therefore, the initial jurisdiction to investigate and determine allegations of medical negligence exclusively rests with the Authority, and only thereafter can any further action be taken in accordance with law, if the circumstances of the case so require.

19. The legislative intent becomes even more evident in respect of jurisdiction, powers to determine the question of medical negligence. The relevant provision of Section 26(4) of the IHRA, 2018 is reproduced as under:-

> *"(4) Where it appears to the Authority that the circumstances of a case warrant action under any law, the Authority may refer such case to the concerned governmental authorities or law enforcement agencies for appropriate action under relevant laws."*

20. The above referred provisions makes it clear that the legislature has vested the Authority with the power, after carefully examining the facts, evidence, and circumstances of each case, to refer the matter to the concerned Government authority or the relevant law enforcement agency for appropriate action under the applicable law, if it considers such a course necessary. This statutory power clearly reflects the legislative intent that

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allegations of medical negligence are not to be dealt with directly by the police in the first instance. Instead, the complaint must first be examined by the specialized Authority established under the Act, which possesses the necessary technical expertise to determine whether the alleged act amounts to medical negligence and whether the facts disclose any violation warranting further legal action. Only after the Authority has completed its evaluation and is satisfied that the circumstances justify further proceedings can it refer the matter to the competent Government authority or law enforcement agency for action in accordance with law. This statutory scheme makes it abundantly clear that the jurisdiction of the police is not direct or independent in cases of alleged medical negligence. Rather, any involvement of the law enforcement agencies is contingent upon a prior examination and referral by the Authority in accordance with the procedure prescribed under the Act. Any direct assumption of jurisdiction by the police without first following this mandatory statutory mechanism would defeat the object of the special legislation and amount to bypassing the procedure expressly enacted by the legislature.

21. Equally important is Section 34 of the Act, whereby the legislature has empowered the Authority to prescribe the procedure for conducting investigations under the Act. This provision further reinforces the conclusion that investigations relating to complaints of medical negligence are governed by the special procedure prescribed under the Act and the Regulations framed thereunder. The investigation contemplated by the special statute is materially different from an ordinary police investigation under the Code of Criminal Procedure. The Authority conducts inquiries through specialized experts, obtains technical opinions, examines professional standards and determines whether the alleged conduct amounts to medical negligence or merely constitutes a recognized medical complication. It is a settled principle of statutory interpretation that where a special statute provides a complete mechanism for the determination of a particular subject matter, the special law prevails over the general law to the extent of any inconsistency. The Code of Criminal Procedure is the general law; the IHRA, 2018 is the special law. The general authority of the police u/s 154 Cr.P.C to register an

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FIR upon information disclosing a cognizable offence cannot override the specific procedural requirement of the Act, which requires that allegations of medical negligence first be examined by the Authority before any criminal process is set in motion. To hold otherwise would be to permit the general law to swallow the special, which is the precise result that the maxim *generalia specialibus non derogant* forbids.

22. In the present case, the alleged incident of medical negligence occurred on 25.06.2025, whereafter the complainant approached the Authority and filed a complaint against the petitioners on 30.06.2025. The Authority duly entertained the complaint, conducted an inspection, examined the relevant medical record, and afforded a proper opportunity of hearing to all concerned parties before completing the statutory inquiry on 30.09.2025. Upon conclusion of the proceedings, the Authority imposed a financial penalty of Rs.1,000,000/- upon the hospital of the petitioner Dr. Muhammad Arshad Chohan and a separate penalty of Rs.1,000,000/- upon the petitioner Dr. Aneeq-ur-Rehman (Anesthetist). It also referred the matter to the Pakistan Medical and Dental Council for further proceedings and for determination of the role of the concerned doctor in the treatment of the patient. However, no adverse finding, action, or penalty was recorded against the petitioner Dr. Muhammad Arshad Chohan. More importantly, the Authority neither recommended the registration of any criminal case against the petitioners nor exercised its power under Section 26(4) of the Act to refer the matter to any law enforcement agency for criminal proceedings. Despite this, subsequently the FIR was registered on the basis of the same allegations of medical negligence. In these circumstances, once the competent specialized Authority had examined the matter through the procedure prescribed by law and had consciously chosen not to refer the petitioners for criminal action, the police could not independently assume jurisdiction and initiate criminal proceedings on the same subject. Such direct registration of the FIR, without a lawful reference from the Authority, appears contrary to the statutory scheme of the special law and amounts to bypassing the procedure specifically provided for dealing with allegations of medical negligence. Such a course of action amounts to assuming a jurisdiction,

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which the legislature has not conferred upon the police. The statutory scheme clearly entrusts the initial determination of allegations of medical negligence to the specialized Authority possessing the requisite medical expertise, and any involvement of the law enforcement agencies is dependent upon a lawful reference made by the Authority itself. The investigating agency cannot sit in over appeal, review, or substitute its own opinion for the findings and decision of the specialized Authority constituted by the legislature for the determination of medical negligence. Permitting the police to directly register an FIR despite the Authority's conscious decision not to initiate criminal proceedings would defeat the very object of the special statute, render the entire statutory mechanism established under the IHRA, 2018 meaningless and redundant, and frustrate the legislative intent of ensuring that allegations of medical negligence are first subjected to expert medical scrutiny before any criminal process is set in motion. Such an exercise of power is, therefore, without lawful authority and cannot be sustained in law.

23. For the foregoing discussion, the titled writ petitions are ***allowed.*** Consequently, FIR No. 985, dated 26.11.2025, u/s 322, 419 and 34 PPC, registered at Police Station Lohi Bher, Islamabad, together with all consequential proceedings arising therefrom, is hereby **quashed**. The quashing of the FIR shall not preclude the Authority from exercising its powers under section 26(4) of the IHRA, 2018 should it, upon any further examination of the matter, form the view that a referral for criminal proceedings against any person is warranted by the evidence and circumstances of the case.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 24.07.2026.

JUDGE

R. Anjam.

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