

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-26240-2019(O&M)
Date of Order: 04th July, 2019**

Sarvjit Kaur

...Petitioner

Versus

Shashi Sareen

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ranjan Lakhanpal, Advocate
for the petitioner.

ANIL KSHETARPAL, J.

This petition has been filed under Section 482 of the Code of Criminal Procedure for setting aside order dated 24.01.2018 passed by Judicial Magistrate Ist Class, Jalandhar, refusing to summon the respondent-doctor, affirmed in revision petition vide order dated 05.04.2019 by the learned Sessions Judge, Jalandhar.

Complainant-petitioner-mother of a new born child had filed a complaint complaining medical negligence of respondent-doctor at Sareen Maternity Home and Hospital, Jalandhar. Complainant is proved to be diabetic. A child was born to her on 10.09.2015 at 11.17 AM. It has come in evidence that the child was on the very next day admitted in Patel Hospital, Jalandhar. It has also come in evidence that child at the time of birth was suffering from Hypoglycemia and Hypospadias.

Both the courts after examining the evidence led have come to a conclusion that there is no evidence to prima-facie prove negligence of respondent-doctor.

This court has heard learned counsel for the petitioner at length

and with his able assistance gone through the order passed by the trial court as well as by the learned Sessions Judge affirming the order of trial court.

Learned counsel for the petitioner has submitted that at the stage of summoning, the Court is only to see *prima-facie* case and in this case *prima-facie* case was made out as the petitioner-complainant had examined in evidence apart from herself and her father-in-law, Dr. Rohit Chopra of Patel Hospital, Jalandhar and Dr. Devender Panwar. He submitted that the Court committed an error by meticulously examining the evidence, which is not permissible.

This Court has considered the submissions.

There is finding of fact to the effect that on the judicial file, there is no evidence that respondent-doctor was negligent. Rather, it has come in evidence that the child when born was not hale and hearty, suffering from diseases noticed above. It has also come in evidence that the child was shifted to Patel Hospital, Jalandhar by the complainant very next day of the birth.

In the absence of any evidence available on the record to *prima facie* prove criminal negligence of a doctor, the Courts have not committed any error in refusing to summon the respondent-doctor. It is settled that the doctor can be summoned for medical negligence only after *prima-facie* evidence is produced to prove criminal negligence on the part of the doctor. Summoning of an accused is a serious matter and the court at the stage of summoning are expected to analyze the evidence produced with due application of mind. It has also come in evidence that the child when born was not normal as noticed by the learned Judicial Magistrate in para 18, which is extracted as under:-

“CW-3-Dr.Rohit Chopra has further deposed that the

patient was infant of a diabetic mother and was suffering from Hypospadia. As per the medical dictionary the word 'Hypospadias' means a congenital condition in which the opening of the urethra is situated on the underside of the penis instead of at its tip. And the word 'Urethra' means the membranous tube that extends from the urinary bladder to the exterior and that in the male conveys semen as well as urine.”

Learned counsel for the petitioner could not dispute this factual position.

Hence, no ground is made out to exercise inherent jurisdiction to interfere in the orders passed by learned Judicial Magistrate Ist Class, Jalandhar, affirmed in revision by the learned Sessions Judge, Jalandhar.

Dismissed.

04th July, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No