

245

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

**CRR-148-2022 (O&M)
DECIDED ON: 01.08.2023**

JASWINDER KAUR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Kamaldip Singh Sidhu, Advocate
for the petitioner.

Mr. Harsimar Singh Sitta, DAG, Punjab.

JASGURPREET SINGH PURI, J (ORAL)

1. Mr. Amardeep Singh, Advocate has appeared and filed his power of attorney on behalf of complainant today in the Court and the same is taken on record.
2. Learned counsel for the petitioner has submitted that the petitioner is a lady of the age of 34 years who is an accused in the present case. The allegations against the petitioner was that she had killed her own husband.
3. Learned counsel for the petitioner has submitted that at the time, when the trial commenced, the petitioner was in custody and PW-1 is her mother-in-law. Her examination-in-chief was recorded on 19.02.2020 and she was subjected to cross-examine on 26.11.2020 and 03.12.2020. Similarly, other witness PW-2, namely, Dharam Singh, who was stated to be an eye-witness was also examined on 19.02.2020. His cross-examination was deferred and he was subjected to cross-examine on 16.12.2020. Learned

counsel for the petitioner further submitted that the petitioner was in custody at that point of time and learned defence counsel had neither consulted the petitioner nor was there any interaction with the petitioner, in view of the fact that the entire country was facing Covid-19 pandemic and not only restrictions were imposed for some period of time, even curfew was also imposed. Thus, because of this reason, she could not be consulted before the defence counsel. Learned State counsel further submitted that the petitioner is having a mentally retarded child and she is rather now residing in her in-law's house.

4. An application was filed for recalling of the aforesaid two witnesses on the ground that the petitioner was not even consulted before the defence counsel. Learned counsel further submitted that when she was released on interim bail on 19.05.2021, she had consulted with the defence counsel and thereafter the application under Section 311 Cr.P.C. was moved for recalling the PW-1 and PW-2.

5. While elaborating his submissions, he submitted that there was a need to move such an application under Section 311 Cr.P.C., because, in fact, it was a case where the incident had taken place on 29.05.2019 and on the same date, the complainant had approached the Police by filing an application to the SHO Police Station, Rajpura by informing that her son, who is the deceased, came to the house under the influence of intoxicant and then he accidentally got hit by string wire affixed in the courtyard of the house and suffered injury on his neck and he was immediately taken to Neelam Hospital, Rajpura for treatment, where he was under treatment and there is no fault of anybody. The aforesaid letter which was issued to the SHO has been placed on record as Annexure A-1. He submitted that it was

thereafter the present FIR was lodged on 31.05.2019 for the reasons best known to the complainant by giving a different version. He also submitted that recalling of the witnesses for cross-examination would go to the root of the case but the learned trial Court dismissed the application under Section 311 Cr.P.C., only on the ground that it would cause delay in trial even after noticing that the petitioner was already in jail, at the time when the cross-examination was conducted.

6. Learned counsel for the petitioner submitted that one opportunity may be granted, so that the aforesaid two witnesses i.e. PW-1 and PW-2 can be cross-examined again in the interest of justice.

On the other hand, learned counsel for the complainant submitted that the application was moved in order to delay the proceedings of the trial. He has however not opposed the prayer of the petitioner in view of the fact that the prayer is only for re-examination of the witnesses.

7. I have heard learned counsel for the parties.

8. Learned counsels for the parties submitted that the matter is still at the stage of recording the statements under Section 313 Cr.P.C. A perusal of the impugned order would show that the application was dismissed on the ground that full opportunity was given to the defence counsel for cross-examination of witnesses and it was further recorded by the learned Sessions Judge that the defence counsel was not able to get instructions from the petitioner and he could not cross-examine the witnesses at the initial stage and that the application was filed to recall the said witnesses for some oblique motive and therefore it was declined. However, this Court is of the view that considering the letter (Annexure A-1) dated 29.05.2019 and the fact that the petitioner is a lady of the age of 34 years and was in custody at the

time of cross-examination and the fact that the aforesaid Annexure A-1 is a vital document which goes to the root of the controversy, the present petition deserves to succeed.

9. Learned counsel for the parties have also submitted before this Court that even today, the petitioner is residing in the house of her in-laws and she has a mentally retarded son, living with her.

10. Consequently, the present petition is allowed. The order dated 09.12.2021 is hereby set aside. The trial Court shall afford one opportunity to the petitioner to recall the witnesses for the purpose of their cross-examination.

(JASGURPREET SINGH PURI)
JUDGE

01.08.2023
neelam/kusum

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>