

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that there are considerable lacunae in the prosecution case. The alleged incident took place on 25.04.2012, however the complaint was filed before the Magistrate on 01.05.2012 i.e., after a gap of 6 days. The applicant in her complaint has averred that the delay in filing the said complaint was due to the fact that she had approached the police first, but dilly-dallying on the part of the police prompted her to file the complaint. On the other hand, in her cross-examination, the applicant has categorically stated that she never approached the police and simply filed the complaint. As such, the delay of 6 days in filing of complaint stands unexplained.

4. As per the complaint of the applicant, there were two eyewitnesses present i.e., Som Nath (PW-2) and Amarjit Singh (PW-3). Amarjit Singh has stated in his deposition that all the shops in the vicinity were closed during the occurrence of the alleged offence. However, complainant and PW-2, namely, Som Nath have deposed that a doctor was sitting inside his clinic and an electrician was standing outside his shop and they had witnessed the respondent tearing the clothes of the applicant. Even if this discrepancy in the statements of the prosecution witnesses is discounted and the version of the complainant is believed, there is no reason why they weren't examined by the prosecution. Further, the shirt of the complainant, which is alleged to have been torn by the respondent was not produced before the learned trial Court. Lastly, the applicant in her deposition stated that the whole incident lasted for an hour. Surprisingly, none of the eyewitnesses stepped in to stop the quarrel from escalating. All these gaps makes the prosecution case toothless.

5. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (See **H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others** passed CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.
6. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-applicant has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.
7. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

21.02.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No