

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.168 OF 2017
WITH
CRIMINAL APPLICATION NO.169 OF 2017
IN
CRIMINAL WRIT PETITION NO.2338 OF 2012**

Sapna Chandrakant Shah ...Applicant
Versus
Chandrakant C. Shah and Anr. ...Respondents

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Mr. Abhijeet J. Kandarkar, Advocate for the Applicant.
Mr. Chandrakant C. Shah, Respondent Present in Person.
Mr. Arfan Sait, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 30th JUNE, 2022.

PER COURT:

1. These interim applications are preferred by the petitioner in Writ Petition No. 2338 of 2012 for restoration of the said Writ Petition and condonation of delay in preferring application for restoration. The petition was dismissed for want of prosecution on 27th November, 2015. There is delay of 484 days in preferring the application for restoration of the petition.

2. Learned counsel for the applicant submitted that the advocate for the petitioner was absent only on single day. On that day the petition was dismissed for default. On account of several difficulties reflected in the application for restoration, there has been delay in preferring the application for restoration of the

Writ Petition. In the interest of justice the delay be condoned and the petition may be restored.

3. The respondent No.2 is present in person. He opposed the application for restoration as well as condonation of delay by filing reply. According to him the delay is enormous and there is no explanation for condoning it. The petitioners advocate had repeatedly remained absent which has resulted in dismissal of the petition for want of prosecution. The petitioner had avoided to appear before the Court since the Court was not inclined to grant relief to the petitioner. The delay cannot be condoned mechanically. The reason for delay is required to be explained. Reliance is placed on the decision in the case of *Esha Bhattacharjee V/s. Raghunathpur Nafar Academy, Basawraj and Another V/s. Special Land Acquisition Officer*, (2013) 14 SCC 81, decision of the Gujarat High Court in the case of *Municipal Commissioner V/s Voltas Limited, Nagaland V/s Lipok AO and Ors* (2005) 3 SCC 752, *K. Subhharayudu and Ors. Vs. The Special Deputy Collector (Land Acquisition) and Lanka Venkateswarlu (D) by L.Rs. V/s State of Andhra Pradesh and Ors.* It is submitted that without showing reasonable cause or bonafide delay should not be condoned.

4. The petitioner in Criminal Writ Petition No.2338 of 2012 has challenged the order issuing process passed by the Court of Learned Magistrate in the private complaint filed by respondent No.2 for offences under Sections 380, 504 and 507 of Indian Penal Code r/w Section 34 IPC. The record also indicate that the petitioner had lodged FIR on 31st July, 2010 under Section 498-A, 323, 504 and 506 r/w 34 of IPC. The complaint filed against the petitioner alleges that she has committed theft of articles, cash and jewelry. During the pendency of Writ Petition No.2338 of 2012, this Court had granted interim relief by order dated 27th August 2013. The Advocate for the petitioner was absent on date of dismissal of the petition for want of prosecution. The proceedings does not indicate that the petitioners Advocate was frequently absent whenever, the matter was listed for hearing. It is settled law that as far as possible the party should be permitted to contest the proceeding on merits. There is matrimonial dispute between petitioner and respondent No.2. In the interest of justice the delay in preferring the application for restoration can be condoned.

5. Hence I pass the following order;

ORDER

- i. Criminal Application No.168 of 2017 is allowed.
- ii. The delay in preferring restoration application is condoned. Interim Application 169 of 2017 is allowed.
- iii. Criminal Writ Petition 2338 of 2012 is restored with the interim protection granted by this Court.
- iv. Criminal Writ Petition No.2338 of 2012 be listed on the admission board on 11th July, 2022.
- v. Interim relief granted earlier shall continue to operate till next date of hearing.

(PRAKASH D. NAIK, J.)