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**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/SPECIAL CIVIL APPLICATION NO. 330 of 2022**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

SUJAL JAYANTIBHAI MAYATRA  
 Versus  
 NA

Appearance:

MAHAVIR M GADHVI(8025) for the Petitioner(s) No. 1,2  
 MR KK TRIVEDI(934) for the Petitioner(s) No. 1,2  
 for the Respondent(s) No. 1

**CORAM: HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

**Date : 19/01/2022**

**ORAL JUDGMENT**

1. The Petitioners have preferred this Petition under Articles 14, 226 and 227 of the Constitution of India challenging the order passed below Application (Exh.10) in HMP No. 2757 of 2021 dated 4.1.2022, whereby the learned Principal Judge, Family Court, Ahmedabad has dismissed the Exh.10 Application, which is filed for the prayer to waive the cooling period of 6

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months as there are no chances of reunion between the parties.

2. Heard learned Advocate for the Petitioners.

3. Learned Advocate for the Petitioners has submitted that the marriage between the Petitioners was solemnized on 8.12.2020 as per Hindu rites and customs at Ahmedabad but due to differences arisen between the Petitioners, the Petitioners are living separately since December 2020 and all efforts for reconciliation were in vain. They have therefore, with mutual consent, filed Hindu Marriage Petition No. 2757 of 2021 before the Family Court at Ahmedabad. Both the Petitioners have entered into a Memorandum of Understanding ('MoU') on 18.10.2021 for mutual divorce and that as per the said MoU, the Petitioners have agreed to withdraw all the criminal cases filed against each other. The learned Family Judge has sent the Petitioners for mediation, however the same failed and the report dated 31.12.2021 to that effect was placed before the learned Family Court Judge, Ahmedabad. Learned Advocate for the Petitioners has submitted the Application Exh.10 filed by the Petitioners for waiving of cooling period of six months came to be rejected by the learned Family Judge and therefore the present Petitioners are before this Hon'ble Court challenging the same.

4. Learned Advocate for the Petitioners has submitted that the learned Family Court Judge has failed to exercise the jurisdiction in favour of the Petitioners vested in it under the provisions of the Hindu Marriage Act, 1955 by misinterpreting the law laid down by the Hon'ble Supreme Court in the case of **Amardeep Singh v. Harveen Kaur**, reported in **(2017) 8 SCC 746** as well as in the case of **Amit Kumar v. Suman Beniwal**, reported in **2021f SCC Online 1270 (Civil Appeal No. 7650 of 2021)**. It is further submitted that the learned Family Court Judge has erred in not appreciating that the provisions of Section 13B(2) are discretionary and not mandatory. It is submitted that the learned Family Court Judge has erred in misconstruing the judgment of the Hon'ble

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Supreme Court in the case of **Amardeep Singh v. Harveen Kaur** (supra) and proceeded on the basis that the conditions specified in paragraph 19 of the said judgment are mandatory and that the statutory waiting period of six months under Section 13B(2) can only be waived if all the conditions therein are fulfilled, in particular, the condition of separation of at least one had half year before making the motion of decree of divorce. It is further submitted by the learned Advocate for the Petitioners that the learned Family Court Judge has failed to appreciate that the Hon'ble Supreme Court has laid down the principles for granting waiver of time of cooling period under the provisions of Section 13B(2) of the Act for all the cases. The interpretation of provisions of Section 13B(2) of the Act is not done under Article 142 of the Constitution of India and only decree of divorce was passed under the provisions of Article 142 of the Constitution of India due to passage of time and to prevent agony of the litigants – Husband and wife. Learned Advocate for the Petitioners has submitted that the marriage between the Petitioners is irretrievably broken down due to irreconcilable differences between them and that all the efforts for saving the marriage have failed, including mediation and that the Petitioners are not willing to live together as husband and wife even after more than 12 months of separation and therefore is no possibility of resuming the matrimonial relationship and that too when the Petitioners have genuinely settled all their differences and have withdrawn all the pending cases and complaints against each other and also when the Petitioners have settled all the issues amicably including the question of permanent alimony.

5. This Court has considered the arguments advanced by the learned Advocate for the Petitioner and has gone through the order passed by the learned Judge, Family Court, Ahmedabad.

6. In the opinion of this Court, the learned Judge, Family Court, Ahmedabad has rightly referred to the judgment of the Hon'ble Supreme in the case of **Amardeep Singh v. Harveen Kaur**, reported in (2017) 8 SCC 746 as

well as in the case of **Amit Kumar v. Suman Beniwal**, reported in **2021f SCC Online 1270 (Civil Appeal No. 7650 of 2021)**. Therefore therefore no error in the order passed by the learned Judge and therefore there is no requirement to interfere in the order passed by the learned Judge, Family Court, Ahmeabad.

7. At the outset, it would not out of place here to mention that this petition is filed under Article 227 of the Constitution of India and exercise of powers under such Article is imperatively spare. The Court may refer to the decision of the Apex Court in **Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, (2010) 8 SCC 329**, wherein the Apex Court has considered in detail the Scope of interference by this Court that, Article 227 can be invoked by the High Court *Suo motu* as a custodian of justice. An improper and a frequent exercise of this power would be counterproductive and will divest this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principle. The observations of the Apex Court read as under:

*“Articles 226 and 227 stand on substantially different footing. As noted above, prior to the Constitution, the Chartered High Courts as also the Judicial Committee of the Privy Council could issue prerogative writs in exercise of their original jurisdiction. [See 1986 (suppl.) SCC 401 at page 469)].*

58. *However, after the Constitution every High Court has been conferred with the power to issue writs under Article 226 and these are original proceeding. [State of U.P . and others vs. Dr. Vijay Anand Mahara j - AIR 1963 SC 946, page 951].*

59. *The jurisdiction under Article 227 on the other hand is not original nor is it appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. Therefore, the powers conferred under Articles 226 and 227 are separate and distinct and operate in different fields.*

60. *Another distinction between these two jurisdictions is that under Article 226, High Court normally annuls or quashes an order or proceeding but in exercise of its jurisdiction under*

Article 227, the High Court, apart from annulling the proceeding, can also substitute the impugned order by the order which the inferior tribunal should have made. {See Surya Dev Rai (supra), para 25 page 690 and also the decision of the Constitution Bench of this Court in Hari Vishnu Kamath vs. Ahmad Ishaque and others - [AIR 1955 SC 233, para 20 page 243]}.

61. Jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. Jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed *ex-debito justicia* or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a Letters Patent Appeal or an intra Court Appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.

62. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

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(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the principles in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh* (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

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(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of *L.Chandra Kumar vs. Union of India & others*, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out

above.

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(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.”

8. The learned Judge, Family Court, Ahmedbad has rightly observed that, admittedly, the marriage of Petitioners was solemnized on 8.12.2020 and they hardly lived for 12 days and separated on 20.12.2020 and since then they have no marital relation. The learned Judge has also rightly considered the observations made by the Hon’ble Apex Court in case of **Amit Kumar v. Suman Beniwal** (supra) by observing that the said judgment is not helpful to the Petitioners as the Hon’ble Apex Court has exercised its power under Article 142 of Constitution of India and waived of statutory period of six months under Section 13(B)(2) of the Hindu Marriage Act and the learned Principal Judge, Family Court Ahmedabad has no power to exercise such power under Article 142 of Constitution of India. In paragraph 27 and 30, the Hon’ble Apex Court has observed as under:

*“27. For exercise of the discretion to waive the statutory waiting period of six months for moving the motion for divorce under Section 13B (2) of the Hindu Marriage Act, the Court would consider the following amongst other factors:*

- (i) the length of time for which the parties had been married;*
- (ii) how long the parties had stayed together as husband and wife;*
- (iii) the length of time the parties had been staying apart;*
- (iv) the length of time for which the litigation had been pending;*
- (v) whether there were any other proceedings between the parties;*
- (vi) whether there was any possibility of reconciliation;*
- (vii) whether there were any children born out of the wedlock;*



(viii) whether the parties had freely, of their own accord, without any coercion or pressure, arrived at a genuine settlement which took care of alimony, if any, maintenance and custody of children, etc.

30. In the facts and circumstances of this case, this Court deems it appropriate to exercise its power under Article 142 of the Constitution of India, to grant the Appellant and the Respondent a decree of divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1955, waiving the statutory waiting period of six months under Section 13(B) (2) of the said Act.”

9. In the aforesaid factual scenario, this Court is in complete agreement with the findings recorded by the learned Principal Judge, Family Court, Ahmedabad and there is no need to interfere with the order passed by it below Application Exh.10 in Family Suit No. 2757 of 2021 dated 4.1.2.22. The Petition therefore deserves to be dismissed and accordingly stands dismissed in limine.

for orders / J.N.W

(A. C. JOSHI,J)

THE HIGH COURT  
OF GUJARAT

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