

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION NO. 163 of 2022**

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BHAGIRATHBHAI MANILAL BANKER (SHUKLA)

Versus

DIIKABEN BHAGIRATHBHAI BANKER (SHUKLA) D/O KANTILAL
KHEMABHAI PARMAR

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Appearance:

MR DV ACHARYA(5616) for the Applicant(s) No. 1

MS. BHAVNA D ACHARYA(6406) for the Applicant(s) No. 1

for the Respondent(s) No. 1,2

MS. M.H.BHATT, APP for the Respondent(s) No. 3

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CORAM: **HONOURABLE MR. JUSTICE B.N. KARIA****Date : 11/03/2022****ORAL ORDER**

By preferring this application, applicant has requested to quash and set aside the judgement and order dated 24.12.2021 passed in Criminal Misc. Application No.2288 of 2015 by learned Judge, Family Court No.5, Ahmedabad.

Heard learned advocate for the applicant.

Learned advocate for the applicant submits that Family Court has overlooked the conduct of the respondent No.1-wife who has not come with clean hands before the learned Family Court as she had suppressed material facts in her application u/s. 125 of Cr.P.C. about the fact that her husband has already filed Family Suit No. 1111 of 2015 for dissolution of Marriage u/s. 13(a) of Hindu Marriage Act, on 30.6.2015. That, wife has filed an application under the

provisions of Domestic Violence Act on 23.3.2016 i.e. after 09 months of filing “Divorce Petition” by the husband on 30.6.2015 which clearly proves the counter blast against the proceedings of ‘Divorce Petition’ preferred by the husband. In the said proceedings, during cross-examination of the wife, she clearly stated that ‘it is true that my husband has persuaded me though I did not return back after one year my husband filed an application for getting divorce”. That, above said admission on the part of the wife clearly shows that she does not want to live with the husband and she has deserted the applicant-husband since 31.5.2014. She has also stated that she is not ready to produce statement of Loan Account of HDFC Bank towards her car loan. That, Family Court has failed to examine the fact that the wife has deserted the husband without any basis and therefore, she is not entitled to get any maintenance. That, Family Court has not properly considered and appreciated the oral as well as documentary evidence on record. That, the applicant has deposited Rs.8,70,000/- before the learned Family Court through Banker’s cheque but, receipt of Family Court has not received by the present applicant.

Issue requires consideration.

Rule returnable on 22.4.2022. Learned APP waives service of notice of rule for and on behalf of the respondent No.3.

BEENA SHAH

(B.N. KARIA, J)