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JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.35641/2019

Hira Masood **Versus** Additional District Judge etc.

J U D G M E N T

Dates of Hearing:	12.09.2023 and 15.09.2023
Petitioner by:	Malik Talal Hussain, Advocate.
Respondent No.3 by:	Mr. Muhammad Umer Riaz, Advocate.
On Court's call:	Mr. Imran Khan, Assistant Advocate General, Punjab.

Anwaar Hussain, J. Hira Masood ("**the petitioner**") was married to respondent No.3 namely, Ayan Sabir ("**the respondent**"). She filed two suits against the respondent. One for recovery of dowry articles or alternate price thereof and other for past maintenance, dower amounting to Rs.500,000/- and gold ornaments weighing 25 *tola* or alternate price thereof. Both the suits were contested by the respondent and through consolidated judgment and decree dated 21.07.2018 passed by the Trial Court, the petitioner's suit for recovery of dowry articles was partially decreed and she was held entitled to dowry articles or alternate price thereof to the tune of Rs.850,000/-. Her suit for recovery of maintenance and dower was also decreed and she was awarded Rs.10,000/- per month as maintenance for her *iddat* period as well as Rs.500,000/- along with 25 *tola* gold ornaments as dower. Both sides preferred appeals and through consolidated judgment and decree dated 13.04.2019, the appeal of the petitioner was dismissed while the appeal preferred by the respondent was partially allowed and the petitioner was held entitled to recover alternate price with 20% depreciation in case of non-availability of dowry articles and the suit of the petitioner to the extent of dower in terms of Rs.500,000/- and

25 *tola* gold ornaments was dismissed. Findings to the extent of maintenance were maintained. Hence, the present constitutional petition.

2. Learned counsel for the petitioner submits that the Appellate Court has not appreciated the factual matrix as well as evidentiary resume of the case and misinterpreted Entry recorded against Column No.15 of the *nikahnama* that pertains to time of payment of dower, which was left blank and this fact alone indicates that the dower recorded in Column Nos.13 and 14 was prompt and payable on the demand of the petitioner. Places reliance on the dicta laid down in cases reported as "*Haseen Ullah v. Mst. Naheed Begum and others*" **(PLD 2022 SC 686)** and "*Messrs MFMY Industries Ltd. and others v. Federation of Pakistan through Ministry of Commerce and others*" **(2015 SCMR 1550)** in support of his contentions while contending that Entries in various Columns of the *nikahnama* are to be conjunctively read to ascertain the intention of the parties. Adds that giving of dowry articles was acknowledged but its alternate value has not been properly determined by the Courts below, more particularly, by the Appellate Court, as no reasons have been put forth in further reducing the said alternate amount by 20%.

3. Conversely, learned counsel for the respondent has vehemently opposed this petition and fully supported the impugned judgment and decree of the Appellate Court. Has also placed reliance on the law laid down in case of *Haseen Ullah supra,* with averments that the *nikahnama* is an agreement and, like any other contract, the contents of its clauses and/or Columns are to be construed and interpreted in accordance with true intentions of the parties. Adds that the intentions of the parties are clearly reflected by an oblique/cross line whereby the Entry against Column No.15 was crossed, which indicates that nothing was left to be paid in parts and the prompt dower agreed

between the parties, in terms of Columns No.13 and 14 was given, by the respondent, at the time of solemnization of *nikah.* Further contends that the word 'prompt' means 'immediate' or 'quick' and it is presumed that nothing is left to be payable if the Entry/Column No.15 is crossed-off. He also places reliance on the law laid down in cases reported as "*Wasif Ali and another v. Mrs. Fakhra Jabeen and others"* **[2023 CLC 1021 Lahore (Rawalpindi Bench)]** and "*Muhammad Qayyum Anjum v. Additional District Judge, Muzaffargarh and 2 others*" **[2022 MLD 416 Lahore (Multan Bench)]** in support of his contentions.

4. On Court's call, learned Law Officer submits that crossing off the Entries of the *Nikahnama ipso facto* may not be so construed as the discharge of the liability of having paid the same and the evidentiary resume of the case including statements of the witnesses is to be examined to ascertain the intention of the parties.

5. Arguments heard. Record perused.

6. Regarding the quantum of maintenance awarded to the petitioner, for the *iddat* period, learned counsel for the petitioner could not point out any misreading and non-reading of evidence, hence, the finding to that extent does not merit interference.

7. As regards dowry articles or its alternate price, the Appellate Court reduced the alternate price of the dowry articles awarded by the learned Trial Court to the tune of 20%. The operative part of the impugned judgement dated 13.04.2019 reads as under:

> "12. …As far as, the recovery of dowry articles is concerned the appellant/defendant has admitted during his cross examination that respondent/plaintiff bring the some portable dowry articles with her to his house. But appellant/defendant remained fail to provide detail of those portable articles. Furthermore, the appellant/defendant has

> produced the list of dowry articles Exh.D1 which was prepared by the mother of respondent/plaintiff. Respondent/plaintiff has clearly admitted during her cross examination that Exh.D1 was prepared by her mother and is in the handwriting of her mother. The perusal of the list produced by appellant/defendant shows that almost same articles are mentioned in it which are decreed by the learned Family Court from the list Exh.P2. The appellant/defendant has not negated the dowry articles, therefore, in these circumstances, the order of learned Family Court with regard to the dowry articles is upheld while to the extent of alternate price it is varied and respondent/plaintiff is held entitled to recover alternative price with 20% depreciation in case of non-availability of dowry articles."

The petitioner claimed dowry articles or Rs.7,315,915/- as its alternate value and perusal of the record reveals that the Trial Court, after thoroughly thrashing out the evidence adduced and recorded, awarded certain dowry articles or Rs. 850,000/- as the alternate value thereof that has been reduced by the Appellate Court without putting forth any cogent reasons for the said reduction. On the other hand, the petitioner side has also not been able to point out any misreading and/or non-reading of evidence on part of the Trial Court to establish the claim of the petitioner to the grant of dowry articles claimed in the suit or Rs.7,315,915/- as their alternate value. Therefore, to this extent, this Court is of the opinion that the judgment of the Trial Court in respect of alternate value of dowry articles is well-reasoned and the reduction by the Appellate Court, to the extent of 20% in alternate value of dowry articles, is not justified.

8. The nub of the matter is the contest between the parties in respect of the prompt dower admittedly fixed as Rs. 500,000/- and 25 *tola* gold ornaments in the light of Entry against Column No.15 of the *nikahnama* between the parties, which in the instant case has been crossed by putting an oblique/cross line.

9. This Court is of the opinion that right of a wife to receive dower from her husband as stipulated in the *nikahnama* or otherwise agreed, as and when becomes due under the law, is an inherent ingredient of the very concept of the marriage in Islam. In the instant case, there is no dispute as to the amount and/or valuables in form of gold ornaments that was fixed as prompt dower in terms of Columns No.13 and 14 of the *nikahnama*. It is the effect of how Column No. 15 of the *nikahnama* has been dealt with by the parties at the time of solemnization of their *nikah* as also the statement of the petitioner during the cross examination that persuaded the Appellate Court to upend the findings of the Trial Court and the claim of prompt dower was rejected, on account of having been paid, which requires opinion of this Court.

10. Before answering the legal question, it is imperative to reproduce the relevant Columns of the *nikahnama* to understand their true object and import. Columns No.13 to 15, in the instant case, read as under:

13۔	مہر کی رقم	25۔تولے طلائی زیورات۔(معجل)
14۔	مہر کی کتنی رقم معجل ہے اور کتنی غیر معجل	پانچ لاکھ روپے۔(معجل)
15۔	آیا مہر کا کچھ حصہ شادی کے موقعہ پر ادا کیا گیا، اگر کیا گیا ہے تو کس قدر۔	

Admittedly, the term prompt dower means ‘immediately’ or ‘quickly’ as also the payment ‘on demand’ as contemplated in para 290 of the principles of Muhammadan Law by D.F. Mulla that reads as under:

> “**290 “Prompt” and “deferred” dower**.-----(1) The amount of dower is usually split into two parts, one called “***prompt,” which is payable on demand***, and the other

> called "deferred" which is payable on dissolution of marriage by death or divorce."
>
> ***(Emphasis provided)***

In case of *Muhammad Qayyum Anjum supra,* the moot point as to how above referred Columns of the *nikahnama* deal with the dower and its kinds, keeping in view the scope of Section 10 of the Muslim Family Courts Ordinance, 1961, came under discussion and this Court held as under:

> "8. ….Here it is relevant for the present purposes to traverse through the wording of columns No. 13 to 16 of the nikahnama. In column No. 13, the word "Raqm (رقم) "(amount) has been used; column No.14 also uses the word "Raqm (رقم) "(amount) whereas columns No. 15 and 16 use the word "Mahr" (dower) that also reveals the intention of the legislature with regard to amount of dower, which can be incorporated and settled by the parties, under columns No.13 and 14 and other valuables as dower under columns No. 15 and 16. ***Entries in columns No.13 to 16 together become 'dower overall'***. Thus, *entry in column No. 13 of the nikahnama is to contain the amount of dower, entry 14 envisages the break-up of such amount of dower spelled out by the parties by virtue of entry under column No. 13 into prompt and deferred* ***whereas entry in column No. 15 may contain anything given or paid out of the amount envisaged under entry 13 or in addition thereto forming as part of the dower overall***…..entries under columns No. 13 to 16 of the nikahnama envisage reflection and manifestation of the parties as to amount/Raqm (رقم) and other articles and/or property given or to be given by husband to wife as the dower overall. Therefore, anything other than an amount, forming part of dower overall and incorporated under columns No. 15 and/or 16 has also to contain the time and mode of payment and giving of the same by husband to wife. ***Failure to spell out the mode and time of dower contained in entry 15 and/or 16 would entail the attraction and applicability of Section 10 of the Ordinance***."
>
> (***Emphasis supplied***)

Section 10 of the Ordinance contemplates that "if no details about the mode of payment of dower are specified in the *nikahnama* or the marriage contract, the entire amount of the dower shall be presumed to be payable on demand".

11. In the instant case, Column No. 15 has been crossed off by putting an oblique line, which as per respondent's case, means that the prompt dower was paid at the time of marriage and nothing has been left as deferred or 'on demand' whereas as per learned counsel for the petitioner since Entry No.15 was crossed off, it means nothing was paid and the same was left to the demand of the petitioner. This Court is of the opinion that it is only the deferred dower that becomes due upon certain exigencies, such as death and divorce, whereas once the mode of payment of some part of dower is settled by way of declaring it as prompt, in Column No.15, the obligation to pay prompt dower needs to be clearly mentioned as having been paid at the time of *nikah* or left payable on demand of the wife. Had there been a payment made at the time of the *nikah* between the parties, it could have been clearly written as 'has been paid at spot' (موقع پر ادا کیا گیا) or 'paid' (ادا شد) or by employing other similar words.

12. Entry in respect of Column No.15 has been crossed off by putting an oblique line and the same cannot be interpreted to the disadvantage of the petitioner, for the reason that dower, in the context of Muslim marriage, is an obligation under the Holy Quran and Hadith. Burden to prove that said obligation has been discharged is on the husband. Said burden can be discharged through an overt act on part of the wife like execution of an affidavit having received the dower or producing the witness(es) in whose presence said obligation was discharged and not by relying on the Entry against Column No.15 of the *nikahnama,* having been crossed off. This Court is of the opinion that leaving Column No.15 blank or crossing it off by putting

an oblique line (as in the instant case) does not mean that the amount of prompt dower agreed between the parties was paid at the time of *nikah* and not left to the demand of the wife. Therefore, in such eventualities, the Courts are required to carefully examine the evidentiary resume of a case to ascertain whether or not a groom/defendant has paid the prompt dower at the *time* of *nikah* or on demand of the wife. Having held so, it is imperative to examine the statement of the petitioner that persuaded the Appellate Court in upsetting the findings of the Trial Court in respect of the claim of the petitioner related to her prompt dower. The petitioner appeared as PW-1 and stated as under:

"درست ہے کہ Exh.D1 & Exh.D2 میرے ولیمے والے دن کی تصاویر ہیں۔ درست ہے کہ ان تصاویر میں جو زیورات میں نے پہن رکھے ہیں وہ منجانب سسرال دیے گئے تھے۔"

The admission on the part of the petitioner that the gold ornaments put on by her on the *walima* function were given to her by her in-laws leads to an inference that she received gold ornaments after the *nikah* and before the *walima* ceremony. It is not the case of the petitioner that the gold ornaments put on by her at *walima*, were not weighing 25 *tolas* as agreed in Column No. 13 of the *Nikahnama* or once given to the petitioner after the *nikah*, were taken back and/or snatched from her by the respondent or his family. This is more important and relevant, in the present case, in view of the fact that the petitioner had set up her case that she was not given any gold ornaments, forming part of her prompt dower, whereas subsequently, she admitted of having worn the gold ornaments given by her in-laws. This makes the case of the petitioner as one of the contradictory stances, which cannot be countenanced. Hence, this Court is of the view that to the extent of delivery of gold ornaments as part of the prompt dower, the Appellate

Court has rightly relied on the statement of the petitioner and discarded the same.

13. However, perusal of the above quoted statement of the petitioner depicts that the dower was not fully paid at the time of *nikah* inasmuch as by no stretch of imagination, the said statement of the petitioner in respect of the picture from the *walima* ceremony, in which the petitioner is wearing some gold ornaments admittedly given by her in-laws, goes on to prove that she received Rs.500,000/- that was also part of her prompt dower. Therefore, it was obligatory on part of the respondent to prove the payment of Rs.500,000/- by leading some independent evidence, which the respondent failed to do. Therefore, the case of the petitioner to the extent of her claim of Rs.500,000/- has force.

14. In view of the above discussion, this Court is of the opinion that the petitioner is entitled to recover dower amount of Rs.500,000/- as recorded against Column No.14 of the *nikahnama* and dowry articles or alternate price of Rs.850,000/- as decreed by the Trial Court. The remaining findings of the Appellate Court regarding the maintenance allowance and 25 *tola* gold ornaments are upheld and to that extent this petition has no merits. The judgment and decree of the Appellate Court is accordingly modified. No order as to costs.

15. **Disposed of** in the above terms.

(ANWAAR HUSSAIN)
Judge

Approved for reporting

Judge

Akram