JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(*Judicial Department*)

W.P No.41-M/2021

Umar Hayat Vs. Mst. Nasreen Bibi and two others

Present: Mr. Aftab Ali, Advocate for petitioner.
Mr. Shahid Ali, Advocate for Respondent No.1.

Date of hearing: **03.11.2025**

JUDGMENT

SABIT ULLAH KHAN, J:-Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has questioned the propriety and legality of the judgment and decree of the learned District Judge, Swat dated 15.12.2020, whereby the Family Appeals No.52 & 53/ FC of 2019, filed by both the parties against the judgment and decree of the learned Family Court dated 20.12.2018 partially decreeing the suit of the respondent Mst. Nasreen Bibi, were decided.

2. Short facts of the case are that respondent No.1 has filed a suit against the present petitioner before the learned Family Court seeking (i) dissolution of marriage on the ground of cruelty; (ii) recovery of her dower consisting of three tolas of gold or its market value; (iii) recovery of maintenance allowance @ Rs.15,000/- per month from June 2017 till completion of her *iddat* period; and (iv) recovery

of dowry articles of the worth of Rs.100,000/- as per the list annexed with the plaint. It was averred by the respondent/ plaintiff that her marriage with the petitioner was solemnized about three years ago in lieu of a dower of three tolas of gold, out of which only one tola was paid while the remaining two tolas are still outstanding. The dowry articles, arranged for her by her parents at the time of *rukhsati*, are lying in the house of the petitioner. It was further contended that in start of the matrimonial life, the petitioner's behaviour was cordial but it gradually turned cruel. Some serious allegations including that of the petitioner's impotency, were also levelled and ultimately, she was ousted from his house during the last Ramadan, whereafter she is residing with her parents.

3. The petitioner/ defendants, on his appearance before the learned family Court, resisted the claim of the respondent/ wife on several legal and factual objections. Pre-trial reconciliation proceedings did not succeed. The divergent pleadings were reduced by the learned family Court into issues. Both the parties produced their evidence and then the post trial reconciliation proceedings also failed. After hearing the arguments of the parties, the learned family Court partially decreed the suit of the respondent/ wife by dissolving the marriage on the ground

of *khula* subject to return of three tola gold dower already received by her; recovery of Rs.50,000/- as worth of the dowry articles; and recovery of Rs.3000/- per month as maintenance allowance only for the period of her *iddat* while rest of the suit was dismissed vide its judgment and decree dated 20.12.2018.

4. Dissatisfied with the aforesaid decision of the learned family Court, both parties preferred their respective family appeals, which were disposed of by the learned Appellate Court through a consolidated judgment dated 15.12.2020, whereby the decree of the learned Family Court was modified by holding the dissolution of marriage on the ground of *khula*, without requiring the return of one tola gold already received and admitted by the respondent/ wife. The rate of maintenance allowance for the *iddat* period was enhanced from Rs.3,000/- to Rs.5,000/- per month, whereas the decree to the extent of recovery of Rs.50,000/- as the value of dowry articles was set aside with the observation that the said issue shall be determined and decided during execution proceedings, hence, this petition.

5. Arguments heard. Record perused.

6. The impugned judgment reveals that the learned Appellate Court has reversed the findings of the learned

Family Court regarding the payment of dower. The learned Family Court had held that the respondent/wife received three tolas of gold as her dower but the learned Appellate Court held that she had received only one tola of gold out of the total dower of three tolas. Initially, it was pleaded by the petitioner in his written statement that the dower was fixed as one tola of gold and that the same had already been paid to the respondent/ wife at the time of marriage; however, later on, upon acceptance of his application, the contention of the petitioner/ defendant in his pleadings was considered to be fixation of the dower as three tola gold, with further assertion of its payment to the respondent/ wife. The respondent/ wife has neither challenged the concurrent findings of the learned Courts below whereby the marriage was dissolved on the ground of *khula*, nor the findings of the learned Appellate Court allowing her to retain one tola of gold as dower already received from the petitioner/ husband at the time of marriage. Significantly, the petitioner/ defendant though has made correction qua his assertion that three tola gold was fixed and paid by him to the respondent/ wife, however, during the evidence, his witnesses have deposed that the dower was fixed as one tola of gold and the same has already been paid to the respondent/ wife, whereas no cogent or convincing evidence could be produced by the petitioner/defendant to

establish the payment of three tolas of gold. Therefore, in these circumstances, the learned Appellate Court rightly concluded that one tola of gold as dower had been paid to the respondent/ wife, based on her own admission in the plaint, and to that extent, the findings of the learned Appellate Court call for no interference.

7. Adverting to the main objection of the petitioner, it has been contended by him that when the respondent/ wife completely failed to prove the allegations of cruelty against him and the marriage was consequently dissolved on the basis of *khula* then the learned appellate Court has erred in upholding the decree for dissolution of marriage on the ground of *khula* without directing the return of the dower already received by the respondent/wife from the petitioner/husband at the time of marriage. So, in such circumstances, the question cropped up before this Court is as to whether, in all circumstances, on the event of dissolution of marriage on the ground of *khula*, the wife could be directed to return the dower already received by her? In the matter in hand, it is an admitted position on the record that the parties had remained in the bond of marriage for a considerable period of more than three years before institution of the suit in the year 2017 but unfortunately, they were not blessed with a child. In view of the evidence

available on record, this was one of the grounds leading to the dissolution of marriage although the evidence produced by the respondent/wife does not qualify to justify dissolution on the ground of cruelty. It is also an admitted fact on the record that the prime period of her life has been spent by the respondent/ wife with the present petitioner/ husband. In the case of "***Khurshid Bibi Vs Muhammad Amin"*** (**PLD 1967 SC 97**), this controversy was laid to rest by the apex Court that in case the marriage is dissolved on the ground of *khula* whether the entire dower paid to the wife would be returned by her wherein it was held that: Therefore, it is necessary for the Court to ascertain in a case of khula what benefits have been conferred on the wife by the husband as a consideration of the marriage, and it is in the discretion of the Court to fix the amount of compensation, as is indicated by the instances of khula cited above**.**

8. The full bench of this Court in the case of "***Dr. Fakhr-Ud-Din Versus Mst. Kausar Takreem and another*** **(PLD 2009 Peshawar 92)** has held that the judge, while dissolving the marriage on the ground of khula, may consider the following points for determination of return of dower or otherwise, which are as under:

"30. While exercising such discretion in that regard, the Judge while dissolving marriage on the ground of `Khula' amongst other, may take into consideration the following conditions and circumstances.

(i) If it is proved before it that the wife was neither disobedient nor was a major contributory or a cause for the hateful and strained relations, rather the fault on this account is attributable to the husband;

(ii) In a case where `Khula' is sought by an orphan lady who has no resources or insufficient financial means to pay back the compensation/consideration or part of it, in such a situation, she had not to be forced to return the whole or part of the same as any strict view in the regard would force the lady to live a sinful life to arrange money for payment. Such a course would be in disregard for the injunctions of Islam being a detestable act;

(iii) In case where the husband has taken some steps for contracting a second marriage without the required permission although it has not been solemnized by then and the fault of crossing the limits of Allah Almighty is well attributed to him;

(iv) In case where the wife has spent the full blooming, the blossom full and peak of her life with the husband and at the fag-end of her life when her youth and beauty 'both have faded and is unable to remarry after divorce/'Khula'. The same shall be taken into consideration;

(v) If the wife is a destitute and after divorce/'Khula', she is left with no shelter to live a graceful life and after considering all the surrounding circumstances, it is evident that she is unable to repay the dower or part of it; and

(vi) The Judges of the Family Courts shall give deep thought to the facts and circumstances of each case so that the above concession based on the interpretation/construction of Islamic injunctions are not extensively misused.

The Judge may also consider other similar circumstances so that the wife is not forced to live impious life for arranging money to repay in full or part of the consideration to the husband. Similarly, the husband is not to be let off from the payment or part payment of the dower if still outstanding enabling the divorced wife to live a pious life with grace and dignity."

(emphasis supplied).

Similarly, a Division Bench of this Court in the case of "***Karim Ullah Vs. Shabana and 2 others***" (**PLD 2003**

Peshawar 146*),* has dealt with the issue in detail and has held that;

> "What we can gather from the Qur'anic dictate is that in general it is not lawful for the husband to get back what he had given to the wife as dower/'Mehr' 'Khula' has however, been made an exception to the general rule. Precisely the abominability of receiving back from the wife of what has been benefited or gifted can be assessed when such an action has been synonymized, as per Hadith, with the licking of the vomited substance by the dog."

Most recently, in the case of "***Asif Mehmood v. Additional District Judge and others***" **(2025 CLC 1074)**, the Lahore High Court, while maintaining the decree for dissolution of marriage on the ground of *khula*, has held the wife entitled to retain the dower and not bound to return the already received dower keeping in view the long duration of marriage between the spouses. In the said case, the Court observed as under:

> "**In such eventuality, it is on the Court to determine, keeping in view facts and circumstances of the case, that how much return of the already received benefits by the wife would be appropriate, therefore, the return or surrender of dower by the wife is not an automatic consequence in each and every case of khula---In order to determine entitlement of a wife seeking khula to the claim of deferred dower, key consideration is the reason for her seeking khula. Where a wife seeks khula on the ground of disliking against the husband, without any fault on the part of the husband, she loses her right to deferred dower in the same way as in the case of prompt dower. Conversely, if the husband's conduct compels the wife to seek dissolution then she retains her entitlement to the deferred dower---In the instant case the respondent obtained the decree for dissolution of marriage on the basis of khula. Nonetheless, the crucial factor to determine was what prompted the respondent to seek dissolution of marriage. In the plaint as**

> **well as her examination in chief as PW1 the respondent levelled allegations of bad conduct and disrespectful behavior of the petitioner towards her, which prompted her to seek dissolution of marriage and to that extent her testimony was not discredited in cross-examination by the petitioner. As per para 289-A(a) of Principles of Muhammadan Law by D.F. Mulla, dower becomes confirmed by consummation of marriage. Para 336(2) further provides that if the marriage was consummated the wife then becomes entitled to immediate payment of whole of the unpaid dower, both prompt and deferred. These rules have been delineated in compliance of the command in verses Nos. 20 and 21 of Surah Al-Nisa. In the instant case, the marriage between the petitioner and respondent subsisted for almost nine years and during this long period the respondent / wife fulfilled her marital obligations. The deferred dower is also seen as a form of security and compensation for the wife for her commitment during the marriage. After such a long period of marriage, it would be inequitable to deny full amount of the deferred dower to wife,**

Thus, I would feel no hesitation to hold that it is neither an absolute nor an automatic right of the husband that upon dissolution of marriage on the ground of *khula*, the wife must, in all circumstances, be directed or compelled to return all benefits including the dower already received from her husband rather the return of such benefits depends upon the facts and circumstances of each case and lies within the discretion of the Court keeping in view the overall conduct of the parties and the reasons leading to the *khula*. Hence, in light of the facts and circumstances of the present case coupled with the receipt of only one tola of gold by the wife as part of her dower and the spending of a considerable prime period of her life with the petitioner/ husband, and in juxtaposition with the law laid down in the cited precedents, I am of the considered

view that the learned Appellate Court has rightly appreciated the entire aspect of the dispute between the parties and has thus justly resolved the controversy through the impugned judgment by holding the respondent/wife entitled to retain the one tola of gold, irrespective of the dissolution of marriage on the ground of *khula*.

9. As per the injunctions of Islam, it is the responsibility of the husband to provide maintenance allowance to his wife till the expiry of the *iddat* period; therefore, the concurrent findings of the learned Courts below holding the respondent/ wife entitled to maintenance allowance are correct. Similarly, it is also a settled principle of law that the amount of maintenance should be fixed at a reasonable and sufficient rate to meet the wife's basic daily needs and expenses, leaving no stone unturned to ensure her sustenance in a dignified manner, as such, the learned appellate Court, while enhancing the said amount from Rs.3,000/- to Rs.5,000/- per month, has committed no illegality or irregularity, as Rs.5,000/-, in view of the price hike of the essential commodities and devaluation of the currency, could reasonably be considered a minimum and just allowance. Likewise, after the marriage, the spouses had remained together for a considerable period, and as per the list of dowry articles, some items were perishable while others

such as the bed, steel set, and cooker, were durable. However, there was no clear evidence on record to establish the intact condition of these articles or to determine their depreciated market value. Therefore, in such circumstances, the grant of recovery of Rs.50,000/- in lump sum was not based on any evidence but merely based on presumption. Hence, the learned Appellate Court has rightly held that this issue shall be determined and decided by the Executing Court during the execution proceedings.

10. It is worth mentioning here that the factual matrix of the matter has already been thoroughly discussed by the learned Courts below including the learned Appellate Court while reversing the decree of the learned Family Court to the extent of dower and maintenance allowance. The findings of the learned Appellate Court are based on a proper and correct appreciation of the evidence produced by both parties whereas this Court, while sitting in writ jurisdiction, in view of the principle laid down in the cases of "***M. Hamad Hassan Vs. Mst. Isma Bukhtari and 02 others***" (**2023 SCMR 1434**), "***Muhammad Hussain Munir Vs. Sikandar***" (**PLD 1974 SC 139**), "***Utility Stores Corporation of Pakistan Limited Vs. Punjab Labour Appellate Tribunal"*** (**PLD 1987 SC 447**), "***Muhammad Lehrasab Khan Vs. Mst. Ageel-un-Nisa***" (**2001 SCMR 338**), "***Shajar Islam Vs. Muhammad Siddique***"

(**PLD 2007 SC 45**), "***Mst. Tayyeba Ambareen and another Vs. Shafqat Ali Kiyani and another***" (**2023 SCMR 246**) and "***Arif Fareed Vs. Bibi Sara and others***" (**2023 SCMR 413**), cannot invoke its constitutional jurisdiction as a substitute for appeal or revision by reappraising/re-evaluating the evidence on record for the purpose of deciding the matter on its facts rather against the judgments of the learned fora below the constitutional jurisdiction of this Court is limited only to the extent of legal parameters for the purpose of correcting any wrong committed by the appellate Court through issuance of writ of certiorari, however, to such legal extent, nothing could be found in the impugned judgment of the learned appellate Court. Even no findings could be held to be based upon no evidence rather aerial presumption/ assumptions.

11. Learned counsel for the petitioner could not point out any illegality, irregularity or jurisdictional defect in the impugned findings of the learned appellate Court, hence, this petition, being without any substance, is hereby dismissed. No order as to costs.

Announced.
03.11.2025 **sd/-**

JUDGE