

Form No: HCJD/C-121
ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Writ Petition No. 2790 of 2021

Shaukat Ali

Versus

Additional District Judge (West), Islamabad and 04 others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
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21.10.2021	Ms. Neeli Khan, Advocate for the petitioner. M/s Babar Manzoor and Ch. Shahzad Hussain, Advocates for respondent No.3
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The petitioner through the instant writ petition has called in question the legality and validity of impugned judgment and decree dated 08.10.2020, passed by the learned Senior Civil Judge-III (Judge Family Court) West-Islamabad as well as impugned Judgment and decree dated 08.07.2021, passed by the learned Additional District Judge (MCAC), West-Islamabad, whereby suit filed by respondent No.3 was decreed.

02. Succinctly stated, the facts of the case are that marriage of the petitioner and respondent No.3 was solemnized according to Muslim Rights and Ceremonies on 16.01.2006,

against the consideration of Haq Mehar amounting to Rs. 50,000/- which was paid by the petitioner at the time of marriage in the form of gold ornaments duly mentioned in *Nikahnama*.

03. From the wedlock, one son namely Abu Bakar and a daughter namely Zunaira Shaukat were born.

04. Marriage of the parties was dissolved through Khula and the petitioner got custody of minor children by order of this Court.

05. Respondent No.3 instituted a suit for recovery of maintenance, dowry articles and personal belongings. Out of divergent pleadings of the parties, issues were framed; evidence was recorded and suit filed by respondent No.3 was decreed; she was held entitled for maintenance allowance for her iddat period at the rate of Rs. 10,000/- per month; minor children were held entitled for recovery of maintenance allowance at the rate of Rs. 5,000/- per month w.e.f October, 2019 till their legal entitlement with 5% annual increase and respondent No.3 was also held

entitled for recovery of dowry articles as per list Exh.P-2.

06. Being aggrieved from the impugned judgment and decree dated 08.10.2020, the petitioner filed an appeal before the learned Additional District Judge (MCAC), West-Islamabad which was also dismissed vide impugned judgment and decree dated 08.07.2021.

07. Learned counsel for the petitioner states that she has challenged the impugned judgments and decrees only to the extent of relief granted to respondent No.3, whereby she was held entitled for recovery of dowry articles as per list Exh.P-2.

08. Learned counsel for the petitioner, *inter alia*, contends that learned Courts below have failed to appreciate the evidence produced by the petitioner and has misread, misconstrued and misinterpreted the evidence led by the petitioner while passing the impugned judgments/decrees dated 08.10.2020 and 08.07.2021.

09. Both the impugned judgments and decrees are based upon surmises and conjectures, hence are not sustainable in the eye of law. Both the learned Courts below have failed to give the due deliberations on the issues particularly issue No.3 and passed the judgments without any legal justification.

10. Respondent No.3 belongs to a poor family; her father passed away in the year 2001 before her marriage and her brothers were jobless at the time of her marriage; they were not in a position to give such a huge dowry articles mentioned in the list produced by respondent No.3.

11. Learned Courts below while passing the impugned judgments and decrees to the extent of amount of dowry articles, ignored the financial status of parents of respondent No.3; learned Courts have not appointed any local commission to determine the value of dowry articles; no receipts have been produced by respondent No.3 in her evidence; exaggerated value of dowry articles has been mentioned in Ex.P2, hence prayed that

impugned judgments/decrees are liable to be set aside. Learned counsel has relied upon the cases reported as **PLD 2013 Islamabad 11**, **PLD 2005 Lahore 504**, **2020 YLR 282** & **2007 MLD 379**.

12. Learned counsel for contesting respondent has controverted the arguments advanced by learned counsel for the petitioner and has stated that impugned judgments and decrees have been passed strictly in accordance with law; the list of dowry articles was exhibited and the petitioner has also admitted in his evidence that dowry articles were brought by respondent No.3 at the time of wedding and has prayed for dismissal of the instant writ petition. Learned Counsel has relied upon the cases reported as **2017 SCMR 321**, **2008 SCMR 1584**, **2012 YLR 2693**, **2012 MLD 756**, **2021 YLR 108** & **2019 CLC 1008**.

13. I have heard the arguments advanced by both the parties and record has been perused with their able assistance.

14. It is mentioned by the respondent No.3 / plaintiff in para-5 of plaint filed in the Court of learned Judge Family Court that the petitioner snatched the gold ornaments which were given to respondent No.3 by her parents.

15. Respondent No.3 / plaintiff mentioned in para No.2 of the plaint that her parents gave dowry articles as per list attached.

16. Petitioner has vehemently denied in para No.2 in his written statement by mentioning that:

"Para No.2 of the plaint is incorrect, hence vehemently denied, no dowry articles are lying in the house of defendant."

17. During the course of arguments, the petitioner has admitted that respondent No.3 brought the dowry articles amounting to Rs. 70,000/- approximately which have been returned to her after passing of the impugned judgments/decrees. Whereas, respondent No.3 present in person states that she has produced legal and cogent evidence in support of her contention regarding the dowry articles and she was thrown by the petitioner out of his

house in plain clothes; all the dowry articles were retained by the petitioner and the impugned judgments / decrees have rightly been passed by both the learned Courts below.

18. There are concurrent findings of both the learned Courts below against the petitioner. In case of concurrent findings of the courts below, scope of the constitutional petition becomes very limited. The petitioner has failed to point out any misreading or non-reading of evidence. It has been laid down in a case titled as **"Syed Arif Ali Sabri Vs. Abdul Samad through L.Rs. and 2 others" (2008 YLR 2309)** that:

"When there are concurrent findings of Courts below, the scope of the constitutional petition for interference is very limited and it can only be interfered when the orders of the Courts below are fanciful or based on misreading or non-reading of the evidence". The same view has also been taken in a case titled as **"Sadruddin Vs. Aslam Madad Ali and others" (PLD 2008 Karachi 2005).**

19. It is well settled that certiorari is only available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or in excess of its jurisdiction, or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of certiorari acts in exercise of supervisory and not appellate jurisdiction. The High Court in exercise of its writ jurisdiction will not review the findings of facts reached by the inferior Court or a tribunal. Reliance may be made to the following case laws:

(i) In a case titled as **"Amjad Khan Vs. Muhammad Irshad (Deceased) through LRs, (2020 SCMR 2155)"**, it is held by the Hon'ble Supreme Court that:

"It is by now a settled principle of law that the High Courts must not

exercise their constitutional jurisdiction in order to interfere with the discretion exercised by lower courts unless the same suffers from jurisdictional, factual or legal errors. In other words, such interference would be justified in cases where the impugned order has been passed without jurisdiction or is based on misreading or non-reading of evidence, or is not in accordance with the law. If none of these errors is present, the High Courts must not exercise their constitutional jurisdiction to interfere with the findings of lower courts merely because it reached a different conclusion as to the controversy than the latter. In this regard, reference can be made to a collective reading of Mst. Mobin Fatima v. Muhammad Yamin (PLD 2006 SC 214) and Nadira Shahzad v. Mubashir Ahmad (1995 SCMR 1419)."

(ii) In a case titled as **"President All Pakistan Women Association, Peshawar Cantt Vs. Muhammad Akbar Awan and others" (2020 SCMR 260)**, it is held by the Hon'ble Supreme Court that:

"It is settled law that when the Statute does not provide the right of appeal against certain orders, the same cannot be challenged by invoking the constitutional jurisdiction of the High Court in order to gain a similar objective. Where a Statute has expressly barred a remedy which is not available to a party under the Statute, it cannot be sought indirectly by resort to the constitutional jurisdiction of the High Court. The High Courts exercising constitutional jurisdiction must be fully cognizant and conscious of this Rule and strictly adhere to the same in the interest of

advancing the policy of law and delivering expeditious justice in accordance with the law and the Constitution. Even otherwise, constitutional jurisdiction is equitable and discretionary in nature and should not be exercised to defeat or bypass the purpose of a validly enacted statutory provision."

(iii) In a case titled as **"Chief Executive MEPCO and others Vs. Muhammad Fazil and others" (2019 SCMR 919)**, it is held by the Hon'ble Supreme Court that:

"Where the Court or the Tribunal has jurisdiction and it determines specific question of fact or even of law, unless patent legal defect or material irregularity is pointed out, such determination cannot ordinarily be interfered with by the High Court while exercising jurisdiction under Article 199 of the Constitution."

(iv) In a case titled as **"Chairman, NAB Vs. Muhammad Usman and others" (PLD 2018 SC 28)**, it is held by the Hon'ble Supreme Court that:

"The powers of judicial review vested in High Court under Article 199 of the Constitution is no doubt a great weapon in the Judge's hands however, the same shall not be exercised in a case where discretion is exercised by the subordinate court / Tribunal in a fair and just manner without violating or disregarding statutory provision of law, likely to occasion the failure of justice. Ordinarily such extraordinary jurisdiction shall not be exercised at random and in routine manner". The following case law is reproduced for the guidance of the learned Judges of the High Court for future course of action:

(i) Brig (Rtd.) Imtiaz Ahmed v. Government of Pakistan, through Secretary, Interior Division, Islamabad (1994 SCMR 2142).

(ii) Shahnaz Begum v. The Hon'ble Judges of the High Court of Sindh and Balochistan (PLD 1971 SC 677).

(iii) Malik Shaukat Ali Dogar v. Ghulam Qasim Khan Khakwani (PLD 1994 SC 281).

(v) In a case titled as **"Shajar Islam Vs. Muhammad Siddique and 2 others"** (PLD **2007 SC 45**), it is held by the

Hon'ble Supreme Court that:

"The High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts based on evidence even if such finding is erroneous. The scope of the judicial review of the High Court under Article 199 of the

Constitution in such cases, is limited to the extent of misreading or non-reading of evidence or if the finding is based on no evidence which may cause miscarriage of justice but it is not proper for the High Court to disturb the finding of fact through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as a substitute of revision or appeal”.

20. Learned counsel for the petitioner has failed to point out as to how the impugned judgments and decrees are the consequence of an error of law or without jurisdiction or in excess of jurisdiction.

21. For what has been discussed above, the impugned judgment and decree dated 08.10.2020, passed by the learned Judge Family Court-West, Islamabad as well as impugned Judgment and decree dated 08.07.2021, passed by the learned Additional District Judge, West-Islamabad are in accordance with law and facts of the matter and do not require interference by this Court.

The writ petition is not maintainable, hence
dismissed being meritless.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Ahmed Sheikh