HCJD/C-121

JUDGMENT SHEET

IN THE SLAMABAD HIGH COURT, ISLAMABAD

Writ Petition No.4089 of 2020

Mst. Shama Kausar
Versus
Abdul Wahid & 02 others

Petitioner by : Ms. Palwasha Tariq, Advocate.

Respondent No.1 by : Qazi Rehan Shabbir, Advocate.

Date of Decision : 23.05.2022

Babar Sattar, J:- The petitioner has impugned (i) judgment and decree passed by learned Judge Family Court dated 24.07.2019 through which suit for recovery of maintenance allowance was dismissed and the suit for recovery of dower was allowed to the extent of Rs.50,000/-, and (ii) judgment and decree passed in appeal by the learned Additional District Court dated 02.12.2020 by which the judgment and decree of the learned Family Court was upheld.

2. Learned counsel for the petitioner submitted that the impugned judgments and decrees suffer from misreading of evidence. She submitted that the learned Courts did not properly value the dowry articles and only granted to the petitioner the right to seek return of the dowry articles or Rs.50,000/- in lieu thereof, which amount was not commensurate with the value of the dowry articles. She submitted that a list of the dowry articles had been adduced before the learned Family Court. That there were contradiction

in the position taken by the respondent No.1 in the written statement filed before the learned Family Court and the testimony of DW-1 who admitted to having received the dowry articles. She further submitted that there were two Nikahnamas produced in evidence one by the petitioner during her testimony which identified as Mark-PA and the second by respondent which was identified as Exh.D1/A. That the dower amount in both was more or less the same, except that the Nikahnama produced by the petitioner did not state that the dower had been paid while in the Nikahnama produced by DW-1 stated that dower had been paid. That the learned Family Court did not frame an issue to determine which Nikahnama was authentic.

3. Learned counsel for the respondent submitted that the Nikahnama produced by the petitioner was correctly marked as Mark-PA as it was a photocopy and not an original document and could thus not be adduced or read in evidence. The Nikahnama produced by the respondent as DW-1 was duly exhibited and read into evidence, which stated that the dower amount had been paid at the time of execution of the Nikahnama. That such fact had also been admitted by the petitioner during her testimony as PW-1. He further submitted that the list of dowry items was also not properly exhibited and was identified as Mark-PB. That it had no signature of the petitioner and the petitioner also acknowledged during her cross-examination as PW-1 that it was prepared by her brothers. He submitted that the question of the respondent receiving a motorbike in dowry was raised and denied by respondent No.1. And it was in view of testimony of PW-2, who

failed to produce any receipt or evidence in relation to provision of a motorbike in dowry, together with the evidence of DW-1 and DW-2 who denied having received any motorbike in dowry, that the learned Family Court came to the conclusion that the items received in dowry did not include a motorbike.

4. This Court has reviewed the impugned judgments as well as the evidence adduced before the learned Family Court and is not convinced that the judgments of the learned Family Court and the learned Additional District Court suffer from misreading of evidence. The learned Family Court has recorded in its judgment after appraising the evidence adduced before it that the petitioner neither produced the original Nikahnama and dowry list that she relied on nor sought permission to adduce secondary evidence in relation thereto, subject to satisfaction of conditions prescribed in the Qanun-e-Shahadat Order, 1984 for production of secondary evidence. The learned Family Court also took into account the evidence adduced by the petitioner herself wherein she admitted having received the dower amount as mentioned in the Nikahnama (produced as Exh.D-1/A). PW-1 in her testimony stated that while she had received the dower amount on the day that the marriage was solemnized, the dower was taken back by the petitioner. She, however, adduced no evidence in relation thereto or explained the circumstances in which the dower including Rs.52,000/- and gold bangles were taken back by the respondent. It was for these reasons that the learned Family Court concluded that the petitioner had failed to prove her claim to the extent of non-receipt of dower as mentioned in the Nikahnama.

5. In relation to the dowry articles the learned Family Court correctly appreciated that the list of dowry articles was not duly exhibited and had not been proved through testimony by plaintiff's witnesses. It did however take into account the discrepancy between in the position taken by respondent No.1 in his written statement and his testimony as DW-1 and concluded that there were certain articles that were received by the respondent in dowry. While in view of the evidence adduced the learned Family Court did not come to the conclusion that a motorbike had been gifted by the petitioner's family to respondent No.1, it accepted the petitioner's contention that various household items had been received by respondent No.1 as dowry. In view of the testimony of DW-1 and DW-2 the learned Family Court determined the value of dowry articles to be Rs.50,000/-.

6. In the event that the learned Family Court had come to the conclusion that respondent No.1 had received a motorbike as part of the dowry received from the petitioner's family and had still granted the appellant Rs.50,000/- in lieu of dowry articles, one could possibly conclude that the financial compensation granted in view of dowry articles was insufficient. That is not however the case. The Court in view of evidence adduced did not accept the petitioner's claim that respondent No.1 had received a motorbike as part of dowry. It therefore ordered that respondent No.1 either return the household items received as dowry or pay Rs.50,000/- in lieu thereof. The learned Appellate Court then reappraised the evidence and upheld the judgment and decree of the learned Family Court.

7. The learned counsel for the petitioner had failed to convince this Court that there was any piece of evidence adduced before the learned Family Court that was either not read or misread in granting the petitioner Rs.50,000/- in lieu of dowry articles. Short of such misreading and non-reading of evidence this Court in its constitutional jurisdiction cannot undertake evaluation of dowry articles afresh and reach a conclusion regarding their value different from that of the learned Family Court.

8. For the aforementioned reasons, this Court is not convinced that the impugned judgments and decrees suffer from material illegality that require the intervention of this Court in its constitutional jurisdiction. The petition is therefore without merit and ***dismissed*** with a cost of Rs.5000/- payable by the petitioner to respondent No.1.

(BABAR SATTAR)
JUDGE

M.A. Raza