

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, **ISLAMABAD**

W.P. NO.24 OF 2020

Shahnaz Siddique

Vs.

ADDITIONAL DISTRICT JUDGE, ISLAMABAD, ETC.

Petitioner by : Ch. Gulfam Ashraf Goraya, Advocate.

Respondents by : Mr. Azhar Mahmood, Advocate.
(For Respondent No. 3)

Date of hearing : 14.02.2020

LUBNA SALEEM PERVEZ, J. Petitioner has filed instant Writ Petition assailing judgment dated 03.12.2019, passed by learned Additional District Judge, West-Islamabad, whereby the judgment and decree dated 12.10.2019, passed by learned Judge Family Court, West-Islamabad, , was modified to the extent of recovery of dowry articles. Petitioner has further prayed for modification of judgment and decree dated 12.10.2019, passed by learned Judge Family Court, and allow recovery of dowry articles as per list attached by the Petitioner as Ex:P-13.

2. Admitted facts of the case are that the Petitioner married to the Respondent No.3 on 26.09.2016, however, the said marriage was dissolved on 22.11.2018, whereafter, Petitioner filed suit for recovery of dowry articles of Rs. 12,07,915/- as per list exhibited as Ex.P-13. The suit was partially decreed by entitling her for the recovery of dowry articles as per list Ex.P-13 except articles mentioned at serial No. 7 & 11 and gifts given by the Respondent No.3 with the direction that as the articles remained in use of the Petitioner/Plaintiff, therefore, she would accept the same in the form in which those articles were. It was further held that if any of the articles, except gold articles, is missing then RespondentNo.3 shall pay 75 % of the prices mentioned in list Ex.P-13. Both the parties challenged the judgment dated 12.10.2019, before the Court of learned Additional District Judge, Islamabad (West), who vide consolidated judgment dated 03.12.2019, modified the decree of trial Court by holding that the Petitioner

is entitled to recover dowry articles as per list Ex-D6 and if any of the dowry article is missing, then Respondent No. 3 shall be bound to pay its 75% price. Petitioner/Plaintiff, being dissatisfied with the said judgment preferred this petition.

3. Learned Counsel for Petitioner contended that consolidated judgment dated 03.12.2019, suffers from non-reading and misreading of evidence as the learned Appellate Court has not appreciated the documentary as well as oral evidence submitted by the Appellant/Petitioner during the trial. Learned Counsel emphasized that though the Petitioner belongs to a poor family, however, her parents in view of the culture and customs in Muslim marriages has given dowry to their daughter. In this regard learned Counsel referred statement of PW-2 (Petitioner's brother-in-law) whereby he stated that the parents of the Petitioner have given dowry to his wife as well as to her younger daughter/Petitioner also. Learned Counsel also referred statement of the Petitioner given on oath as PW-1 wherein she narrated the list of articles in her dowry which contained two gold bangles of three tolas, one locket and one ring. Learned Counsel contended that statement of the Petitioner has not been denied by Respondent No.3 during the trial. Thus, learned Addl. District Judge, has erroneously presumed that dowry articles in general and gold ornaments in particular have been retained by the Petitioner and, therefore, held Petitioner entitled to recover the dowry articles as per list Ex.D6 submitted by the Respondent No.3 and in case of missing article the Respondent would bound to pay its 75% price.

4. Learned counsel for Respondent No.3, vehemently opposed the contentions of the learned counsel for Petitioner and denied the list of dowry articles submitted by the Petitioner as Ex.P13 and submitted that Petitioner is entitled for dowry articles as per receipt of dowry articles produced by the Petitioner vide Ex.D6. Learned Counsel argued that Petitioner belongs to a poor family thus could not afford to give the articles as claimed in the list Ex:P13. He pointed out that the Petitioner has stated in her statement on oath and during cross examination that the gold was purchased from the shop of her brother-in-law namely Qaiser Abbas but did not produce him as a witness. Learned Counsel submitted that all the

gold ornaments were in the custody of the Petitioner and she could not prove snatching of the same from her at the time she was allegedly expelled from the house. Learned Counsel referred judgment titled **Mst. Samiya Iqbal Butt versus Rehan Zafar, etc** reported as **NLR 2013 Civil 369** wherein it has been held as under:

“...we are of the view that the latter Court considered every piece of evidence led while passing the judgment and decree and rightly excluded the aforementioned articles from consideration as it was of the view that the jewelry in question being items of daily use could not have been left behind by petitioner-wife while leaving the house. Petitioner’s learned counsel has not referred to any piece of evidence which could persuade us to interfere with the afore-referred finding of fact.”

Learned Counsel contended that the Petitioner not only miserably failed to prove her claim before the learned Courts below also remained unsuccessful in pointing out any illegality in the impugned judgment dated 03.12.2019, and prayed for dismissal of the petition.

5. Arguments advanced by the learned Counsel for the parties have been heard and the documents, placed on record have also been examined with their able assistance.

6. In the present case both the parties are asserting on the list of dowry articles prepared and exhibited during trial. Petitioner claims dowry articles as per Ex-P13, whereas, Respondent’s assertion is that the Petitioner is entitled to receive said articles as per list Ex-D6. Both the parties at the trial stage presented the material evidence and made statements on oath and thereafter were cross examined to prove their contentions. Learned Counsel for the Respondent questioned affordability of Petitioner’s family to give that much dowry, in this regard this court is of the view that bride’s parents at the wedding of their daughter normally give articles in the name of dowry mainly comprising of daily use household goods e.g furniture and certain electronic items, most of the times beyond their capacity in view of the culture and custom of the society. Thus, there is no force in this contention of the Respondent No.3. Moreover, from the averments of the Respondent’s Counsel and record it is apparent that dispute is only regarding the quantity of dowry articles, and both the parties are trying to prove their claim as per their lists, in that regard it is observed that list produced by the Petitioner i.e. Ex-P13 comprised of articles worth

Rs. 12,07,915 out of which articles amounting to Rs. 2,89,300/- are without receipts and regarding articles of Rs. 7,39,615/- receipts are produced, and also includes gifts from Respondent No. 3 worth Rs. 1,79,000/-, whereas, it is pertinent to note that the Respondent No. 3 in his statement given on oath admitted to present 3 tolas gold bangles (karay) worth Rs. 150,000/- to the Petitioner as Mehr, and this statement has not been countered by the Petitioner. Besides, it is generally accepted that the gold ornaments are always retained by the wife. Considering the above said contentions of the parties and perusal of record, I am of the view that the grievance of the Petitioner voiced through present petition mainly relates to the factual controversy in respect of the quantum of claim which could only be ascertained on the basis of facts put forth and evidence produced by the parties before the learned Courts below and the learned Appellate Court while modifying the judgment/decreed has ably dealt with each and every material evidence and came to the conclusion that the Petitioner is entitled to recovery of dowry articles as per list Ex:D6. It has been held in a number of cases that factual controversies are not to be decided by the High Court while exercising constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Thus, judgment dated 03.12.2019, passed by the learned Appellate Court is not open to interference by this Court.

7. For the reasons mentioned hereinabove, instant writ petition, being devoid of any merit, is hereby *dismissed*.

**(LUBNA SALEEM PERVEZ)
JUDGE**

M. JUNAIDUSMAN