

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

W.P. NO.4059/2019

Mst. Rafina Bibi.

Vs.

**Learned Additional District Judge-I/Judge MACA (East),
Islamabad and 2 others.**

Petitioner by : Mr. Sajid Mehmood Ch., Advocate.

Respondents by : Ms. Rabia Habib, Advocate.

Date of hearing : 24.09.2020

LUBNA SALEEM PERVEZ, J. Petitioner invoked the constitutional jurisdiction of this Court by way of filing instant Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, assailing judgment dated 01.10.2019, passed by the learned District & Sessions Judge, East-Islamabad, whereby, her appeal was dismissed and the findings dated 03.07.2020 of the learned family Court were upheld.

2. Admitted facts, of the case are that the petitioner filed suit before Judge Family Court, East-Islamabad on 19.05.2017, for dissolution of marriage on the basis of Khula and recovery of maintenance, dowry articles and gold ornaments, which was decreed to the extent of dissolution of marriage by way of khula vide order dated 10.01.2018. The dowry articles were also handed over to the plaintiff through bailiff, vide his report dated 03.02.2018. Learned family Judge, vide judgment dated 03.07.2019, on the issues of maintenance and recovery of gold ornaments from defendant held that *the claim of plaintiff to recover maintenance and gold ornaments weighing three tolas has dismissed, however, the plaintiff is bound to return three tola gold ornament as zar-e-khula to defendants*. The appeal against the judgment & decree dated 03.07.2019, filed before Additional District Judge-I/Judge MCAC (East)-Islamabad was also dismissed, hence, present writ petition.

3. Learned counsel for Petitioner submitted that the petitioner was deserted from the house by the defendant by snatching the gold ornaments in March 2016; that the learned Family Judge as well as learned ADJ has misread the evidence and passed the impugned order which, as such, suffers from illegalities and irregularities; that learned Courts below failed to apply their judicial mind while passing the impugned judgments/order. He relied on the case titled ***“Bushra Bibi vs. Judge Family Court” (PLD 2000 Lahore 95)*** and prayed for setting aside of both the judgments of the Court below.

4. Learned counsel for Respondent on the other hand submitted that during the trial proceedings it was proved that the plaintiff was not deserted from the house rather she left the house on her own free will; that it was proved that in March 2016, the defendant was not in Pakistan but abroad; that she has admitted of having received a ring and a pair of gold ear rings in lieu of dower, which admittedly is in her possession, however, she could not prove the snatching of three tolas gold given to her as dower; that she is not entitled for maintenance being a disobedient wife who left the house of the defendant without any genuine reason; that there is no illegality or irregularity in the judgments of the learned courts below. She relied on the judgments of ***“Mst. Samiya Iqbal Butt vs. Rehan Zafar, etc” (NLR 2013 Civil 369, “Mst. Sakina Bibi vs. Muhammad Latif” (2003 YLR 1006) and “Mohammad Sajjad vs. Neelum Shaheen” (2017 YLR 2481).***

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

6. Perusal of the record shows that the suit was filed for grant of khula, recovery of maintenance, dowry articles and gold ornaments. The khula was granted after failure of reconciliation proceedings on 10.01.2018 and thereafter the dowry articles were also returned through bailiff on the orders of the learned Family Judge. Thereafter, the issues in respect of maintenance and return of gold ornaments remained with the learned Judge for decision. In respect of maintenance since, March 2016 up to iddat

period, the contention of the plaintiff that she was being treated cruelly and harshly by the defendant who deserted her from his house on the behest of his parents was proved to be wrong as she herself admitted in March 2016, the defendant (her ex-husband) was abroad in connection with his job further it has been observed from the contents of document at page 81 of the record, which is a statement of the petitioner signed by her before Jirga, wherein she admitted that she was living with her parents on her own will while her husband was abroad, therefore, deserting her from house by the defendant and snatching of gold ornaments appears to be a false statement, therefore, the learned trial Judge has rightly decided this issue against her. In the judgment of “Mst. Sakina Bibi vs. Muhammad Latif” (2003 YLR 1006) it has been observed that *it is well settled that if a wife refuses, without lawful justification to live with his husband she is not entitled to her maintenance*). In another judgment of “Muhammad Sajjad vs. Neelum Shaheen” (2017 YLR 2841) the Hon’ble Shariat Court, AJK has observed that *If wife is not willing to live with her husband, she was not entitled for maintenance allowance, husband was bound to pay maintenance to wife till she was faithful and lived with him and she voluntarily left the house of her husband then she was not entitled for maintenance, wife was entitled for maintenance allowance only when she was forced to leave the house of her husband due to cruelty or violence but when she abandoned the house of the husband with her free consent and willfully to perform marital obligations she would not be entitled for any maintenance allowance*. So far as the issue, relating to recovery/claim of three tolas gold, fixed as dower in possession of the defendant is concerned, it has been categorically admitted by the plaintiff that she has received a gold ring at the time of Nikkah and the remaining dower amount has been received by her on 08.07.2014 in front of witnesses and also admits of having a pair of gold ear rings. Moreover, she could not bring on record any evidence for snatching the gold ornaments by the defendant during trial. Therefore, the issue of possession of gold ornaments with defendant, being remained unproved, has been rightly decided against the plaintiff.

7. In view of the discussion made hereinabove, I am of the considered opinion that the judgment passed by the learned Family Judge has been

W.P. No.4059/2019

passed after thorough scrutiny of evidence and record and thereafter learned ADJ while concurring with the findings of learned Family Judge has considered all the relevant documents and evidence of the case. The learned counsel for the petitioner is not able to point out any irregularity, illegality or any misreading or non-reading of the evidence/record, therefore, the judgment and decree dated 03.07.2019, passed by learned Family Judge as well as judgment dated ~~01.10~~ 01.10.2019, passed by learned ADJ are upheld. Consequently, the instant writ petition, being devoid of any merit, is dismissed.



(LUBNA SALEEM PERVEZ)
JUDGE

Announced in open Court on 01-10-2020


JUDGE