

**2012 M L D 756**

**[Islamabad]**

**Before Shaukat Aziz Siddiqui, J**

**Mst. SHAKEELA BIBI---Petitioner**

**Versus**

**MUHAMMAD ISRAR and others---Respondents**

Writ Petition No.1552 of 2010, heard on 26th December, 2011.

**West Pakistan Family Courts Act (XXXV of 1964)---**

---Ss.17, 5 & Sched.---Qanun-e-Shahadat (10 of 1984), Preamble---Constitution of Pakistan, Art. 199---Constitutional Petition---Suit for recovery of dowry articles---Non-production of receipts for dowry articles---Effect---Solitary statement of wife was sufficient to prove the claim of dowry articles---Contention of husband that wife, while making claim for dowry articles, was required to prove the case in terms of the requirements of Qanun-e-Shahadat Order, 1984 was not only misconceived but was also besides the mandate of law as envisaged in S. 17(1) of the West Pakistan Family Courts Act, 1964---Section 17 of the West Pakistan Family Courts Act, 1964 was a special law and provisions of Qanun-e-Shahadat Order, 1984 were excluded through said section---Was not possible for any bride / wife in the society to keep the record of purchase receipts, prepare the list of dowry articles and obtain signatures from the husband's side---Mothers start collecting, purchasing, and preserving articles for their daughters from when they start growing up and there was a tradition that the in-laws of any wife were extended esteem and respect and it was considered an insult to prepare the dowry list for the purposes of obtaining signatures from them---Constitutional petition was allowed, in circumstances.

Muhammad Jaffar v. ADJ 2005 MLD 1069; Mst. Amina Begum and others v. Mehr Ghulam Dastgir PLD 1978 SC 220; Muhammad Habib v. Mst. Safia Bibi and others 2008 SCMR 1584 and Mirza Arshad Baig v. ADJ 2005 SCMR 1740 rel.

Mrs. Robina Shaheen for Petitioner.

Haider Mehmood Mirza for Respondents.

Date of hearing: 26th December, 2011.

## **JUDGMENT**

**SHAUKAT AZIZ SIDDIQUI, J.**---By invoking the constitutional jurisdiction of this court, petitioner sought declaration, against the judgment and decrees dated 31-7-2009 and 24-12-2009 passed by learned Judge Family Court, and learned Additional District Judge, Islamabad, being without lawful authority, illegal, against law and facts. Petitioner further prayed for setting aside the impugned judgment and decrees with a consequence of decree of suit as a whole.

2. Brief facts as glean out from the writ petition are that marriage between the spouses was solemnized on 20-1-1995 at Islamabad, for consideration of dower amount of Rs.1,00,000. Although column No.15 of Nikahnama Exh.P2 suggests that dower was deferred ( ) but columns Nos.16 and 17 indicate that entire dower was paid in shape of gold ornaments and a house. Petitioner brought her claim of gold ornaments, weighing 19 tolas, dowry articles, possession of house ( ) and maintenance allowance at the rate of Rs.1,500 p.m, fixed under column No.18 of Nikahnama, way of filing suit before the learned Judge Family Court at Islamabad. In pursuance of the, process issued, the respondent/defendant put his appearance and filed written statement.

Out of the divergent pleadings of the parties the learned Judge/Family Court framed the following issues:--

## **ISSUES.**

(1) Whether the plaintiff is entitled to decree for recovery of maintenance allowance, if so, at what rate, and since when? OPP

(2) Whether the plaintiff is entitled to decree for recovery of dowry articles according to list attached with the plaint as prayed for? OPP

(3) Whether the plaintiff is entitled to decree for recovery of amount as prayed for? OPP

(4) Whether the suit is not maintainable in its present form? OPD

(5) Whether the plaintiff has no cause of action and locus standi to file the instant suit? OPD

(6) Whether the plaintiff has not come to the court with clean hands? OPD

(7) Whether the plaintiff has concealed the material facts from the court? OPD

(8) Whether the plaintiff is estopped by her word and conducts to file the instant suit? OPD

(9) Whether the plaintiff has filed this suit just to pressurize and blackmail the defendant? OPD

(10) Whether the suit is false, frivolous and vexatious? OPD

(11) Relief.

4. Parties led their respective evidence, the learned Judge Family Court, partially decreed the suit, vide judgment and decree dated 31-7-2009. Feeling aggrieved, petitioner filed an appeal under section 14 of the West Pakistan Family Court's Act 1964, but same was dismissed by impugned judgment and decree dated 24-12-2009.

5. The learned counsel for petitioner submits that both the Courts below failed to appreciate the evidence, brought on record, and settled law on the issue before the Court.

6. On the other hand, learned counsel for respondent No.1 submits that petitioner is not entitled to discretionary relief, through exercise of constitutional jurisdiction by this Court. The learned counsel further contends that, even on merits, petitioner has no case, therefore, writ petition is liable to be dismissed.

I have heard the learned counsel for the parties and perused the record.

7. In my estimation, both the courts below, failed to appreciate the evidence, more particularly statement of petitioner who appeared as P.W.1. In an affidavit tendered in evidence as Exh.P1, Para 4, petitioner stated as under:--

In cross-examination, defendant/respondent side himself put few questions which were replied as under:--

I believe that this important piece of evidence escaped notice of both the Courts. It is held in the case of Muhammad Jaffar v. ADJ reported as 2005 MLD 1069, that solitary statement of wife is sufficient to prove the claim of dowry articles.

8. To, further, satisfy myself and resolve the controversy, parties were directed to appear in person. Today they are in attendance. When asked from petitioner whether she is ready, to take oath, in support of her claim with regard to dowry articles?, She answered in affirmative. On the contrary, when asked from respondent No.1 whether he is ready, to deny the claim of petitioner on oath, with regard to dowry articles?, he refused. Petitioner took oath on the "Holy Quran" that she was given, dowry articles approximately, amounting to Rs.2,15,000 and that those articles are in the possession of respondent No.1. In order to shorten litigation and to do complete justice between the parties this exercise was taken, and I guided myself from the authoritative pronouncement of honourable Supreme Court of Pakistan, in case of Mst.Amina Begum and others v. Mehr Ghulam Dastgir, reported as PLD 1978 SC 220.

9. This stance of husband's side that bride while making claim of dowry articles, is required to prove the case, in requirements of Qanun-e-Shahadat Order 1984, as held by learned trial court, not only misconceived, but besides the mandate of law as envisaged in section 17(1) of the West

Pakistan Family Courts Act, 1964, which is a special law. For convenience Section 17 of Act ibid is reproduced herein below:---

"Provisions of Evidence Act and Code of Civil Procedure not to apply.-

(1) Save as otherwise expressly provided by or under this Act, the provisions of the (Qanun-e-Shahadat, 1984 (P.O. No.10 of 1984)) AND the Code of Civil Procedure, 1908 (except sections 10 and 11) shall not apply to proceedings before any Family Court, [in respect of Part 1 of Schedule].

(2) Sections 8 to 11 of the Oaths Act, 1873, shall apply to all proceedings before the Family Courts."

Bare reading of above provision makes it abundantly clear that provisions of Qanun-e-Shahadat Order, 1984 are excluded.

10. Even otherwise, in our society, it is not possible for any bride/ wife to keep the record of purchase receipts, prepare the list of dowry articles, and obtain signatures from bridegroom/husband side. In my observation, mothers start collecting, purchase and preserving of articles for her daughter, when she starts growing. It is also a tradition that in-laws, of any bride/wife are extended esteem respect and it is considered an insult to prepare the dowry list for the purposes of obtaining signature from them. I am also fortified, with the ratio and wisdom of the Court of apex provided through cases Muhammad Habib v. Mst.Safia Bibi and others reported as 2008 SCMR 1584 and Mirza Arshad Baig v. ADJ reported as 2005 SCMR 1740.

11. In this view of the matter, instant petition is allowed and impugned judgment and decree passed by Additional District Judge, Islamabad dated 24-12-2009 is set aside and judgment and decree dated 31-7-2009 is modified by holding that petitioner/plaintiff is entitled to recover an amount of Rs.1,50,000 as value of dowry articles, instead of Rs.2,15,000 as an amount of Rs.65,000 is fixed, as depreciation of the dowry articles. Order accordingly.

K.M.Z./38/IsI

Petition allowed.

