

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P No.421-2021

Mst. Rashida Aslam
vs.
Additional District Judge, Islamabad (West) and others.

Petitioner by: Mr. Abdul Hafeez Amjad, Advocate.

Respondents by: Ms. Saba Batool Mumtaz, Advocate for respondent No.3.

Date of Hearing: 15.02.2023.

MOHSIN AKHTAR KAYANI, J: Through the instant writ petition, the petitioner has assailed the judgment and decree dated 15.07.2019, passed by learned Judge Family Court (West), Islamabad and judgment and decree dated 09.11.2020, passed by learned Additional District Judge (West), Islamabad, whereby both the Courts below have concurrently dismissed the claim of jewelry articles of the petitioner.

2. Learned Counsel for the petitioner contends that the petitioner was married to respondent No.3/Nawab Akhtar on 12.11.2011 at District Kasur, Punjab and thereafter shifted to Islamabad. He further contends that petitioner was given dowry articles amounting to Rs. 741,810/- as per list Exh.P/4 including the gold ornaments, based upon some of the receipts Exh.P/4 to Exh.P/6, but the marriage was dissolved on the basis of divorce during the pendency of the matter. He further contends that after the divorce, she has filed a suit for recovery of dowry articles on 13.01.2018 and appended the list of dowry articles, whereas certain items have been handed over to the petitioner in bad condition, except the gold items, which have concurrently been denied by the Courts below, despite the fact that overwhelming evidence was available on record.

3. Conversely, Learned Counsel for the respondent No.3 contends that the judgments and decrees have factually been settled by the Courts below and this Court in constitutional petition cannot pass a contrary decision against the factual aspect. He further contends that the claim sought by the petitioner has not been justified in any manner, therefore, instant writ petition may kindly be dismissed.

4. Arguments heard and record perused.

5. Perusal of record reveals that petitioner filed a suit for recovery of dowry articles mentioned in the list Exh.P/4 whereby all the items were decreed as per list, except gold ornaments from serial No. 90 to 93 of the list, which includes 03 tola gold set, 04 tola Bangles, gold chain and gold ring alongwith two topes and the claim of the petitioner has been denied in the written statement by the respondent, who acknowledges majority of the articles in the written statement, which were handed over to the petitioner and duly admitted before this Court.

6. While considering the evidence of the petitioner, who appeared in her own support as PW-1 and was cross-examined at length, in which she admitted that:-

مجھے جو میری والدہ نے سونا دیا تھا مجھے یاد نہ ہے کہ کتنے تولے کا تھا۔

She also acknowledges that:-

یہ درسیہ ہے کہ سادی کے موقع پر مدعا علیہ نے بھی مجھے سونا دیا تھا از خود کہا کہ بعد میں واپس لے لیا تھا۔

7. However petitioner has neither mentioned the aspect of receiving back the gold ornaments in her plaint nor in the affidavit of evidence Exh.P1, which creates adverse affect against the claim of the petitioner by both the Courts below in their findings on issue No.1, which resulted into dismissal of suit to the extent of gold ornaments. Similarly, it is also reflected from the judgments of the Courts below that petitioner has been denied her right of the gold ornaments only on one count that she cannot

remember that what was the weight of gold set, which was given by her mother. The trial Court while giving the findings on issue No.1 has also referred that "*it does not appeal to prudent mind that the parents having limited source of income can give 7 tolas gold ornaments to their daughter besides giving her dowry articles of almost valuing Rs.400,000/-*". Even otherwise, it is common practice in our society that female usually keeps the gold ornaments with them.

8. While considering the above findings, it appears that learned trial Court as well as Appellate Court have appreciated the testimony of respondent No.3/DW-1, who, submitted his evidence Ex.D/1 in shape of affidavit and in cross examination, respondent No.3/Nawab Akhtar acknowledges that:-

علاوہ ازیں مدعیہ کی سٹادی کے وسیع من محلف نے طلائی زیورات تقریباً 8 تولے مدعیہ کو پہنائے جس کی تفصیل کلی گولڈ لاکٹ، کلی جوڑی کنگن، کلی عدد گلوبند، مکمل، کلی عدد سونے کی نتھلی و سونے کا کوکا، دو جوڑی کان کی بالیاں و تین جوڑیاں ٹاپس، کلی سونے کی انگوٹھی پہنائی، اس کے علاوہ من محلف نے مدعیہ کو 45 لیڈیز سوٹ، 8 جوڑے جوتے (شوز/ سینڈل)، 1 لیڈیز سویٹر 2 دولن سٹالز، دو کائن سٹالز اور کلی عدد لیڈیز ریٹ وائچ بھی دی۔ جو کہ مدعیہ کے قبضہ میں ہیں اور مدعیہ دوران آبادی شفیٹنگ کے دوران اپنے ساتھ قصور سے اسلام آباد لیکر آئی تھی۔ جبکہ مدعیہ کو سٹادی کے وسیع من محلف نے کوئی طلائی زیورات نہ دیکھے تھے جو کہ زیورات دیے گئے وہ من محلف کے دیے گئے ہیں۔

9. While considering the above evidence, the concurrent findings could not be interfered. The respondent side has produced the receipt of jewelry in shape of documentary evidence, whereas the evidence of petitioner only contains some jewelry articles, which were already handed over to the petitioner and that aspect has concurrently been settled by the Courts below, therefore, no exception could be taken to the concurrent findings in constitutional petition. No jurisdictional defect has been pointed out by the petitioner, rather case was dismissed by the Courts below on merits.

10. For the foregoing reasons, I have reached to the conclusion that plaintiff/petitioner is not entitled for any gold ornaments from respondent No.3, hence instant writ petition is **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on _____

JUDGE

RAMZAN