

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Writ Petition No.1358 of 2021**  
Nasir Mehmood  
Versus  
Addl. District Judge Islamabad West and others

Petitioner by:	Ch. Muhammad Shafqaat, Advocate
Respondent No.3 by:	Mr. Muhammad Waqas Malik, Advocate
Date of Hearing:	<b><u>03.03.2022</u></b>

**Sardar Ejaz Ishaq Khan, J:** The petitioner's ex-wife filed a suit for dissolution of marriage and recovery of maintenance, dowry articles and dower before the Family Court (West), Islamabad. The suit claimed that the dower was fixed at 8 tolas gold and monthly pocket money at Rs.5,000/-. It went on to state that all the dowry articles were handed over to the husband and received by him at his residence where he signed the list of dowry articles. They were married a few months only. The pleadings were at variance as to the circumstances of the wife's departure, the wife claiming she was beaten and thrown out, the husband claiming she left of her own volition, and the learned trial court found on evidence the husband's version to be the correct one.

2 The learned family court decreed the dissolution of marriage on the basis of khula on failure of reconciliation proceedings and set the remaining questions relating to the possession and return of dower and dowry and maintenance, etc. for trial. After consideration of the evidence, the learned family court concluded that the dower gold weighing 8 tolas was given by the husband to the wife on the wedding day and remained in her possession. However, citing Tuharat Firdos versus Imtiaz Khan (2019 CLC 1562) and Aurangzeb versus Mst. Gulnaz (PLD 2006 Karachi 563), the family court invoked the principle of 'reciprocal benefits', concluded that it had discretion in the matter and, given that the wife had lived with the husband for some months, allowed the wife to retain half the dower and ordered her to return the remaining half 4 tolas as consideration for khula.

3 On the question of return of dowry articles, the court believed the wife's version in evidence and accepted the dowry list appended with the plaint for return of the items listed therein, citing the judgment titled Mst. Saib Noor versus Zafar Iqbal (2011 YLR 1268), whereby the list of dowry articles annexed with the plaint right from the inception of the suit and exhibited without objection by the defendant was to be taken as authentic and correct, the receipts of purchase of the dowry articles not being produced in evidence notwithstanding, as the rigours of the law of evidence did not apply to a family suit. The court also referred to the admission made by the husband in his cross-examination that he had received the dowry articles and had signed the list and, given that the husband was a well-educated person, his contention that he signed the dowry list without due care was rejected. Nonetheless, the family court did not allow the entire dowry list; it rejected the part thereof listing 22 tolas gold for the reason that there wasn't enough evidence to believe that this gold actually existed. Resultantly, the family Court allowed the recovery of the dowry list items except the 22 tolas gold listed therein.

4 Both the husband and the wife appealed the judgment which was disposed of by a consolidated judgment dated 26.01.2021. The learned appellate court dismissed both the appeals and agreed with the findings of the learned family court.

5 The main thrust of the petitioner husband's learned counsel was that:-

- i) the wife was not entitled to retain 50% of the dower because she had obtained khula and that she had herself left the house of the petitioner without any lawful justification; and
- ii) the evidence of the defendant admitting the list of dowry articles was recorded in the absence of his counsel in a hasty manner and the personal belongings of the wife were intentionally written in the list of dowry articles but they were not actually there.

6 The learned counsel for the petitioner during arguments attempted for this Court to reappraise the evidence, which however is not the task of this Court sitting in its Constitutional jurisdiction; the scope is limited to cure any illegality, failure or excess of jurisdiction, material error of fact or law patent on the face of record, and the like, and which does not entail that

this Court substitute its view on appraisal of the evidence for the view taken by the trial or the appellate court. I therefore confine myself to the question of law raised by the learned counsel that both the learned family court and the appellate court committed an error of law in permitting the wife to retain half the amount of dower despite taking khula before the trial and given the wife's admission in evidence that she left the house and refused to stay with her husband.

7 Learned counsel submitted that it was true that in some cases where the marriage had lasted for a long period the courts do allow half dower to be retained by the wife, but submitted that this was not the correct legal position, that the said judgments were motivated by compassion alone, and that this could not in any event be valid for the instant case where the marriage had lasted a few months only. The following cases were cited:

- i) Shagufta Bibi versus Judge Family Court, Mailsi and others (2013 MLD 487 [Lahore])

Distinguishing Muhammad Zafar versus Judge, Family Court and another (2005 CLD 1844) it was held that, when the marriage was dissolved at the reconciliation stage without going through the entire trial, then the court had no discretion to refuse the return of dower in view of the proviso to section 10(4) of the West Pakistan Family Courts Act, 1964, which the court found couched in mandatory terms.

- ii) Muhammad Saeed versus Additional District Judge and others (2019 CLC 1008 [Lahore])

Here too the court found that on the basis of khula, the dower had to be returned by the wife.

- iii) Muhammad Kamran versus Mst. Samera Majeed and others (2018 YLR 1251 [Lahore])

Here too the court found that where the wife obtained a decree for dissolution of marriage on the basis of khula, it was always subject to return of dower and she subsequently could not claim it as of right and that, in case of khula, the wife would have to either remit the dower if she had not received it or pay back the same to the husband if she had received it.

- iv) Khurram Naseer versus Judge Family Court (West) and others (2016 MLD 1183 [Islamabad])

Here too the Islamabad High Court held that the wife had to restore haq mehr received by her in consideration of marriage if the marriage was dissolved on the basis of khula right after the pre-trial reconciliation proceedings and before the entire evidence was led and the court referred to the proviso to section 10(4) to come to the conclusion that in such circumstances the dower had to be returned.

8 I am unable to agree with the reliance by the learned trial court and the agreement therewith by the learned appellate court on the 'reciprocal benefits' principle in the circumstances of this case. The reliance by the court on Aurangzeb versus Mst. Gulnaz (supra) is uncalled for because there the wife had lived with the husband for over 1.5 years and this on the facts of that case was to be treated as sufficient reciprocal benefit received by the husband for a dower of Rs.42,000/-, given that the wife was destitute. More to the point is that the application of the proviso to section 10(4) was not discussed in the said judgment. The second judgment Tuharat Firdos versus Imtiaz Khan (supra) relied on by the learned family court is also not attracted to the facts of this case as the wife there belonged to a poor family and the law report shows this factor was predominant in the decision to allow her to retain the dower house. Neither of these cases discussed the proviso to section 10(4). In view of the fact that in this case the wife lived for a few months only with the husband, in view of there being no finding of the wife's destitution, and in view of the finding of the learned trial court that the wife admitted during the course of cross examination that she herself left her husband's house and that she turned down the efforts of the husband and the mother for reconciliation, I find the reliance on the 'reciprocal benefits' principle by the family court an excessive exercise of jurisdiction bordering on largesse uncalled for in the circumstances of this case.

9 Above all, I find it difficult to reconcile the principle of reciprocal benefits with the proviso to section 10(4) which is reproduced below<sup>1</sup>:-

**S. 10. Pre-trial proceedings.—**

...

(4) If no compromise or reconciliation is possible the Court shall frame the issues in the case and fix a date for the recording of the evidence;

<sup>2</sup>Provided that notwithstanding any decision or judgment of any Court or tribunal, the Family Court in a suit for dissolution of marriage, if reconciliation fails, shall pass decree for dissolution of marriage forthwith and also restore the husband the Haq Mehr received by the wife in consideration of marriage at the time of marriage.

<sup>1</sup> Reproduced per the statutory provision prevalent in Islamabad.

<sup>2</sup> Proviso added by Amending Ordinance. LV of 2002 dated 1.10.2002.

10 The aforesaid proviso makes it mandatory for the wife to return the dower on the basis of khula given under section 10(4) of the Family Courts Act, 1964. Both the judgments relied on by the learned family court are judgments of Single Benches, therefore are not binding on this Court, and since they do not evaluate the impact of the proviso to section 10(4), respectfully, can be said to be per incuriam to this extent.

11 In view of the foregoing, I find that the principle of reciprocal benefit cannot be applied without due regard to the proviso to section 10(4) of the Family Courts Act, especially where there is no finding of the wife's destitution. Therefore, I am inclined to follow the ratios in Shagufta Bibi (supra) and Khurram Naseer (supra), which appear to me to be the correct interpretation of the proviso to section 10(4) which does not use any words 'such part of the dower as the Court may order', or similar, and I am therefore unable to read a discretion of the family court therein on the principle of reciprocal benefit. It is clarified that this does not entail that return of dower is to be a condition precedent to khula being ordered – far from it – but is an obligation that arises and fastens in parallel with khula being granted under section 10(4), to be fulfilled by the wife there and then or thereafter.

12 I am however persuaded by the learned counsel for the respondent ex-wife that the dowry articles ordered to be returned by the family court is not to be interfered with by questioning the failure of the wife to produce receipts of purchase or a later objection of the husband to the dowry list. The learned counsel cited, and I respectfully adhere to, the judgment of the Hon'ble Supreme Court in Shafique Sultan versus Mst. Asma Firdous and others (2017 SCMR 393), where it was held that the list of dowry articles provided by the wife consisting of articles of daily use generally given to brides on weddings was to be accepted where the articles were not extravagant nor shown to be beyond the financial resources of the wife's family, and that the Qanun-e-Shahadat Order, 1984 was not *stricto sensu* applicable and, accordingly, the husband's contention therein (as herein) regarding the proof of receipts and effect of non-production of authors of such receipts was found to be misconceived.

12 Resultantly, this writ petition is allowed in part to the extent that the judgment and decree allowing the wife to retain half the dower of 4 tolas gold is declared to be unwarranted in law and is set aside. The wife will return the entire dower of 8 tolas gold to the husband. The rest of the decree is not interfered with.

13 There is no order as to costs.

**(Sardar Ejaz Ishaq Khan)**  
**Judge**

Announced in open Court on 02.06.2022

**Judge**

**Approved for reporting.**

Imtiaz