

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1908/2017

Shaukat Hussain
Versus

The Learned Additional District Judge-V, East Islamabad and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	24.06.2019	Sardar Anzar Iqbal Khan, Advocate for the petitioner. Raja Muhammad Shakeel Abbasi, Advocate for respondent No.3.

Through the instant writ petition, the petitioner, Shaukat Hussain, impugns the judgment dated 30.03.2017, passed by the Court of the learned Additional District Judge, Islamabad, whereby the petitioner's appeal against the judgment and decree dated 29.11.2016, passed by the learned Family Court, Islamabad, was dismissed. Vide the said judgment and decree dated 29.11.2016, the learned Family Court partially decreed respondent No.3's suit for dissolution of marriage, recovery of maintenance allowance, gold ornaments and dowry articles.

2. Learned counsel for the petitioner submitted that the petitioner and respondent No.3 got married on 03.03.2008; that subsequently, the relations between the couple turned sour; that respondent No.3 left her matrimonial abode with her own sweet will; that respondent No.3 was a *Nasheza*, and therefore, not entitled to receive any maintenance; that as per column No.13 of the *Nikahnama*, the dower amount was Rs.1,000/- only which had already been paid; that as per entry in column No.16 of the *Nikahnama*, five *tolas*

in the form of gold ornaments had been gifted to respondent No.3; that the said gold ornaments were never snatched from respondent No.3; that respondent No.3 was never subjected to any cruelty; and that the learned Family Court did not have any jurisdiction to decide the matter pertaining to the gold ornaments, which had been gifted to respondent No.3. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel for the petitioner placed reliance on the judgment reported as “Syed Mukhtar Hussain Shah Vs Mst. Saba Imtiaz” (*PLD 2011 S.C. 260*).

3. On the other hand, learned counsel for respondent No.3 submitted that the concurrent judgments passed by the learned Courts below do not suffer from any jurisdictional infirmity so as to warrant interference in the constitutional jurisdiction of this Court; that the entry of five *tolas* of gold ornaments gifted to respondent No.3 finds mention in column No.16 of the *Nikahnama* dated 03.03.2008, and therefore, the learned Family Court did have jurisdiction in the matter; that the petitioner had not filed any suit for restitution of conjugal rights; that during the subsistence of the marriage, the petitioner had remained abroad for three years and did not pay maintenance from 2010 till the filing of the suit; that while the petitioner was abroad, respondent No.3 had no option but to live with her parents; and that the maintenance of Rs.3,000/- per month awarded in respondent No.3’s favour is too little. Learned counsel for respondent No.3 prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. Learned counsel for the petitioner had stressed on the fact that since the five *tolas* of gold ornaments had been gifted to respondent No.3, she was bound to return the same upon the dissolution of marriage on the basis of *khula*. The entry as to the five *tolas* of gold ornaments gifted to respondent No.3 finds mention in column No. 16 of *Nikahnama* (Exh.P-2) whereas in column Nos. 13 to 15 prompt dower is fixed as Rs.1,000/- and shown to have been fully paid in cash. Specific entry with regard to dower in the *Nikahnama* shows that the gift of five *tolas* of gold was not a part but in addition to dower.

6. Now adverting to the question of the return of such a gift by a wife to her ex-husband on dissolution of marriage through *khula*, it is settled law that the gifts received by a bride at or after marriage from her husband or parents of husband is personal property of the wife. In case of *Mst. Mahwish Vs Additional District Judge, Islamabad-West* (2018 CLC 1337) while discussing import of Sections 2 (a) and 5 of the Dowry and Bridal Gifts (Restriction) Act (XLIII of 1976) this Court had the occasion to hold that the gifts given to a wife at or during subsistence of marriage by husband or his parents are the absolute property of the bride.

7. By virtue of the Family Courts (Amendment) Ordinance (Ordinance XLV of 2002), Schedule (Part-I) to the Family Courts Act, 1964 was amended by addition of item No. 9 so as to confer jurisdiction in the matters relating to personal property and belongings of wife on the Family Courts. Since it has been held that items gifted to

a wife during subsistence of her marriage comprise her personal property thus the dispute relating to the same would be within the exclusive jurisdiction of the Family Court. Consequently, the objection raised by the petitioner in that regard is not well found.

8. The petitioner's stance during the trial was that he gave the gold ornaments, as mentioned in Column 16 of the *Nikahnama*, to the respondent. Therefore, as per his own statement such ornaments became respondent No.3's property. The Judgment of the Hon'ble Supreme Court in case of 'Syed Mukhtar Hussain Shah', *supra* is distinguishable being inapplicable to facts and circumstances of present case. This law point was considered by the Hon'ble Supreme Court in the case of "Mst. Yasmeen Bibi Vs Muhammad Ghazanfar Khan" (PLD 2016 SC 613) and it was held as follows;

"17. As in this case the landed property, given to the wife, or the undertaking given in the "Nikah Nama", to be transferred to her name is conclusive in nature and may be construed as a part of dower or a gift in consideration of marriage therefore, it was falling within the exclusive domain of the Family Court at Multan, as the wife was/is residing there, which has not been denied by the respondent, therefore, in our considered view, the District Appeal Court and the learned Judge in Chamber of the High Court, Multan Bench, Multan fell into legal error by holding the view to the contrary. Any departure made from the true object and spirit of law, enacted by the Legislature would defeat the same, which is not permissible under any cannon of justice and principle of law, nor the Courts are having any authority or powers to import their own opinion therein, defeating the clear intention of the Legislature and when the provisions of Ss. 16 to 20 of the C.P.C. stand excluded from the proceedings before the Family Court then, the question of its territorial jurisdiction would never arise, provided that the Family Court where the wife resides, shall have the exclusive jurisdiction over all such

matters for the sake of convenience because Rule 6 of the West Pakistan Family Court Rules, 1965 so provides."

9. The possession of the gifted gold ornaments weighing five *tolas* was concurrently decided, by the learned Courts below, to be with the petitioner, the learned Courts based their finding on the reconciliation agreement dated 03.10.2009 (Exh-P-4) wherein the petitioner agreed to return the said gold ornaments to respondent-wife. Since execution of the said agreement is admitted throughout, the learned Courts below have rightly relied on the same.

10. The question regarding the dowry articles was also decided on the basis of petitioner's own statements. During the evidence, he admitted to be in possession of the dowry articles consisting of furniture, plastic ware etc as such the learned courts below correctly decreed the suit of respondent.

11. Petitioner was bound to pay maintenance, to the respondent during the period respondent No.3 remained his wife. This is particularly so when in the evidence the petitioner's version was that he himself accompanied the respondent to her parent's house and that he did not make any efforts for her return. The Hon'ble Supreme Court in case titled as "Muhammad Sharif Vs Additional District Judge" (2007 SCMR 49) held that "*Muslim husband was under legal obligation to maintain his wife and if she was forced to live away from her husband for no fault on her part even then husband was to provide maintenance to his wife*". The petitioner admitted that respondent No.3 had been at her parents' house since the year 2010 and he was working abroad for three years since the year

2011. He admitted to have made no effort for the return of his wife and neither did he pay any maintenance. In the agreement Exh-P4 he covenanted to pay maintenance to his wife at the rate of Rs.5,000/- per month but learned trial court fixed the maintenance at a lower rate of Rs.3,000/-. The learned Court below had already fixed the maintenance at a lesser rate, therefore, no interference is called for.

12. In the result, no illegality or infirmity found in the impugned judgments, instant writ petition is thus dismissed. There is no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*