

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

**CASE NO. : W.P. NO.945-2018**

**Tehreem Aamir**

**Vs.**

**The Additional District Judge-III, (West) Islamabad etc.**

**Petitioner by : Malik Muhammad Zubair, Advocate**  
**Mr. Muhammad Akram, Advocate**  
**Respondents by : Raja Muhammad Akbar, Advocate**  
**Amicus Curiae : Mr. Muhammad Ali Raza, Advocate**  
**Raja Khalid Mahmood Khan, Advocate**  
**Mr. Kashif Ali Malik, Advocate**  
**Date of hearing : 02.02.2021**

**AAMER FAROOQ J.** The petitioner and respondent No.3 contracted marriage on 13.06.2014. Both the parties belong to *Fiqh Jafaria* and the dower, mentioned in the *Nikah Nama*, was in the sum of Rs.5000/- along with expenses to be incurred in the shape of Ziarat of the sites in Iraq, Iran and Syria and performance of Hajj. Due to the dispute between the parties, the relationship could not continue for long, hence respondent No.3 divorced the petitioner on 26.11.2014. The petitioner filed a suit for recovery of dower amount in the sum of Rs.12,00,000/- as expenses for performing Ziarat and Hajj; dowry articles in the sum of Rs.2,29,600/- and maintenance @ Rs.10,000/- per month as well as 5-Tola ornaments at the prevailing market rates. The suit was decided on 26.11.2016 by the Judge, Family Court, whereby the claim, to the extent of dower, was turned down on the

basis that promise, to take the spouse for Ziarat, is not dower and is actionable before the courts of plenary jurisdiction; the claim, to the extent of dowry articles, was also turned down partially; maintenance for the Iddat period was awarded and recovery of 5-Tola gold, was also decided in favour of petitioner. The petitioner preferred appeal against judgment and decree dated 26.11.2016, which was dismissed vide judgment and decree dated 02.05.2017, hence the petition.

2. Learned counsel for the petitioner *inter alia* contended that promise, to take the petitioner on Ziarat and Hajj, was part of dower, hence fell within the jurisdiction of Family Court and ought to have been granted. It was contended that since the petitioner now cannot travel alone without *mehram*, the cost of travelling for two persons, is approximately Rs.12,00,000/-. It was also submitted that claim of dowry articles has been denied unjustifiably, as cogent evidence was presented in the Court.

3. Learned counsel for respondent No.3 *inter alia* contended that judgments by the learned trial court as well as the learned appellate court do not suffer from any infirmity. In this behalf, it was submitted that promise to provide a service or an undertaking of the same, does not constitute dower, but merely a promise, which was actionable in the courts of plenary jurisdiction.

4. Keeping in view the nature of proposition, this Court sought assistance from three different lawyers by appointing them *amicus curiae*. In this behalf, Mr. Ali Raza, Advocate Supreme Court, as an *amicus*,

submitted that dower is not confined to tangible goods but can also be intangible in the form of services. He, in support of his contentions, placed reliance on various *Surahs* of Holy Quran, in particular, Surah Al-Baqra (Ayat 2:237), Surah An-Nisa (Ayat 4:19), Surah An-Nisa (Ayat 4:24), Surah An-Nisa (Ayat 4:4) and Surah Al-Ma'idah (Ayat 5:5). Reliance was also placed on Sahih al-Bukhari Volume-I, Pages 727, 1149 and 95, Chapter 50 & 135. Learned counsel also placed reliance on judgments of Hon'ble Supreme Court of Pakistan in cases reported as 'Saadia Usman and another Vs. Muhammad Usman Iqbal Jadoon and another' (2009 SCMR 1458). 'Saleem Ahmad and others Vs. Government of Pakistan through Attorney General of Pakistan and 2-others' (PLD 2014 Federal Shariat Court 43) and 'Abdul Rafay Butt Vs. Additional District Judge and others' (PLD 2015 Lah. 258).

5. Raja Khalid Mahmood Khan, Deputy Attorney General for Pakistan also assisted the Court in the matter and submitted that dower need not be only a tangible item but can be intangible. He placed reliance on various sources in support of his contentions, which are the same, as on which, reliance was placed by Mr. Ali Raza, ASC. He submitted that marriage is a social contract and dower is consideration for the same. In support of his contentions, he placed reliance on cases reported as 'Mst. Samina Ali Vs. Station House Office' (PLD 1995 Lahore 629), 'Mst. Shaista Shahzad and another Vs. Additional District Judge and others' (PLD 2012 Lahore 245) and 'Mannan Feroz Vs. Shomaila' (2015 YLR

1235). He also submitted that there is some authority albeit from Indian Jurisdiction that a Muslim person is bound to maintain his ex-wife till rest of her life or until she contracts marriage. Reliance was placed on case reported as 'Mohd. Ahmed Khan Vs. Shah Bano Begum and others' (AIR 1985 Supreme Court 945).

6. Mr. Kashif Ali Malik, Advocate Supreme Court *inter alia* contended that marriage in Islam is a legal contract between two parties on the terms and conditions agreed between them; that no amount has been fixed in Shariah for the dower and it is upon the norms of the society and the affordability of male. He placed reliance on various Surahs of Holy Quran, which are same, as cited above. He also referred to the *Ahadees* on the subject to substantiate that it is not essential that dower is only a tangible item or something which can be quantified in money. He placed reliance on cases reported as 'Muhammad Tariq Vs. Mst. Shaheen and 2-others' (PLD 2006 Peshawar 189), 'Abdul Rashid and Another Vs. Mst. Shaheen Bibi and 2-others' (PLD 1980 Peshawar 37) and 'Mst. Shazia and another Vs. Muhammad Nasir and 2-others' (2014 YLR 1563). He also referred to the correspondence available at the site <https://aboutislam.net/counseling/ask-the-scholar/hajj/dowry-hajj-pay-divorce>, whereby one of the scholars, answered the questions similar to the ones raised in the instant petition regarding the promise to take the wife on Hajj as part of dower.

7. Arguments advanced by learned counsel for the parties as well as the *amicus curiae* have been heard and the record perused with their able assistance.

8. The facts, leading to filing of instant petition, have been mentioned hereinabove hence need not be reproduced.

9. The claim of the petitioner, to the extent of recovery of Rs.12,00,000/- as dower amount, has been turned down along with sum of dowry articles.

10. Under the Family Courts Act, 1964, a Family Court has the jurisdiction in the matters, which are provided in Schedule to the Act. In this behalf, at Sr. No.2 of the Schedule, dower falls within the jurisdiction of Family Court.

11. The pertinent question, in the instant controversy, is whether, promise of respondent No.3 to take the petitioner for Ziarat as well as for Hajj, if he has the ability, forms part of dower.

12. The dower is consideration for marriage under the Islamic Law. In this behalf, reliance is placed on case reported as 'Mst. Shaista Shahzad and another Vs. Additional District Judge and others' (PLD 2012 Lahore 245), wherein it was observed as follows:-

*"15. Before proceeding further it may be useful to remind that according to Mohammedan Law Nikah is not a Sacramento but a civil contract between a Muslim man and woman which is entered into for procreation and legalization of children and the spouses after consenting it are bound to respect it and to live within the limits of Allah. The contract of Nikah under the Mohammedan Law may be dissolved by the husband at his will without any intervention of a Court or by mutual consent of the husband and wife without intervention of a Court or by a judicial decree at the suit of husband or wife. In the*

*Mohammedan Law a wife cannot divorce herself from her husband without his consent except under a contract whether made before or after marriage.*

*16. In view of the above legal position, it is understandable that if a Mohammedan wife can lawfully stipulates for a divorce under a contract then she can also stipulate for future claim in case of divorce apart from the dower fixed at the time of Nikah. Any such stipulation, therefore, cannot be termed as against public policy of the Mohammedan Law. Any claim on the basis of such stipulation arising out of the civil liability can be safely termed as "actionable claim". Any right within the meaning of "actionable claim" is prima facie alien to the "personal property and belonging of the wife" incorporated in Entry No.9 of Schedule II to Section 5 of the Family Courts Act, 1964".*

Similar views were expressed in case reported as ‘Mannan Feroz Vs. Shomaila’ (2015 YLR 1235) as well as ‘Mst. Samina Ali Vs. Station House Office’ (PLD 1995 Lahore 629).

13. In case reported as ‘Sohail Vs. Mst. Nazia Amin and 3-others’ (2015 CLC 1374), the Hon’ble Division Bench of Baluchistan High Court, observed as follows:–

*“Dower or Mehr under Muhammadan Law is the sum of money or other property which the husband is obliged to pay to his wife as mark of respect to the wife. Quranic commandant shows that no marriage can take place without fixing dower, therefore, dower is the consideration of marriage contract and it is also a token of respect for wife, therefore, the dower range is a debt and the wife is entitled to receive the same as a creditor of her outstanding dues against her husband, thus, it becomes an obligation of the wife's consent to Nikah in such view under the domain of Almighty Allah the dower becomes due soon after the marriage is consummated or the Nikkah is solemnized. It is undisputed that under Muslim law dower is a debt which is owned by the husband to the wife. Accordingly the ordinary principle of payment of debt should also govern the case relating to realization of dower debt. The Article 285 of the Muhammadan Law is relevant in this behalf which provides as under:–*

*"Dower or Mehr under the Muslim Law is the sum of money or other property which the wife is entitled to receive from the husband in consideration of the marriage. Under Muhammadan Law dower is an obligation imposed upon the husband as a mark of respect to the wife. The consideration had been compared to the price in a contract of sale because marriage is a civil contract and sale is a typical contract to which Muhammadan jurists are accustomed to refer by way of analogy. Thus, the wife is entitled to receive the dower as incident of the contract of marriage and as a token of respect, even the injunction of Islam makes it mandatory of such an incident where the husband has been died without payment of dower/Haq-e-Mehr to his wife/wives, his*

*estate cannot devolve upon his legal heirs before recovery of Haq-e-Mehr from the deceased's property and in all intents a widow is entitled to recover her debts of dower like other creditors of her deceased husband."*

14. The question, whether dower can only be in the form of tangible items or even be in the form of service, can be discerned from various Aayaats of Holy Quran, which are as follows:-

#### Surah Al-Baqrah

237. And if ye divorce them before consummation but after the fixation of a dower for them then the half of the dower (is due to them) unless they remit it. Or (the man's half) is remitted by him in whose hands is the marriage tie; and the remission (of the man's half) is the nearest to righteousness. And do not forget liberality between yourselves. For God sees well all that ye do.

238. Guard strictly your (habit of) prayers especially the middle prayer and stand before God in a devout (frame of mind).

239. If ye fear (an enemy) may on foot or riding (as may be most convenient) but when ye are in security celebrate God's praises in the manner He has taught you which ye knew not (before).

#### Surah An-Nisa

3. If ye fear that ye shall not be able to deal justly with the orphans marry women of your choice two or three or four; but if ye fear that ye shall not be able to deal justly (with them) then only one or (a captive) that your right hands possess. That will be more suitable to prevent you from doing injustice.

4. And give the women (on marriage) their dower as a free gift; but if they of their own good pleasure remit any part of it to you take it and enjoy it with right good cheer.

5. To those weak of understanding make not over your property which God hath made a means of support for you but feed and clothe them therewith and speak to them words of kindness and justice.

18. Of no effect is the repentance of those who continue to do evil until death faces one of them and he says "Now have I repented indeed"; nor of those who die rejecting faith: for them have We prepared a punishment most grievous.

19. O ye who believe, ye are forbidden to inherit women against their will. Nor should ye treat them with harshness that ye may take away part of the dower ye have given them except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity.

If ye take a dislike to them it may be that ye dislike a thing and God brings about through it a great deal of good.

20. But if ye decide to take one wife in place of another even if ye had given the latter a whole treasure for dower take not the least bit of it back: would ye take it by slander and a manifest wrong?

24. Also (prohibited are) women already married except those whom your right hands possess. Thus hath God ordained (prohibitions) against you: except for these all others are lawful provided ye seek (them in marriage) with gifts from your property desiring chastity not lust. Seeing that ye derive benefit from them give them their dowers (at least) as prescribed; but if after a dower is prescribed ye agree mutually (to vary it) there is no blame on you and God is All-Knowing All-Wise.

25. If any of you have not the means wherewith to wed free believing women they may wed believing girls from among those whom your right hands possess: and God has full knowledge about your faith. Ye are one from another: wed them with the leave of their owners and give them their dowers according to what is reasonable: they should be chaste not lustful nor taking paramours: when

#### Surah Al-Maidah

4. They ask thee what is lawful to them (as food): say: Lawful unto you are (all) things good and pure: and what ye have taught your trained hunting animals (to catch) in the manner directed to you by God; eat what they catch for you but pronounce the name of God over it: and fear God; for God is swift in taking account.

5. This day are (all) things good and pure made lawful unto you. The food of the People of the Book is lawful unto you and yours is lawful unto them. (Lawful unto you in marriage) are (no only) chaste women who are believers but chaste women among the People of the Book revealed before your time when ye give them their due dowers and desire chastity not lewdness nor secret intrigues. If anyone rejects faith fruitless is his work and in the Hereafter he will be in the ranks of those who have lost (all spiritual good).

15. The matter is further elucidated from Hadees in Sahih Al-Bukhari

Sharif in the following words:-

آپ نے فرمائی تھی ے پاس کچھ مال بھی ہے وہ بولا نہی آپ نے فرمائی جاؤ اگر لوہے کی انگوٹھی مل سکے تو تلاش کر لو اس نے جاکر تلاش کی اور آکر کہا مجھے کچھ نہ ملا اور نہ لوہے کی انگوٹھی پائی۔ آپ نے پوچھا کئی تجھے کچھ قرآن یاد ہے وہ بولا مجھے فلاں فلاں سورت یاد ہے آپ نے فرمائی جاؤ اس کا نکاح تجھ سے نسب تھی قرآن یاد ہونے کے کردی

16. The Hon'ble Supreme Court of Pakistan also highlighted the concept of 'dower' in case reported as 'Saadia Usman and another Vs.



Muhammad Usman Iqbal Jadoon and another' (2009 SCMR 1458) by observing that dower is gift given by bridegroom to bride and the Holy Quran is silent on two types of dower i.e. prompt and deferred dower; where part of dower is described as 'Mu'wajjal i.e. deferred but not time limit is fixed for its payment, the time of such payment is either death or divorce.

17. In the Book of Marriage (Chapter 29-30), on the dowry being some actions that a person has to perform, the following is mentioned:-

2111. Sahi bin Sa'd As-Sā'idi narrated that a woman came to the Messenger of Allah ﷺ and said: "O Messenger of Allah, I have given myself to you as a gift." She remained standing for a long time, until a man stood up and said: "O Messenger of Allah, marry her to me, if you do not desire her." The Messenger of Allah ﷺ said: "Do you have any dowry to give her?" He replied: "I have only this Izar of mine." The Messenger of Allah ﷺ said: "If you give her your Izar, you will be confined (to your house), having no Izār! So go find something else." He said: "I can't find anything." He replied: "Go find (something), even if it be an iron ring!" So he searched, but could not find anything. The Messenger of Allah ﷺ then said to him: "Do you have anything of the Qur'an (memorized)?" He replied: "Yes, this Sūrah, and this Sūrah," and others that he named. The Messenger of Allah ﷺ said: "I have married her to you with what is with you of the Qur'an." (Sazih).

2125. It was reported from Ayyub, from 'Ikrimah, from Ibn 'Abbas, who said: "When 'All married Fātimah, the Messenger of Allah ﷺ said: 'Give her something:' He replied: 'I don't have anything!' He said: 'Where is your Hutami coat of mail? ... (Sahih)

2126. It was reported from Muhammad bin 'Abdur-Rahmān bin Thawban, from a man among the Companions of the Prophet ﷺ, that when 'All married Fātimah, the daughter of the Messenger of Allah ﷺ, and he wanted to go to her, the Messenger of Allah ﷺ forbade him, until he gave her something. He said: "O Messenger of Allah! I don't have anything."; The Prophet ﷺ told him: "Give ) her your coat of mail," so he gave it to her, then went to her. (Da'if)

18. D.F. Mullah, in the Book Principles of Muhammadan Law, has stated that dower is an obligation imposed upon a husband as a mark of

respect to the wife and where a claim is made under a contract of dower, the Court should, unless it is otherwise provided by any legislative enactment, award the entire sum provided in the contract.

19. In case reported as 'Haji Ajab Gul and 3-others Vs. Rahim Gul and 28-others' (1991 SCMR 2500, the august Apex Court observed that dower can be fixed in the form of life interest in the property.

20. The Hon'ble Peshawar High Court, in case reported as 'Abdul Rashid and Another Vs. Mst. Shaheen Bibi and 2-others' (PLD 1980 Peshawar 37), observed that dower may either be in cash or kind or in form of rendition of personal service.

21. The crux of the matter derived from the Holy Quran as well as Sunnah and the case law is that dower need not be in the form of tangible goods but also can be in the form of services. In the instant case, in the Nikah Nama, along with sum of Rs.5000/- as dower, it was mentioned that respondent No.3 shall take the petitioner for Ziarat to different countries, if he has the ability to do so and for performance of Hajj. The factum of taking of spouse for Ziariat and Hajj falls within the concept of 'dower' *per se*, however, it can be seen from Nikah Nama that a rider has been added that if husband/respondent No.3 ought to have the ability for the same.

22. The dower cannot be a conditional promise or consideration; it has to be absolute, even though it may be deferred or Mu'wajjal. In the instant case, respondent No.3 has led the evidence that he is not a

person of means and no evidence even was led by the petitioner as to the conditionality that respondent No.3 has the means to pay the same.

The conditional aspect of the promise takes the clause out of ambit of 'dower' and as has been rightly observed by the trial court as well as appellate court that it is an actionable claim. Even—otherwise, even it is regarded that it is dower, even then, the petitioner has not led any evidence as to the means of respondent No.2 in support of her claim. Likewise, there is no jurisdictional or legal defect in respect of findings rendered by respondents No.1 & 2 regarding partial dismissal of claim pertaining to gold.

23. In view of foregoing, no interference is required in the judgments impugned before this Court.

24. For the above reasons, instant petition fails and is accordingly dismissed.

**(AAMER FAROOQ)**  
**JUDGE**

Announced in Open Court on 29.04.2021

**JUDGE**

Approved for reporting

Zawar