

JUDGMENT SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

W.P No.970/2018.

Ghulam Abbas Naqvi

Vs.

Syeda Iftikhar Bibi etc.

Petitioner by:

Mr. Abdul Shakoor Paracha & Ms. Wajiha
Pervaiz Raja, Advocates.

Respondent No.1 by:

Mr. Naseer Anjum Awan, Advocate.

Date of Decision:

14.02.2020.

MOHSIN AKHTAR KAYANI, J:- Through the instant writ petition, the petitioner has assailed the judgment & decree dated 14.02.2018, passed by learned Additional District Judge (West), Islamabad, whereby suit filed by respondent No.1 has been decreed to the extent of 31½ Tolas gold ornaments or the amount equivalent to prevailing market rate of gold.

2. Brief facts referred in the instant writ petition are that respondent No.1 filed suit for recovery of maintenance, dowry articles and dower on 19.03.2014 against the petitioner before Family Court, Islamabad with the claim that she was married to the petitioner on 07.02.1998 against the dower of Rs.1,00,000/- and a house, whereas Rs.65,000/- were paid in the shape of gold ornaments at the time of marriage. Respondents No.1 deserted by the petitioner on 26.01.2013 in three clothes and the petitioner contracted second marriage without obtaining permission and pronounced divorce. The suit was decided by Family Court vide judgment & decree dated 02.11.2016 to the extent of grant of maintenance at the rate of Rs.15,000/- per month for Iddat period only and amount of Rs.35,000/- as remaining amount of dower alongwith interest. The relief to the extent of dowry articles was turned down including the claim of 31½ Tolas gold ornaments. Respondent No.1 feeling aggrieved with the judgment & decree of Family Court filed an appeal before the Court of Additional District Judge to the extent of recovery of 31½ Tolas, which was allowed vide impugned judgment & decree dated 14.02.2018.

3. Learned counsel for the petitioner contends that learned Additional District Judge Islamabad ignored the evidence on record and gave his findings due to misreading and

non-reading of the facts and circumstances of the case; that evidence of respondent No.1 is silent qua snatching of gold ornaments by the petitioner, even no such event has been referred in her plaint nor in her affidavit; that receipts Exh.P.10 to Exh.P.13 of gold ornaments have been placed on record through subsequent order by way of application filed by respondent No.1. Vide order dated 06.11.2015 without any sufficient cause, which were not available at the time of filing of the suit nor any other witness has been produced to justify the receipts of gold ornaments and as such the documentary evidence is contrary to law.

4. Conversely, learned counsel for respondent No.1 contends that 31½ gold ornaments have been referred in Exh.P.8, list of dowry at serial Nos. 80 to 86, which was available on record at the time of filing of the suit and as such the petitioner has not refuted the claim in expressed manner and specific issue has been framed by the Trial Court i.e. issue No.3, which was decided in favour of respondent No.1 by the Appellate Court; that learned Trial Court allowed the application for submission of receipts through which gold ornaments were purchased from Prince Jewelers Sarafa Bazar, Rawalpindi, 06.12.1997 & 10.02.1998/Exh.P.10 to Exh.P.13 vide order dated 06.11.2015 and reasons have duly been appreciated by learned Family Court.

5. I have heard the arguments and perused the record.

6. Perusal of the record reveals that the petitioner is mainly aggrieved with the relief granted by learned Additional District Judge in appeal vide impugned judgment & decree dated 14.02.2018 to the extent of 31½ gold ornaments or the equivalent amount at the prevailing market rate of gold in the market in favour of respondent No.1 (ex-wife of the petitioner). The petitioner and respondent No.1 married to each other on 07.02.1998, however, the differences cropped up and the petitioner divorced respondent No.1, who filed suit for recovery of maintenance, dowry articles and dower against the petitioner, which was decided vide judgment & decree dated 02.11.2016, whereas claim of dowry articles to the extent of 31½ Tolas gold ornaments was rejected through findings on issue No.3, which was assailed by respondent No.1 by way of filing appeal, which was allowed by learned Appellate Court.

7. Regarding claim of 31½ Tolas gold ornaments specific issue was framed, which is reproduced as under:-

"3. Whether the plaintiff is entitled to recover gold ornaments weighing 31½ Tolas or alternatively price of gold ornaments?OPP"

8. Learned Trial Court has given its findings on above referred issue in the following manner:-

"Plaintiff keeps her ornaments in an iron box and same was found broken during local commission proceedings and since report is not challenged by defendant that means defendant has accepted factum of broken iron box. Moreover, defendant admitted in cross examination that usually in villages, people keep save their ornaments in boxes, these points established, that defendant has taken all gold ornaments of plaintiff from said box. However, this court is not in concurrence with this formulation, on the ground that record transpires that plaintiff has mentioned in EXP-1 that these gold ornaments weighing 31½ tolas were snatched by defendant from her, whereas in cross examination she has stated that she has left these articles while leaving the house. Plaintiff has not uttered single word in plaint describing date and manner in which ornaments were snatched from her. She has also admitted that these gold ornaments are usually available with her. She also admitted that since marriage till 2014 gold ornaments remained in her possession. In these circumstances, plaintiff has failed to establish through cogent and confidence inspiring evidence that gold ornaments were sanctioned from her. Accordingly this issue is decided in negative."

9. The above mentioned findings were assailed before the Appellate Court, who rendered contrary view in the following manner:-

"In support of claim of the appellant, she not only appeared herself that she was kicked out from her matrimonial home on 26.01.2014 while snatching the gold ornaments, she also produced documentary evidence to prove ownership of gold ornaments and the receipts thereof. Respondent has also claimed that he and his family gave gifts to appellant but the gold ornaments given as gifts to appellant cannot be claimed by respondent, which are otherwise the exclusive ownership of appellant. During cross-examination the appellant clearly mentioned that from where the gold ornaments were purchased by the parents of appellant which fact is supported by the tangible evidence viz receipts of gold ornaments. On the other hand respondent take clear stance of taking along the gold ornaments, valuable articles and cash amount but he has badly failed to establish his stance. It is very much important to note that the appellant has only claimed dowry articles as per agreement. Almost all the articles were handed over to appellant, thus it is proved that the appellant has no exaggeration by filing the suit which shows that she was in fact claiming her own items. As per said list, she claimed gold ornaments and local commission who supervised delivery of articles clearly mention that the locks of jewelry were broken when she received dowry articles."

The most important factor for deciding this issue is that the appellant is a lady living far away from her parent's house and was all alone where she was living with respondent, thus she was not in a position to take her valuable articles, gold ornaments alongwith cash amount etc in presence of respondent's family members and she was not so daring to carry gold ornaments etc on public transport. Thus the stance of respondent has also not acceptable when he

himself claimed that she took alongwith the gold ornaments etc in presence of his family members but the respondent withheld the best evidence. For whatever is discussed above in this issue, it is apparent from the record and evidence that the appellant is entitled for the relief of gold ornaments of 31½ Tolas or the amount equivalent to prevailing rate of gold, therefore, this issue is decided in favour of appellant and to this extent the impugned judgment and decree is set aside."

10. The above referred contradictory view of both the Courts below have been taken into account with able assistance of learned counsel for the parties. However, following facts are reflected from the record:-

(i) Respondent No.1 ex-wife has specifically mentioned the snatching of gold ornaments by the petitioner in her plaint in para-II and in her prayer explaining the claim of 31½ Tolas gold ornaments.

(ii) Respondent No.1 has also appended Exh.P.8 alongwith plaint, which refers the jewelry of 31½ Tolas at serial Nos.80 to 86 comprising of six bangles, two "Karas", rings, two gold sets, one "Locket" set, "Bindhia and ear ring separately.

(iii) The petitioner has denied the version of respondent No.1 and referred in para No.4 that respondent No.1 herself "took away all her gold ornaments and other similar valuable articles". Similarly, he has referred in para-6 of on facts that he has attached the list with written statement, whereby he is ready to return those items and respondent No.1 is also directed to return the gold ornaments as per list attached. This fact was reiterated in para-12 also.

(iv) Respondent No.1 appeared as P.W.1 by way of filing affidavit Exh.P.1 and has referred the list of dowry articles Exh.P.8 and the receipts of jewelry Exh.P.10 to Exh.P.13 in para-5.

(v) During the course of cross-examination, respondent No.1 stated that:-

"۱۔ 26.01.2014 کو میرے زیورات مجھ سے چھینے گئے تھے۔ اس بات کا ذکر میں نے دعویٰ میں کیا ہے۔

۲۔ فہرست سامان جہیز Exh.P.8 میری تیار کردہ ہے۔

۳۔ زیورات میں نے اپنی مرضی سے خریدے تھے۔ زیورات پر جس جیولرز صرافہ بازار راولپنڈی سے خریدے تھے۔ پر جس جیولرز کے مالک کو بطور گواہ کو پیش عدالت نہ کیا ہے از خود کہا کہ رسیدات منسلک کر رکھی ہیں۔"

11. The petitioner while appearing as D.W.1 referred his evidence as Exh.D.1 in shape of affidavit and stated in para-6 that:-

"۱۔ من مخلص اور اسکے خاندان کے دیگر افراد نے مدعیہ کہ مختلف مواقع پر مدعیہ کی خواہش کے مطابق زیورات (بمطابق لسٹ فہرست سامان پیش کردہ) دیے جو گھر چھوڑتے ہوئے مدعیہ اپنے ہمراہ لے گئی اور تاحال مدعیہ کے قبضہ میں اسکے پاس ہیں۔

۲۔ مدعیہ وہ تمام اشیاء گھر سے جاتے ہوئے اپنے ہمراہ لے گئی تھی اور تاحال تمام زیورات و دیگر زیورات، تحائف اسکے قبضہ میں ہیں۔"

12. Keeping in view above position, it can safely be concluded that respondent No.1 has justified her claim of her gold ornaments in shape of receipts Exh.P.10 to Exh.P.13 issued on 06.12.1997,10.02.1998 by Prince Jewelers Sarafa Bazar Rawalpindi, which was issued in the name of father of respondent No.1 and if these receipts are put in juxta position with claim of respondent No.1 ex-wife, who has given her detailed circumstances in the affidavit as well in her plaint and detail of jewelry was referred in Exh.P.8, respondent No.1 has successfully proved her claim, whereas the petitioner has failed to justify his counter version. Learned Appellate Court has rightly appreciated the record in proper manner and gave its detailed findings while appreciating status of documentary evidence. The claim of respondent No.1 has been visible from the date of filing of the suit till closing of evidence and documentary evidence supports her version. Respondent No.1 was deserted from matrimonial abode on 26.01.2014, which is apparent from record and similarly statement of respondent No.1 coupled with documentary evidence is consistent and no discrepancy has been noted qua her claim, even the petitioner has not refuted Exh.P.8 in any manner, which contains list of jewelry articles. It is well settled law that provisions of Qanun-e-Shahdat Order, 1984 are not stricto sensu applicable to family matter and the objection of petitioner/husband regarding proof of receipts without production of author of such receipts was misconceived. Reliance is placed upon 2017 SCMR 393 (Shafique Sultan vs. Mst. Asma Firdous and others). Similarly solitary statement of wife was sufficient to prove claim of dowry articles. Reliance is placed upon 2012 MLD 756 (Mst. Shakeela Bibi vs. Muhammad Israr and others) as the same was consistent and corroborated with list of dowry articles Exh.P.10 to Exh.P.13.

13. Keeping in view above position, it is settled law that in case of reverse findings, the judgment & decree given by the Appellate Court has to prevail as the Appellate Court has rightly appreciated the evidence in proper manner although it is not rule, which is applicable in each case, however, in present case findings of learned Trial Court are not justified, whereas findings of Appellate Court are in detail while appreciating every aspect, therefore, view taken by the Appellate Court is more convincing in this situation. Learned counsel for the petitioner has failed to point out any illegality in the impugned judgment of Appellate Court.

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14. For what has been discussed above, the instant writ petition bears no merits, therefore, the same is **dismissed**.

(MOHSIN AKHTAR KAYANI)
JUDGE

R. Anjam

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