

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

**WRIT PETITION NO.2165 OF 2020**

Mst. Maria Munir and another.

**VERSUS**

Ghulam Haider and 2 others.

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Date of Decision : 03.02.2021.  
Petitioner by : Malik Aamir Saleem, Advocate.  
Respondents by : Ms. Noshaba Anjum, Advocate.

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**FIAZ AHMAD ANJUM JANDRAN, J.-** Through instant writ petition, petitioners impugn judgments and decrees dated 09.04.2019 and 28.09.2019, passed by the learned Judge Family Court, and Learned Additional District Judge, Islamabad-East, respectively, whereby suit for dissolution of marriage on the basis of Khula, recovery of maintenance and dowry articles was decreed while appeal filed by the respondent No. 1 was dismissed and that of petitioner No. 1 was partly allowed.

2. Vide judgment-in-original, petitioner No. 1 was held entitled to maintenance allowance @ Rs. 5,000/- per month from June, 2017 till period of Iddat, petitioner No. 2 (minor) at the rate of Rs. 8,000/- per month from the said date till her legal entitlement with 10% annual increase. The claim of petitioner No. 1 to the extent of recovery of dowry articles was also decreed excluding gold ornaments mentioned at serial No. 1 & 2 of the list

of dowry articles which are "*4-bangles, 2-big bangles (Karry) and Mala Set*".

3. In-appeal, judgment and decree *ibid* were slightly modified to the extent of maintenance allowance of petitioner No. 1 for the period of Iddat which was enhanced from Rs. 5,000/- to Rs. 10,000/- per month.

4. Essential and relevant facts for the disposal of instant writ petition are that petitioner filed subject suit against the respondent No. 1 which was duly contested by the latter through written statement, learned Trial Court framed necessary issues and recorded evidence of the parties that includes statement of petitioner No. 1 as PW-1 and that of respondent No. 1 as DW-1. The learned Trial Court after hearing the parties decreed the suit in terms noted in para-2 *ibid* while appeal was partly allowed only to the extent of enhancement of maintenance allowance for the period of Iddat. Hence, instant writ petition.

5. Learned counsel for the petitioners argued that findings of the learned Trial Court and affirmed by the learned Appellate Court are contrary to the provisions of Oaths Act, 1873, which provides specific procedure for decision of the issue on oath; that application of the petitioners for additional evidence remained unattended at appellate stage and that the petitioners have taken specific stance that the gold ornaments given in lieu of dower, were snatched by respondent No. 1, therefore, impugned judgments and decrees being result of misreading and non-reading of evidence and contrary to law on the subject, are liable to be set aside to the extent

of claim of gold ornaments. Learned counsel placed reliance upon case law reported as **PLD 2008 (Peshawar) 95.**

6. On the other hand, learned counsel for respondent No. 1 argued that concurrent findings of the two learned Courts, in absence of any misreading or non-ready of evidence, cannot be interfered with in constitutional jurisdiction particularly when the documentary evidence in the shape of Nikahnama remained un-rebutted whereby it is established and admitted that the gold ornaments were given to the bride/petitioner No. 1 at the time of marriage and that any interlocutory application would be deemed to have been decided by way of final judgment, therefore, petition is liable to be dismissed.

7. Heard the learned counsel for the parties and examined the record with their able assistance.

8. The contest in the instant writ petition is restricted to the extent of claim of gold ornaments, given to the petitioner No. 1 in lieu of dower. Ex. P-2 is Nikah-nama of the parties which is an admitted document as petitioner No. 1 in the beginning of her cross-examination admitted its entries as correct. In column No. 13 of Ex. P-2, dower was fixed as 4-Tola gold ornaments while in the next column No. 14, it is mentioned that entire dower amount has been paid at the spot. Although petitioner No.1 in her affidavit Ex. P-1 alleged that at the time of desertion, respondent No. 1 snatched dower, gold ornaments and dowry articles but no evidence has been produced to substantiate the said allegation. More so, paternal uncle of petitioner No. 1 in cross-examination admitted that no

event of snatching of gold ornaments and dowry articles have taken place in his presence and that he was only informed about it. The assertion of the petitioner No. 1 in affidavit Ex.P-1 in presence of evidence on record would not be considered enough to discard and disbelieve the documentary evidence Ex. P-2, contents whereof have been admitted by the petitioner No. 1 herself. Mere a vague and omnibus assertion by alleging that the entire belongings have been snatched by the respondent No. 1 is not confidence inspiring. There are also no details of the alleged episode of snatching of gold ornaments and other belongings.

9. It is settled principle that to rebut a document, strong and confidence inspiring evidence is required particularly where the same retains status of an admitted document. The inference drawn by the learned Court of first instance is not exclusively based upon the offer of oath which the respondent No.1 had placed, rather it is also observed under issue No.2 that "*dower in shape of 4-tola has been paid*". The learned Appellate Court also re-appreciated this aspect by observing that "*nothing could be brought on record to deny the correctness of an admitted Nikahnama Ex.P-2*". Hence, it cannot be said that the impugned judgments and decrees are result of misreading or non-reading of evidence and are exclusively based upon the offer of special oath, so made by the respondent No. 1.

10. The contention of learned counsel for the petitioners that application for decision on special oath was not attended to by the learned Appellate Court, is devoid of force for the reasons that the matter remained

pending for considerable time before the learned Court of first instance but no such application was made earlier while alike offer made by the respondent No. 1 was refused by the petitioner. Even otherwise, when the entire evidence of the parties is on record, interest of justice demand that the matter should be decided on the basis of evidence, *pro and contra*, particularly when the decision sought to be made on special oath, has been refused by one or the other side.

11. The case law relied upon by learned counsel does not extend any help to the petitioners due to having distinct facts and circumstances.

12. Having examined the case from every angle, it is observed that the concurrent findings on facts arrived at by the two learned Courts are based upon correct appreciation of evidence, no misreading or non-reading of the evidence is surfaced and no exceptional circumstance has even been alleged to interfere in the concurrent findings in constitutional jurisdiction where scope is only to question the illegality or jurisdictional defect of any order of inferior court. Consequently, instant writ petition fails and is accordingly **dismissed**.

**(FIAZ AHMAD ANJUM JANDRAN)**  
**JUDGE**