

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

W.P No. 3279-2019

Zafran Ali

Versus

Additional District Judge (East), Islamabad and others.

Petitioner by: Ch. Naeem Ali Gujjar, Advocate.

Respondent by: Hafiz Farmanullah, Advocate.

Date of Decision: 20.04.2022.

.....

MOHSIN AKHTAR KAYANI J. Through the instant writ petition, the petitioner is aggrieved with the findings of the Courts below, whereby suit for recovery of maintenance allowance as well as recovery of gold jewelry has been decreed concurrently in favour of respondent Saliya Tahzeem.

2. Brief facts referred in the instant writ petition are that the respondent Saliya Tahzeem has filed suit for recovery of maintenance allowance, expenses of delivery, recovery of gold ornament for herself as well as maintenance of her minor son on the ground that she was married to petitioner on 17.04.2011 against the dower of Rs. 2,000/-, which was paid. However, five (05) Tola gold ornaments were gifted to the plaintiff/respondent by the petitioner. Both the spouses were blessed with minor son Alian Ali on 23.06.2012, but as per stance of the respondent wife, the delivery expenses were not paid by the petitioner, even the petitioner has not maintained her, rather deserted her after the birth of minor son and snatched the gold jewelry, which persuaded her to file suit for recovery of maintenance, expenses of delivery and recovery of gold ornaments on 20.01.2012. However, during the pendency of the suit, petitioner also filed suit for

restitution of conjugal rights, but same could not be materialized as the petitioner has divorced the respondent on 12.12.2014 and suit for restitution of conjugal rights has been withdrawn and trial Court after recording of evidence of the parties, has passed the judgment and decree dated 29.11.2018, whereby the maintenance to the respondent wife was granted @Rs.4000/- per month from April, 2012 till the completion of *Iddat* period i.e. 12.12.2014 and Rs.4000/- per month was also fixed as maintenance of minor son from the date of his birth till date and future maintenance alongwith 10% annual increase. In addition to above, the claim of the respondent wife regarding gold jewelry has been settled as it has been maintained by learned Additional Sessions Judge (East), Islamabad vide judgment and decree dated 15.06.2019, hence this petition.

3. Learned counsel for the petitioner contends that learned Trial Court has not appreciated the evidence in its true perspective, despite the fact that overwhelming evidence was available that respondent is a disobedience wife and she is not entitled for the maintenance as she herself is not willing to reconcile in the matrimonial bonds, which is evident in the suit of conjugal rights. It has further been contended that when jewelry was already with the respondent ex wife, but courts below have not appreciated this aspect and drawn the conclusion contrary to record.

4. Conversely, learned counsel for respondent No.1 contends that the Courts below have rightly decreed the suit on the basis of available record and evidence, no illegality has been observed, as such the scope of constitutional jurisdiction, especially in such type of cases is very limited.

5. Arguments heard and record perused.

6. Perusal of record reveals that marriage between petitioner and respondent took place on 17.04.2011 against dower of Rs.2,000/-

alongwith gold jewelry of 05 Tola, which have been referred in clause-16 of the Nikahnama Ex.P3, which is admitted between the parties. However, parties were blessed with minor son Alian Ali on 23.06.2012 at PIMS Hospital, Islamabad and the medical expenses has been borne by the father of the respondent wife. However, after that she has taken a stance that she has been deserted and not a single penny has been paid by the petitioner as it was the primary responsibility of the petitioner to bear all the expenses incurred over delivery, though the factum of desertion has been denied by the petitioner husband, but in his written statement, he has taken a stance that the plaintiff/respondent was bound to perform her matrimonial bonds, but she is spending deserted life on her own wishes without consent and desire of the defendant/petitioner. He even acknowledges that the relationship between the parties remained cordial till 10.01.2012. However, the Courts below have fixed the maintenance rate w.e.f April, 2012 on the basis of result extracted from the evidence, which is admitted position on record as such it is not the case of the petitioner that he has paid the same to the respondent wife till divorce as referred in the evidence in an unequivocal terms:-

یہ درسیہ ہے کہ مدعیہ کو غیر آبادی کے بعد کو کئی چہان نفقہ ادا نہ کیا تھا۔ از خود کہا کہ وہ آباد ہونے کیلئے تیار ہی نہ تھی۔

7. This partition of the evidence has settled the entire claim of the respondent wife and rightly appreciated by the trial Court, however, the petitioner has not disputed the rate of maintenance as he is working in Medical Company, even otherwise he has referred in his evidence that he is ready to pay Rs.1000/- per month maintenance of the minor son, though it is not relevant at this stage as petitioner himself confined the case to the extent of maintenance of respondent wife, which is admittedly under lawful marriage contract with the petitioner till date of divorce. Mere filing of suit for restitution of

conjugal rights could not be considered as valid justification for non payment of maintenance, especially when no positive effort has been placed on record, in which default is attributed to the ex-wife, as such the respondent lady has taken the plea that she has been treated badly in inhuman manner, which persuaded her to file the suit, soon after the desertion by the petitioner.

8. Now adverting to the second question of gold jewelry, which is also admitted by the petitioner in the evidence, even it has specifically been referred in clause-16 of the Nikahnama, therefore, in the light of admitted position and record, the plea raised by the petitioner is not justiciable. Even otherwise, the respondent wife has taken a plea that petitioner has snatched the gold jewelry on the initial days of marriage with the help of his mother and sister, which factum has been brought on record in her cross-examination by the petitioner counsel, hence such admission adversely affect the entire case of the petitioner.

9. In view of above, the judgments and decrees passed by the Courts below are with four corners of law, no illegality has been observed in the concurrent findings as question of fact has already been resolved against the petitioner, which could not be interfered by this Court in constitutional jurisdiction, hence instant writ petition is misconceived and same is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE