

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2039 of 2016
Major Anees-ur-Rehman
Versus

Additional District Judge, Islamabad and another

Date of Hearing:	11.10.2017
Petitioner by:	Mr. M. Hussain Bhatti, Advocate, Mr. Jameel Hussain Qureshi, Advocate/Court's friend.
Respondents by:	Mirza Nabeel Tahir, Advocate for respondent No.2.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner/defendant, Major Anees-ur-Rehman, impugns the judgment and decree dated 22.01.2016, passed by the Court of the learned Additional District Judge, Islamabad, whereby respondent No.2/plaintiff's appeal against the judgment and decree dated 30.11.2015, passed by the learned Judge Family Court, was allowed. Vide the said judgment and decree dated 30.11.2015, the learned Judge Family Court, had dismissed respondent No.2's claim for the recovery of 14 *tolas* of gold ornaments and the remaining dowry articles. Vide the said appellate judgment and decree, the learned appellate Court decreed respondent No.2's suit to the extent of recovery of 14 *tolas* of gold ornaments as well as the remaining dowry articles.

2. Learned counsel for the petitioner, Mr. M. Hussain Bhatti, Advocate, was briefly heard. Mr. Jameel Hussain Qureshi, Advocate, was asked to assist the Court. He went through the case file and submitted that the petitioner and respondent No.2 got married on 18.02.2012; that the couple were blessed with a son; that subsequently, the relations between the petitioner and respondent No.2 were turned sour which lead to their divorce; that in the *Nikahnama*, 20 *tolas* of gold was mentioned as dower; that 07 *tolas* of gold was admittedly given by the petitioner to respondent No.2 at the time of marriage, whereas 13 *tolas* was deferred; that respondent No.2 had also brought along dowry

articles with her; that respondent No.2 left her matrimonial abode on her own account; that subsequently, respondent No.2 instituted a suit for the recovery of dower and dowry articles; that the petitioner, with good intentions, filed an application before the learned Family Court, wherein it was pleaded that the petitioner was willing to return respondent No.2's dowry articles and to give respondent No.2 her deferred dower; that the local commission appointed by the Court on the petitioner's application reported that the dowry articles, with some discrepancies, had been handed over to respondent No.2's brother; that for the discrepancies in the dowry articles, an amount of Rs.84,000/- was paid by the petitioner to respondent No.2; that additionally, the petitioner paid an amount of Rs.4,00,000/- plus Rs.1,40,000/- through two cheques in lieu of the 13 *to/as* of gold i.e. deferred dower; that in total an amount of Rs.6,24,000/- was paid by the petitioner to respondent No.2; that no objections were filed by respondent No.2 to the report of the local commission; that respondent No.2 instead of being satisfied, claimed that 14 *to/as* of gold in the shape of gold ornaments had not been given by the petitioner to respondent No.2; that there is inconsistency in the evidence of respondent No.2 (PW-1) and her brother (PW-2) as regards the receipt of Rs.84,000/-; that since the report of the local commission is in consonance with the testimony of PW-2 as regards the payment of Rs.84,000/-, the evidence of PW-1 is rendered unreliable; that the judgment and decree passed by the learned Judge Family Court is strictly in accordance with the law and facts of the case; that the learned appellate Court erred by not appreciating that on account of the handing over of the dowry articles and an amount of Rs.6,24,000/-, the dispute between the petitioner and respondent No.2 had come to an end; and that even though the petitioner and respondent No.2 are divorced, respondent No.2 wants to harass the petitioner and embroil him in unnecessary litigation. Learned counsel for the petitioner prayed for the writ petition to be allowed, and for the impugned judgment and decree dated 22.01.2016, to be set-aside.

3. On the other hand, Mirza Nabeel Tahir, Advocate, learned counsel for respondent No.2 submitted that respondent No.2 in her suit as well as her evidence had taken the position that the petitioner had snatched 14 *tolas* of gold ornaments from respondent No.2 when she was turned out from her matrimonial abode; that out of the said 14 *tolas* of gold ornaments, 07 *tolas* had been given to respondent No.2 by her parents, whereas 07 *tolas* had been given to her as prompt dower by the petitioner at the time of her marriage; that respondent No.2 had not been cross-examined on her deposition regarding the snatching of the said gold ornaments; that 14 *tolas* of gold had been snatched from her; that although the petitioner paid Rs.5,40,000/- in lieu of 13 *tolas* of gold (deferred dower) to respondent No.2, but 14 *tolas* have never been paid; that an amount of Rs.84,000/- was not paid by the petitioner to respondent No.2; that the report of the local commission regarding the payment of Rs.84,000/- is erroneous; that the list of dowry articles submitted by respondent No.2 cannot be doubted; that petitioner had also submitted a list of dowry articles which, he admitted, was in his possession; that the said list included a gold Madrasi set, a pearl gold set, gold rings and bangles etc.; and that the appellate judgment and decree is accordance with the law and facts of the case. Learned counsel for respondent No.2 prayed for the writ petition to be dismissed.

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

5. The record shows that the petitioner and respondent No.2 got married on 18.02.2012. The couple were blessed with a son. As per the *Nikahnama*, the dower was 20 *tolas* of gold out of which 07 *tolas* was given at the time of the marriage, whereas 13 *tolas* was deferred. This is an admitted position. Subsequently, the relations between the couple turned sour causing the petitioner to divorce respondent No.2.

6. On 25.06.2014, respondent No.2 instituted a suit for the recovery of dower and dowry articles against the petitioner

before the learned Judge Family Court, Islamabad. Respondent No.2, in her suit *inter-alia* pleaded that 13 *tolas* of deferred dower had not been given to her. It was also pleaded that on 01.11.2013, the petitioner threw out respondent No.2 from her matrimonial abode and snatched the 7 *tolas* of gold ornaments given to her by her parents, and the 7 *tolas* of gold ornaments given to her by the petitioner as prompt dower at the time of her marriage.

7. The petitioner contested the said suit by filing a written statement. From the divergent pleadings of the contested parties, the learned Judge Family Court, on 23.09.2015, framed the following issues:-

- “1 Whether the plaintiff is entitled for recovery of dower in shape of gold ornaments weighting of 27 *tolas*? *OPP*
2. Whether the plaintiff is entitled for recovery of dowry articles as per list annexed with plaint? *OPP*
- 3 Whether the plaintiff comes to the court with clean hand? *OPD*
- 4 Relief.”

8. Respondent No.2 had filed a list of dowry articles, which she claimed were in the petitioner’s possession. Some of the items in this list were one Madrasi gold set, one white pearl gold set, one ring, gold earrings, four bangles, etc. It may be mentioned that the petitioner had also submitted a list of respondent No.2’s dowry articles which were lying with the petitioner. This list clearly mentions a Madrasi gold set, a white pearl gold set, and an artificial jewelry set.

9. On 15.01.2015, the petitioner submitted an application for the appointment of a local commission. In the said application, it was pleaded that the petitioner was ready to return respondent No.2’s dowry articles in accordance with the said list. The petitioner also expressed his readiness to pay the deferred dower i.e. 13 *tolas* of gold. Mr. Muhammad Nadeem Raja, Advocate, the local commission appointed by the Court, submitted his report on 08.06.2015. As per the said report, possession of the dowry articles (as per the list submitted before the Court, with some discrepancies) was given to respondent No.2’s brother. In lieu of the 13 *tolas* of gold (deferred dower), an

amount of Rs.5,40,000/- was paid by the petitioner through two cheques. In addition to the said amount, Rs.84,000/- was paid in cash by the petitioner. In this way, a total amount of Rs.6,24,000/- was paid by the petitioner to respondent No.2. No objections were filed to the report of the local commission.

10. Respondent No.2 entered the witness box as PW-1 and filed her affidavit-in-evidence. The position taken by respondent No.1 in the said affidavit was in consonance with the one taken in her suit. Respondent No.2 in her affidavit-in-evidence clearly deposed that 14 *tolas* of gold ornaments were snatched from her when she was turned out from her matrimonial abode. Respondent No.2 has not been cross-examined on the question as to whether 14 *tolas* of gold ornaments were snatched from her.

11. During her cross-examination, respondent No.2/PW-1 admitted that her dower was 20 *tolas* of gold, out of which 07 *tolas* was given to her at the time of the marriage. She also admitted having taken the value of 13 *tolas* of gold in the form of cash from the petitioner. She also admitted receipt of most of the dowry articles. Respondent No.2's brother, Aimal Khan gave evidence as PW-2. In his cross-examination, PW-2 admitted having received Rs.6,24,000/- from the petitioner. Out of the said amount, Rs.84,000/- was said to have been paid in cash and the rest through two cheques.

12. There is a glaring discrepancy in the testimonies of PW-1 and PW-2. PW-1 denies receiving Rs.84,000/-, whereas PW-2 (who is PW-1's brother) admits having received Rs.84,000/- from the petitioner. In the report of the local commission, it is clearly mentioned that Rs.84,000/- was given in cash by the petitioner to respondent No.2/PW-1's brother. Since respondent No.2 did not file any objections to the report of the local commission, I have no reason to fault the findings of the learned Judge Family Court that as per the report of the local commission, Rs.84,000/- was paid in cash in lieu of the discrepancies in the dowry articles.

13. The petitioner's *bonafides* deserve recognition because he had filed an application before the learned Judge Family Court,

in which he had expressed his willingness to return respondent No.2's dowry articles, and to pay the deferred dower of 13 *tolas* of gold. It is on the petitioner's application that the learned Judge Family Court, had appointed a local commission. Although the report of the local commission does not exhaustively list out the dowry articles received by respondent No.2's brother on respondent No.2's behalf, it does mention the fact that the dowry articles as per the list (with some discrepancies) were handed over to respondent No.2's brother. In the said report, it is also mentioned that two cheques for Rs.1,40,000/- and Rs.4,00,000/- were given to respondent No.2's brother in lieu of 13 *tolas* of gold i.e. deferred dower. In addition to the said amount, Rs.84,000/- was paid in cash. Respondent No.2 denies having received the said Rs.84,000/-. When the report of the local commission is read along with the cross-examination of PW-2 (respondent No.2's brother, who admitted the receipt of the said Rs.84,000/-), respondent No.2's testimony becomes unreliable. As mentioned above, respondent No.2 did not file any objections to the report of the local commission.

14. Respondent No.2, in her evidence did not describe the gold ornaments which were "snatched" from her by the petitioner. She did not even produce the receipts of the 07 *tolas* of gold ornaments which she claims her parents had given her. I cannot bring myself to agree with the findings of the learned appellate Court that simply because no payment had been made by the petitioner for the 07 *tolas* of gold ornaments, the allegation as to the snatching of the gold ornaments stood proved. Even if it is assumed that the gold ornaments were snatched by the petitioner from respondent No.2, the fact remains that according to the report of the local commission the dowry articles (with some discrepancies) were returned by the petitioner to respondent No.2, through her brother. These dowry articles included the gold ornaments mentioned in the list submitted by the petitioner as well as the list submitted by respondent No.2. In the report of the local commission, it is not mentioned that the "discrepancies" were related to the gold ornaments. In lieu of the

discrepancies, Rs.84,000/- had been paid by the petitioner. Had the “discrepancies” in the dowry articles handed over by the petitioner been referable to the gold ornaments, respondent No.2 would have certainly filed objections to the report of the local commission. Since respondent No.2 had not taken any objection to the report of the local commission, and this very fact disentitles respondent No.2 to assert that she had not received the gold ornaments mentioned in the list of the dowry articles. Therefore, I am of the view that the learned appellate Court misread the evidence on the record.

15. In view of the above, the instant appeal is allowed. The impugned judgment and decree dated 22.01.2016, is set-aside, and the judgment and decree dated 30.11.2015, is restored. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Ahtesham