

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD,
(JUDICIAL DEPARTMENT).

Writ Petition No. 3692 of 2021

Mazhar Yaseen Khan Abbasi

Versus

Mst. Sadia Abbasi and others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(06)	24.10.2022	Rana Muhammad Irshad Khan, Advocate for the petitioner. Mr. Nadir Khan, Advocate for the respondent No.1.

Through the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed judgment and decree dated 29.02.2020, passed by learned Judge Family Court / Guardian Judge, East-Islamabad, whereby the suit filed by the respondent No. 1 for recovery of maintenance, dower and recovery of gifts / gold was partially decreed and judgment and decree dated 22.09.2021, whereby appeal filed by the petitioner was dismissed

by the Court of learned Additional District Judge, East-Islamabad.

02. Succinctly stated, facts of the case are that respondent No.1 filed a suit for recovery of maintenance, dower and recovery of gifts / gold, wherein she stated that marriage inter se the parties was solemnized on 22.12.2017, against dower amount of Rs. 403,000/- in shape of gold ornaments. The petitioner ousted respondent No. 1 from his house on 12.09.2018, in three wearing apparel and retained all the dowry articles, gold ornaments weighing 07 Tolas and educational documents, respondent No. 1 filed an application before concerned Chairman Union Council for recovery of dowry articles and on 13.01.2019, dowry articles were received by her in the presence of witnesses, except gold ornaments given by her parents and others and given as dower by petitioner. The said gold ornaments were lying in locker,

whereas keys of locker were with the petitioner, but jewelry boxes were found lying empty in the locker. The petitioner on 20.10.2018, sent a notice of *Talaq* to the respondent No. 1 and also conducted *Talaq* proceedings before Chairman Union Council, petitioner failed to give due maintenance and gold ornaments to respondent No. 1, hence the suit.

03. The suit was contested by the petitioner by filing written statement. Issues were framed and after hearing both the parties learned Judge Family Court / Guardian Judge, East-Islamabad partially decreed the suit of the respondent No. 1 vide impugned judgment and decree dated 29.02.2020.

04. The petitioner filed an appeal which was dismissed by the Court of learned Additional District Judge, East-Islamabad vide impugned judgment and decree dated 22.09.2021.

05. Learned counsel for the petitioner, *inter alia*, contends that both the impugned judgments and decrees are erroneous, not tenable under the law; learned Judge Family Court / Guardian Judge, East-Islamabad passed the impugned judgment and decree on the basis of mis-reading and non-reading of evidence; the petitioner produced sufficient evidence that the respondent No. 1 took her jewelry while leaving house of the petitioner but learned Courts have not appreciated the evidence produced by the petitioner; both the impugned judgments and decrees are against the law, hence are liable to be set-aside.

06. Learned counsel for the contesting respondent No. 1 has controverted the arguments advanced by learned counsel for the petitioner and stated that impugned judgments and decrees are passed strictly in accordance with law and evidence produced by the parties; the petitioner has

taken different stances in written statement as well as in the affidavit of evidence; the petitioner has failed to establish during the trial that the respondent No. 1 has taken the jewelry while leaving the house; there are concurrent findings of both the learned trial Courts, hence prayed for dismissal of instant writ petition.

07. Arguments advanced by learned counsel for the petitioner and learned counsel for the respondent No.1 have been heard and record has been perused with their able assistance.

08. The petitioner has taken different stance in the pleadings as well as in the evidence. In Para-6 of the written statement, he has mentioned that the respondent No. 1 left the house with her own free will and wish, without any rhyme or reason along with her brother and uncle in his absence and proved herself to be a cruel and disobedient wife and also mentioned in Para-12 that the respondent

No. 1 took away all the gold ornaments, documents and certificates along with her when she left the house with her brother and uncle but in the affidavit of evidence he has taken a stance by mentioning that the respondent No. 1 left the house on 12.09.2018, in presence of petitioner, without permission and also took suitcase filled with her belongings and hand box etc. along with her.

09. The respondent No. 1 filed petition before Union Council for return of the dower / gift articles, the commission appointed by the Union Council, got recovered the gifts / dower articles and also prepared the list which is Mark-A, wherein the suitcases, purse, educational documents have been mentioned. The empty boxes of dower were also recovered but the ornaments were not present in the boxes.

10. Different stance taken by the petitioner in the pleadings and the recovery of all the dowry / gift articles from the

house of the petitioner by the commission appointed by Union Council clearly prove that respondent No. 1 has not taken jewelry while leaving the house of the petitioner.

11. Learned counsel for the petitioner has failed to point out any illegality in the impugned judgments and decrees. It is well settled that certiorari is only available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or in excess of its jurisdiction, or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in exercise of its undoubted jurisdiction and it decides a matter in violation of the principles of natural justice. The High Court while issuing a writ of certiorari acts in exercise of supervisory and not appellate jurisdiction. The High Court in exercise of its writ jurisdiction will not review the

findings of facts reached by the inferior Court or a tribunal.

12. In this regard, reliance is placed upon following dictums / laws laid down by the Hon'ble Supreme Court of Pakistan:

i. **Amjad Khan Vs. Muhammad Irshad (Deceased) through LRs, (2020 SCMR 2155).**

ii. **President All Pakistan Women Association, Peshawar Cantt Vs. Muhammad Akbar Awan and others (2020 SCMR 260)**

iii. **Chief Executive MEPCO and others Vs. Muhammad Fazil and others (2019 SCMR 919).**

iv. **Chairman, NAB Vs. Muhammad Usman and others (PLD 2018 SC 28).**

v. **Shajar Islam Vs. Muhammad Siddique and 2 others (PLD 2007 SC 45).**

13. Further, there are concurrent findings of both the learned Courts below against the petitioner. In case of concurrent findings of the Courts below, scope of the constitutional petition becomes very limited.

The petitioner has failed to point out any mis-reading or non-reading of the evidence.

It has been laid down in a case titled as

Syed Arif Ali Sabri Vs. Abdul Samad through L.Rs. and 2 others (2008 YLR 2309) that:

"When there are concurrent findings of Courts below, the scope of the constitutional petition for interference is very limited and it can only be interfered when the orders of the Courts below are fanciful or based on misreading or non-reading of the evidence".

Reliance is also placed on the cases titled

as **Khuda Bukhsh Vs. Muhammad Sharif and another (1974 SCMR 279)**,

and **Sadrudin Vs. Aslam Madad Ali and others (PLD 2008 Karachi 2005)**.

14. For what has been discussed above, impugned judgments and decrees dated 29.02.2020 & 22.09.2021, passed by learned Judge Family Court / Guardian Judge, East-Islamabad and learned Additional District Judge, East-Islamabad

respectively, are in accordance with law and facts of the matter, hence do not require any interference by this Court.

15. In view of above prospective, the instant writ petition has no merits and the same is **dismissed**, with no order as to costs.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal /-