

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

W.P. No. 3956/2019.

Mst. Kausar Bibi

versus

The Learned Additional District Judge, Islamabad (West), etc.

Petitioner by: Mr. Muzammil Hussain Shad, Advocate.

Respondent No.2 by: Mr. M. Safdar Ali Bhatti, Advocate.

Date of Decision: 11.01.2021.

MOHSIN AKHTAR KAYANI, J: Through this Writ Petition, the petitioner has called in question the judgment & decree dated 15.10.2019, passed by learned Additional District Judge, Islamabad, whereby claim of recovery of two tola gold ornaments and a gold ring granted by learned Judge Family Court, Islamabad vide judgment & decree dated 27.05.2019 was set aside.

2. Brief facts referred in the instant petition are that petitioner entered into marriage with respondent No.2 Haq Nawaz on 05.05.2013 against the dower of Rs.3500/-. At the time of rukhsati, parents of petitioner gave gold ornaments of two tola, dowry articles and in addition to the same a gold ring to respondent No.2, marriage lasts for few years and later on petitioner was deserted by respondent No.2 from his abode. The petitioner filed suit for dissolution of marriage, recovery of maintenance allowance, gold ornaments and dowry articles, which was contested by respondent No.2 by way of filing written statement and learned Judge Family Court, Islamabad after recording the evidence of the parties passed the judgment & decree in favour of petitioner on 27.05.2019. Respondent No.2 feeling aggrieved with the said judgment filed appeal before the Additional District Judge, Islamabad, which was accepted to the extent of two tola gold and a gold ring and judgment of Family Court was set aside to that extent. Hence, instant writ petition.

3. Learned counsel for the petitioner contends that learned appellate court has not appreciated the evidence and passed the impugned judgment & decree on the basis of surmises and conjunctures; that two tola gold ornaments have been acknowledged by respondent in the evidence and same has rightly been extended to the petitioner by the trial Court, as such impugned judgment to the extent of wrong appreciation by the appellate Court requires interference of this Court in the constitutional jurisdiction.

4. Learned counsel for respondent No.2 contends that petitioner left the abode by herself and she was not deserted by respondent as alleged in the plaint; that it is usual norms and practice in our society that women folk retain their gold jewelry with them.

5. Arguments heard, record perused.

6. Perusal of record reveals that claim of the petitioner was decreed to the extent of dissolution of marriage, maintenance allowance, two tola gold ornaments with gold ring or in alternate its current market value from respondent vide judgment & decree dated 27.05.2019, passed by learned Judge Family Court, Islamabad. Respondent No.2 being aggrieved with the said judgment filed appeal before learned Additional District Judge, Islamabad, who set aside the same to the extent of two tola gold ornaments and a gold ring, resultantly instant writ petition has been filed by the petitioner.

7. While considering the arguments rendered by the parties, I have gone through the evidence submitted on record by the petitioner through her attorney Hasnain Iqbal, her real brother, whereby it was specifically stated in Ex.P.2 that:-

یہ کہ رخصتی کے وقت مدعیہ کے والدین نے مدعیہ کو 2 تالے زیورات اور سامان جہیز دیا اس کے علاوہ مدعیہ کے والدین نے مدعا علیہ کو
ایا سونے کی انگوٹھی بھی پہنائی تھی۔

8. The above referred stance of the petitioner if read in conjunction with para-5 of the said affidavit, it appears that petitioner was deserted from her abode in December, 2016 in three clothes after physical abuse, however, on the

other hand respondent No.2 denied such allegations. Respondent No.2 submitted his affidavit Ex.D-1 and taken a categorical stance that:-

مدعایہ کہ غیر موجودگی میں مدعیہ مدعایہ کا گھر چھوڑ کر چلی گئی اور یہ کہ جب مدعایہ کے گھر سے گئی تو سارا سونا اپنے ساتھ لے گئی تھی۔

But during the course of cross-examination he acknowledged that he is not aware about the date and time when petitioner (plaintiff) left the abode. However, when he was asked specific question regarding two tola gold and gold ring, he answered in the following manner:-

مجھے پتہ نہ ہے۔

However, at later part of cross-examination he acknowledged that:-

یہ درست ہے کہ دو تولا سونا اور انگوٹھی میرے پاس موجود ہے۔ از خود کہا کہ میں پہلے سوال میں انکار کر چکا ہوں کہ سونا اور انگوٹھی مدعیہ ساتھ لے گئی تھی۔

9. While considering these contrary stances taken by respondent No.2, it appears that he is not truthful witness, who has taken summersault in same breath, even he is not aware when his wife left the abode. Similarly, respondent No.2 has denied the gold ring which was gifted by parents of petitioner although he acknowledged the same. In such eventuality minimum requirement of law in favour of petitioner qua her claim of two tola gold ornaments has rightly been appreciated by the trial Court, however, while going through the judgment rendered by first appellate Court in Para-13, it appears that learned appellate Court has heavily relied upon the presumption that gold ornaments have usually been retained by women folk though such presumption appears to be contrary in this case. The appellate Court has given much emphasis upon the statement of respondent No.2 that petitioner while leaving the house took alongwith her all gold ornaments, such stance if placed in juxtaposition with the cross-examination of respondent No.2, the same has been denied, therefore, findings given by first appellate Court are contrary to the record and evidence has wrongly been appreciated which could be settled by way of interference in the constitutional

jurisdiction. Learned Judge Family Court, Islamabad has rightly passed the decree in favour of petitioner which could not be set aside on the presumption. It is trite law that when a witness has acknowledged the stance in cross-examination no other evidence is required, therefore, judgment & decree dated 15.10.2019, passed by learned Additional District Judge, Islamabad is hereby set aside and judgment & decree dated 27.05.2019, passed by learned Judge Family Court, Islamabad is hereby restored.

10. Instant writ petition is allowed in above terms.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid