

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

**W.P. No. 323 of 2020**

**Mst. Sobia Shaheen**

**Versus**

**Muhammad Usman.**

Date of Hearing: : 15.04.2022  
Petitioner by: : Rana Liaqat Hayat, Advocate.  
Respondent by: : Javed Iqbal Mangral, Advocate.

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**ARBAB MUHAMMAD TAHIR, J.** The instant writ petition is arising out of Judgment and decree dated 13.11.2019, passed by the Additional District Judge, Islamabad-West whereby appeal of respondent No. 1 against the Judgment and Decree dated 23.05.2019 of the Judge Family Court, Islamabad-West, was partly allowed.

2. Facts, relevant for adjudication of instant writ petition, are that petitioner filed suit for recovery of *dower in the shape of gold ornaments and maintenance for the period of Iddat*, which was duly contested by the respondent No.1 by filing written statement. The learned Trial Court after framing issues and recording evidence of the parties decreed the suit vide Judgment and Decree dated 23.05.2019, in terms that petitioner was held entitled to recover maintenance allowance for the period of Iddat at the rate of Rs. 10,000/- per month besides Rs. 350,000/- as dower amount or gold ornaments given to her at the time of marriage in lieu of dower amount, and also two Tola gold ornaments. The respondent No. 1 against the said Judgment and Decree dated 23.05.2019, preferred an appeal which was allowed vide impugned Judgment and Decree dated 13.11.2019, whereby suit of the petitioner to the extent of recovery of gold ornaments, in-total 9 Tolas (7 Tolas as Haq Mahar and 2 Tolas given by her parents at the time of her marriage), was dismissed while decree to the extent of maintenance for the Iddat period was upheld. Hence, this writ petition.

3. Learned counsel for the petitioner argued that there are glaring contradictions in the pleadings and evidence of the respondent No. 1; that the sole witness of the Jirga denied payment of dower amount in the shape of gold ornaments while the stance of the petitioner had been

consistent throughout, which was duly appreciated by the learned Trial Court; that the learned Appellate Court upheld the verdict of trial Court by exclusively placing reliance upon the affidavit i.e. Jirga proceedings which were not proved by the respondent No. 1 by producing the members of the said Jirga, therefore, impugned judgment is liable to set aside.

4. Heard, record examined.

5. In the instant case, the marriage of petitioner and respondent No. 1 was solemnized through Nikah Nama *Mark-A*, which is an admitted document. Unfortunately, the marriage lasted for just two and a half month. It is also an admitted position that the petitioner has since been divorced by the respondent No. 1, while the Jirga proceedings *Mark-B/Ex.D1* is the bone of contention between the parties. The petitioner alleges that no gold ornaments in lieu of dower amount as mentioned in affidavit *Ex.D-1* were given to her while, on the contrary, as per the stance of the respondent No. 1 contained in the written statement, all the issues pertaining to dower, maintenance allowance and dowry articles were settled in the Jirga and the petitioner in token of its correctness affixed her signatures and had also taken away entire dowry articles.

6. The other aspect of the matter is that as per stance of the petitioner, the gold ornaments, 9 Tolas in-total, were taken by the respondent No. 1 on the night of 28<sup>th</sup>-29<sup>th</sup> June, 2017 together with certain amounts, as reveals through Para 5 of the plaint and on her demand, the respondent flatly refused, for the reason that the same belonged to him. In-addition, she also asserted that the respondent No. 1 blamed her that she left all the gold ornaments at her parents' house.

7. In order to substantiate her claim, the petitioner got herself examined as PW-1, besides her brother Tanveer Akhter and one Muhammad Ayub Bhatti, a witness of the Jirga proceedings. The crucial documents in this case are affidavit of divorce (*Talaq Nama*) *Ex.P-2* and affidavit *Ex.D-1/Mark-B* (***Ex.D-1***) while copy of Nikah Nama is *Mark-A*. The learned trial court after evaluating the evidence came to the following conclusion:-

***“That though defendant tried to establish stance through Ex.D-1 but once the contents of Exh. D-1 are disputed by the plaintiff, he was burdened to prove the correctness of Ex.D-1 by producing to attesting witnesses of the document, which he***

***fails to do in the instant case. On the other hand, plaintiff by producing one attesting witness of Ex.D-1, who denied the contents of Ex.D-1 created doubt in the authenticity of Ex.D-1”.***

8. On the above aspect, the findings of the learned Appellate Court are to the effect that as the petitioner and her witness admitted execution of Ex.D-1 and her signatures upon the same, she therefore, cannot retract from the same as a man can tell lie but the document cannot.

9. As the findings on the issue are at variance, the entire record of the proceedings in suit have been gone through carefully.

10. It is noticed that the dispute between the spouses cropped up on the night between 28<sup>th</sup>-29<sup>th</sup> June, 2017, which immediately led to the filing of a suit by the respondent No. 1 for permanent injunction against the petitioner and his brothers. In Para No. 3 of the said suit, it is mentioned that “on hearing this incident several persons of the locality gathered and **the plaintiff divorced the defendant No. 1 on her demand (copy of divorced deed is attached herewith).**”

11. In the said suit, there is no mention about the reconciliation proceedings through any Jirga, which means by that time no reconciliation proceedings were there, and it is also clear that before the Jirga proceedings respondent No. 1 has divorced the petitioner.

12. The marginal witnesses of Ex.D-1 are Muhammad Ayub PW-3, Tanvir Akhter, Haji Malik Bashir and Saqib Mehmood. The petitioner had been consistent on the point that the gold ornaments given to her in lieu of dower together with those given by her parents were snatched by the respondent No. 1, and that no such ornaments were returned to her pursuant to Ex.D-1. One of the attesting witnesses of Ex.D-1 supported her stance that no ornaments were given to the petitioner pursuant to said Jirga proceedings rather only an amount of Rs.1 lac had been paid to her. It is significant to note that when the petitioner has unequivocally denied the receipt of gold ornaments pursuant to Jirga proceedings contained in Ex.D-1, it was incumbent upon the respondent No. 1 to prove the contents of said affidavit, by producing at least two marginal witnesses of the said document but no such effort was made.

13. Another important aspect of the matter is that Ex.D-1 was a settlement through the intervention of members of the locality and was

not approved by any court of law and, therefore, it cannot be said that the petitioner was bound by its terms and conditions as a force of law nor she was compelled to do so. Even otherwise, matters referred to a Jirga to settle the dispute or effect a compromise between the parties without the permission of the Court, such proceedings will not be having blessing or backing of the Court, therefore, action will not be protected by the law. Reliance is placed upon case of **“Shazia Bibi v. State” 2004 P.Cr.L.J. 1523.**

14. In addition it is also observed that in Nikah-Nama Mark-A, it is mentioned that dower amount of Rs.3,50,000/- in the shape of seven tola gold ornaments has been paid to the petitioner who subsequently alleged that respondent No.1 had taken away the same which also led to a skirmish on the night between 28<sup>th</sup>-29<sup>th</sup> of June, 2017 where after respondent No.1 fled away from the house and then filed a suit for permanent injunction, referred above. Unlike specific entry in Nikah-Nama Mark-A, Ex.D-1 affidavit did not specifically state anything about the said gold ornaments rather it is mentioned in clause 3 of Ex.D-1 that the petitioner in presence of Jirgah has received dowry articles maintenance and no dispute is left between the parties. The petitioner was bound by the said document that she could not sue the respondent No. 1 in terms of maintenance, dower and dowry articles. In clause 4, it is stipulated that the petitioner has got written this affidavit as an acknowledgement of receipt of dower amount, maintenance and dowry articles. Had it been the case that petitioner had received dower in the shape of gold ornaments it should have been mentioned in Ex.D-1.

15. Averting to the contents of Ex.P-2 (Divorce deed) it is mentioned in Clause 3 of Ex.P2 that petitioner has received dowry articles, dower etc, before the members of the Jirgah. When the petitioner denied to have received any gold ornaments pursuant to Jirgah proceedings, and the fact that one of its witnesses namely Muhammad Ayub PW-3 corroborated her version by further stating that only Rs. 100,000/- were given to her, it was incumbent upon the respondent No. 1 to produce marginal witnesses of divorce deed Ex.P-2 and affidavit Ex.D-1. It was also for the reason that it had been the stance of the respondent No. 1, either in his first suit or in the written statement that the petitioner had taken away the gold ornaments to her parents' house.

When the petitioner was already in possession of the ornaments then there is no explanation as to why she was again paid any consideration in lieu of dower amount to Clause 3 of Ex.P-2 (Divorce Deed).

16. To sum up, it is established from the evidence on record that marriage of the petitioner was solemnized with respondent No.1 through Nikah Nama Mark-A wherein its column No.13 dower amount of Rs.3,00,000/- was mentioned, which has been paid to the petitioner in the shape of 7-tola gold ornaments. In addition, she was given gold ornaments weighing 2-tola from her parents at the time of marriage, receipt whereof had been tendered as Ex.P-4 while she remained firm on this aspect during cross-examination which is corroborated by the testimony of her witness PW-2. On the aspect of taking back the gold ornaments, her stance was consistent as reveals through plaint, her statement that remained unshaken despite cross examination, duly corroborated by the statement of her brother while to refute the same, the respondent No.1 opted not to contest the suit himself and appointed his brother as Special Attorney. The eagerness to counter the claim of the petitioner for the recovery of gold ornaments, quite visible from the contents of first suit filed by the respondent No.1, wherein he had taken the stance in para-3 that the petitioner had taken away the ornaments from the house of her parents, lends support to the stance of the petitioner regarding taking back the ornaments by respondent No.1. Significantly by that time, the respondent No.1 has since divorced the petitioner as reveals through para-3 of the said suit. It is also established that after the rift cropped up between the spouses, the very first action had been from the side of respondent No.1 by way of filing suit for permanent injunction on the next day i.e. 30.06.2019 and then a day thereafter, the two writings Ex.P-2 and Ex.D-1 were made, which are short of details with regards to the delivery of gold ornaments. By the time Jirga proceedings were held, respondent No.1 had already divorced the petitioner and thus before the said proceedings, had been under obligation to pay dower amount or gold ornaments stipulated in Nikah-Nama, and it not so happened even during Jirga proceedings, reduced into writing as Ex. D1 or Ex. P2 because no specific entry in this regard is mentioned therein.

17. Having gone through the record of the case, it appears that the findings of the learned Appellate Court are not legally sustainable for reasons mentioned above while that of the learned Trial Court appear to be correct appreciation of evidence on record. Consequently, instant writ petition is **allowed**, impugned Judgment and Decree dated 13.11.2019 passed by the learned Additional District Judge, Islamabad (West) is set-aside while judgment and decree of the learned Trial Court dated 23.05.2019 is restored. Parties are left to bear their own costs.

**(ARBAB MUHAMMAD TAHIR)**  
**JUDGE**

Announced in open court on \_\_\_\_ .05.2022.

**JUDGE.**

A.R.Ansari

APPROVED FOR REPORTING