

## **ORDER SHEET.**

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

**W.P No.2911/2019.**

Muhammad Yasin

Versus

Mst. Iqra Javaid and another.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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**01.**            29.10.2019    Mr. Mujib-ur-Rehman Kiani, Advocate for the petitioner.

Through the instant writ petition, the petitioner has assailed the judgment & decree dated 17.12.2018, passed by learned Senior Civil Judge-III/Judge Family Court-East, Islamabad as well as judgment & decree dated 27.06.2019, passed by learned Additional District Judge-I (East) Islamabad, whereby the decree passed by learned Judge Family Court-East, Islamabad in favour of respondent No.1 to the extent of maintenance as well as dowry articles was maintained.

2.    Learned counsel for the petitioner inter-alia contends that the petitioner was married to respondent No.1 on 11.04.2014 against prompt dower of Rs.1000/- and in addition to the said amount 5 Tolas gold ornaments have also been referred in column No.17 of the Nikahnama; that respondent No.1 willfully left abode of the petitioner and refused to perform her matrimonial obligations, where-after divorce was pronounced on 03.01.2017 and as such she is not entitled for maintenance from the date of desertion i.e. 18.04.2014 till Iddat period as she was disobedient wife but the Courts below have not considered this aspect; that the wife who was not performing matrimonial obligations is not entitled for maintenance, even no evidence has been brought on record by respondent No.1 regarding financial status of the petitioner nor rate of maintenance has been

determined on the principles settled by Superior Courts; that respondent No.1 has not proved that dowry articles and personal belongings including 5 Tolas gold ornaments have been snatched by the petitioner but the Courts below have not considered this aspect and passed the impugned judgments & decrees in mechanical manner rather the same are based on misreading and non-reading of important facts.

3. I have heard learned counsel for the petitioner and gone through the record.

4. Perusal of the record reveals that the petitioner entered into Nikah with respondent No.1 on 11.04.2014 against prompt dower of Rs.1000/- and in column No.17 of the Nikahnama 5 Tolas gold ornaments have been given to respondent No.1 as gift. As per record appended with this case and on the basis of arguments of learned counsel for the petitioner it has been admitted by the petitioner side that respondent No.1 had left the abode of the petitioner on 18.10.2014 within 06 months of the date of marriage and Talaq was pronounced by the petitioner on 17.11.2016, whereas respondent No.1 has filed suit for maintenance and recovery of dowry articles on 23.05.2017, whereby she claims that she is entitled for past monthly maintenance allowance at the rate of Rs.12,000/- w.e.f. 18.10.2014 till completion of Iddat period alongwith recovery of 5 Tolas gold ornaments or in alternate its amount according to market value. Respondent No.1 has also claimed costs of Rs.1,50,000/- on medical treatment alongwith recovery of dowry articles as per list. The suit has been contested by the petitioner by way of filing written statement, whereby he has denied the purchase of any dowry articles and contends that he has maintained respondent No.1 when she was living with him, however, it has been acknowledged by the petitioner side that

dower and 5 Tolas gold ornaments has already been paid to respondent No.1. Surprisingly the claim of maintenance referred in Para 10 of the plaint has been denied by the petitioner by saying that "*incorrect hence denied*".

5. I have gone through the evidence, whereby respondent No.1 has recorded her evidence to prove her contention in the light of issues framed by Family Court. Iqra Javed/respondent No.1 herself appeared as P.W.1 and reiterated her stance taken in the affidavit/Exh.P.1 and her supportive witnesses Muhammad Bashir submitted his affidavit/Exh.P.2, Mazhar Hussain submitted his affidavit/Exh.P.3 and Abdul Majeed submitted his affidavit/Exh.P.4, who were cross-examined by the present petitioner, however, no fruitful claim could be achieved in contrast to above evidence. The petitioner put his appearance before the Court as D.W.1 and submitted his affidavit/Exh.D.1, in which he has taken the stance that respondent No.1 is disobedient wife and the dowry articles were returned through commission.

6. During the course of cross-examination, he acknowledges that:-

"یہ درست ہے کہ میں نے اپنے جواب دعویٰ اور بیان حلفی میں بابت مزدوری و آمدن کا کوئی ذکر نہ کیا ہے۔ میرا مکان ہے جو تقریباً چھ مرلے کا ہے از خود کہا کہ میرے والد صاحب نے لے کر دیا تھا جواب فوت ہو گئے ہے۔ جب میرے گھر رہی ہے تو میں خرچہ دیتا رہا ہوں۔ میں نے دعویٰ دائری کے بعد سے اب تک مدعیہ کو کسی قسم کا خرچہ نہ دیا ہے۔"

7. Similarly, the petitioner has also acknowledged that he has returned the dowry articles in the following manner:-

"عدالت میں میں نے خود کہا تھا کہ سامان جہیز واپس کرنا چاہتا ہوں عدالت نے پھر کمیشن مقرر کیا اور میں نے اپنی رضامندی سے سامان جہیز واپس کیا۔ یہ درست ہے کہ سیریل نمبر 10, 18, 20 اور 21 واپس نہیں کی ہے۔ از خود کہا کہ لسٹ میں کچھ چیزیں اپنے طرف سے تحریر کی گئی ہے جو کہ عدالت کو بتایا تھا۔ یہ درست ہے کہ سیریل نمبر 13, 14, 15 اور 16 موجود تھی مگر ٹوٹی ہوئی تھی۔"

8. Besides the above referred acknowledgement, the petitioner has also acknowledged that he entered into second marriage.

9. Keeping in view above background of the case and evidence recorded by the petitioner side, I have gone through the findings recorded by learned Trial Court on issue No.1, who has rightly appreciated the factum of non-payment of maintenance on part of the petitioner, even Jirga was constituted in which P.W.4/Ch. Abdul Majeed has given detailed version through Exh.P.4 and it has also been noted that Jirga was constituted on the request of mother of respondent No.1 for assumption of matrimonial bond but the petitioner has not paid a single penny to respondent No.1 from the date of desertion till Iddat period, however, the petitioner has not taken any specific stance in his written statement regarding his financial status and learned Trial Court has discussed all these issues in detail while referring column No.17 of Nikahnama in its findings on issue No.2 and decided the issue against the petitioner. The findings of learned Trial Court regarding dowry articles have not been refuted in any manner, especially in the light of admission made by the petitioner in cross-examination, in which he himself admitted that certain dowry articles have not been returned to respondent No.1.

10. I have also gone through the judgment of learned Appellate Court, whereby learned Appellate Court has appreciated the acknowledgement of the petitioner, who while appearing as D.W.1 as well as during cross examination made admission regarding non return of dowry articles. Even otherwise the petitioner during cross-examination on P.W.1 suggested that ***“whether it is correct that jewellery, which was given to her was taken back from her”*** as such the admission which has been made by the petitioner on record is so blatant and clear that no

other meanings can be extended qua the claim submitted by respondent No.1 in her evidence. It is trite law that concurrent findings cannot be interfered in constitutional jurisdiction especially when judicial review has been claimed by the petitioner. Both the Courts below have rightly appreciated the evidence. Learned counsel for the petitioner has failed to point out any illegality and jurisdictional defect in the impugned judgments. The instant writ petition is misconceived and the same stands **dismissed in limine**.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

R.Anjam