

**JUDGEMENT SHEET**  
**IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH**  
(Judicial Department)

W.P No. 704-D/2021 with  
C.M No. 1098-D/2021

**Mst. Tanzila Bibi**  
**vs**  
**Muhammad Asif and another**

**For petitioner**      Muhammad Anwar Awan, Advocate  
                                 Mr. Qaiser Saleem, Advocate

**For respondent**    Nemo

**Date of hearing:**   10.10.2022

**JUDGMENT**

SHAHID KHAN, J.-

Through the subject constitutional petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question the judgment and decree dated 10.9.2021 rendered by learned Judge Family Court-I, D.I.Khan, whereby the suit of plaintiff/petitioner for dissolution of marriage was decreed on the basis of Khula.

2.            The Court has carefully gone through the pleadings, submissions at the bar and the case law coupled with scrutiny of the evidence made available.

3.            Points raised and submissions made by learned counsel for the petitioner have been duly analyzed and considered in the light of the material annexed with this writ petition inclusive of the impugned judgment, original pleadings

of the suit, the evidence therein, the decree passed by the trial court, and it is observed that the learned Judge Family Court-I, D.I.Khan has not committed error of law while decreeing the suit of the plaintiff/petitioner for dissolution of marriage on the basis of Khula.

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4. The record, particularly the suit filed by the petitioner/plaintiff and the findings recorded by the learned Judge family Court-I, D.I.Khan were examined carefully, from where it is found, that marriage between the parties were solemnized after few days of birth of petitioner and her marriage is still not consummated. The record further reveals that the respondent/husband has already been contracted second marriage and as now, the petitioner has developed strong hatred from the respondent and does not want to live with him at any cost. Unnecessary facts apart, the question boils down for determination in this case is whether the plaintiff/petitioner was married with the respondent in her childhood and she had repudiated her marriage before attaining the age, of eighteen years. Before answering this question, this Court deem it appropriate to ascertain that whether a minor girl, at the age of 10/11 years, can repudiate her marriage while exercising her right of option of puberty in view of section Section 2(vii) of the Dissolution of Muslim Marriages Act, 1939. As per averment made in the plaint and evidence adduced by the petitioner/plaintiff, the plaintiff/petitioner is reported to be of 11

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years old. The stance of the petitioner is that she, on attaining the age of puberty, had repudiated the marriage in exercise of her right of Khiaar-ul-Baloogh, however, the respondent insisted on claiming her to be his wife which obliged her to file the instant suit for a declaration as to her unmarried status. This Court has to see that at the time of repudiation of marriage/Nikah, whether the petitioner has attained puberty or not. Of course, there is clear finding of the learned Judge Family Court, D.I.Khan that petitioner is 10/11 years old, in such eventuality, how can she exercise her right of puberty.

5. In Muslim Law when a minor girl is entered into contract of marriage by her father or guardian during her minority she has the option to repudiate this marriage called Khiaar-ul-Baloogh on attaining puberty before the age of eighteen years. Provided that the marriage has not been consummated. It may be noted that as per Article 195 from the book *'Principles of Mohammedan Law by Sir Dinshah Fardunji Mulla'*, Every Mohammedan of sound mind, who has attained puberty, may enter into a contract of marriage, and Puberty is presumed, in the absence of evidence, on completion of the age of fifteen years.

6. Under the Muslim Law the competence of a girl to enter into a contract of marriage is dependent on the attainment of puberty. Puberty is presumed at the age of fifteen years. According to *'Fatawa Alamgiri', Page-93 of*

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*Vol-V*, the lowest age of puberty according to its natural signs, is 12 years in males and 9 years in females and if signs do not appear, both sexes are held to be adult on the completion of their age of 15 years. The principle which after copying out from *Fatawa Alamgiri* and *Hedaya* can be deduced is that a girl even having not attained puberty but possessing discretion and sufficient understanding can enter into a contract of marriage however for its operation it will be dependent on the consent of the guardian, if there is one, but in the absence of any guardian it will take effect on her attaining of majority and ratifying the contract. According to Paragraph-274 of Mahommedan Law, "when a marriage is contracted for a minor by any guardian other than the father or father's father, the minor has the option to repudiate the marriage on attaining the puberty. This is technically called the "option of puberty" (*Khiar-ul-Baloogh*). The right of repudiation of the marriage is lost, in the case of a female, if after attaining puberty and after having been informed of the marriage and of her right to repudiate it, she does not repudiate without reasonable delay. The Dissolution of Muslim Marriages Act, 1939, however, gives her the right to repudiate the marriage before attaining the age of *eighteen years*, provided that the marriage has not been consummated. But in the case of a male the right continues until he has

ratified the marriage either expressly or impliedly as by payment of dower or by cohabitation."

7. A wife is entitled to the dissolution of her marriage on the option of puberty if she proves the following facts:--

(i) The marriage took place before she attains the age of sixteen years.

(ii) The marriage has not been consummated.

(iii) She has repudiated the marriage before attaining the age of 18 years. The decree of the Court is not necessary to invalidate the marriage which has been dissolved by the wife.

8. *Section 2(vii) of the Dissolution of Muslim Marriages Act, 1939* enshrines that she having been given in marriage by her father, other guardian before she attains the age of fifteen years, repudiated the marriage before attaining the age of 18 years.

A plain reading of the above provision makes it manifestly clear that the repudiation of the marriage by a woman who was married during her infancy is subject only to two conditions. First she repudiates the marriage before attaining the age of 18 years. Secondly the marriage has not been consummated. The decree of the Court is not necessary to invalidate the marriage which has been dissolved by the wife. Reference can be made to cases of *Mst. Farangeza v. The State (1995 MLD 1439)*, *Mst. Janat v. Additional District Judge*

*(PLD 1981 Lahore 68), Mst. Aslam Khatoon v. Muhammad Azim Khan and others (1991 CLC Note 226 at p.177 Mulazim Hussain v. Mst. Amina Bibi and another (1994 CLC 1046) and Muhammad Sharif v. Judge Family Court (1998 MLD 1873).*

9. It is not disputed that the marriage of parties has not been consummated. The plaintiff/petitioner had instituted the suit at the age of 10 years. The condition to repudiate the marriage is before attaining the age of 18 years. At the time of institution of the suit the plaintiff had not attained the age of 18 years. From the scanning of evidence it is established that at the time of filing of suit the plaintiff was of 10/11 years age. This fact has been highlighted by the Judge Family Court-I, D.I.Khan in its judgment. The Judge Family Court after taking into consideration the evidence of the petitioner came to the conclusion that the plaintiff is not willing to live with the respondent at any cost, thus, has validly dissolved the marriage between the parties on the basis of Khula. The learned counsel for the petitioner has not been able to point out any illegality misreading or non-reading of evidence which could call for interference in the impugned judgment and decree.

10. The upshot of above discussion, that the impugned judgment rendered by Judge Family Court-I, D.I.Khan is perfect in all respects, with proper application of judicial mind to the facts and law which hardly calls for interference by invoking

the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973., therefore, the instant petition is devoid of any force which is dismissed with no order as to cost.

Announced  
October 10, 2022  
Hasnain/\*

  
JUDGE

Office  
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JUDGE

(D.B)

Hon'ble Mr. Justice Muhammad Faheem Wali  
Hon'ble Mr. Justice Shahid Khan