

[Balochistan]

Before Naeem Akhtar Afghan and Abdul Hameed Baloch, JJ

ALI AKBAR---Petitioner

Versus

Mst. SAMINA and another---Respondents

C. P. No. 890 of 2017, decided on 6th August, 2019.

Family Courts Act (XXXV of 1964)---

---S. 5, Sched.---Suit for recovery of dowry articles---Witnesses of defendant-husband had admitted that dowry articles had been brought by the plaintiff-wife---Onus of proof had shifted to defendant to establish that the purported dowry articles were not given to him---High Court observed that it was not possible for any wife/bride to keep the record/ receipts of purchased articles or prepared list of dowry articles and obtained signature from bridegroom/husband side---Husband had failed to point out any illegality or irregularity in the impugned judgment passed by the Trial Court---Constitutional petition was dismissed, in circumstances.

Muhammad Habib v. Safia Bibi 2008 SCMR 1584 rel.

Habib-ur-Rehman for Petitioner.

Zaheer Ahmed Shahwani for Respondent No.1.

Date of hearing: 1st August, 2019.

JUDGMENT

ABDUL HAMEED BALOCH, J.---This petition is directed judgment dated 10.06.2017 (impugned judgment) passed by the learned Family Judge, Khuzdar ("trial court"), whereby suit for Dissolution of Marriage, Recovery of Dowry Articles, Recovery of Maintenance Allowance for Plaintiff Rs.5000/- per month for the past three months till the Iddat Period has been decreed.

2. The brief facts of the case are that the respondent No.1/plaintiff filed the referred suit, with the averments that the respondent/plaintiff married with the petitioner seven months back according to the injunction of Quran and Sharia at Khuzdar. The plaintiff tried to adjust herself with the whole family of petitioner, but the petitioner and his whole family changed their attitude and used cruelty and started maltreatment and beating the respondent while mentally and physically torturing her; that the defendant is drug addict and while being

drunk always tortures the plaintiff; that about three months ago the petitioner/ defendant and his family beaten the plaintiff and kicked out her from the house in wearing clothes without any reason; that the petitioner/defendant took the dowry articles, one Almirah, one show case, one bed set, one makeup box, one washing machine, 25 readymade Balochi dress, two brief cases, two dinner sets, which was gifted to plaintiff/ respondent by her father and on asking for the said property, the petitioner/ defendant annoyed and threatened for dire consequences; that the petitioner/ defendant is not providing maintenance to the plaintiff for last three months while the parents of plaintiff are poor and hardly surviving under these circumstances are also bearing the expenses of plaintiff/respondent; that due to maltreatment, non-providing of maintenance allowance and dowry articles, the plaintiff claimed for dissolution of marriage with the petitioner. She lastly prayed for the decree of the suit on the following terms.

1. To dissolve the marriage tie.
 2. To direct the defendant to return back the dowry articles of plaintiff or its value to Rs.150000/-
 3. To direct the defendant to pay the past maintenance allowance of plaintiff and onward till iddat period at the rate of 5000/- per month.
3. The petitioner/defendant on receipt of notice, contested the suit by filing written statement.
4. That after framing the issues, both the parties produced their respective evidence before the trial court. The trial court after hearing the parties, decreed the suit. Hence this petition.
5. Learned counsel for the petitioner contended that the impugned judgment passed by the trial court is contrary to fact, law and natural justice; that the trial court without appreciating the material available on record has passed the impugned judgment and decree in a slipshod manner; that the plaintiff/ respondent claimed khula on the basis of cruelty, but has failed to establish the same, but the trial court has not considered this aspect of the case, which is an illegality and irregularity. He therefore prayed for setting aside the impugned judgment and remand of the case to the trial court for decision afresh.
6. Learned counsel for respondent No.1 vehemently contested the contention of the learned counsel for the petitioner contended that the learned trial court has rightly decreed the suit filed by the plaintiff/respondent. He urged for dismissal of the petition.
7. Heard. Record perused. Record reveals that the learned trial court out of pleadings of the parties framed four issues. The parties led their evidence in pro and contra against each other. The respondent claimed in the plaint as well as in her statement before the trial court that due to maltreatment, cruelty, hatred has been developed in her mind and categorically denied the possibility of reconciliation with the petitioner. Since the marriage between the petitioner and respondent solemnized seven months before filing suit. It transpires that relation between the spouses became strained at the very initial stage of matrimonial life. The

record indicates that hatred had developed in the mind of the respondent against the petitioner. It is to be noted that disliking, hatred, abomination can be given birth by any incident of single worth. It is a mindset of a person who is moved from an incident in which the disliking, hatred or loathing is created, as such no hard rule can be framed in this regard. The learned Family Judge has to judge it from the fact and circumstances of the case as well as from the appearance of the parties during the conciliation efforts and has to satisfy its judicious consciences as to whether marriage bond between the parties could any longer be sustained or to dissolve the contract of marital tie. Therefore findings of fact having been found against the petitioner with regard to hatred, we do not find any illegality or unlawfulness in it, while granting decree for dissolution of marriage in favour of respondent No. 1.

8. With regard to dowry articles the witnesses of the petitioner in their statements before the trial court admitted that the dowry articles has been brought by the respondent. In the circumstances, the onus of proof shifts to petitioner to establish that the purported dowry articles were given by him. Even otherwise in our society it is not possible for any wife/bride to keep the record/receipts of purchased articles or prepared list of dowry articles and obtained signature from bridegroom/husband side.

For rendering this view, we are fortified from the dictum laid down by the Hon' able Apex Court on the case of Muhammad Habib v. Safia Bibi 2008 SCMR 1584, wherein it has been held as under:

"Having heard learned counsel for the petitioner in the light of the material on file, we find that learned High Court has rightly observed that "the evidence of the petitioner is insufficient to rebut the version of the plaintiff/ respondent, Mst. Safia Bibi..... The learned appellate court after proper appreciation of the evidence on record modified the decree of learned Judge ,Family Court and accepted the appeal of the plaintiff/respondent regarding her whole claim of Rs.1,80,7000. The perusal of list Exh.P.1 reveals that these are the articles which are ordinarily given to a bride at the time of her marriage. Both the courts below have given concurrent findings which are based upon substantial evidence and the petitioner has not been able to controvert the same during the trial, as such the petitioner has not been able to controvert the same during the trial, as such the petitioner has failed to show any illegality or irregularity committed by the Courts below in the impugned judgments so as to warrant interference by this court in exercise of its constitutional jurisdiction.

In view of above, the petitioner has failed to point out any illegality or irregularity in the impugned judgment passed by the trial court warranting interference by this court.

Thus, the petition being devoid of merits is dismissed but with no order as to costs.

ZC/85/Bal.

Petition dismissed.