

Form No.HCJD/C-121
ORDER SHEET
**IN THE LAHORE HIGH COURT, MULTAN BENCH,
MULTAN.**
JUDICIAL DEPARTMENT

Writ Petition No.4024 of 2021

Wahid Bakhsh
Versus
ADJ, Muzaffargarh etc.

Sr.No. of Order/ Proceeding	Date of Order/ Proceeding	Order with signatures of Judge and that of parties or counsel, where necessary.
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15.03.2021 Mr. Mohammad Basir Khan Sikhani, Advocate for
the petitioner.

Through this writ petition, the petitioner has
challenged the legality of judgment & decree dated
17.08.2020 passed by learned Judge Family Court,
Muzaffargarh whereby suit for recovery of
maintenance allowance, dower and dowry articles
filed by respondents No.3 to 8 was partially decreed
and judgment & decree dated 05.10.2020 passed by
the learned District Judge, Muzaffargarh who
dismissed the appeal of the petitioner.

2. Brief facts of the case are that the marriage
was solemnized between the petitioner and
respondent No.3 in the year 2004 and from this
wedlock, respondents No.4 to 8 were born.
Respondents No.3 to 8 / plaintiffs filed suit for
recovery of maintenance allowance, dower and
dowry articles against the petitioner. The said suit
was contested by the petitioner while filing the

contesting written statement. From the divergent pleadings of the parties, issues were framed and evidence was recorded. The learned trial court vide judgment & decree dated 17.08.2020 partially decreed the suit of respondents No.3 to 8 declaring that plaintiff No.1 and minor respondent No.6/plaintiff Muhammad Elyan are entitled to recover their maintenance allowance @ Rs.5000/- per head per month from the date of institution of suit till their legal entitlement with 10% annual increase. Plaintiff No.1 is entitled to recover her “proper” dower / Mahr-i-Misl (similar as dower of her real sister Mst. Farhat Bibi), i.e. 2 tolas gold ornaments valuing Rs.60,000/- and house, nalka, haveli pukhta latrine etc. measuring 20 Marlas valuing Rs.1,00,000/- from the petitioner/defendant and plaintiff No.1 is also entitled to recover her dowry articles or alternate value of Rs.40,000/-. The petitioner’s appeal was also dismissed by the learned appellate court vide judgment & decree dated 05.10.2020. Hence, this writ petition.

3. I have heard the learned counsel for the petitioner at some length and gone through the record with his able assistance.

4. To prove the asserted stance in the plaint respondent No.3 / plaintiff herself appeared as PW-1 and tendered her statement through an affidavit

(Exh.P-1). In cross examination she stated that Wahid Bakhsh is her husband. Muhammad Alyan (minor son) is aged about 9 years who is living with her and is studying in Class-III of Faiz Aam School whereas remaining children are in the custody of her father. Muhammad Aslam appeared as PW-2 who produced his Nikahnama as Exh.P-2 and supported the version of respondent No.3.

Conversely, petitioner Wahid Bakhsh has appeared as DW-1 and he admits that marriage was solemnized between the parties and from this wedlock four sons and one daughter were born. One son Muhammad Alyan is living with his mother. He participated in marriage ceremonies of his brothers as well as sisters in laws. At the time of marriage, the parents of the plaintiff gave dowry articles to their daughter.

5. From the perusal of oral as well as documentary evidence, it reveals that admittedly, the marriage was solemnized between the petitioner and respondent No.3 in the year 2004 and from this wedlock, four sons and one daughter were born. Respondent No.3 / plaintiff claimed dower of 2-tolas gold ornaments, 02-Kanals house situated at Mouza Ajab Arain P.O. Karam Dad Qureshi, Tehsil & District Muzaffargarh along with ancillary amenities etc. or alternate value of Rs.14,20,000/-.

The petitioner has not denied this fact in his written statement. Respondent No.3 has not produced any written Nikahnama rather asserted that only oral Sharai Nikah was solemnized. In support of claim she produced Nikahnamas of her sister (Exh.P-3), her brother (Exh.P-4) and petitioner's brother (Exh.P-5) and took stance that house and gold was fixed as dower.

6. Admittedly Nikah between the parties was orally solemnized according to Shariah. Under the Quranic teachings the relations of a Muslim family unit (spouse) is established through solemnization of Nikah in order to determine the rights / obligations of a husband and wife and it is made mandatory for a husband to give dower to his wife. Quantum of the dower amount has been left open for the parties to settle the same according to their independent opinion. In case the amount of dower is not mentioned in that eventuality a modus operandi is provided in Shariah to ascertain the same from the customs, status and allied social traits of the parties. The such settlement or determination of dower amount is named as proper dower (Mehr-e-Misl).

The main controversy in this case is with regard to the quantum of dower amount. As no such definite information / evidence is available which may demonstrate the exact amount of the dower as

such it would legally be presumed that dower amount would be equivalent to proper dower (Mahr-e-Misl). Indeed Islam is complete Code of life which furnishes an elaborate and comprehensive guideline having universal approach for the humanity for all times to come regarding each and every aspect of the social life. In Holy Quran, the matter of dower has been elucidated as under:

وَأَتُوا النِّسَاءَ صَدُقَتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا
فَكُلُّوهْ هَنِيئًا مَّرِيًّا.

اور عورتوں کو ان کے مہر خوشی سے دے دیا کرو۔ ہاں اگر وہ اپنی خوشی سے اس میں
سے کچھ تم کو چھوڑ دیں تو اسے ذوق شوق سے کھا لو۔ (سورۃ النساء، آیت نمبر 4)
(ترجمہ: فتح محمد جالندھری)

As per para 289 of Muhammadan law by D.F. Mulla, the wife is entitled to receive reasonably appropriate “proper dower” (Mahr-e-Misl), even if the Nikah was contracted on the express condition of non claiming any dower by the wife. For determination of proper dower amount a litmus test has been provided in Islamic jurisprudence whereby dower amount of other female members from the family of her father such as her other sisters, father’s sisters etc. may be considered as proper dower. For ready reference Para 289 is reproduced as under:-

“289. Proper dower. – If the amount of dower is not fixed (s.286), the wife is entitled to ‘proper’ dower (mahr-i-misl), even if the marriage was contracted on the express condition that she should not claim any dower. In determining what is “proper”

dower, regard is to be had to the amount of dower settled upon other female members of her father's family such as her father's sisters."

Further Dr. Tanzeel-ur-Rehman in his book (مجموعہ قوانین)

(جلد اول, اسلام) has written in detail regarding proper

dower (Mehr-Misl). In this regard section 69

whereof is reproduced as under:-

”مہر مثل: مہر مثل امثال و اقربان کے مہر کو کہتے جو اس عورت کے مثل عورت کا مقرر ہوا ہو۔

تشریح

مہر مثل کے تعین کے لیے عورت کے باپ کی رشتہ دار عورتوں کے مہرون کو دیکھا جائے گا۔ مثلاً پھوپھیوں، سگی بہنوں اور چچا زاد بہنوں کا مہر۔

مہر مثل کے تعین کے لیے مثل عورتوں کی عمر، حسن و جمال، علم و عقل، دینداری، اور کردار کا لحاظ بھی کیا جائے گا۔

فتح القدیر میں لکھا ہے کہ مہر مثل کے تعین میں ان عورتوں کے شوہروں کے حسب اور مال کو بھی دیکھا جائے گا لیکن اگر اس عورت میں کچھ ذاتی اوصاف ہوں تو ان کا بھی لحاظ کیا جان چاہیے۔

لزوم مہر ۶۹۔ اگر معاہدہ نکاح میں مہر کا تذکرہ نہ کیا گیا ہو تو شرعاً مہر لازم تصور کیا جائے گا اور مرد پر مہر مثل واجب ہوگا۔

توضیح: اگر نکاح اس شرط کے ساتھ کیا جائے کہ نکاح میں کوئی مہر نہ ہوگا تو شرط ساقط ہوگی اور مہر مثل واجب ہوگا۔

مہر۔ ایک شرعی حکم:

لیکن مہر معاہدہ بیع کی طرح ایک رقتی معاوضہ کا نام نہیں ہے بلکہ فی الحقیقت شرع میں اس کا حکم زوجہ کی حرمت اور توقیر کے لیے دیا گیا ہے چنانچہ اگر معاہدہ نکاح میں اس کا ذکر نہ ہو تب بھی مہر مثل لازم ہوگا۔ حتیٰ کہ اگر یہ طے بھی کر لیا جائے کہ نکاح میں کوئی مہر نہ ہوگا تب بھی مہر لازم ہوگا اور شرط ساقط ہو جائے گی۔“

(emphasis supplied)

The learned courts below after considering the oral as well as documentary evidence declared respondent No.3 entitled to receive “proper” dower

(mehr misl). Reliance is placed on the case titled as Mst. Manzoor Elahi Vs Muhammad Nawaz & Others (2002 MLD 988).

7. Learned counsel for the petitioner has not been able to point out any illegality or material irregularity, misreading and non-reading of evidence in the impugned judgments & decrees passed by the learned Courts below and has also not identified any jurisdictional defect. The concurrent findings of facts are against the petitioner which do not call for any interference by this Court in absence of any illegality or any other error of jurisdiction. Reliance is placed on the case titled as Zulfiqar Ali Vs. Judge, Family Court & 7 Others (2007 MLD 1710).

8. In view of above, this writ petition is **dismissed** *in limine* being misconceived and devoid of any merits.

(CH. MUHAMMAD IQBAL)
JUDGE

Approved for reporting.

(CH. MUHAMMAD IQBAL)
JUDGE