

Form No:HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT RAWALPINDI BENCH,
JUDICIAL DEPARTMENT**

Case No. W. P. No.337 of 2012

Farrah Bashir

Versus

Muhammad Umar Tahir etc.

S.No. of order/ Proceedings	Date of order/ Proceedings	Order with signature of Judge and that of Parties of counsel, where necessary.
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3).	01.04.2014	Sardar Muhammad Hafeez Khan, Advocate for the petitioner. Sardar Aftab Ahmad, Advocate for respondent No.1.
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This petition is filed against appellate order dated 24.12.2011 passed by Addl. District Judge, Rawalpindi, whereby judgment/decreed by family court, in suit for dissolution of marriage, was upheld.

2. Facts briefly are that *Nikah* between petitioner and respondent No.1 was solemnized against dower of Rs.200,000/-. Due to strained relations, suit for dissolution, filed by the petitioner was decreed, on the option of '*Khula*' in lieu of said dower. As per entry No.13 and 14 of the '*Nikah Nama*', the dower amount was fixed at Rs.200,000/-, out of which, Rs.100,000/- was to be paid in the shape of gold ornaments at the time of *Nikah* and remaining Rs.100,000/- was payable on demand. Judge Family Court ordered for return of Rs.100,000/-, paid in the shape of gold ornaments under Section 10(4) of the Family Courts Act, 1964.

The decree was challenged in appeal, by the petitioner, to the extent of return of dower amount of Rs.100,000/- in lieu of gold ornaments, which

was dismissed by the judgment, impugned in this petition.

3. Learned counsel for the petitioner contends that receiving of the gold ornaments (worth Rs.100,000/-) as dower was specifically denied by the petitioner in paragraph No.4 of the plaint. The entries in the *Nikah Nama* regarding payment of dower were alleged to have been wrongly written or tampered. Since the petitioner had denied receiving of dower in the shape of gold ornaments, therefore, family court was bound to record evidence by framing issue regarding receiving of the dower amount. He submits that decision of the learned appellate court regarding exclusion of oral evidence in presence of documentary evidence is against the provisions of Section 17 of the Family Courts Act, 1964.

Learned counsel for the petitioner has relied on the judgment of this Court in the case of Wahid-ul-Islam versus Shaheen Akhtar and 2 others reported as **2011 CLC 566**. He has also relied on two judgments of Sindh High Court in the cases of Abdul Sattar versus Mst. Kalsoom (**PLD 2006 Karachi 272**) and Aurangzeb versus Mst. Gulnaz and another (**PLD 2006 Karachi 563**).

4. Learned counsel for respondent No.1 has supported the impugned judgment and decree. He submits that in paragraph No.2 of the written statement, respondent No.1 has specifically asked for return of dower amount. He has also produced

the original copy of the *Nikah Nama* to assert that the same was not tampered or forged.

5. Heard the learned counsel for the parties. Record perused.

6. Examination of record confirms the assertion of the petitioner that in her plaint she denied to have received the dower of Rs.100,000/- in shape of gold ornaments. However, in the same paragraph she accepted to have received a gold ring worth not more than Rs.6000/-. Conversely, respondent No.1 had claimed, returning of the dower amount in his written statement. Yet, the Judge Family Court, on failure of pretrial proceeding, passed a simple judgment decreeing the suit for dissolution of marriage on the basis of *Khula* and return of dower according to *Nikah Nama*. The trial court did not take pain to discuss the contents of the divergent pleadings or refer any evidence. In my opinion, the trial court erred in exercised of jurisdiction, by not addressing to the assertions and denials in the pleadings.

So far appellate court's judgment is concerned, I am not in agreement with the observation that in presence of documentary evidence oral evidence shall be excluded. Learned appellate court has ignored the provisions of section 17 of the Family Courts Act 1964, which bars the application of Qanoon-e-Shahadat Order, 1984 and Code of Civil Procedure, 1908 as has been held by the Apex Court in the case of Syed

Muhammad versus Mst. Zeenat and others (PLD 2001 SC 128) and Ahmad Yar versus Additional District Judge, Chiniot, District Jhang and others (2007 SCMR 1768). The rationale embedded in these provisions, besides being expeditious disposal, is to apply an unfettered judicious mind keeping in view the practice and customs prevalent in the society. Under the facts of instant case, there was every possibility that despite writing payment of dower at the time of *Nikah* (as gold ornaments), the same would not have been given in fact. It is a common practice in our society that gold ornaments given to bride (as dower or gift) are usually taken back from her; sometimes to support the husband financially and often on the pretext of safe custody. Mere finding by appellate court that relevant entries (of *Nikah Nama*) were found not tempered, in my opinion was not sufficient to discard the assertion of petitioner. The petitioner, in her plaint, regarding entry in *Nikah Nama* has used the words that it could have been due to “*inadvertent mistake or in connivance with the defendant*”.

From the judgments referred by learned counsel for the petitioner, one is more relevant to the issue in hand hence relevant part is reproduced from Abdul Sattar versus Mst. Kalsoom (PLD 2006 Karachi 272): -

“However, where a dispute arises on this issue between the parties as to the payment/receipt/remission of dower then the same would have to resolved by the Family

Court. In this situation if the wife is willing to deposit the dower amount in Court, then too a preliminary decree for dissolution of the marriage should be passed by the Family Court whereafter the disputed issue regarding the dower amount could be resolved. Of course if the wife does not deposit the dower amount in Court; the matter would have to be decided upon taking evidence whereafter the decree should be passed accordingly. In this connection it would be seen that where the husband asserts payment but the same is denied by the wife, he would have to prove the same because the onus of proof is always upon the person who alleges a fact. Reference can also be made to Mulkhan Bibi v. Muhammad Wazir Khan PLD 1959 (W.P.) Lahore 710. As regards section 17 of the Family Court Act, 1964, which provides that the Qanun-e-Shahadat, 1984 and the Code of Civil Procedure, 1908 shall not apply to proceedings before the Family Court, in my opinion the same does not debar such Court from passing a preliminary decree dissolving the marriage on the basis of 'Khula' or any other ground. The provision of section 17 as to non-applicability of the Qanun-e-Shahadat Order and Civil Procedure Code in my view, is to expedite the proceedings before the Family Court so that the same are not delayed for lack of procedural formalities as contained in the aforementioned laws. The same cannot be construed so as to defeat the purposes of the Family Courts Act, 1964"

[emphasis supplied]

7. For the reasons given supra, the judgment and decree along with appellate order are set aside to the extent of returning the dower amount and case is remanded to the trial court with direction to treat the decree passed for dissolution of marriage as preliminary decree, frame proper issue on the

divergent pleadings on dower (to be returned in lieu of *Khula*) and decide the same after recoding evidence.

8. **Disposed of.**

(Shahid Jamil Khan)
Judge

Approved for reporting

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