

**Judgment Sheet**  
**IN THE LAHORE HIGH COURT, LAHORE**  
JUDICIAL DEPARTMENT

WP No.11679/2012

**JUDGMENT**

Muhammad Saeed vs. Addl. District Judge etc.

**Date of hearing: -** 19.02.2019

**Petitioner by: -** Ch. Muhammad Akmal Dhariwal Advocate

**Respondent by:-** Mr. Abid Hussain Khichi, Advocate.

**JAWAD HASSAN, J:-** Through this constitutional petition, the Petitioner has called in question judgments and decrees dated 19.10.2011 and 07.03.2012 passed by two courts below.

2. Counsel for the Petitioner has argued that impugned judgments and decrees are result of misreading and non-reading of evidence and without application of judicious mind, therefore are liable to be set aside.

3. On the other hand, the counsel for the Respondent No.3 has supported the impugned judgments and decrees as the same have been passed after appraisal of evidence and application of judicious mind, hence are liable to be maintained/upheld.

4. Arguments heard and record perused.

5. It is reflected from perusal of record that a suit for recovery of dower, maintenance allowance and dowry articles filed by the Respondent No.3 was decreed by learned Judge Family Court Pakpattan Sharif, vide judgment & decree dated 19.10.2011, whereby she was entitled to get dowry articles detailed in issue No.2 or its alternative price fixed as Rs.1,25,000/-, whereas the suit of plaintiff

to the extent of recovery of maintenance allowance and recovery of deferred dower was dismissed. Being dissatisfied from the said judgment and decree, the Respondent No.3 preferred appeal before the learned District Judge, Pakpattan Sharif, which was partly accepted vide judgment & decree dated 07.03.2012, whereby impugned judgment and decree was modified in terms that the Respondent No.3 was entitled to recover 03-tolas gold ornaments fixed as deferred dower or its alternative price i.e. Rs.50,000/- and she was also entitled to recover dowry articles according to the detail given by her in Ex.P/1 or alternative its price i.e. Rs.3,00,000/-, while the appeal filed by the Petitioner was dismissed.

6. Perusal of record reveals that both the parties produced their respective evidence in support of their contentions. The Respondent No.3 herself appeared as PW-1 and she produced Muhammad Sarwar and Muhammad Shafique as PW-2 and PW-3 respectively. In documentary evidence, she produced Ex.P-1 to Ex.P-2 and Mark-A to Mark-Q. On the other hand, the Petitioner was examined as DW-1 and he produced Muhammad Rafique as DW-2 and Muhammad Shahbaz as DW-3.

7. The findings of two Courts below are at variance on the issue of recovery of dowry articles and deferred dower. The learned Judge Family Court, Pakpattan Sharif after appraisal of evidence has come to a right conclusion that the Petitioner had filed a suit for restitution of conjugal rights in order to reconcile with the Respondent No.3, but she herself got a decree of divorce on the basis of Khula and got the Haq-ul-Mehar. In her plaint, the Respondent

No.3 herself has mentioned that she was deserted by the Petitioner from the house on 28.07.2009, but in her examination-in-chief she has not specifically mentioned that she was deserted by the Petitioner from the houses on the said date. Further she has also not claimed maintenance allowance of previous period or in future and further she also failed to prove her forceful desertion from the Petitioner's house through cogent and confidence inspiring evidence. The filing of suit for restitution of conjugal rights by the Petitioner demonstrate that the Petitioner was willing to rehabilitate the Respondent No.3 but it was she, who obtained decree of divorce on the basis of Khula thus she was not willing to reconcile with the Petitioner, therefore, the learned Judge Family Court has rightly declared her disentitled for maintenance allowance. Therefore, the findings of the learned Judge Family Court in this respect are upheld. So for as deferred dower is concerned, it has come in evidence of the Petitioner that the Respondent No.3 took away 04 tolas gold ornaments with her at the time of her desertion from his house. Furthermore, the deferred dower is payable after a specified period of time and when no period is fixed, the same shall be paid on the death of the husband or dissolution of marriage. The Respondent No.3/Plaintiff in her examination-in-chief has not uttered a single word whether the deferred dower has been taken away by her or the same is still with the Petitioner. However, it has come in the evidence of Petitioner (DW-1) during cross-examination that in the column of Nikahnama, he wrote three tola gold ornaments which he gave at the time of Nikah, which the Respondent No.3 took away at the time of desertion

of his house. The Respondent No.3 has failed to place on record any cogent and confidence inspiring evidence that three tolas gold ornaments as deferred dower and one tola gold which was given by her parent is with the Petitioner or the same has been snatched by the Petitioner. It is general presumption that the gold ornaments are always possessed by females and in exceptional cases these are with males. The Respondent No.3 failed to prove that deferred dower/gold ornaments are in the custody of the Petitioner or the same have been snatched by him forcefully by him. The findings of the learned District Judge, Pakpattan are based on erroneous conclusion/presumption, therefore, the same are set aside and that of learned Judge Family Court, are upheld.

8. So for as dowry articles are concerned, while passing the impugned judgment & decree, the learned Judge Family Court, Pakpattan has relied upon the list prepared by the Petitioner in his written reply and tentatively fixed its value as Rs.1,25,000/-. Nothing has come in evidence that source and income of the parents of the Respondent No.3, from which it could be presumed that the father of the Respondent No.3 was in position to give dowry articles as claimed in the list of dowry articles prepared by her father. Even otherwise, as mentioned supra, parents gave articles to their daughters at the time of their marriage according to their financial status but some time they have to exceed to their financial limits and even get debt for the provision of dowry articles. It has come in evidence of the parties that the dowry articles were given to the Respondent No.3 and there is no denial to the fact that the same are

lying with the Petitioner. Since the marriage remained intact for about six months, therefore, the learned District Judge, Pakpattan has rightly modified the judgment and decree of the learned Judge Family Court entitling the Respondent No.3 to receive dowry articles according to detail given by her in Ex.P-1 or alternative its price i.e Rs.3,00,000/-.

Resultantly, for what has been discussed above, the instant writ petition is partly allowed to the extent that the Respondent No.3 is not entitled to recover dower. Her suit to the extent of dowry articles or its alternate price i.e. Rs.3,00,000/-stands decreed. No order as to costs.

**(JAWAD HASSAN)**  
**JUDGE**

*ZAHOOR*