

Stereo HCJDA-38
JUDGMENT SHEET
LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.57778/2022

Muhammad Afzal

Versus

Addl. District Judge, etc.

JUDGMENT

Date of Hearing:	26.04.2023
Petitioner by:	Mr. Abdul Razzaq Younas, Advocate.
Respondents No.3 and 4 by:	Mr. Muhammad Younas Bhullar, Advocate.

Anwaar Hussain, J:- Through this single judgment, the present as well as connected constitutional petition bearing W.P. No.60517/2022 are intended to be decided by this Court. Respondent No.3, namely, Mst. Madiha Kiran has filed the connected constitutional petition. Both the petitions have laid challenge to the findings of the learned Appellate Court below, rendered in proceedings emanating from the suits instituted by respondents No.3 and 4 (respondents No.3 and 4 are hereinafter collectively referred as ‘**the respondents**’).

2. Briefly stated facts of the case are that the respondents instituted three suits. The first suit was for recovery of maintenance allowance and delivery expenses whereas the second suit was for recovery of dowry articles or in alternate prevailing market price thereof; and the third suit was instituted for dissolution of marriage on the ground of cruelty alongwith recovery of the dower. Suit to the extent of dissolution of marriage became infructuous as during the pendency of the third suit, the petitioner divorced respondent No.3. The suits were consolidated and issues were accordingly framed. After recording evidence led by the parties, the learned Trial Court decreed the suit of

the respondents, *vide* judgment and decree dated 30.10.2021, in the following terms:

- “1. The plaintiff No.1 is entitled to recover maintenance @ Rs.10,000/- per month from the date of her desertion i.e. January, 2018 from the defendant till her legal entitlement.
2. The plaintiff No.2/minor is entitled to recover maintenance @ Rs.15,000/- per month from his date of birth till his legal entitlement with 10% annual increment. It is made clear that annual increment shall be calculated from 30.10.2022. The interim maintenance paid during trial shall be adjusted accordingly.
3. Plaintiff is not entitled to recover expenses incurred on reception of Barat i.e. Rs.19,52,900/-.
4. Plaintiff is entitled to recover maternity/delivery expenses to the tune of Rs.20,000/- from the defendant.
5. Plaintiff is not entitled to recover dower amount mentioned in column No.13 of Nikahnama.
6. Plaintiff is held entitled to recover dowry articles mentioned in Annexure A to Annexure I, from the defendant except items mentioned in Annexure-A, Annexure B and items mentioned against Sr. No.06 and 08 in Annexure-E in their existing condition. And, in absence of dowry articles, she is entitled to recover Rs.1700,000/- as alternate price from the defendant.”

Feeling aggrieved, the respondents preferred appeal, which was partially accepted by the learned Additional District Judge, Lahore, *vide* judgment and decree dated 14.07.2022. The judgment and decree of the learned Trial Court has been modified and respondent No.3 has been held entitled to the recovery of Toyota Corolla GLi, Model 2017 (hereinafter referred to as ‘**the car**’) or its alternate price i.e., Rs.2,285,000/-.

3. Learned counsel for the petitioner, on instructions, submits that he is only challenging the findings of the learned Appellate Court below pertaining to the award of the car and does not lay challenge to

the findings of learned Appellate Court below to the extent of maintenance, expenses incurred on birth of respondent No.4, dowry articles etc. *Inter alia*, avers that the car does not exist and the documents prepared in respect thereof were fictitious. Adds that the car was never delivered to the petitioner; that registration book of the car was not brought on record; that in criminal case registered in respect of the misappropriation of the car, nothing was brought on record to indicate that the petitioner was involved in any wrong doing; that respondent No.3 is not participating in the trial in respect of the criminal case registered regarding the car; and merely on the basis of registration of a criminal case, the learned Appellate Court below has upset the findings of the learned Trial Court, therefore, the said findings are not sustainable.

4. Conversely, learned counsel for the respondents submits that the petitioner is a practicing doctor and the amount awarded as maintenance does not commensurate with the sound financial position of the petitioner as well as prevailing inflation rate and therefore, in the interest of justice, amount of Rs.25,000/- per month is to be granted, as maintenance to the minor/respondent No.4. Adds that para 7 of the plaint of the second suit is self-explanatory in which claim regarding the giving of car, as well as motorcycle at the time of engagement, has been mentioned and that the learned Courts below have erred in not awarding the motorcycle inasmuch as any property given in reference to a marriage is to be considered as part of the dowry articles. Places reliance upon case reported as “Mirza Arshad Baig v. Additional District Judge, Multan and others” (2005 SCMR 1740) in support of his contentions. Further contends that the alternate value of the car has not been properly determined by the learned Appellate Court below and draws the attention of this Court to Exh.P-3 and Exh.P-6 in reference to the proof of purchase of the car as well as Exh.P-9 regarding the gold ornaments. Adds that evidence regarding expenses incurred on the birth

of respondent No.4 has been misread as well. Concludes that brothers of the petitioner also acknowledged giving of car as part of the dowry. In rebuttal, learned counsel for the petitioner submits that initially, the brothers of the petitioner, who persuaded and forced the petitioner to enter into marriage with respondent No.3, were arrayed as defendants in the suit for recovery of dowry articles but their names were later on deleted and hence, any assertion regarding giving of the car in affidavits executed by brothers of the petitioner is not of any evidentiary value.

5. Arguments heard. Record perused.

6. Learned counsel for the petitioner has laid emphasis on a single point to refute claim of respondent No.3, regarding the car, in the terms that there is no evidence available that the said vehicle was given at the time of the marriage as part of the dowry and, merely, on the basis of registration of a criminal case by father of respondent No.3 against the petitioner for misappropriation, the learned Appellate Court below has decreed the suit of respondent No.3 in respect of the car, whereas in respect of the same finding, it is the claim of respondent No.3 that alternate value of the car has not been properly determined/ascertained by the learned Appellate Court below and prayer has been made for award of present market value of the car. This Court will first address this core issue. Perusal of the record reveals that in her plaint, for recovery of dowry articles, in para 7 thereof, respondent No.3 asserted the following facts:

“7. That at the time of marriage, a new Toyota Car APL4, Auto-GLi, colour white, 1299-CC, bearing Engine No.Z500924, Chassis No.NZE170R-4127111, Model 2017, purchased by the father of the plaintiff from TOYOTA JINNAH MOTORS, 23-km Ferozpur Road, Lahore against Rs.22,85,000/- along with documents was given to plaintiff in dowry but was initially deployed on rent by the defendants and then subsequently sold out without any intimation.”

Responding to the said paragraph, the petitioner took the following stance in his written statement:

“6) ...The vehicle mentioned in this Para was purchased with the cash provided by the answering defendant. It was also registered in the name of defendant in token of acknowledgment of cash provided by the defendant.”

(Emphasis supplied)

In addition to the fact that respondent No.3 brought on record the sale invoice of the car, the above quoted response of the petitioner, in his written statement, exhibits an admission on part of the petitioner that the car, in-fact, was purchased and transferred in the name of the petitioner, at the time of wedding, albeit with cash amount given by the petitioner. Even if the stance of the petitioner is accepted that the car was purchased with the cash amount given by the petitioner, the same has not been proved by the petitioner by leading any evidence. Moreover, there is no explanation as to why the petitioner remained mum for not demanding the delivery of the car, from the father of respondent No.3 for a considerable period of time, when the marriage between the parties was subsisting and the relationship was cordial, therefore, the assertions of learned counsel for the petitioner that no such car was ever purchased or delivered to the petitioner are baseless to say the least and hence, discarded. As a natural corollary, the fact that the car was not recovered during investigation in the criminal case registered by the father of respondent No.3 becomes meaningless as the petitioner accepts registration of the case in his name.

7. Adverting to the fact that whether alternate value of the car was properly ascertained by the learned Appellate Court below, perusal of the impugned judgment reveals that value of the car has been fixed as Rs.2,285,000/- that is the amount, which was paid by the father of respondent No.3 when the car was booked from M/s Toyota Jinnah Motors, in the year 2017, when the marriage of respondent No.3 with the petitioner took place. In this regard, it is imperative to note that

primarily a suit for the return of dowry articles, whenever decided, is decreed by the Courts as such with the observation that in case of failure, on part of the judgment-debtor, to return the said articles, as an alternate, the amount equivalent to the price of dowry articles is ordered to be paid and while determining the alternate value of the dowry articles, the Courts consider the depreciation of most of the dowry articles on account of normal and natural wear and tear thereof that takes place over the passage of time since marriage of the parties. The rationale underlying the application of principle of depreciation is that the dowry articles are to be returned in their current position and if the same is not done, their price is to be paid as an alternate and since most of the value of dowry articles put to use during the subsistence of marriage do undergo depreciation on account of said daily use, therefore, while determining the alternate price, it is justifiable that the depreciation in value of such articles is to be taken into account. However, one cannot lose sight of the fact that there may be some articles forming part of the dowry, for instance, the gold ornaments or the vehicles or even few electrical appliances etc., value whereof may appreciate over the years. The car, in the instant case is such an article. Record depicts that giving of the car to respondent No.3, as part of her dowry has been established, as discussed hereinabove, and the same was registered in the name of the petitioner, at the time of his marriage with the former. Therefore, the principle i.e., the dowry article is to be returned in its present form, is applicable with respect to the car as well. In case of articles such as the car, while determining/ascertaining amount of money as an alternate price, the principle of appreciation should be kept in mind inasmuch as if the principle of depreciation is to be considered with respect to one set of the dowry articles such as furniture, etc., which involves depreciation of articles on account of wear and tear, the principle of appreciation must also be taken into account with respect to such other articles that involves increase in value. Failure to do so would not only be iniquitous but would also put premium on the unlawful retention of such dowry articles by the

defendant/husband even after the dissolution of marriage or demand for return of the same by the plaintiff/wife. Therefore, the learned Appellate Court below erred in not considering the appreciation in the value of the car while fixing/determining the alternate price thereof inasmuch as this is common knowledge that value of Pak Rupees has depreciated over the number of years and the value of new as well as used vehicles, like the car in instant case, is on continuous rise. Therefore, awarding amount spent on purchase of the car in the year 2017 is not justified and respondent No.3 is entitled to recover the market value of the car as on date of realization of the decree. Hence, connected constitutional petition bearing W.P. No.60517/2022, filed by the respondent, has force to this extent and the findings of the learned Appellate Court below merit modification.

8. As regards amount of monthly maintenance awarded, the respondents claim that the same should be fixed at the rate of Rs.25,000/- per month, per head, till their legal entitlement since the petitioner is a practicing doctor. This Court does not find merits in the arguments as the amount fixed by the learned Courts below is reasonable. Even otherwise, the marriage of the petitioner and respondent No.3 has come to an end and as regards maintenance awarded to respondent No.4 (the minor), he has been held entitled to 10% annual increase in maintenance amount of Rs.15,000/- per month with effect from 30.10.2022 and, therefore, the said increment caters for the growing financial needs of respondent No.4 as well as the rise in inflation rate, hence, no interference is required in this regard. Similarly, concurrent findings of the learned Courts below, to the extent of the remaining dowry articles, are also based on proper appreciation of record and no misreading or non-reading could be pointed out by learned counsel for the parties in general and learned counsel for the respondents in particular. Same is the position with respect to findings regarding the delivery charges incurred on birth of respondent No.4, expenses incurred on reception of *barat* and gold ornaments given as part of the dower. In addition, as regards gold

ornaments, the learned Appellate Court below has put forth cogent reasons while observing that the gold ornaments were given as prompt dower and column No.14 of the *Nikahnama* between the parties clearly reflects that the same were paid at the time of solemnization of the *nikah*. Moreover, it is settled principle of law that the gold ornaments are always possessed by females unless snatching is not only alleged but also proved, which is not the position in the instant case. Therefore, respondent No.3 is not entitled to the grant of the gold ornaments. Cases titled “Javed Iqbal v. Additional District Judge Faisalabad and another” [2017 CLC Note 25 (Lahore)] and “Muhammad Saeed v. Additional District Judge and others” [2019 CLC 1008 (Lahore)] are referred in this regard. Adverting to the claim of respondent No.3 that a motorcycle was given at the time of engagement as gift to the petitioner and same also forms part of the dowry articles, needless to mention that any gift given to the groom at the time of engagement, cannot be treated as part of the dowry as the same is not the property of respondent No.3 rather ownership of said motorcycle vests with the petitioner. It is imperative to note that dowry is only such articles that are given at the time of marriage to the bride and not the gifts to the bridegroom at the time of engagement. Therefore, reliance placed by learned counsel for the petitioner on case of *Mirza Arshad Baig supra* is misplaced, on account of distinguishable facts.

9. The learned Appellate Court below, after re-appraising the evidence on record, has maintained findings of facts to the extent of dower, maintenance allowance, motorcycle, expense incurred on birth of respondent No.4 and expenditure on reception of *barat* and has modified the finding to the extent of the entitlement of respondent No.3 to the car given as part of dowry and the same does not merit interference. The Supreme Court of Pakistan in case reported as “Mst. Farah Naz v. Judge Family Court, Sahiwal and others” (PLD 2006 SC 457) has held as under:

“It was none of the business of the High Court in writ jurisdiction to substitute its own findings for the findings

recorded by the court of appeal after due appraisal of evidence. We would, therefore, set aside the judgment of the High Court as well as that of the Family Court decreeing the suit in the sum of Rs.4,00,000 and restore the judgment of the appellate Court accepting the claim of the appellant, as pleaded in the suit.”

10. In view of the above discussion, this Court is of the opinion that learned counsel for the petitioner could not point out any misreading or non-reading of evidence, jurisdictional defect or procedural impropriety in the findings of the learned Courts below in general and the learned Appellate Court below in particular, hence, present petition bearing W.P. No.57778/2022 is **dismissed**. Similarly, the prayer of respondent No.3 in connected petition, except to the extent of alternate value of the car determined by learned Appellate Court below, is also devoid of merits and hence, discarded. However, the connected petition bearing W.P. No.60517/ 2022 filed by the respondents is **disposed of** in the terms that respondent No.3 is entitled to recover market value of the car, from the petitioner, which can be ascertained/determined by the learned Executing Court, by having recourse to appointment of local commission/car dealers and the judgment of the learned Appellate Court below dated 14.07.2022 is accordingly **modified**.

(Anwaar Hussain)
Judge

Approved for reporting

Judge