

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

Writ Petition No. 897-A/2021

Date of hearing :17.10.2022.....

Petitioners (Malik Khursheed) By Mr. Jehangir Elahi,
Advocate.

Respondents (Mst. Tahseen Bibi)
By Riaz Ahmed, Advocate.

FAZAL SUBHAN, J.- By way of this writ under
Article 199 of the Constitution of Islamic Republic
of Pakistan, 1973 (constitution) the petitioner has
prayed for the following; -

*" It is, therefore, humbly
prayed that on acceptance of
this petition, the judgment
and order and decree sheets
passed by both the courts
below may graciously be set-
aside and claim of the
petitioner as per heading of
the written statement and
heading of the appeal
submitted by the petitioner
/defendant may kindly be*

decreed. Or any other relief may kindly be granted by this Honourable court which may deemed fit and proper for the petitioner.”

2. Record reveals that the respondent Mst. Tehseen Bibi instituted a family suit bearing No.181/FC of year 2005 against the present petitioner for a decree of dissolution of marriage, etc, mentioned in the heading of plaint. The petitioner after attendance filed his written statement and denied all the averments made in the plaint and claimed decree for restitution of conjugal rights. Both the parties produced their desired evidence, where-after, the learned trial court/FC through its judgment dated 18.04.2019 granted decree in favour of the respondent as following: -.

- 1). Dissolution of marriage on the basis of Khula.
- 2). Recovery of Iddat period maintenance # Rs.3000/- per month.
- 3). Recovery of maintenance allowance of minors/plaintiffs of suit in Rs.2000/- per month per head from the date of institution of suit in hand i.e 09.12.2015 and on awards till attaining the age of majority of plaintiffs No.2 & 3 and till marriage of plaintiff No.4.
- 4). Visitation rights of petitioner/defendant i.e once in every month in court room as respondent No.2/plaintiff No.1 is duty bound to produce minors/plaintiffs No.2 to 4 in the court for meeting with petitioner/defendant once in every month.

5). Remaining suit is hereby dismissed.

3. Aggrieved from the said judgment and decree, the respondent filed family appeal No.18/FC of 2019, however, his appeal was also dismissed, hence the petitioner filed this writ petition.

4. Arguments of learned counsels for petitioner and learned counsel for respondent heard and record gone through.

5. The main grievance of the petitioner in this petition are, firstly that the respondent No.1 claimed dissolution of marriage on the basis of cruelty but the trial court granted decree of dissolution of marriage on the basis of Khullah, without passing an order for return of Zar-e-Khulah and dismissed other claimed of the respondent No.1 and his claim for restitution of conjugal right, and secondly custody of minors was granted to respondent No.1.

6. Conscious to the fact that while considering the controversy between the parties under the writ

jurisdiction, High Court, in ordinary course, does not enter into the factual aspect of the case, which are normally considered and decided by the Family Courts as well as Appellate Courts, therefore, the question of validity of grant of decrees on the basis of Khullah without the grant of decree for return of dower or Zar-e-Khullah and custody of minors, being a legal questions are only to be considered, here.

7. In the present case, record reveals that parties are in contest since 2015 and pre-post trial reconciliation efforts did not materialized. The controversy of payment or otherwise of dower 16 tolls gold ornaments was dealt with by the learned trial court under issues No.4 & 5 and it was held that dower 16 tolas gold ornaments were paid to her at the time of marriage. The learned Appellate Court, after considering the record and evidence deposed in respect of the payment of dower in the form of 16 tollas gold ornaments arrived to a different conclusion that tough dower 16 tollas was given at the time of marriage but it was taking back by the petitioner. On careful analysis of the record there is left no doubt that golden ornaments were

paid at the time of marriage but it was the consistent stance of respondent No.1 that the same were taken back and sold and to this extent she has not been confronted with a single question nor her said stance has been disproved and thus, findings of the learned Appellate Court that golden ornaments had already been taken back therefore, in the event of decree on the ground of Khullah without directions for return of golden ornaments was patently correct because whatever was given was already retrieved. So far decree for grant of Khullah instead of cruelty is concerned, needless to say that the institution of marriage is a divine command and in the Holy Qur'an, Allah Almighty Speaks of the relationship of spouses in the following words.

*“they are like garments, unto you as
you are like garments unto them.”*
Al-Qur'an Surah 2 187.

This command of Allah can only be achieved and cherished when the relations between husband and wife is based on love, care, trust, sympathy, devotion, sense of responsibility and the like, and without these standards of behavior, a desire for a happy marital union between the spouses cannot be achieved. When the relationship between a

husband and wife has reached to such an extent that putting them in a forcible union would result in transgression of the commands of Allah, then dissolution of marriage on the ground of Khullah can be ordered. Though under the Muslim Family Laws Ordinance, 1961, in the event of dissolution of marriage on the ground of Khullah, wife has to invariably, surrender the dower to the husband received by her at the time of marriage, unless waived by him, however, in the instant case, the Appellate Court has already arrived to the conclusion, in view of the record/evidence, that golden ornaments 16 tola have already been taken back by the petitioner hence, no order for its return in the event of decree for dissolution of marriage on the ground of Khullah was required.

8. So far as the decree of guardianship of the three minors is concerned, the two courts below have properly appreciated the evidence to the effect that the petitioner is an irresponsible and unreliable person and having no independent source of income at the same time, evidence brought on record proves that he was involved in criminal cases and as a result he absconded and remained out of the city for sufficient long time.

As compared to him, the respondent No.1 remained a loyal mother and providing education and other basic necessities to the minors hence at this juncture she is best choice to be granted the custody of minors.

9. For these reasons, as no legal infirmity or irregularity is pointed out in the impugned judgment hence, this writ petition being bereft of merits, is dismissed.

Announced
17.10.2022
Muhammad Tariq SSG

J U D G E