W.P. No. 21501/2012

Kalsoom Bibi etc. Muhammad Irfan etc.

26.02.2015 Mr. Muhammad Irshad Chaudhry, Advocate for the petitioner.
Raja Kamran Khaliq, Advocate for respondent No.1.

Through this constitutional petition, petitioner challenges the vires of judgment and decree dated 24.05.2012 passed by learned Addl. District Judge Chinniot, whereby the decree for the grant of dowry articles or in alternate price of Rs. 1,00,000/- awarded to the petitioner by the learned Judge Family Court, Bhowana was set aside.

2. Brief facts giving rise to the filing of this petition are that at the time of marriage between the petitioner and respondent No.1, dowry articles mentioned in the list were given and during the subsistence of marriage, petitioner No.2 was born. However, thereafter the relationship between the spouses got strained and about a year before filing of suit for recovery of dowry articles and maintenance on 18.03.2011 she was turned out by respondent No.1 while retaining all her dowry articles. On 23.11.2011 a decree was passed by the learned Judge Family Court awarding Rs. 1200/- per month to petitioner

No.1 from the date of institution of suit till she was legally entitled and Rs. 1200/- per month was also awarded to petitioner No.2 with 10% annual increase alongwith maternity charges of Rs. 8000/- and recovery of dowry articles or in alternate their price Rs. 1,00,000/-. However, appeal was filed by respondent No.1 which was allowed as a result of which recovery of dowry articles was set aside while upholding the decree for maintenance allowance, hence this writ petition.

3. Learned Counsel for the petitioner contends that on the basis of overwhelming evidence regarding financial status of respondent No.1 as well as description of dowry articles given in her statement by the petitioner together with the social cultural background of giving dowry as a custom, the petitioner proved the dowry articles.

4. Conversely, learned counsel for respondent No.1 submits that it was a marriage by choice in which dowry articles were not given by the father of the petitioner as he stated in his evidence that entire *Barat* was only served with water. Also submits that order of the learned appellate court is well reasoned and, therefore, does not require any interference.

5. Arguments heard. File perused.

6. In the pleadings, the response to paragraph 7 of the plaint in which dowry articles were statedly brought by the petitioner, the respondent No.1, gave only one liner defence of evasive denial in written statement though stated in paragraph No.2 that she did not bring any dowry articles. To prove her claim, petitioner herself appeared as PW-1 and produced her father as PW-2. Petitioner in her statement gave the details of dowry articles though did not place on record any receipt thereof. However, in his statement father of the petitioner namely, Haqnawaz/PW-2 has categorically stated that he owned a house showing his financial capacity to give dowry. He also stated that on the occasion of marriage of his daughter in the year 2008, about 500 persons attended the marriage function, who were given water. Needless to observe that in such like situation where if marriage was contracted without approval of the father, he would rather prefer to follow entire wishes of his daughter by giving dowry articles to her rather than entertaining the guests. Besides, entertaining the guests with lavish food may not be a custom but giving dowry is. The father being the most natural witness may be somewhat interested but his testimony cannot be ignored in the facts and circumstances of the

present case as he had no enmity with the respondent No.1.

7. On the other hand, in his statement, respondent No.1 while appearing as DW-1 has admitted that petitioner went out of his house 2 months before birth of his son. DW-2, a close friend of respondent No.1 though stated that only 10 persons attended the marriage function who were only served with water, but his said statement appears to be revengeful as he was not entertained by the father of the bride.

8. While scanning the case law cited by the parties in ***MUHAMMAD HABIB versus Mst. SAFIA BIBI and others*** (2008 SCMR 1584), it was held that delivery of dowry articles should also be seen with reference to the nature of the dowry articles whether they are of personal use or otherwise. Applying this principle statement of PW-1 showing the normal useable articles do not appear to be exaggerated. In ***M. JAFFAR versus ADDITIONAL DISTRICT JUDGE and others*** (2005 MLD 1069) it was held that in a normal marriage where the guests are entertained, the dowry articles are shifted at the time of Rukhsati.

9. In view of the above, it is held that learned appellate court has incorrectly reversed the findings on issue No.3 that no list of dowry articles was produced. Ex-P1 is

the dowry list and the receipt of dowry articles is not essential to prove the delivery of dowry articles as in rural societies such receipts are rarely retained at the time of marriage. No bride or her parents ever think of her desertion so as to plan a pre-emptive defence, otherwise considered as a bad omen.

10. In this view of the matter, the findings of the learned appellate court is reversed as a result of which suit for recovery of dowry articles stands decreed to the extent of dowry articles or in alternate their price Rs. 1,00,000/- while upholding the findings of learned Judge Family Court.

(ALI BAQAR NAJAFI)
JUDGE
Special Bench Family-I

Shahzad

Approved for reporting.

JUDGE