

2023 C L C 143

[Balochistan]

Before Muhammad Kamran Khan Mulakhail and Shaukat Ali Rakhshani, JJ

BEHZAD HUSSAIN----Petitioner

Versus

Bibi ANSA and 2 others----Respondents

Constitution Petition No.1183 of 2022, decided on 3rd August, 2022.

(a) Family Courts Act (XXXV of 1964)---

---S.5, Sched.---Suit for recovery of dowry articles---Scope---Petitioner assailed judgments and decrees passed by courts below whereby respondent's suit for recovery of dowry articles and maintenance was allowed---Validity---Fact that dowry articles were brought by respondent with her at the house of petitioner had been proved---Gold (Jewellery) receipts were produced and exhibited through representative of the jeweler's shop---Objection that gold receipts pertained to the date before the solemnization of the marriage was not worthy of credit as it was normal practice that often the parents purchased gold ornaments for their children early for upcoming marriage---Respondent had successfully proved the claim, entitling her for the relief sought pursuant to maintenance and dowry articles as concluded by the Family Judge, endorsed by the appellate court as well---Constitutional petition was dismissed.

(b) Constitution of Pakistan---

---Art.199---Constitutional jurisdiction---Writ of certiorari---Scope---While adjudicating a constitutional petition of writ of certiorari, High Court shall exercise jurisdiction sparingly and seldom, particularly, when there are concurrent findings of facts rendered by the subordinate courts in original jurisdiction as well as exercising appellate jurisdiction.

(c) Constitution of Pakistan---

---Art.199---Constitutional jurisdiction---Findings of fact---Scope---Constitutional jurisdiction is an extraordinary jurisdiction, thus, High Court can neither substitute the evidence recorded by the trial court nor can render opinion regarding quality and advocacy of the evidence as appraisal of the evidence is the task of the trial court, however, the appellate court may see and do reappraisal of the evidence, if the evidence is grossly mis-read, found to be inconsistent with the testimony of the other witnesses or the evidence is found to be shocking and contrary to the pleadings---If the trial and appellate courts after thrashing the factual controversy arrive at the conclusion, then the high Courts are always reluctant to interfere while exercising jurisdiction under Art.199 of the Constitution, unless compelling

reasons are shown, such as mis-reading and non-reading of the evidence visible on record.

Haji Wajdad v. Provincial Government 2020 SCMR 2046 rel.

(d) Family Courts Act (XXXV of 1964)---

---S.17---Provisions of Qanun-e-Shahadat, 1984 and Code of Civil Procedure, 1908 not to apply---Scope---Bare reading of S.17 of the Family Courts Act, 1964, clearly heralds the bar contained under Qanun-e-Shahadat, 1984, in stircto sensu as the spirit and design of the Family Courts Act, 1964, is to expeditiously settle and dispose of the family disputes and redress the grievances of the spouse swiftly, avoiding unnecessary technicalities impeding the course of justice.

Shafiq Sultan v. Asma Firdous and others 2017 SCMR 393 rel.

Ajmal Khan Kakar for Petitioner.

Date of hearing: 28th July, 2022.

ORDER

SHAUKAT ALI RAKHSHANI, J.----Behzad Hussain, petitioner has preferred the titled constitutional petition to overturn the judgment and decree dated 24th December 2001 drawn by Family Judge-I, Quetta ("Family Judge") as well as judgment and decree dated 12th May 2020 authored by Additional District Judge-X, Quetta ("Appellate Judge"), pursuant to a suit for recovery of dower articles and maintenance to the tune of Rs.20,000/- per month since marriage till Iddat period.

2. Bibi Ansa, respondent filed a suit for recovery of dowry articles and maintenance before the learned Family Judge, narrating therein that on 26th January 2016 she got married with Behzad Hussain, the petitioner; her parents gave dowry articles comprising of jewelry, crockery and other household articles; after the wedlock two twin sons, Ruhaab and Gulfam were born on 19th October 2016 whereas their son Yawar was born on 17th September 2017 after separation of the spouse; initially, both the spouse lived cordially at Quetta but when they shifted to Lahore and started residing with the family of the petitioner, the relation between the spouse became strained day by day; allegedly according to respondent she was mentally and physically tortured besides not being provided maintenance, thus, the respondent was turned out of the house on 3rd day of Ramadan 2018 in wearing apparels after beating her and withholding the custody of the minor twins; on 28th July 2018 through a written divorce the tie between the spouse unfortunately ended.

Conversely, the petitioner put in his written statement, vehemently contesting the facts narrated by the respondent; he disputed the receipts of the dowry articles for being tampered dated before solemnization of the marriage and urged that father of the respondent could not purchase gold ornaments worth of Rs.9,15,600/- as he was jobless; he denied agonizing the respondent and stated that he has maintained the respondent very well

throughout and blamed her for being cause of their separation and maintained that on her request, the petitioner has divorced her; more-so the custody of the twins were retained with her consent.

3. Diverging pleadings of the parties, culminating in casting following issues, which are reproduced hereunder;

- "1. Whether the plaintiff is entitled to receive the past maintenance allowance and onward till Iddat period from defendant? If yes, at what rate? (OPP)
2. Whether the dowry articles and gold ornaments were provided to plaintiff as per her list? If yes, whether same are lying in possession of defendant? (OPP)
3. Whether the plaintiff is entitled to the relief claimed for?
4. Relief?

4. Respondent (plaintiff) produced four (04) PWs and got recorded her statement, whereas on the other hand, the petitioner (defendant) produced three (03) DWs as well as stepped into the witnesses box as witness in his defence, following the judgments and decrees impugned herein by both fora.

5. Learned counsel for the petitioner inter alia made submission that both the courts below have misread the evidence and have failed to appreciate the testimonies of the witnesses in its true perspective. He vehemently disputed the dowry receipts for being tempered; he vigorously argued that the dowry receipts are dated long before solemnization of the marriage, which fact alone suggests that the same are not genuine but both the courts below have not considered such aspect of the matter, making the judgments and decrees impugned herein a nullity within the spectrum of law. He maintained that although the respondent has failed to perform her matrimonial obligation, but even then he had maintained her and paid an amount exceeding her claim of maintenance, but both the courts below have not appreciated such fact, thus, seeks to set aside both the impugned judgments and decrees herein.

6. Adversarial parties have been heard and record vetted thoroughly.

7. Aware of the legal proposition, while adjudicating a constitutional petition of writ of certiorari, this Court shall exercise jurisdiction sparingly and seldom, particularly, when there are concurrent finding of facts rendered by the subordinate courts in original jurisdiction as well as, exercising appellate jurisdiction. We are also cognizant of the rule expounded by the apex Court and followed by the Hon'ble High Courts time and again by means of various judgments that the constitutional jurisdiction is an extraordinary jurisdiction, thus, this Court can neither substitute the evidence recoded by the trial Court nor can render opinion regarding quality and advocacy of the evidence as appraisal of the evidence is the task of the trial Court, however, the appellate Court may see and do reappraisal of the evidence, if the evidence is grossly mis-read, found to be inconsistent with the testimony of the other witnesses or the evidence is found to be shocking and contrary to the pleadings. More-so, if the trial and appellate Court after thrashing the factual controversy

arrive at the conclusion, then the High Courts are always reluctant to interfere while exercising jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, unless compelling reasons are shown, such as mis-reading and non-reading of the evidence visible on record and impugned judgments. Rule of law lay in case of "Haji Wajdad v. Provincial Government", (2020 SCMR 2046) is helpful for reference.

8. Emphasis has largely been made by learned counsel for the petitioner that the respondent has failed to prove the factum of dowry, verbally and otherwise; the purported receipts of the list of dowry articles is tempered and has also not been established through tangible evidence. We have scanned the evidence on record, which transpires that the fact that the dowry articles were brought by the respondent with her at the house of petitioner has been proved. Statement of Abdul Wahab (PW-1) affirmed the correctness of list of dowry articles besides reiterating the contentions made in the plaint. Although, he was cross-examined but nothing fruitful could be extracted in favour of the petitioner. Similarly, the testimony of PW-2 Muhammad Saleem, uncle of the respondent is also worth of consideration as he has remained firm and consistent to his deposition contained in the affidavit and during lengthy cross-examination, his statement was not shattered at all. He supported the claim of the respondent with regard to the dowry articles taken by respondent at the time of Rukhsati to the house of petitioner. His statement with regard to maltreatment by the petitioner and expelling her from his house has been found to be confidence inspiring. The respondent brought on record the gold receipts of Singaar Jewelers, which were produced and exhibited through Faisal Mehmood (PW-3) representative of the said jeweler's shop as Ex.P/3- A to Ex.P/3-E; despite being cross-examined from various angles to disprove the questioned gold receipts, but he miserably failed as the said witness remained firm enough, rebutting the suggestions made by the learned opposite counsel. Muhammad Aslam (PW-4) produced receipt dated 23rd December 2015 issued on the letter pad of his shop titled as "Zia Refrigeration and Air-condition" which was tendered by him in court. He was cross-examined but nothing favourable could be extracted in favour of the petitioner.

9. Per the burden of proof of issue No.2 was upon the respondent which she has undoubtedly discharged by producing aforesaid witnesses and receipts. Respondent testified in line with her pleadings, suffering from no infirmity at all, while on the other hand, the testimony of the petitioner as well as his witnesses Jan Muhammad (DW-1) Abdul Latif (DW-2) and Syed Ahmed Aftab (DW-3) neither have been found by us to be consistent nor confidence inspiring.

10. Admissibility of receipts was questioned by the petitioner on manifold counts. Firstly, that the gold receipts pertain to the date before the solemnization of the marriage, which objection seems to be not worthy of credit as it is normal practice that often the parents purchase gold ornaments for their children for early for upcoming marriage. Secondly, the petitioner objected that on a gold receipt the name of father of the respondent was rewritten, which objection too has no substance as the representative of Singaar Jewelers (PW-3) has rebutted such assertion made by learned counsel for the petitioner and offered plausible explanation. Last but not the least, the admissibility of receipts was brought under challenge as the same had not been produced, exhibited and proved as per the Qanun-e-Shahadat Order, 1984 ("Order of 1984"). Conscious of the conditions to prove a document as enunciated

under the Order of 1984, we may observe that the provisions of law *ibid* are not *stricto sensu* applicable in the instant case. For ease of understanding section 17 of the West Family Courts Act, 1964 ("Act of 1964") is reproduced herein below;

"S. 17. Provisions of Evidence Act and Code of Civil Procedure not to apply. (1) Save as otherwise expressly provided by or under this Act, the provisions of the Qanun-e-Shahadat, 1984 (P.O. No.10 of 1984) and the Code of Civil Procedure, 1908 [except Sections 10 and 11] shall not apply to proceedings before any Family Court, [in respect of part i of Schedule].

(2) Sections 8 to 11 of the Oaths Act, 1873, shall apply to all proceedings before the Family Courts."

Bare reading of section 17 *ibid*, clearly heralds the bar contained under Order of 1984 in *stricto sensu* as the spirit and design of the Act of 1964 is to expeditiously settle and dispose of the family disputes and redress the grievances of the spouse swiftly, avoiding unnecessary technicalities impeding the course of justice. Fortified by the ratio expounded in the case of "Shafiq Sultan v. Asma Firdous and others", (2017 SCMR 393), the excerption of relevant portion of para-6 of the reported order *ibid* is reproduced herein under;

"6....Even otherwise, the provisions of Qanun-e-Shahadat Order, 1984 are not *stricto sensu* applicable to family matters. As such, the argument of learned counsel for the petitioner regarding proof of receipts and the effects of non-production of authors of such receipts, in the specific facts and circumstances of the present case is misconceived. "

11. As far as beating the respondent on the fateful day and expelling her by her husband in wearing apparels is concerned, the petitioner has vigorously denied such assertions. According to him, the petitioner on the pretext of marriage ceremony of his sister went to Quetta, whereof the fare of airline was also arranged by him and that later on the respondent refused to join him and ask for divorce, as such, being disobedient wife, the respondent cannot claim maintenance. The claim of maintenance @ Rs.20,000/- was albeit not acceded thereto, however, the learned trial Judge allowed maintenance @ Rs.10,000/- per month since 21st May 2018 up till expiry of her Iddat period, which decision was though assailed before the appellate Court, but it met the same fate after a thorough analysis and scrutiny of the evidence.

12. In wake of the above discussion, we are of the considered opinion that the respondent had been successful to prove the claim, entitling her for the relief sought pursuant to maintenance and dowry articles as concluded by the learned Family Judge, endorsed by the appellate Court as well.

Thus, we have failed to find out any infirmity, perversity, illegality, misreading and non-reading of the evidence by both the courts, therefore, we are reluctant to interfere and upset the concurrent findings arrived at by both the fora.

Petition being bereft of merits stands dismissed in limine.

SA/156/Bal.

Petition dismissed.