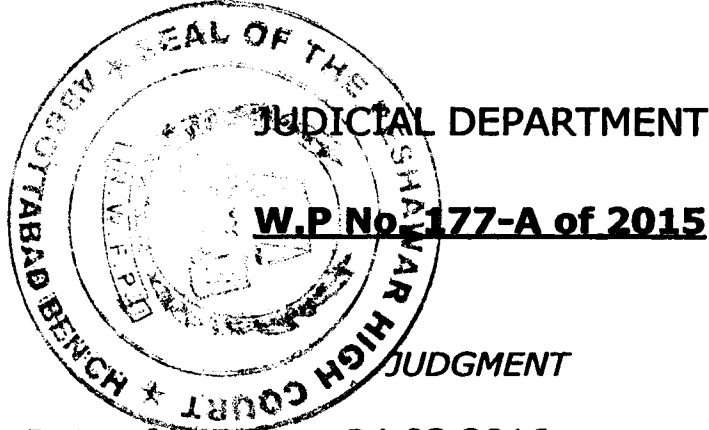


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JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.



Date of hearing 24.02.2016

Appellant(s)/Petitioner (s) Muhammad Zaheer by
Sardar Muhammad Ashfaq,
Advocate

Respondent (s) Saima Bibi by Sardar Muhammad Mushtaq.

QALANDAR ALI KHAN, J:- The instant writ
petition by Muhammad Zaheer, petitioner, is
directed against the judgment and decree of the
learned Judge Family Court-I, Mansehra, dated
21.02.2013, whereby, decree for (i) dissolution
of marriage (ii) recovery of maintenance
allowance at the rate of Rs.800/- per month
since 11.05.2010 and onwards till decision of
suit (iii) recovery of dower of Rs.200000/- and
(iv) recovery of dowry articles as per list
annexed with the plaint (EXPW3/2), was
granted in favour of the plaintiff/wife, Mst
Saima Bibi, against the

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petitioner/defendant/husband. The learned Judge Family Court dismissed suit of the plaintiff/wife with regard to alternate market value of dowry articles, and plea of defendant/petitioner for restitution of conjugal rights, recovery of cash amount of Rs.50,000/-, gold ornaments weighing seven tola, fifteen suits, ten pairs of shoes and bridal gifts. In his writ petition, the petitioner/husband also assailed judgment and decree of the learned appellate Court/ADJ-V, Mansehra, dated 04.02.2015, whereby the judgment and decree of the learned Judge Family Court dated 21.02.2013 was upheld with the exception of gold ornaments mentioned at Sr. No.27 of the dowry articles, which was excluded from the list and to that extent the appeal was accepted while rest of the appeal was dismissed.

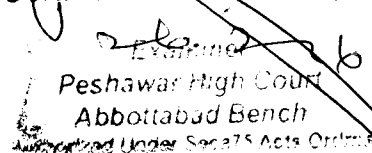
2. Plaintiff/respondent No.1 had lodged suit against the defendant/petitioner for (a) dissolution of marriage (b) recovery of Rs.120,000/- on account of maintenance allowance at the rate of Rs.5000/- per month from 11.05.2010 till decision of the suit (c)

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recovery of Rs.200000/- on account of dower (d) recovery of dowry articles according to the list of dowry articles annexed with the plaint or in the alternative for recovery of price of the dowry articles amounting to Rs.200000/-. In her plaint, the plaintiff/respondent No.1 averred that her 'Nikah' with defendant/petitioner was solemnized in lieu of dower amounting to Rs.200000/-on 01.08.2008, where-after they lived together as husband and wife and during that period a child namely Abdul Waez was born out of the wedlock who was aged about 3 years at the time of lodging of the suit and was in the custody of the defendant/petitioner. The plaintiff/respondent No.1 alleged cruel behaviour on the part of defendant/petitioner during this period, and her ouster from his house by the defendant/petitioner on 11.05.2010 after snatching the child from her, forcing her to take refuge in the house of her parents, without being provided maintenance allowance and to meet the minor child.

3. In his written statement, the defendant/petitioner resisted the suit by

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alleging that the plaintiff/respondent No.1 was a self deserted woman and that she had left his house on her own while taking along with her seven tola gold ornaments and cash amount of Rs.50,000/-, besides fifteen pairs of garments and ten pairs of shoes and other gifts for her parents, sister and brothers, which were liable to be returned to him in case of dissolution of marriage on the basis of *khula*. The defendant/petitioner prayed for restitution of conjugal rights while disputing claim of the plaintiff/respondent No.1 for dowry articles and maintenance allowance. He further contended that though Rs.200000/- was fixed as dower but seven tola gold ornaments were given to the plaintiff/respondent No.1 in lieu of her dower. He questioned other facts relating to his cruel behaviour, ouster of the plaintiff/respondent No.1 from his house or snatching the child or other valuables from her. He, on the other hand, claimed that the plaintiff/respondent No.1 left his house after she received a 'telephonic message' about 'serious illness' of her mother and admission in

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 Abbottabad Bench
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the ICU ward of Ayub Medical Complex Abbottabad, which later turned out to be a false information and thus proved to be a pretext on the part of the plaintiff/respondent No.2 to leave his house, as even subsequently she made false excuses to stay away from him. According to the petitioner, several attempts were made through *jirga* for bringing respondent No.1 back, but his efforts proved unsuccessful due to her intransigence.

4. The learned trial Court/Judge Family Court-II, Mansehra, reduced pleadings of the parties to as many as 11 issues; and recorded evidence of the parties in support of their respective pleas. After failure of efforts for pre- and post trial reconciliation, and hearing arguments of learned counsel for the parties, the learned Judge Family Court-I, Mansehra, passed the impugned judgment and decree dated 21.02.2013 which was, initially, impugned by the petitioner/husband before the learned appellate Court/District Judge Mansehra, and after disposal of the appeal by the learned appellate Court/ADJ-V, Mansehra,

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vide judgment and decree dated 04.02.2015, the petitioner/husband filed this writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, against both the aforementioned judgments and decrees of both the lower forums.

5. Arguments of learned counsel for the parties heard, and record perused.

6. At the outset, the learned counsel for the petitioner stated that he would not press the writ petition against recovery of maintenance allowance and recovery of dowry articles, and would confine his case only to the extent of dissolution of marriage and recovery of dower of Rs.200000/-. The learned counsel urged that respondent No.1 was a self deserted wife who refused to reunite with the petitioner despite his repeated efforts through *jirga*. The learned counsel claimed that there was no proof of cruelty on the part of the petitioner.

However, according to the learned counsel, if respondent No.1 was adamant not to reunite with her husband, the petitioner, that was possible only through dissolution of marriage on

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the basis of *khula* and in that case she was to return the benefits she had received from the petitioner/husband. The learned counsel for the petitioner further stressed that in lieu of dower of Rs.200000/-, respondent No.1/wife had received seven tola gold ornaments, which were brought along with her by respondent No.1 at the time of voluntarily and with her sweet will leaving the house of the petitioner/husband.

7. As regards decree for dissolution of marriage in favour of respondent No.1 against the petitioner, the latter preferred appeal against the judgment and decree in this behalf by the learned Judge Family Court-I Mansehra dated 21.02.2013, which was dismissed to the extent of dissolution of marriage by the learned appellate Court/ADJ-V Mansehra vide impugned order dated 04.02.2015, on the ground of non-maintainability of appeal against a decree for dissolution of marriage, except in the case of dissolution for reasons specified in clause (d) of item (viii) of Section 2 of Dissolution of Muslim Marriages Act, 1939, that is, if the husband treats the wife with cruelty i.e disposes of her

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property or prevent her exercising her legal right over it. In the opinion of the learned appellate Court, the learned Judge Family Court had not dissolved the marriage on the ground mentioned in clause (d) of item (viii) of Section 2 of Dissolution of Muslim Marriages Act 1939, therefore, in view of the bar contained in Section 14 (2) of West Pakistan Family Court Act, 1964, the appeal was incompetent to the extent of dissolution of marriage. In other words, the appeal was held not maintainable vide order of the learned ADJ-V Mansehra dated 04.02.2015, however, the petitioner could neither show any illegality or legal infirmity in the impugned order of learned ADJ-V, Mansehra, nor had filed writ petition in time against the judgment and decree for dissolution of marriage by the Judge Family Court-I Mansehra dated 21.02.2013. Even otherwise, on appraisal of evidence, the learned Judge Family Court arrived at the conclusion that not meeting the only condition of bringing the minor child from Karachi for meeting with the mother by the petitioner/defendant showed his

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lack of interest in '*abadi*', and further that non payment of dower was also sufficient ground for dissolution of marriage. It was further held by the learned Judge Family Court that the plaint as well as evidence of the plaintiff/respondent No.1 showed her extreme aversion to live with the defendant/petitioner, therefore, she could not be compelled to live in hateful union with the defendant/petitioner and that if she was forced to live with the defendant/petitioner then she might transgress the limits ordained by the Allah Almighty. While seeing no ray of hope of reunion between the parties, their separation was found inevitable by the learned Judge Family Court. Nothing was shown on record against the findings in this respect of the learned Judge Family Court, also affirmed to the extent of facts narrated in the case, by the learned appellate Court/ADJ-V, Mansehra, vide impugned judgment and decree dated 04.02.2015. In short, the concurrent findings on facts in the case are not open to exception in the writ jurisdiction of this Court,

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especially when payment of dower was also not proved on record by the petitioner/husband.

8. The parties entered into matrimonial bond on the basis of *Nikah Nama* (EXPW3/1), showing fixation of Rs.200000/- as dower, which was still unpaid. There is no dispute with regard to the fixation of dower at Rs.200000/- and also the fact that Rs.200000/-fixed as dower has not been paid by the petitioner/husband to respondent No.1/wife so far. The petitioner alleged that in lieu of dower, seven 'tola' gold ornaments were given to respondent No.1/wife in the year 2008 and afterwards in two installments of six tola and one tola, respectively; but there is nothing on record that seven 'tola' gold ornaments, even if given to respondent No.1/wife, were in lieu of dower. The onus of payment of dower was, obviously, on the petitioner/husband, but he could neither adduce evidence to prove payment of dower in the shape of seven 'tola' gold ornaments to respondent No.1/wife or acceptance of the gold ornaments in lieu of dower by respondent No.1/wife. Therefore,

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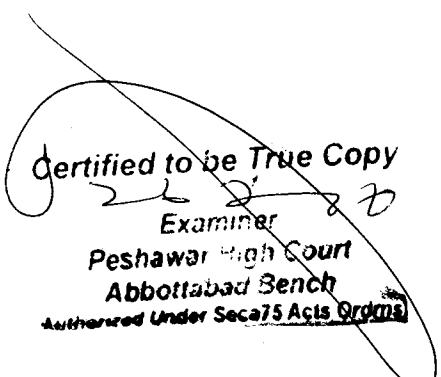
findings of both the Courts below in this respect are based on proper evaluation of evidence adduced by the parties in the Court.

9. No other point was urged on behalf of either of the parties, therefore, the writ petition against the judgments and decrees of both the learned Judge Family Court and that of learned appellate Court are found based on proper appreciation of facts of the case, evidence available on record and the law applicable thereto; hence the writ petition is dismissed.

Announced:
24.02.2016


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