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Judgment Sheet

IN THE LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
(JUDICIAL DEPARTMENT)

Writ Petition No.2889 of 2020

Mst. Shamim Akhtar
Versus
Additional District Judge Rawalpindi & others.

JUDGMENT

Date of Hearing	23.10.2024
For Petitioner	Ch. Muhammad Mobeen Shazaib, Advocate.
For Respondent	Mr. Asif Raza Bhatti, Advocate.

SHAKIL AHMAD, J. Titled petition is being decided along with Writ Petition No.2478 of 2020 through this consolidated judgment as judgments and decrees dated 14.09.2020 and 12.10.2020 passed by learned Judge Family Court and Additional District Judge Rawalpindi, respectively, are under challenge in these petitions by the same parties.

2. For the facility of ready reference, hereinafter Mst. Shamim Akhtar will be referred to as **'petitioner'** and Farooq Azam will be referred to as **'respondent'**.

3. Facts of the case, in brief, giving rise to the filing of these petitions are that petitioner instituted a suit against the respondent seeking decree for recovery of maintenance allowance, Rs.300,000/- as stipulated in the *Nikah nama* and four *tolas* gold ornaments. The respondent contested the suit by filing written statement. After framing of issues and recording of evidence of the parties, the Judge Family Court, Rawalpindi proceeded to decree the suit in the following terms:-

> *"1. The plaintiff is entitled to get Rs.20,000/- per month w.e.f. the date of desertion i.e. 16.12.2017 till expiry of her iddat period i.e. 15.05.2018.*
> *2. The plaintiff is entitled to recover Rs.03 lac from the defendant as per column No.18 of Nikahnama.*
> *3. The claim of plaintiff for recovery of gold ornaments is dismissed".*

Both the parties assailed the judgment and decree of the trial court by filing separate appeals and Additional District Judge Rawalpindi, vide judgment and decree dated 12.10.2020 decided both the appeals as under:-

> *"The sequel of above discussion is that, appeal filed by Mst. Shamim Akhtar is partly allowed in the manner that she is held entitled to recover the gold ornaments weighing 4 tolas, whereas, the rival appeal of Farooq Azam is partly allowed in terms that Mst. Shamim Akhtar is allowed to recover Rs.60,000/- for the period of iddat only and further she is not entitled to recover Rs.300,000/- from the respondent (defendant) as dower. ..."*

Being dissatisfied, both the parties have filed instant petitions.

4. Heard learned counsel for the parties and record so annexed with the petitions perused.

5. Learned counsel for petitioner and the respondent are only objecting to the decrees of courts below qua dower and gold ornaments, respectively.

6. As regards petitioner's claim qua recovery of Rs.3,00,000/- as stipulated in the *Nikah nama*, it may be observed that petitioner averred in the plaint that she got married to the respondent in lieu of dower of Rs.10,000/-. She further claimed that it was also agreed that an amount of Rs.300,000/- will be given to the petitioner in case respondent pronounces divorce on petitioner or he contracts second marriage and that respondent has contracted marriage with one Sania Nazar on 17.02.2018 and also divorced the petitioner, therefore, she is entitled to recover Rs.300,000/-. The respondent, in his written statement did not deny specifically qua fixation of Rs.300,000/-, however, asserted that all the dower has been paid and he divorced petitioner upon her asking. Before dilating upon the proposition, it seems apt to reproduce hereunder the stipulation as hinted against columns No.18 to 22 of Nikah Nama: -

طلاق کی صورت میں3 لاکھ روپیہ، ناراضگی کی صورت میں 20 ہزار ماہوار خرچ، دوسری شادی کی صورت میں بھی یہی شرائط، سارا زیور دونوں طرف سے عورت کا ہو

گایہ شرائط اس وقت ہونگی جب غلطی دولہا والوں کی طرف سے ہو گی۔

From the bare perusal of above, it transpires that both the parties agreed upon the stipulation qua payment of Rs.300,000/- in the events of pronouncing divorce upon petitioner and contracting second marriage by the respondent. Narration given in Nikah Nama qua the amount can legitimately be counted as deferred dower that was to become payable on happening of any of the events so mentioned therein. In the instant case since respondent has contracted second marriage and also divorced the petitioner, therefore, the petitioner was entitled to the decree for the dower to the tune of Rs.300,000/-. Needless to observe that the stipulation agreed upon between the parties qua payment of certain amount by respondent to the petitioner on the event of divorce or contracting second marriage, in no way curtails the right of husband to pronounce divorce. Any stipulation or condition agreed between the parties mutually and with their free consent cannot be considered as an absolute bar to either pronounce divorce. In case *"Ghulam Shabbir v. Mst. Abbas Bibi and others"* **(2022 CLC 963)** the moot point, whether any condition incorporated in the Nikah Nama qua payment of compensation to wife in case of divorce was contrary to the law and Islamic injunctions or not, was taken up and resolved in the following terms:

> *"3……. The vires and constitutionality of the Muslim Family Law, Ordinance, 1961 and schedule thereto, which included to Nikah Nama, were variously subjected to challenge successfully. Clause 19 forms part of Nikah Nama - Form-II, added in terms of Rules 8, 10, 11 and 12 of the W.P. Rules under the Muslims Family Law Ordinance, 1961.*
>
> *4. Clause 19 of Nikah Nama in this case is grossly misconstrued. The financial benefits agreed mutually are in the nature of reasonable financial support for setting her free. There is no cavil that terms of Nikah Nama constitutes a civil contract between the parties, both of which are at liberty to agree to the terms of arrangement. Clause-19, as available in Nikah Nama, is not in the nature of absolute bar qua right to divorce. It is not disputed that petitioner had divorced the wife - which*

> *manifest that no bar to divorce was imposed.*
>
> *5. As far as contractual obligation in column 19 is concerned, it was agreed and factum of Nikah Nama is not disputed. The amount agreed in terms of clause-19 of Nikah Nama is spousal support - having all the attributes of alimony - wherein reasonable benefits were offered to enable ex-wife to have dignified and comfortable life. There is no restriction that husband cannot agree to arrange for maintenance or agree to extend fiscal advantage to the wife, even after the divorce. This nature of the benefit / advantage, which is not in any manner is restricting right of divorce, is in fact an act of bestowing benefit or gift upon wife to support her, hence, cannot be termed as illegal or contrary to the spirit of ISLAM and teachings of Quran."*

7. It may further be observed that there exists no categorization of the dower either in the Holy Quran or Sunnah[1]. Any amount/property agreed to be paid by the husband to wife on the happening of some future event, by all intents and purposes be construed as a deferred dower to be paid by the husband on the happening of such event. While discussing the scope and nature of prompt and deferred dower, Syed Ameer Ali, a prominent jurist of his age, in his celebrated compilation Mohammedan Law (Volume II) that was published in 1965 by All Pakistan Legal Decisions, Lahore while defining prompt and the deferred dower observed as under: -

> *"**Prompt and deferred dower.***
>
> *As there is nothing in the Koran or in the traditions tending to show that the integral payment of the dower prior to consummation is obligatory in law, the later jurisconsults have held that a portion of the mahr should be considered payable at once or on demand, and the remainder on the dissolution of the contract, whether by divorce or the death of either of the parties. The portion which is payable immediately is called the mahr-i-mu'ajjal, "prompt" or "exigible"; and a wife can refuse to enter the conjugal*

[1] "*Dr. Sabira Sultana v. Maqsood Sulari, Additional District and Sessions Judge, Rawalpindi and 2 others"* **(2000 CLC 1384)**

> *domicile until the payment of the prompt portion of the dower. The other portion is called mahr-i-muwajjal "deferred dower" which does not become due until the dissolution of the contract. It is customary in India to fix half the dower as prompt and the remaining moiety as deferred or "postponed:" but the parties are entitled to make any other stipulation they choose. For example, they may allow the whole amount to remain unpaid until the death of either of the husband or the wife. Generally speaking, among the Musulmans of India, the deferred dower is a penal sum, which is allowed to remain unpaid with the object of compelling the husband to fulfill the terms of the marriage-contract in their entirety."*
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> (Underlining is to supply emphasis).

So, any penal sum that has to be paid by the husband on the event of some future happenings as agreed by him although penal in nature yet same may be considered as deferred dower in view of exposition given by late Syed Ameer Ali. Faiz Badruddin Tyabji in paragraph No. 98 of his famous work 'Muhammadan Law'[2], defined the terms prompt and deferred dower in the following words:

> *"Mahr may be (a) either prompt, or exigible (in Arabic mu'ajjal) i.e., payable immediately on marriage if demanded by the wife or (b) deferred (in Arabic muwajjal) i.e., payable on the dissolution of marriage, or the happening of some specified event".*
>
> *(emphasis supplied)*

In view of above, it can very conveniently be resolved that where no specific or definite period is settled for the payment of deferred dower, wife would become entitled to dower at the event of dissolution of marriage or on the death of any of the spouses. If any sum or property is agreed to be paid or given to the wife on the happening of some specified event, the same would become payable on the occurrence of that specified event as a deferred dower. In the

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[2] third edition published by N.M. Tripathi & Co., Bombay 1940

instant case, there was a specific stipulation in the Nikah Nama that in case of divorcing the petitioner or contracting second marriage by the respondent, the respondent would pay an amount to the tune of Rs.300,000/- to the petitioner. Undeniably, respondent has divorced the petitioner, therefore, petitioner was entitled to recover an amount to the tune of Rs.300,000/-as stipulated in Nikah Nama by construing the same as a deferred dower. Respondent simply failed to substantiate his stance as taken in his written statement qua pronouncing of divorce upon petitioner on her insistence. Learned Judge Family Court rightly resolved the issue qua entitlement of respondent for receiving Rs.3,00,000/-, whereas learned Appellate Court fell in obvious error disentitling petitioner to recover Rs.3,00,000/-.

8. Adverting to respondent's claim qua gold ornaments, it may be observed that petitioner in paragraph No.5 of the plaint claimed that "*on 16.12.2017, the defendant after giving severe beatings to the plaintiff ousted the plaintiff in wearing apparels and snatched the gold ornaments*". Respondent controverted petitioner's stance with the assertion that on the day of alleged snatching, he was abroad. The petitioner during cross-examination negated her version and stated that on 16.12.2017 the defendant was abroad. The relevant portion of cross-examination of the petitioner is reproduced hereunder for the facility of ready reference:-

یہ درست ہے کہ مورخہ 16.12.2017 کو مدعا علیہ پاکستان میں موجود نہ تھا۔

From the above deposition, it can very conveniently be observed that petitioner failed to substantiate her claim that the respondent snatched gold ornaments from her. Learned Judge Family Court, thus, rightly proceeded to non-suit petitioner qua her claim of gold ornaments.

9. In view of above discussion, it can very conveniently be observed that the appellate court fell in obvious error while passing

the impugned judgment and decree. In this backdrop, instant case and the connected case are the fit cases for interfering in the impugned judgment and decree of the appellate court in view of the guidelines given in Mst. Tayyeba Ambareen's[3] case by invoking the provisions of Article 199 of the Constitution.

10 The upshot of above discussion is that both the petitions are partly allowed and the judgment and decree dated 12.10.2020 passed by the Additional District Judge, Rawalpindi to the extent of entitling petitioner to recover four tolas gold ornaments and declining petitioner's claim to recover Rs.300,000/- from the respondent, is set aside and judgment and decree of the trial court dated 14.09.2020 is restored, whereby petitioner was non-suited qua her claim of gold ornaments and was held entitled to receive Rs.3,00,000/- as stipulated in *Nikahnama*.

(SHAKIL AHMAD)
JUDGE

*M.Sajid**

Approved for reporting

Judge

[3] Mst. Tayyeba Ambareen and another v. Shafqat Ali Kiyani and another (2023 SCMR 426).