

**IN THE LAHORE HIGH COURT, MULTAN BENCH  
MULTAN  
JUDICIAL DEPARTMENT**

**Writ Petition No.1802 of 2019**

**Muhammad Sajjad  
Versus  
ADJ etc.**

**JUDGMENT**

<b>Date of Hearing:-</b>	08.02.2021.
<b>Petitioners by:-</b>	Malik Javed Akhtar Wains, Advocate
<b>Respondents by:-</b>	Jam Ghulam Asghar, Advocate for respondent No.3.

**CH. MUHAMMAD IQBAL, J:-**Through this writ petition, the petitioner has challenged the validity of consolidated judgment & decree dated 20.10.2017 only to the extent of dower passed by the learned Judge Family Court, Jalalpur Pirwala and consolidated judgment & decree dated 05.05.2018 passed by the learned Addl. District Judge, Jalalpur Pirwala who partly accepted the appeal of respondent No.3 and dismissed the appeal of the petitioner.

2. Brief facts of the case are that respondent No.3 / plaintiff contracted marriage with the petitioner / defendant on 07.02.2016. Respondent No.3 filed three suits for recovery of maintenance allowance and dowry articles valuing Rs.5,52,000/-, dower weighing 05-Tola gold ornaments and 05-Marlas constructed house as well as recovery of Rs.5,00,000/- against the petitioner in which the

petitioner appeared and filed contesting written statement as well as also filed suit for restitution of conjugal rights. As many as 9 issues were framed which are as under:-

1. Whether the plaintiff is entitled for recovery of maintenance allowance from the defendant as prayed for, if so, on what grounds? OPP
2. Whether the plaintiff is entitled for recovery of dowry articles as prayed for from the defendant, if so, on what grounds? OPP
3. Whether the plaintiff is entitled to recover dower from the defendant as prayed for, if so, on what grounds? OPP
4. Whether the plaintiff is entitled to recover Rs.5,00,000/- from the defendant because of defendant's second marriage without permission of plaintiff? OPP
5. Whether the suits of the plaintiff are false, frivolous, and concocted, the same are liable to be dismissed? OPD
6. Whether the plaintiff has not come to the court with clean hands and estopped by her words and conduct, if so, on what grounds? OPD
7. Whether the plaintiff has filed suits just to harass and blackmail the defendant, if so, on what grounds? OPD
8. Whether the defendant is entitled to the decree for restitution of conjugal rights as prayed for, if so, on what grounds? OPD
9. Relief.”

After framing of the issues, both parties led their pro and contra oral as well as documentary evidence.

The learned Judge Family Court, Jalalpur Pirwala vide consolidated judgment & decree dated 20.10.2017 decreed the suits for recovery of maintenance allowance of respondent No.3 declaring her entitled to get maintenance allowance

@ Rs.5000/-per month with 10% annual increment from April, 2016 till her legal entitlement. Suit for recovery of dowry article was decreed to the extent of Rs.25,000/- and rest of claim of dowry articles was dismissed. Suit for recovery of dower to the extent of 5-Tolas gold ornaments of respondent No.3 was dismissed and house measuring 05-Marlas was decreed and suit for recovery of Rs.5,00,000/- as per stipulation mentioned in Nikahnama was also decreed as prayed for whereas suit of the petitioner for restitution of conjugal rights was also decreed subject to payment of dower. Both parties filed appeals respectively and the learned Addl. District Judge, Jalalpur Pirwala partly accepted the appeal of respondent No.3 and dismissed the appeal of the petitioner vide consolidated judgment & decree dated 05.05.2018. Hence, this writ petition.

3. I have heard the learned counsels for the parties at some length and gone through the record with their able assistance.

4. Initial onus of proving the assertion raised in the plaint was placed on the shoulder of the plaintiff/respondent No.3. As per column No.16 of document of Nikahnama (Exh.P-2) of Mst. Rehana Mai daughter of Haji Muhammad Sadiq it is written as under:-

16۔ پانچ مرلہ پلاٹ محلہ حافظ آباد میں مکان

پختہ بنوا کر دو نگا۔

The other copy of Nikahnama (Exh.P-3) of the petitioner with Mst. Rehana Mai column No.16 whereof also contains stipulation as under:-

16۔ 5 مرلہ مکان بستی ٹھار والی میں مکمل  
بنوا دیں گے جلال پور پیر والا محلہ حافظ آباد  
میں مکمل بنوا کر دو نگا۔

But copy of Nikahnama (Exh.P-2) does not contain any cutting or tempering whereas copy of Nikahnama (Exh.P3) of the spouses contain certain cutting and interpolation but in this regard neither objection was raised in the written statement nor objected when it was got exhibited in the evidence by the petitioner whereas both aforementioned documents almost contain the same stipulation regarding column No.16 of the Nikahnama. It is also proved on record that house / plot measuring 05-Marlas situated at Hafizabad was settled between the parties. With regard to existence of cutting in column No.16 of Ex.P3 Saeed Ahmad Nikah Khawan/ Registrar (PW-3) has clarified in his statement that in first leaf five marla constructed house situated at Basti Tharwali was mentioned in Nikahnama but later on same was crossed/cancelled and Mohalla Hafizabad City Jalapur Pirwala was mentioned with mutual consent of parties and this part of his statement has not been questioned/shaken in cross examination which

deposition is deemed to be correct/ admitted. As such, the learned courts below rightly passed the impugned judgments & decrees and no illegality has been committed.

5. As regard the claim of recovery of Rs.500,000/- by the respondent/plaintiff from the petitioner/defendant on the ground of second marriage is concerned, which controversy is encompassed in issue No.4 that:

Whether the plaintiff is entitled to recover Rs.5,00,000/- from the defendant because of defendant's second marriage without permission of plaintiff? OPP

The respondent/plaintiff has contended that at the time of registration of Nikah, it was mentioned in the Clause 19 that in case the petitioner/defendant divorces the respondent/plaintiff, he will pay an amount of Rs.500,000/-. With regard to imposition of clog on the right of a husband qua pronouncing divorce, Allah Almighty in Holy Qur'an has delegated uncovenanted powers to the husband to pronounce Talaq to his wife in order to avoid any transgression of Islamic bounds. In this regard I seek guidance from Ayat Nos.227-228 of Surah Al-Baqarah, which is as under:

<p>227. But if their intention Is firm for divorce, Allah heareth And knoweth all things.</p> <p>228. Divorced women Shall wait concerning themselves For three monthly periods. Nor is it lawful for them To hide what Allah Hath created in their wombs, If they have faith In Allah and the Last Day. And their husbands Have the better right To take them back In that period, if They wish for reconciliation. And women shall have rights Similar to the rights Against them, according To what is equitable; But men have a degree (Of advantage) over them. And Allah is Exalted in Power, Wise.</p> <p>(translation by Abdullah Yusuf Ali)</p>	<p>اور اگر ارادہ کر لیں طلاق کا تو بیشک اللہ ہر بات سننے والا، سب کچھ جاننے والا ہے۔</p> <p>اور طلاق یافتہ عورتیں روکے رکھیں اپنے آپ کو تین حیض تک۔ اور نہیں جائز ہے ان کے لئے یہ کہ چھپائیں وہ اس کو جو کچھ پیدا کیا ہے اللہ نے ان کے رحم میں اگر وہ ایمان رکھتی ہیں اللہ پر اور آخرت کے دن پر۔ اور ان کے خاوند زیادہ حقدار ہیں انہیں لوٹالینے کے (اپنی زوجیت میں) اس (مدت) میں اگر وہ چاہیں صلح کرنا۔ اور عورتوں کے بھی حقوق ہیں ویسے ہی جسے ان پر ہیں (مردوں کے) دستور کے مطابق البتہ مردوں کو عورتوں پر ایک درجہ صاصل ہے۔ اور اللہ غالب ہے بڑی حکمت والا ہے۔</p> <p>(اردو ترجمہ) مرتبہ : مولانا سید شبیر احمد</p>
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Further in 01<sup>st</sup> Ayat of Surah At-Talaq, Allah

Almighty says as under:-

<p>O Prophet! when ye Do divorce women, Divorce them at their Prescribed periods, And count (accurately) Their prescribed periods : And fear Allah Your Lord: And turn them not out Of their houses, nor shall They (themselves) leave, Except in case they are Guilty of some open lewdness. Those are limits Set by Allah : and any Who trans gresses the limits Of Allah, does verily Wrong his (own soul: Thou knowest not if Perchance Allah will Bring about thereafter Some new situation.</p> <p>(translation by Abdullah Yusuf Ali)</p>	<p>اے نبی! جب طلاق دو تم عورتوں کو تو طلاق دو تم انہیں اس طرح کہ وہ عدت شروع کر سکیں اور ٹھیک ٹھیک شمار کرو عدت (کے زمانہ) کا۔ اور ڈرو اللہ سے جو تمہارا رب ہے۔ اور نہ نکالو تم انہیں ان کے گھروں سے اور نہ وہ خود نکلیں الایہ کہ ارتکاب کریں وہ کسی کھلی بدکاری کا۔ اور یہ اللہ کی (مقرر کردہ) حدیں ہیں۔ اور جو تجاوز کرے گا اللہ کی مقرر کردہ حدود سے تو درحقیقت وہ ظلم کرے گا اپنی ہی جان پر۔ نہیں جانتے تم شاید کہ اللہ پیدا کر دے اس کے بعد بھی (موافقت کی) کوئی صورت۔</p> <p>(اردو ترجمہ) مرتبہ : مولانا سید شبیر احمد</p>
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Further guidance in this regard can be taken from the Sunnah of Holy Prophet from Hadith No.235 of Bukhari Sharif, which reads as under:-

اسماعیل بن عبداللہ، مالک، نافع، عبداللہ بن عمر سے روایت کرتے ہیں کہ انہوں نے اپنی بیوی کو رسول اللہ صلی اللہ علیہ وسلم کے عہد میں بحالت حیض طلاق دیدی حضرت عمر رضی اللہ تعالیٰ عنہ نے نبی ﷺ سے اس کے متعلق پوچھا، تو آپ نے فرمایا کہ اس کو رجوع کرنے کا حکم دو پھر وہ اس کو روکے رکھے، یہاں تک کہ پاک ہو جائے پھر حیض آئے پھر پاک ہو جائے پھر اگر چاہے تو اس کے بعد اپنے پاس رہنے دے، اور اگر چاہے تو صحبت کرنے سے پہلے طلاق دے یہی وہ عدت ہے جس کے لئے عورتوں کو طلاق دیئے جانے کا حکم اللہ تعالیٰ نے دیا ہے۔

Section 105 Chapter XII of the Code of Muslim Personal Law (written by Dr. Tanzil-ur-Rahman, Ex-Judge of Sindh High Court, Volume 1) the Delegation of right of Divorce (Tafwid at-Talaq) is described which is reproduced as under:-

**Delegation of the right of divorce:** It is lawful for the husband to delegate to the wife the right of effecting divorce. In that event, however, his own right of effecting divorce shall not lapse.

Even otherwise, Section 7 (1) of the Muslim Family Laws Ordinance, 1961 deals with Talaq, which is reproduced as under:-

“S. 7 ‘Talaq’. (1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.”

5. From the perusal of afore-mentioned glorious references of Holy Quran and Sunnah as well as provisions of Section 105 of the Code of Muslim Personal Law written by Dr. Tanzeel-ur-Rehman and Section 7 of the Muslim Family Laws

Ordinance, 1961, a husband has an absolute right to divorce his wife and in this regard no condition is described in the Sharia as well as in the codified law. In this regard, the Hon'ble Supreme Court of Pakistan in the case reported as Muhammad Bashir Ali Siddiqui Vs Mst. Sarwar Jahan Begum & Another (2008 SCMR 186) has also declared that the condition/restriction on the right of a husband to divorce his wife, is illegal. The condition if any imposed in the Nikahnama for the award of damages on account of alleged unjustified divorce is against the basic principle of Islamic Law. The husband has a right to divorce his wife from his free will and no condition can be imposed in this regard. Reliance can also be placed on the cases titled as Mst. Zeenat Bibi Vs Muhammad Hayat & 2 Others (2012 CLC 837) & Muhammad Asif Vs Mst. Nazia Riasat & 2 Others (2018 CLC 1844). As such, the judgments of the learned Courts below to the extent of issue No.4 suffer from patent illegality and are liable to be set aside. Therefore, the findings of the learned Courts below on issue No.4 are hereby reversed and this issue is decided against the respondent/plaintiff.

6. In view of above, this writ petition is hereby partly accepted only to the extent of findings of the



learned Courts below to the extent of issue No.4  
whereas to the extent rest of the findings, the same  
is **dismissed**.

**(CH. MUHAMMAD IQBAL)**  
**JUDGE**

***Shahzad Mahmood***

Approved for reporting.

**JUDGE**