

**JUDGMENT SHEET  
PESHAWAR HIGH COURT PESHAWAR  
JUDICIAL DEPARTMENT**

**WP NO. 1975 of 2010  
JUDGMENT**

**Date of hearing-----02.04.2015-----**

**Appellant (Habib Gul) by Mr. Hizar Hayat, Advocate.**

**Respondent (Mst. Shaheen etc) by Khan Ghawas Khan &  
Mukhtar Ahmad Khan, Advocates.**

**MUHAMMAD DAUD KHAN, J.-** Through this

Constitutional Petition, the petitioner/husband has challenged the judgment and decree of learned Additional District Judge-VI, Mardan dated 24.04.2010 whereby the appeal filed by respondent/wife was accepted and the judgment and decree of Family Court, Mardan was modified to the extent that the respondent/wife was held entitled to recovery of dower as per Kabeen Nama and maintenance allowance.

2. Brief facts of the case are that Mst. Shaheen, plaintiff/wife (respondent herein) filed suit against the defendant/husband (petitioner herein) for recovery of dower i.e. 3 tola golden ornaments, a house and maintenance allowance @ Rs.1000/- per month on the basis of Kabeen Nama dated 26.04.2002. She also

prayed for the return of dowry articles as per list annexed with the plaint. The petitioner/husband contested the suit by filing his written statement wherein he denied the claim of respondent/wife and termed the Kabeen Nama as bogus. He also prayed for grant of a decree in his favour for conjugal rights against the respondent/wife.

3. The parties were summoned by the trial Court and on failure of reconciliation efforts, issues were framed and evidence of both the parties was recorded. The trial Court while appreciating the available evidence on record came to the conclusion that the respondent/wife has failed to prove the execution of the Kabeen Nama through cogent evidence, which was further not registered as per requirements of the Registration Act, therefore, the respondent/wife was held entitled to only Rs.1000/- as her dower, which as per statement of the Nikah Khwan, produced by the petitioner/husband, was orally fixed at the time of Nikah.

4. The respondent/wife feeling aggrieved of the above decision of trial Court, filed appeal before the District Court, which was decided by the Additional District Judge-VI, Mardan vide judgment and decree dated 24.04.2010. It was held by the appellate Court that the respondent/wife has duly proved the execution of Kabeen Nama by producing the Petition Writer Anwar Baig (PW.12), Radi Gul marginal witness to the Kabin Nama as PW.2 and Mohsin Khan as PW.4 being a witness in whose presence the Kabeen Nama was scribed and duly signed by the defendant and witnesses. It was further observed that the petitioner has also contracted a third marriage and on this ground too, she was entitled to maintenance allowance. Thus, suit of the plaintiff/respondent was decreed accordingly to the extent of recovery of dower and maintenance allowance.

5. Arguments of learned counsel for the parties were heard and record of the case was perused.

6. The question for determination in the instant writ petition would be as to whether the respondent/wife has proved the execution of Kabeen Nama, Ex.PW1/1, by producing cogent evidence and whether non-registration of Ex.PW1/1 was fatal for rejection of her claim of dower.

7. So far as the execution of Kabeen Nama is concerned, the plaintiff not only produced its scribe, who duly supported the contents of the Kabeen Nama but also admitted to have entered the same in his register at Serial No.300 dated 26.04.2002. Similarly, PW.2 duly admitted his signature over the Kabin Nama as a marginal witness and stated that the defendant had not paid dower to the plaintiff. According to him, the plaintiff resided in the house of defendant only for 5/6 months where after she was expelled from the house by the defendant. PW-4 Mohsin Khan though is not a marginal witness to the deed in question, yet he has stated that the deed was scribed in his presence which was duly signed by the defendant and the witnesses. It

has come in the evidence of plaintiff/respondent that first the deed was scribed in the District Courts and there after the Nikah was performed in a nearby plot to the house of brother of plaintiff. The learned trial Judge while appreciating the evidence on record has wrongly given due weight to the statement of the Nikah Khwan that only Rs.1000/- was fixed orally at the time of Nikah when the deed in question was not scribed in his presence; hence obviously he was not in the knowledge of execution of the deed in question prior to the ceremony of Nikah between the parties. Similarly, the trial Court also ignored the well established principle of law as enunciated in Section 17 of the West Pakistan Family Courts Act, 1964 that applicability of CPC and Qanun-e-Shahadat to proceedings before Family Court has been excluded. The august Supreme Court of Pakistan in the case of **Farzana Rasool vs. Dr. Muhammad Bashir** (2011 SCMR 1361) has held that, “*Object of exclusion of C.P.C. and Qanun-e-Shahadat, 1984 was to avoid technicalities by providing a short,*

*simple and speedy methodology for settlement and disposal of disputes relating to family matters.”* The aforesaid principle was followed and adopted by the Lahore High Court in the case of **Farrah Bashir vs. Muhammad Umar Tahir** (2014 CLC 1605) as well as by this Court in the case of **Mst. Rozeena Khattak vs. Raja Abdul Rasheed** (2012 PLD 108). In a similar nature case, wherein the trial Court had granted decree to the wife regarding maintenance allowance only for three months as against her claim of three years, the appellate Court accepted the appeal of wife and granted her decree for recovery of maintenance allowance for the last three years and the High Court upheld the findings of the lower Appellate Court in Constitutional jurisdiction. The matter went upto the apex Court wherein their lordships held that:-

*“First Appellate Court had all powers of trial Court and first appellate Court was justified to re-examine/re-appreciate the evidence on record. First Appellate Court had reversed the finding of*

*fact with cogent reasons and High Court was justified not to disturb the finding of fact while exercising constitutional jurisdiction. **Muhammad***

**Sharif vs. Additional District Judge (2007 SCMR 49).**”

8. There are various pronouncements of the superior Courts on the point that when the husband contracts a second marriage without permission of the first wife, she would be entitled to maintenance allowance irrespective of the fact as to whether she left the house at her own choice or was compelled by her in-laws to leave the house.

9. In view of the above facts and circumstances of the case, we are of the view that the learned appellate Court has rightly decreed the suit of respondent, as the marriage tie between the parties is still in tact and the performance of conjugal rights of plaintiff/respondent is subject to payment of her dower as mentioned in the Kabeen Nama, which as per evidence on record, has not

been paid to her. The writ petition is, therefore,  
dismissed with no order as to costs.

**Announced**  
**02.04.2015**

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