

**JUDGEMENT SHEET
IN THE PESHAWAR HIGH COURT, BANNU BENCH
(Judicial Department)**

W.P. No. 1251-B/2020

Shafqat Ullah son of Akbar Jan Khan resident of Mira Khel Tehsil
and District Bannu.....Petitioner.

Versus.

Mst. Anjuman daughter of Karim Dad resident of Pipal Bazaar
Daud Shah Tehsil and District Bannu & another.Respondents.

JUDGEMENT

Date of hearing: **24.01.2022.**

For petitioner: **Mr. Sardar Naeem Khan. Advocate.**

Respondents: **Hafiz Muhammad Hanif. Advocate.**


MUHAMMAD NAEEM ANWAR, J.- This single judgment in
the instant petition shall also decide **W.P. No.936-B/2021**
titled "**Shafqat Ullah Vs Mst. Anjuman & 02 others**" and
W.P. No.29-B/2022 titled "**Mst. Anjuman Vs Shafqat Ullah**
& 02 others" as all the three petitions are the outcome of
suit filed by the respondent No.1 bearing No. 86/FC against
the petitioner.

02. Facts of the case as per the contents of the plaint are
that a suit for recovery of dower amounting to Rs.300,000/-,
maintenance allowance amounting to Rs.45,60,000/- @
Rs.20,000/- per month for the last 19 years and onward at
the same rate, dowry articles as per list annexed with the
plaint, decree for dissolution of marriage under sub section


(ii) (iv) & (v) of Section 2 of Dissolution of Muslim Marriages Act, 1939 was filed by respondent No.1 on the ground that her nikah with the petitioner was solemnized in the year 1998 in lieu of dower amounting to Rs.300,000/-, which is still outstanding against the petitioner, dowry articles as per the list handed-over to her by her parent which are laying in his house. After her "*Rukhsati*" respondent No.1, in the entire period of 19 years remained in Pakistan for four or five months as just after two months of her "*Rukhsati*" he had proceeded to Japan and she was directed to reside with her parents. In intervals off and on he came to Pakistan and in that period for few days she had an opportunity to live with her however, in those days she performed her marital obligation. Earlier to her marriage he had a Japanese wife and even marrying with her, he has contracted third marriage with a Russian lady. It was further contended that lastly, she had a tour with him for performing *Umrah* however, after their arrival to Pakistan he has left for Japan. She alleged that dower is still outstanding, dowry articles are laying in his house, apart from nonpayment of maintenance the allegations of impotency were also leveled against petitioner. When put on notice, the petitioner resisted the suit through his attorney by filing detailed written statement with a prayer for recovery of prize bonds amounting to Rs.70,000/-, an amount of Rs.300,000/-, 20

tola gold ornaments and a decree for restitution of conjugal rights. The parties were provided equal opportunity to prove their respective contentions. On failure of post-trial reconciliation proceedings and hearing the parties, learned trial court through its judgment and decree dated 19.11.2020 granted a decree of Rs.300,000/- as dower, marriage was dissolved on the basis of nonpayment of maintenance allowance for more than 02 years, decree for maintenance allowance @ Rs.10,000/- per month for the last 19 years before the institution of suit till the decision, recovery of undisputed dowry articles, whereas the claim of petitioner for recovery of prize bonds worth Rs. 70,000/-, cash amounting to Rs. 300,000/- gold ornaments and the prayer for restitution of conjugal rights was dismissed. Decree for dissolution of marriage under Section 2 (ii) was challenged by the petitioner through instant petition whereas, rest of decree was challenged by the petitioner through his appeal bearing No. 61/2020 before the learned appellate court which was partially allowed with the modification that period of maintenance allowance was reduced from 19 years to 06 years preceding to the institution of the suit, his appeal against rest of the prayers was dismissed being not pressed by the learned Additional District Judge through his judgment and decree dated 17.11.2021. Still being not satisfied from the decree for

maintenance allowance @ Rs.10,000/- per month for the last 06 years preceding to the institution of the suit, he has preferred the W.P. No. 936-B/2021 with the prayer that she is not entitled for any maintenance allowance. Respondent No.1 being aggrieved from the judgment and decree of the learned appellate court whereby period of maintenance allowance was reduced from 19 years to 06 years challenged it through her W.P. No. 29-B/2022.

 **03.** Learned counsel for petitioner contended that decree for dissolution of marriage under Section 2(ii) of Muslim Marriages Act, 1939 could not be granted because the suit of respondent No.1 was premature being filed before completion of two years as on 3rd of May 2016 petitioner came to Pakistan from *Umrah* when both husband and wife were residing together and the suit was filed of 18.04.2018 and for seeking dissolution of marriage under section 2(ii) of the Act of 1939 completion of two years is condition precedent. He placed reliance on the case law titled as "Muhammad Hanif Khan Vs Mst: Umar Dara and 03 others" (PLD 2021 Peshawar 184), the judgment rendered in W.P. No. 446-B/2019 titled "Wasim Nawaz & 02 others Vs. Mariam Bibi and 02 others" decided on 28.04.2021. He vociferated that respondent No.1 was not at all entitled for maintenance allowance for the reason that not only she has been maintained by the petitioner for the last 19 years but

also she has left the house of petitioner as per her own choice and desired to lead a separate life thus, being self-deserted lady is not entitled for maintenance allowance and in the above scenario when she could not be held entitled for maintenance allowance, her suit for dissolution of marriage could only be decreed on the ground of "*Khulla*" but the learned trial court as well as the learned appellate court have erred in law by decreeing the suit for maintenance allowance and also dissolved the marriage under section 2(ii) of the Act of 1939.




04. Conversely, learned counsel for respondent No.1 (plaintiff) contended that the learned appellate court has misinterpreted the law while modifying the judgment of the learned trial court for past maintenance allowance for 19 years prior to institution of the suit whereas, in consonance with law and "*Sharia*" it was the duty of the husband to maintain his wife for which no limitation could be made as a bar. He while relying on the case law reported in the case titled "*Sher Zaman Vs Mst. Mah Zari* (2018 YLR 128) by which the single bench of this Court has awarded a decree of maintenance allowance for 30 years. He also relied upon the judgment of this Court passed by single bench wherein the maintenance allowance for the period of 07 years was granted in favour of wife against the husband.

05. Arguments heard, record perused,

06. In essence, the controversy revolves around the maintenance allowance and the points for determination are:

a) Whether the wife/respondent was entitled for maintenance allowance, if so, for how much period the decree could be granted in her favour against the petitioner?

b) Whether the marriage could be dissolved under section 2(ii) of dissolution of Muslim Marriages Act 1939?



It is not in dispute that the marriage was solemnized in the year 1998, it is also admitted that the petitioner is permanently residing in Japan, it was also not denied that off and on he came to Pakistan but in the entire period of 21 years till today he remained in Pakistan for four to five months by calculating his total stay in intervals in Pakistan. Though the petitioner in his written statement has alleged that he has paid maintenance allowance to her wife but neither his attorney nor the witnesses could prove the payment of maintenance. The concept of Maintenance in Muslim law was introduced to provide support to those people who are not capable to maintain themselves. The principle of maintenance includes the basic requirement of a person for survival and includes amenities like food, clothing, shelter, education and other necessities of life. *Nafaqah* is an Arabic word, rooted from *infÉq*, which means to spend for a good purpose. Literally it means what a

person spends for his family members. In general, maintenance refers to what is spent to support one's family with food, clothing, accommodation and other expenditures. In accordance with provision of Muhammadan law, it was legal and bounded duty of husband to provide maintenance allowance to her legally wedded wife and in case the husband is not paying the maintenance allowance there was a legal justification for respondent No-1 to leave her abode from petitioner's house. In this respect, Section-277 of Muhammadan Law is reproduced as under: -

"277. Husband's duty to maintain his wife. The husband is duty bound to maintain his wife (unless - she is too young for matrimonial intercourse) so long as she is faithful to him and obeys his reasonable orders. But he is not bound to maintain a wife who refuses herself to him, or is otherwise disobedient, unless the refusal or disobedience is justified by non-payment of prompt (S.290) dower, or she leaves the husband's house on account of his cruelty."

07. The record reflects that no such allegation of disobedience or refusal on the part of respondent were alleged by the petitioner. In such circumstances when a woman/girl remains in *Nikah* of a person for 21 years and in that period he attended her only for months keeping aside the maintenance for his other obligations i.e., performance of marital duties which on the other hand was the right of respondent for which she was deprived, In Islam there are duties of husband towards his wife i.e., to pay maintenance, to pay dower, to provide accommodation and the physical

need, caring for fulfilment of marital obligation is also the duty of husband so that, she may not commit a sin by eyeing other men in order to quench her thirst. I am of the view that not only she was rightly held entitled for maintenance allowance but the quantum of maintenance was rightly determined.

08. Turning to the second part of first point, i.e., the period of maintenance. Undoubtedly, the Limitation Act 1908 and the Family Court Act 1964 do not provide any limitation for the period for which wife could be held entitled for maintenance allowance. It was for the first time when in the case of "**Muhammad Nawaz Vs Mst. Khurshid Begum**" (PLD 1972 SC 302), this controversy was taken up before the Apex Court, wherein the Hon'ble Supreme Court has upheld the decision of former High Court of West Pakistan Lahore, wherein it was held that in case of suit for recovery of past maintenance allowance, the provision of Article 120 of the Limitation Act, 1908 would apply. In the case of "**Ghulam Habib Vs Zubaida Khatoon**" (1992 CLC 1926), Lahore High Court while relying upon the principle of Muhammad Nawaz's case has held the limitation provided in Article 120 of the Limitation Act, 1908, i.e., 06 years when the right to sue accrues in cases for past maintenance. In the case of "**Bushra Qassim Vs Abdul Rasheed**" (1993 CLC 2063), Lahore High Court has held that in consequence, the

petitioner/respondent is entitled for past maintenance for a period of 06 years to the filing of application dated 14.07.1987 before Arbitration Council as well as further maintenance @ Rs.1000/- per month. This Court in the case of **"Mst. Anar Mamana Vs Misal Gul" (PLD 2005 Peshawar 194)** has held that there is no specific provision of law providing period of limitation for past maintenance by the Muslim Laws Ordinance, 1961 (VIII of 1961) and the issue would be governed by residuary Article 120 of the Limitation Act, 1908 under which the period of Limitation is 6 years from the date, the cause of action accrues. In the case of **"Farkhanda Mumtaz Vs Muhammad Sharif" (PLD 2006 Peshawar 96)**, it was held by this Court that suit for past maintenance is governed by Article 120 of the Limitation Act, 1908 which had prescribed the period of 6 years from the date of accrual of cause of action. Suit for maintenance filed by petitioner (wife) was decreed granting maintenance @ Rs.5000/- per month for the period of 6 years preceding to the institution of the suit and onward. The apex court in the case of **"Mst. Farah Naz Vs Judge Family Court, Sahiwal" (PLD 2006 SC 457)** has observed that claim for past maintenance would be governed by Article 120 of the Limitation Act, 1908 which prescribed a period of 6 years for which no period was provided elsewhere in the Act, from the date when right to sue had

accrued. The Lahore High Court in the case of "Rasheed Ahmad Vs Mst. Shamshad Begum & 03 others" (2007 CLC 656) has held that, Article 120 of the Limitation Act, 1908 applies to a suit for maintenance. Like-wise the Hon'ble Supreme Court of Azad Jammu and Kashmir in the case of "Mst. Zaibun Vs Mehrban" (PLD 2004 SC AIK 25) has held that no specific provision being available providing limitation for suit for maintenance, resort could be had to residuary Article 120 of the Limitation Act, 1908 which has prescribed 6 years limitation. Past maintenance of 6 years could be granted and beyond that claim of the plaintiff would be barred by limitation. In the case of "Rashid Ahmad Khan Vs Additional District Judge, Layyah & 02 others" (2011 MLD 1012), Lahore High Court has held that no period of limitation is prescribed under Limitation Act, 1908 for filing suit for maintenance allowance and was governed by Article 120 of the Limitation Act, 1908 which provided period of 6 years for filing of a suit for which no period for limitation is prescribed. This is the consistent view of High Courts, Supreme Court of Azad Jammu Kashmir and Hon'ble Supreme Court of Pakistan since 1972. The only judgment of this court relied upon by the learned counsel for respondent/husband in the case of "Sher Zaman Vs Mst Mah Zari" (2018 YLR 128) rendered by single bench of this Court, wherein past maintenance for the period of 30 years

was awarded in favour of wife however, as against the consistent view, the Division Benches of this Court and that all the apex Court I am not persuaded to rely upon the case law produced by respondent (supra) for the reasons that the Court might not have been properly assisted. The principle of consistency would certainly apply in the instant matter basic object of which is to maintain uniformity and consistency of view/decisions by the courts with its aim to foster, develop and channelize the system of justice, which occupy a very prominent position in the law of precedent, as per jurisprudence, which has to be adhered to in order to maintain discipline in the administration of justice by the superior Courts thus, the judgment of the learned trial court was rightly modified by the learned lower appellate court by reducing the period of past maintenance allowance from 20 years to 6 years preceding to the institution of suit.

09. The question as to whether nonpayment of maintenance allowance, in the circumstances of the case could provide a bar for dissolution of marriage, under section 2(ii) of the Act of 1939 which reads as (*the husband has neglected or failed to provide her maintenance allowance for the period of 02 years*) the language of Section 2(ii) provides a ground for nonpayment of maintenance allowance for 02 years and these "02 years" must be an unbroken period but as to whether it must be the

last interval of two years is neither the requirement of law nor the language of statute. Similarly, it was not even interpreted by the *Shariat* Court in the judgment reported as (NLR 1989 SD 487) that the period of two years would be the last two years the only condition is that there must an unbroken period of two years.

10. Like-wise, the word "neglect" means failed to look after, failed to care of, failed to provide for, leave alone, let aside, not attended to, to remiss about, shirk, disregard, turned a deaf ear to, thrown to winds, forgotten, underestimated, carelessness, irresponsibility and delinquency, attributed to the husband. It is to be seen that whether for complete interval of 02 years there remains a failure on the part of petitioner and if so, the period would be considered as an unbroken period when she was not looked after by the husband for which he was legally required, not only to provide a shelter, food, clothes, but also to look after about her health etc. being in his *Nikah*. Apart from mere narration on the part of petitioner, nothing is available even an iota of evidence leading to the provisions of maintenance allowance in any capacity to respondent. In accordance with injunctions of *Islam* husband is bound to maintain his wife throughout the period she remains in a matrimonial bond with him with contingent of 02 preconditions, (1) when the wife abandons the conjugal

domicile of husband without any valid reason and (2) when she disobeys her husband without a good cause. In the instant, the parties were in *Nikah* since 1998 and for the last 19 years the only period with which they lived together may not be more than a few months. When he himself enjoyed the life of foreign country like Japan and the respondent remained waiting for her husband for sensible and good relation with him to live in love with him. No maintenance whatsoever was ever provided by the petitioner. Though in the case of Wasim Nawaz, this Court has enunciated that period of 02 years preceding to the institution of suit for nonpayment of maintenance allowance was not mature because in that suit *Rukhsati* had taken place on 04.07.2012 and the date of alleged ouster was January 2016, suit was instituted on 31.10.2016, and in that eventuality, it was held the suit for dissolution on the ground of section 2(ii) was premature. Whereas, in the instant case since 1998 no maintenance was ever provided what to say about for last two years. The argument of the petitioner that the respondent proceeded for Umrah in the year 2016 along with her husband, as it was, this submission too does not provide any justification for disentitling her for maintenance allowance as the period of 15 days spent in Saudi Arabia (Makkah & Madina) cannot be equated with the payment of maintenance allowance. I am of the view that precondition

of nonpayment of maintenance allowance has already been completed preceding to the institution of the suit, therefore, it was a valid ground for respondent No.1 to seek her dissolution on this ground.

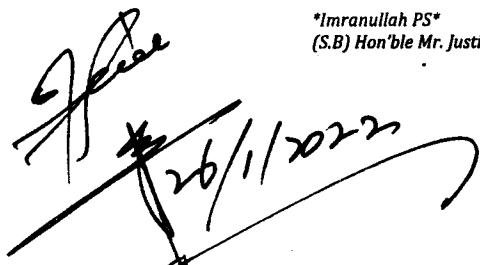
11. Learned counsel for the parties have not been able to point out any illegality, material irregularity or jurisdictional defect in the impugned judgments, therefore, for what has been discussed above, this as well as connected W.P. No.936-B/2021 titled "Shafqat Ullah Vs Mst. Anjuman & 02 others" and W.P. No.29-B/2022 titled "Mst. Anjuman Vs Shafqat Ullah & 02 others" being without substance are hereby dismissed by leaving the parties to bear their own costs.

Announced.
24.01.2022.



JUDGE

Imranullah PS
(S.B) Hon'ble Mr. Justice Muhammad Naeem Anwar



26 JAN 2022

