

W.P. No. 8469/2007

Javed Iqbal

Addl. District Judge etc.

04.03.2015 Ch. Fayyaz Ahmed Sanghera Khan, Advocate  
for the petitioner.  
Ch. Ijaz Akbar, Advocate for respondent No.2.

**C.M. No.1/2014.**

For the reasons given in this application, which is supported by an affidavit, the same is allowed and the writ petition is restored to its original number. The main case is being taken up at the request of learned counsel for the parties.

**MAIN CASE.**

2. Through this constitutional petition, petitioner seeks setting aside of judgment and decree dated 19.04.2007 passed by the learned Addl. District Judge whereby the judgment and decree dated 14.02.2006 passed by the learned Judge Family Court, Faisalabad was modified to the extent of granting full dowry articles as claimed by respondent No.2.

3. Brief facts giving rise to the filing of this petition are that at on 05.04.1996 petitioner married with respondent No.2 in lieu of dower Rs. 500/- who were blessed with 2 minors. The dowry articles worth Rs. 4,90,200/- was allegedly given to respondent

No.2 but few days prior to the filing of suit for recovery of dowry articles on 09.9.2002, she was ousted. Meanwhile, respondent No.2 also filed an application under Section 25 of the Guardian and Wards Act, for the custody of minors namely, Junaid Iqbal and Muhammad Mehdi. Both the suits were contested and consolidated issues were framed. After recording of evidence both documentary as well as oral, the Judge Family Court granted the decree of dowry articles to the extent of Exh-C1, i.e. the list prepared by the local commission as per order of the court and dismissed the suit for custody of minors filed by respondent No.2. However, an appeal was filed against the said judgment and decree which was modified only to the extent of all these dowry articles mentioned in her examination-in-chief, hence this writ petition.

4. Learned counsel for the petitioner contends that neither the list of dowry articles was produced nor receipts were presented to justify the full grant of dowry articles. Adds that after the grant of dowry articles as per Exh-C1 by the learned Judge Family Court, the learned appellate court was required to discuss the findings before setting it aside.

5. Conversely, learned counsel for respondent No.2 submits that report of the local commission itself was prepared in connivance with the petitioner as articles like

empty box of sewing machine and T.V. trolley without sewing machine and T.V. could not be part of dowry articles. Adds that in para 4 of the written statement dowry articles have been admitted, therefore, there is no illegality in the impugned order.

6. Arguments heard. Record perused.

7. Vide impugned judgment and decree, the learned appellate court observed that after delivery of dowry articles in the house of petitioner, the burden was upon the petitioner to prove that the same was taken away since some of the dowry articles were admitted by the petitioner. However, it has failed to appreciate a generally accepted principle that gold ornaments are always retained by the women in her personal possession and, therefore, in absence of any evidence of its snatching away the same are presumed to be with them. A perusal of statement of respondent No.2 who appeared as PW-1, reveals that 12 gold bangles, a necklace set, locket set and pearl set in total 25 tolas of gold were claimed as dowry articles but she has stated that after getting married in the year 1996 she was turned out from the house of the petitioner about 4 years prior to the recording of statement in 2010, and did not state any snatching away of the gold ornaments. Secondly, in paragraph 4 of the written statement it was admitted that a

colour T.V., gold ornaments, a watch, tape recorder, Saree and other dresses were not retained by petitioner. This stand is further corroborated by the report of local commission dated 03.02.2006 prepared by the Ahlmed of the court in presence of Nasir Mehmood, i.e. representative of respondent No.2 stating therein that in total 55 articles including fridge (Sr. No. 39) dinning table, chairs, washing machine, two air coolers were returned and this report was never objected to by respondent No.2. Thirdly, the learned appellate court was required to mention the dowry articles instead of granting the decree on the basis of examination-in-chief of respondent No.2, particularly when in her cross-examination she could not withstand the claim of full dowry articles. Noticeably, since T.V. as well as sewing machine were not mentioned though their tables and covers were mentioned, therefore, the same should be considered in the list of dowry articles since they have proved the existence in the list of dowry articles.

8. For what has been stated above, the judgment and decree passed by learned appellate court to the extent of gold ornaments weighing 25-tolas as mentioned in the plaint as well as in the statement, is excluded whereas T.V. and sewing machine is added in the list Exh-C1 or in alternate Rs.

1,00,000/- is fixed as its tentative value keeping in view the depreciation and the use of said articles which shall be returned by the petitioner to respondent No.2 within a period of one month from today.

**(ALI BAQAR NAJAFI)**  
**JUDGE**  
**Special Bench Family-I**

*\*Shahzad\**

Approved for Reporting.