

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR

JUDICIAL DEPARTMENT

J U D G M E N T

Writ Petition No.1074-P/2014
Date of hearing.....27.10.2017

Aminullah & another Vs...Mst: Robina Pervaiz & others.

Petitioner(s) by Mr. Muhammad Ibrahim Khan, Advocate.

Respondent(s) by Mr. Muhammad Sajid Khan, Advocate.

MUHAMMAD YOUNIS THAHEEM, J:- Through

the instant constitutional petition, petitioners have challenged the validity and legality of Judgment & decree dated 05.03.2014, passed by the learned Additional District Judge-IV, Swabi at Lahor, whereby the family appeal filed by the petitioners has been dismissed and the Judgment & decree dated 28.02.2013, passed by the learned Judge Family Court, Lahore, District Swabi was maintained.

2. Briefly, the facts of the case are that respondent No.1/plaintiff filed family suit against the petitioner/defendant No.1 for dissolution of marriage on the ground of cruelty specially through forced abortion, recovery of 02 tola gold ornaments,

Rs.20,000/-, share of defendant No.1 in the house of defendant No.2 as dower according to Kabeen Nama and maintenance allowance of Rs.5000/- per month for past seven months and 20 days and onwards till her iddat period. Recovery of dowry articles as per list or its value Rs.2,35,300/-. Recovery of medical expenses amounting to Rs.30,000/-. The suit was contested by the petitioners/defendants by filing written statement. After the failure of pre-trial reconciliation between spouses, the learned trial Court framed issues. Both the parties produced their respective evidence, after failure of post trial reconciliation efforts and hearing arguments, the learned trial Court, decreed the suit vide judgment and decree dated 28.02.2013. The reliefs decreed are reproduced as under:-

“Vide my issue wise findings suit of the plaintiff stands disposed of as under:-

Relief as per para # I for dissolution of marriage is hereby decreed in favour of plaintiff on the basis of cruelty against the defendant No.1.

Relief as per para #II for the recovery of dower fixed as 02 tola gold ornaments, Rs.20,000/- and share of the defendant No.1 in the house of the defendant No.2 is decreed as prayed for against the defendants.

Relief as per para #III for recovery of maintenance allowance @ Rs.2000/- per month for the past 07 months and 20 days prior to the institution of suit till completion of her iddat period is hereby decreed in favour of plaintiff against the defendants.

Relief as per para #IV for the recovery of dowry articles as per list Ex PW3/6 or its market value worth Rs.2,35,300/- is hereby decreed in favour of the plaintiff against the defendants.

Relief as per para #V medical expenses as Rs.30,000/- stands dismissed. While prayer by the defendant No.1 for restitution of conjugal rights is hereby dismissed.”

3. Petitioners/defendants feeling dissatisfied from the judgment and decree passed by learned trial Court preferred family appeal and learned appellate Court after hearing arguments, dismissed the appeal vide impugned judgment dated 05.03.2014. The relevant/concluding para of impugned judgment of the learned appellant Court is reproduced as under:-

“From the available facts and circumstances of the case learned counsel for the appellants/defendants has not been able to point any misreading or non reading of evidence brought on the record as to term the impugned judgment and decree of the learned trial Court as based on surmises and conjectures. As a result, the instant

***appeal is being devoid of any merits
and same is hereby dismissed with
no order as to cost."***

So petitioners feeling still aggrieved from the judgments and decrees of both the Courts of respondents No.2&3 filed present petition.

4. Learned counsel for petitioner argued that respondent No.1 has failed to prove fixation of dower alleged in the plaint, cruelty and forced abortion, as petitioner alongwith other accused have been acquitted in case FIR No.407 dated 26.03.2011 P.S Zaida u/s 338-A/338-C/342 PPC, so dissolution of marriage on the basis of cruelty particularly forced abortion has not been proved.

5. On the other hand learned counsel for respondent No.1 supported the judgment & decree passed by two Courts below and added that evidence recorded in criminal case cannot be referred and relied upon as neither it was produced during recording of evidence nor was alleged in the written statement.

6. Arguments heard and record perused.

7. From the perusal of record it is admitted position that both parties, previous to marriage are close relatives as their fathers are real brothers. Nikah between petitioner No.1 and respondent No.1 is admitted and decree for

dissolution of marriage has been passed on the ground of cruelty alongwith maintenance while petitioners are disputing the fixation of dower and decree for dissolution of marriage on the ground of cruelty.

8. The respondent No.1 appeared as PW-3 and recorded her statement and narrated the same facts as alleged in the plaint about maltreatment, beating and forced abortion/miscarriage of 02 months pregnancy by defendant No.1 with help of other family members of petitioners by a local Daai. Respondent No.1 during her examination in chief produced pregnancy test report Ex PW3/1 which is positive. Similarly petitioner annexed the record of criminal trial in case FIR No.407 registered on 26.03.2011 in consequence of order of Justice of Peace u/s 22-A of Cr.P.C. The pregnancy test report Ex PW7/1 is the same which has been produced by PW-3 and is Ex PW3/1 dated 20.03.2011. However the name of patient is appearing as Robi instead of Robina. The arguments of petitioner that pregnancy test Ex PW3/1 or Ex PW7/1 is someone else is not convincing as when PW-3 appeared in the witness box she was not cross examined over this

particular point. So, it is proved that on 20.03.2011 respondent No.1 was pregnant and then she reported the occurrence to her father and afterward FIR No.407 was registered in consequence of order u/s 22-A Cr.P.C. Petitioner annexed the statement of Lady Doctor Shahida and medical examination report. It is pertinent to mention that respondent No.1 was medically examined after abortion. So, lady Doctor opined that there was no pregnancy on examination on 21.05.2011. However, petitioner during cross examination admitted it correct that actual cause of dispute is issue of abortion. The relevant portion of cross examination is reproduced as below:

یہ درست ہے کہ ہمارے اور مدعیہ والوں کی
بنیادی ناراضگی اسقاط حمل کے مسئلہ پر تھی۔

9. So, according to evidence on record maltreatment, cruelty and forced abortion has been proved and learned Judge Family Court has correctly and lawfully appreciated the evidence, so did the learned appellate Court while reappraising of evidence. However, the arguments of learned counsel for petitioner that petitioner was acquitted in a criminal case for the charge of forced

miscarriage and in this respect though petitioner has annexed certified copies of evidence recorded in referred criminal case but those were not produced during the recording of evidence according to prescribed manner in the instant family case, so this argument has no force and it could not be a valid argument that forced abortion was not committed. Therefore, this Court cannot decide the instant petition by considering evidence recorded in criminal case. In this respect wisdom is derived from the judgment of Supreme Court of India in case titled **Mitthulal and another Vs State of Madhya Pradesh** cited as **AIR 1975 SC 149**.

The relevant principle is reproduced as below:-

“It is elementary that each case must be decided on the evidence recorded in it and evidence recorded in another case cannot be taken into account in arriving at the decision. Even in civil cases this cannot be done unless the parties are agreed that the evidence in one case may be treated as evidence in the other.”

Similarly in same like circumstances Hon'ble Lahore High Court in case titled as **Muhammad Arif Vs Malik Muhammad Farooq & 04 others** enunciated the following rule:-

“It is also settled principle of law that evidence recorded in another

case as evidence in case in hand is not permissible by virtue of Article 57 of Qanun-e-Shahadat 1984 in arriving to this conclusion we are fortified by the following judgment".
Noor Elahi Vs State PLD 1966 SC 708.

10. The respondent No.1 has proved cruelty, maltreatment by husband and at the hands of other house mates of petitioner. So, the learned trial Court has correctly appreciated the evidence and decreed the suit in favour of respondent No.1 except medical expenses according to judgment dated 28.02.2013 and maintained by learned appellate Court. This Court has gone through the evidence, but no any misreading or non-reading of evidence has been found. So, the judgments of both the Courts below have been passed with all lawful authority and no injustice has been done to petitioner, so needs no interference.

11. Thus this petition being bereft of merits is dismissed.

Announced.
 27.10.2017.

J U D G E

(SB) of Mr. Justice Muhamamd Younis Thaheem