

**JUDGMENT SHEET  
IN THE LAHORE HIGH COURT, LAHORE  
JUDICIAL DEPARTMENT**

**Writ Petition No.335 of 2016**

**Mst. Iram Shahzadi**

**Versus**

**Muhammad Imran-ul-Haq & others**

**J U D G M E N T**

Date of hearing:	19.07.2018.
Petitioner by:	Mr. Tahir Khan, Advocate.
Respondents by:	Mr. Inzar Rasool, Advocate.

**MUHAMMAD SAJID MEHMOOD SETHI, J.-** Through instant petition, petitioner has assailed judgment & decree dated 02.12.2015, passed by learned Additional District Judge, Lahore, whereby appeal filed by respondent No.1 against judgment & decree dated 01.04.2015, passed by learned Judge Family Court, Lahore, was partly accepted and findings of learned trial Court to the extent of 22-Tolas gold ornaments were reversed.

2. Brief facts of the case are that petitioner filed suit for recovery of dowry articles or alternate value of Rs.10,00,000/-, maintenance allowance, dower amount and gold ornaments weighing 42-Tolas. In the earlier round of litigation, learned Judge Family Court decided the suit vide judgment & decree dated 28.10.2013. Both the parties approached learned lower Appellate Court, whereby suit to the extent of Issues No.1 & 4 was remanded back to learned trial Court for afresh decision with direction to decide the same in the light of available evidence and record, after

affording further opportunity to respondent No.1. Both the aforesaid issues are reproduced hereunder:-

1. Whether the plaintiff is entitled to recover dowry articles as per list attached or in alternative Rs.10,00,000/-? If so, upto what extent? OPP.
4. Whether the plaintiff is entitled to recover gold ornaments weighing 42-Tolas as prayed for? OPP.

In post-remand proceedings, learned Judge Family Court, vide judgment & decree dated 01.04.2015, proceeded to decide the above issues partly in favour of petitioner in the manner that petitioner was held entitled to recover 22-Tolas gold ornaments, which were given to her from the side of her in laws, as admitted by respondent No.1 himself, whereas claim of petitioner for recovery of 20-Tolas gold ornaments was dismissed. As regards dowry articles, petitioner was held entitled to recover the same excluding the items mentioned at Sr. No.2, 4, 10, 14, 16, 18, 20, 22, 37 to 39, 43, 53, 58 to 85 as per list Exh.P2/A, or their alternate value with 20% depreciation upon each item. Feeling aggrieved, respondent No.1 preferred appeal before learned lower Appellate Court, which was partly accepted vide judgment & decree dated 02.12.2015 and findings of learned trial Court to the extent of 22-Tolas gold ornaments were reversed and those to the extent of 20-Tolas gold ornaments were upheld. Hence, instant constitutional petition.

3. Learned counsel for petitioner submits that impugned judgment & decree, passed by learned lower Appellate Court, is illegal and without any lawful justification. He adds that impugned appellate judgment & decree is absolutely non-speaking and the same has been passed without keeping in view the well-settled principle of law enshrined by the Superior Courts that bridal gifts are in addition to *Haq Mehr* / dower and not in lieu thereof, thus, do not form part of the dower. He further submits that gold

ornaments, mentioned at Sr. No.16 of *Nikahnama* (Exh.P4), are bridal gifts, which could not be confused with dower and were not liable to be returned to respondent No.1 on the ground of *Khula*. In support of his submissions, he has referred to *Shakeel Saood Khan v. Rizwana Khanum and another* (PLD 2012 Lahore 43).

4. Conversely, learned counsel for respondent No.1 defends the impugned appellate judgment & decree and submits that petitioner has failed to point out any illegality or legal infirmity in the impugned decision, thus, same is liable to be upheld under the law. He further argued that learned Family Court also lacked jurisdiction to entertain claims of the petitioner regarding entries made against column No. 16 of *Nikahnama*. In support of his contentions, he has placed reliance upon *Amir Bibi through Legal Heirs v. Muhammad Khurshid and others* (2003 SCMR 1261), *Muhammad Bashir Ali Siddiqui v. Mst. Sarwar Jahan Begum and another* (2008 SCMR 186), *Muhammad Akram v. Mst. Hajra Bibi and 2 others* (PLD 2007 Lahore 515), *Mst. Naveeda Kausar and others v. Mauzzam Khan and others* (2016 CLC 180) and *State Life Insurance Corporation of Pakistan v. Qazi Majid Ali and 2 others* (2016 CLC 765).

5. Arguments heard. Available record perused.

6. The issue under dispute calls for a perusal of entries made at serial Nos.13, 14, 15 and 16 of the *Nikahnama* (Exh.P4) which shows that *Haqmahr* of Rs.5000/- was fixed in the entry against serial No.13, payment of which was deferred since the entry against serial No. 14 has been left empty. The entry against serial No. 15 shows that no part of *Haqmahr* was paid at the time of marriage. The entry of gold ornaments, weighing 22-Tolas, having been given to the bride by family of respondent No. 1 is shown at serial No. 16 of the *Nikahnama* which is reproduced below:-

جو کہ ایک قطعہ مکان رہائشی واقع عمران سٹریٹ قاضی پارک گلی نمبر ۹ شاہدرہ ٹائون لاہور کا نصف حصہ لڑکی کی ملکیت ہوگا۔ جو کہ حق مہر میں لکھ دیا گیا ہے یہ کہ 22 تولہ زیور جو کہ لڑکی والوں کی طرف سے ہے اور 20 تولہ زیور جو کہ لڑکی والوں کی طرف سے ہے اس طرح کل زیور 42 تولہ لڑکی کی ملکیت ہو گا۔ اور ماہوار جیب خرچ مبلغ -/6000 روپیہ چھ ہزار روپیہ ہو گا۔

Perusal of above column shows that 22-Tolas gold ornaments were given to the petitioner by family of the respondent No. 1 which became ownership of the petitioner. Although it is written in answer to the question if in lieu of dower any property has been given yet the mention of Rs. 5,000/- as dower in column No. 13 leaves no doubt that the gold ornaments are in addition to the *Haqmahr* and not in lieu thereof and do not form part of the dower. Obviously, gold ornaments, weighing 22-Tolas, have much greater value than Rs.5000/- and could not be treated as part of *Haqmahr* of Rs.5,000/- only. Entries against serial Nos. 13, 14, 15 and 16 cannot be construed in such a manner so as to conclude that the *Haqmahr* consisted of Rs.5,000/- and gold ornaments mentioned in column No. 16. The position would have been otherwise if the gold ornaments had also been mentioned at serial Nos.13, 14 and 15 of the *Nikahnama* which is not the case here. It follows that such gold ornaments are not part and parcel of dower but have to be regarded as bridal gifts in contradistinction to dower. In the given circumstances 22-Tolas gold ornaments being bridal gifts cannot be withheld by the husband in lieu of *Khula* as the said bridal gifts are not part of dower. Reference in this regard can be made to the case of Shakeel Saood Khan (supra). Even otherwise respondent No. 1 while appearing as DW1 has also shown his consent to return 22-Tolas gold ornaments to the petitioner.

7. Section 2(a) of Dowry and Bridal Gifts (Restriction) Act, 1976 has defined 'bridal gift', 'dowry' and 'present', which shows

that the articles of 'dowry', 'bridal gift', 'presents' or all other movable property are the belongings of bride. Bridal gifts given by husband are absolute property of wife and cannot be snatched from her. Under the *Sharia*, the marriage between a man and a woman can be dissolved on the basis of *Khula*, for which some consideration, which is in the form of dower which the wife is entitled to receive at the time of marriage or on demand, is to be forgiven. In the present case, only certain amount is mentioned in Column No.13 of the *Nikahnama* as dower money, however, there is no mention of gold ornaments therein. Consideration for marriage is dower amount which has not been paid to the wife. Petitioner (wife) has waived her dower amount in consideration of *Khula* which is enough. Learned Appellate Court has failed to consider this aspect of the case, hence, impugned judgment & decree dated 02.12.2015, passed by learned Additional District Judge, Lahore, is patently illegal. Reference is made to *Tania Naseer v. Muhammad Zubair and 2 others* (2017 YLR 1481) and *Mst. Mussarat Iqbal Niazi v. Judge Family Court and others* (2013 CLC 276).

8. So far as the argument of the learned counsel for the respondent No. 1 that Family Court lacked jurisdiction to entertain claims regarding entry made against column No. 16 of *Nikahnama*, suffice it to say that Entry No.10 added in the Schedule (Part I) of Family Courts Act, 1964, through Act No.11/2015 dated 18.03.2015 confers jurisdiction upon the Family Court to entertain and adjudicate any matter arising out of the *Nikahnama*. This issue was considered at length by this Court in *Muhammad Imran v. Additional District Judge, Multan and 3 others* (PLD 2018 Lahore 429) and *Mst. Mithan v. Additional District Judge, Jatoi and 7 others* (2017 MLD 1101), and the objection qua jurisdiction of Family Court was repelled.

9. In view of the above, instant petition is allowed. The impugned appellate judgment & decree dated 02.12.2015, passed by learned Additional District Judge, Lahore are set aside being illegal and without lawful authority and consequently, judgment and decree passed by the learned Judge Family Court, Lahore is restored.

(Muhammad Sajid Mehmood Sethi)  
Judge

Announced in open Court on 04.09.2018.

Judge

Approved for reporting.

Judge