

Mr. Qayyum Tahir Ch., Advocate for Petitioner. Shaukat Rafiq Bajwa, Advocate for Respondents. Date of hearing: 27.3 1998.

JUDGMENT

Mst. Manzooran Bibi, petitioner herein, filed a suit for dissolution of marriage against Respondent No. 1. on the grounds that she was deprived of her articles of dowry, extended threats of murder, the respondent was a man of bad character, non-payment of maintenance and also on the ground of *Khula*. *Nikha* of the petitioner was performed on 18.10.1992 and in exchange the sister of Respondent No. 1 was married to the brother of the petitioner. The parties are in issue, as to the plea if the *Rukhsati* had taken place as according to the petitioner, *Rukhsati* did not take place while respondent pleaded that she had stayed for few months in his house,

2. The suit was resisted by Respondent No. 1 who denied the allegations raised in the plaint and pleaded that his sister, who was married to the brother of the petitioner had died and that the brother of the petitioner had been pressurizing his family for marrying the second sister of Respondent No. 1, which being not accepted, the relations between the two parties, were destroyed by him.

3. The learned Judge Family Court dismissed the suit on 23.11.1994 by returning the findings on Issues Nos. 1 and 2 against the petitioner which judgment was maintained in appeal by the learned District Judge, Faisalabad, *vide* judgment, dated 22.3.1995.

4. The judgments of the two courts below have been assailed in this Constitutional Petition on the ground that the view taken by the two courts below is arbitrary, the issue of *Khula* has not been considered in its true legal perspective, the circumstances justifying release of petitioner from the marital tie were completely over-looked and *Khula* was refused on an illegal assumption that the petitioner having failed to prove the other issues pertaining to misappropriation of property and bad character of Respondent No. 1 could not claim *Khula*.

5. Learned counsel for the parties have been heard. It has not been denied that the petitioner in her statement, had specifically stated that she had been receiving threats of life from the Respondent No. 1 and that on any condition she was not willing to live with him and also that efforts for reconciliation in pre-trial and post trial proceedings could not succeed and that the petitioner throughout remained adamant in her stand that she would not live with the respondent No. 1 in any circumstance. It is also a fact that *th&t Nikha* took place on 18.10.1992 and that the matrimonial relations are under suspense for the last more than five years as the petitioner is staying with her parents.

6. The learned Judge Family Court, was mainly influenced by the fact that the petitioner could not prove the issue of misappropriation of dowry articles and that the evidence indicated that it was a marriage in exchange and there might be a chance for reconciliation. He did not, consider the pre-requisites for grant of *Khula* and on the contrary denied relief for the reason that in his view the petitioner having failed to prove other issues could not be granted *Khula*. The learned District Judge, agreed with the argument that the wife had a right to dissolution of marriage on the ground of *Khula* but still he declined the relief as he was also influenced by the reasoning that the issue of misappropriation of articles of dowry or other allegations about the character of Respondent No. 1 could not be proved, despite the fact that he was involved in a criminal case. The two courts below while recording findings on the other issues were mainly influenced by the fact that the petitioner had received information about the character of Respondent No. 1, through, her brother. It may be relevant to take note of the fact that sister of Respondent No. 1, who was married to the petitioner's brother has already died and according to the respondent, relations became strained as the brother of the petitioner had been pressing for marrying the second sister of Respondent No. 1. Whatever may be the reason, one fact, at least, which come from the defence of the respondent was that the relations between the parties were not cordial, and that the marriage was practically broken as the matrimonial relations were under suspense for a considerable time.

7. In *Shahid Javed us. Sabba Jabeen & others*, (1991 CLC 805), it was observed that right of dissolution of marriage on the basis of *Khula* was independent right and failure of wife to establish grounds other than *Khula* taken by her would not prejudice her right to seek *Khula* divorce and family courts are enjoined to determine this right independently. It is, also a settled rule that if dissolution of marriage is claimed on number of grounds including *Khula* then the mere fact that the wife could not establish her allegations *qua* other grounds would not disentitle her to seek independent determination of her right for dissolution of marriage on the ground of *Khula*. The Court cannot on the basis of decision on the other issues decline *Khula* on erroneous assumptions that the basis could not stand. In *Mst Rashida Bibi v. Bashir Ahmed and other* (PLD 1983 Lah. 549), it was held that if the woman stated categorically that she would not live with her husband and was willing to forego all her claims in case her marriage would be dissolved on basis of *Khula*, this would be sufficient for the court to satisfy that the two parties could certainly not live within the limits prescribed by God and woman entitled to get the marriage dissolved on the basis of *Khula*.

8. The law does not require that the wife should give objective reasons for seeking dissolution on the ground of *Khula*. If the wife is adamant and all attempts for reconciliation had failed, there is little choice for the court except to grant decree for the consequences in adopting any other course may be disastrous. In *Mst. Khurshid Bibi v. Baboo Muhammad Amin* (PLD 1967 SC 97), it was ruled as follows: -

".... under Muslim Law, the wife is entitled to *Khula*, as a right if she satisfies the conscience of the Court. It will otherwise mean forcing her into a hateful union." Shah Wali Ullah of Delhi in *Al-Musawwa-min-Ahadith-al-Muatta*, Vol. II. P. 160. goes to the length of saying that "even if she obtains *Khula* without any reason (apart from personal dislike) it is lawful but not proved. The reason is that the Prophet and Companions never inquired from her the reason for her seeking *Khula*." Referring to the Hadith of the Holy Prophet Barariah and Mughis, it was concluded that "this shows that a woman cannot be compelled if she had a fixed aversion with husband to live with him. *Khuki* is a release from matrimonial bond which right, according to the dictates of the Holy Qur'an. can be exercised if the circumstances indicate that it is impossible for the parties to live within the limits prescribed by Allah Almighty and their re-union will give birth to hateful union. The courts are bound to grant this right of *Khula* to a woman where she expressly claims or omits to claim in her pleadings and even if the other grounds for seeking dissolution of marriage could not be proved. In *Mst. Zarina Bibi v. Addt. District Judge, Jhang, & others*, (1993 MLD 1507), it was held that where the wife has developed fixed aversion against the husband, the separation had taken place, the wife claiming *Khula* need not to come out with any logical, objective and sufficient reason for dissolution of marriage. It was ruled that if the wife was living separately from her husband, no reconciliation could take place during the proceedings before the Family Court and thereafter, this would be good enough to strengthen the view that irremedial rift existed between the parties amounting from fixed aversion on the part, of wife against husband and, therefore, the parties could not live together amicably as husband and wife within the limits of Allah Almighty. It was also held that mere fact that the wife had failed to substantiate other issues resulting to cruelty and levelling of false allegations against her husband will not be sufficient to disentitle her to the grant of *Khula*.

filed by the petitioner against Respondent No. 1 is decreed on the basis of *Khula*, with no orders as to costs.

i K.A.B. i

Petition allowed.