

**JUDGMENT SHEET**

**IN THE PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

**W.P No. 494-M/2020  
With Interim Relief**

**Mst. Nadia Bibi.....(Petitioner)**

**vs**

**Asad Khan and others.....(Respondents)**

Present: Mr. Shafiq Ahmad, Advocate for the petitioner.

Mr. Arshad Khan Khattak, Advocate for the  
respondent No. 1.

**Date of hearing: 15.02.2023**

**JUDGMENT**

**Dr. Khurshid Iqbal, J.-**

1. Mst. Nadia Bibi (petitioner) and Asad Khan (respondent) married to each other sometime in the year 2014. After about three years of the marriage, the petitioner brought a family suit against the respondent. She stated in her plaint that the respondent's behaviour with her remained very cordial; he would fulfil her any valid desire and never neglect performance of his conjugal obligations. She added that the respondent owed loan to one Umar Wahab (Muhammad Wahab) for which he snatched from her gold ornaments, promising with her that he would purchase them for her later on. Then, she further added, the respondent became a drug addict due to which he would quarrel with her and would use abusive language about her parents. In order to save her marital

bond, she kept enduring the harsh and cruel behaviour of the respondent. About 8 months before the institution of the suit, family members of the respondent kicked her out of the house so she went to the house of her parents. During that time of desertion, the respondent never asked about her, nor did he maintain her. She prayed for a composite decree of dissolution of marriage, return of her 04 tola gold ornaments, dowry articles and maintenance allowance for 8 months at the rate of Rs. 10,000/- per month.

2. The respondent submitted a written statement in order to contest the suit. He denied from the averments the petitioner made in her plaint, including dower, snatching of gold ornaments for satisfaction of debt, maintenance and, above all, his cruel behaviour. The trial Court framed as many as 12 issues, on which both the parties recorded their respective evidence. The trial Court also made efforts for reconciliation between the parties before as well as after recording of evidence, but in vain. In light of evidence of the parties and arguments of their respective counsels, the trial Court passed a decree in favour of petitioner in the following terms:

"دادری: مدلل بحث برتنیجات بالا کی روشنی میں دعویٰ مدعیہ تاحد تنفیخ نکاح بذریعہ خلع و جردی سامان جہیز ڈگری کیا جاتا ہے۔ جبکہ دعویٰ مدعیہ تاحد نان و نفقہ، علاج معالجہ اور حق مہر خارج کیا جاتا ہے۔ چونکہ تنفیخ نکاح کی ڈگری بذریعہ خلع صادر کی گئی ہے لہذا اسی صورت میں مدعیہ حق مہر

چار تولے سونا، مدعا علیہ کو واپس کرنے کی پابند ہے کیونکہ خلع کی صورت میں بیوی کو اپنے حق مہر سے دستبردار ہونا پڑتا ہے۔"

3. Both the parties filed their respective appeals before the learned Additional District Judge/ Izafi Zilla Qazi, Malakand at Dargai. On partial acceptance of her appeal on 19.02.2020, the petitioner was granted decree for recovery of dowry articles as per the list (Ex PW 1/1) or its market value. The appeal of the respondent was dismissed.

4. I have heard arguments of learned counsel for the parties and perused the record.

5. The quantum of dower alleged as 04 tolas gold ornaments and its payment is not disputed between the parties. The dispute is over what the petitioner contends its "snatching" by the respondent for repayment of a debt of Rs. 2,00,000/00. The respondent plainly denied the allegation of snatching of the dower. The petitioner and her two witnesses, namely, Umar Hayat and Umar Siddique (PWs-2 and 3) were not cross-examined on this point. She produced Muhammad Wahab (PW4), the man who advanced the aforesaid loan to the respondent. Muhammad Wahab deposed that the respondent, via a telephonic call, demanded from him *qarz-e-hasana* of Rs. 2,00,000/-. He gave to the respondent a cheque for



the aforesaid money, which the latter cashed from the bank. Later on, when he demanded its repayment, the respondent took him the gold ornaments which he refused to receive in lieu of the loan. He maintained in his deposition that after about 2/3 days, the respondent paid him the loan amount in cash, telling him that he sold the gold ornaments of his wife. Certain portion of his cross-examination may be referred here. For example, he admitted having no documentary proof of the loan. He, however, added that he paid the money through a bank's cheque. When asked about the number of the cheque, he replied that the record of the same is available in the bank. Obviously, he couldn't be expected to remember the number of the cheque. He was asked about the witness in whose presence he handed over the cheque. He replied that the respondent's wife (petitioner) was present. As noted above, the petitioner was not asked about the loan in her cross-examination. He was then asked about evidence of the fact that the respondent sold the gold ornaments. He reiterated that the petitioner and the respondent both told him that the gold ornaments were sold for repayment of the loan.



6. Two aspects need more critical analysis. Firstly, Muhammad Wahab is the maternal uncle of the

petitioner. Secondly, he stated that counsel for the respondent told him to give evidence. The mere fact that he is a close relative of the petitioner is not a sufficient ground to discard his evidence as an interested witness. The reason is that no enmity or ill will between him and the respondent was attributed to him. A suggestion was put to him that he deposed falsely in order to grab money. He denied that suggestion. Similarly, the fact that he gave evidence because counsel for the respondent asked him also doesn't seem to be a factor to throw away his evidence. Had he said the petitioner (herself) or her counsel *advised* or tutored him for giving evidence, might have raised a question on his credibility. Above all, every witness after having entered the witness box is administered oath and his/her evidence must be believed as true unless it is demonstrably shattered as unbelievable for being not cogent, solid and confidence inspiring and/or even false.



7. The respondent himself didn't appear as a witness to spell out his own contention and face cross-examination. His father (Qasim Khan/special attorney/DW1) and his uncle (Amin Khan/DW2) admitted in their respective depositions that Muhammad Wahab had advanced loan to the respondent. They also

admitted that usually people do sell gold ornaments of wives to repay their debts, suggesting an admission of the contention of the petitioner that she offered (though the respondent didn't snatch) the gold ornaments to repay his loan.

8. Both the learned Courts below have not discarded the statement of Muhammad Wahab. I agree with the learned Courts below that the specific contention of "snatching" of gold ornaments was not proved by the petitioner. In my view, the word "snatching" may not be understood in strictly literal sense in the circumstances of the case, most particularly when the testimony of Muhammad Wahab is weighed holistically. I may repeat here that Muhammad Wahab candidly testified that respondent and the petitioner both informed him of having sold the gold ornaments to satisfy his debt. This sufficiently proves that the petitioner had given her gold ornaments to the respondent willingly to rescue him in a difficult time. The fact that in our social set up, a wife would ordinarily offer her gold ornaments to her husband for sale in any moment of financial stringency is a relevant fact in family suits. Spouses love to help each other, rather always remain ready to sacrifice for each other as and when an opportunity arises. It is part of our

*Wahab*

social norms that the first thing a wife would offer to her husband in financial difficulty would be her gold ornaments. As for evidence of such events (contention in a family suit), it is a significant aspect of our family law that there is and could never be such independent and impartial evidence as the presence of people who are not related to the parties; even of those, such as, close relatives like parents, siblings and even children. Many issues between the spouses, ranging from their individual likes and dislikes, to inter and intra family rivalries, love and hate, pride and prejudice, envy and jealousy, to consideration and decisions about clothing, housing, food, schooling and even financial matters, are seen, discussed and decided by spouses inside their residential room with great regard for privacy and secrecy. It is for this reason that Family Courts are required to resolve rather than to adjudicate family disputes through a behavioural approach that involves psychological, social, and contextual explanations of human behaviour in matrimonial relationship. And again, it is for this reason that the formal laws of procedure and evidence are not applicable to family suits. As a corollary of the above discussion, I would respectfully differ with the learned trial and appellate Courts' judges that the petitioner failed to prove snatching of her gold ornaments by the respondent. I



would hold that the petitioner succeeded in proving that she had handed over to the respondent her gold ornaments though snatching was not typically proved. And, while the petitioner discharged her burden of having given her gold ornaments to the respondent, the latter having admitted her stance in his evidence, discernibly failed to prove that returned the gold to her.

9. As regards the dissolution of marriage on the basis of *khula*, the next contention of the petitioner, the evidence shows that the respondent has never treated her cruelly, physically and/or mentally. Her own deposition is sufficient to be referred here. Her deposition shows that the respondent while abroad (in Saudi Arabia) would ask about her wellbeing through telephonic calls, would love her, as she said "even now" and had never treated her violently, and had also brought for her a gift of gold ring. She, however, complained that while at home, her in-laws would not talk to her. While the petitioner didn't spell out specific details whether such behaviour of her in-laws made her impossible for her to live in the house of respondent, it has definitely a negative psychological impact on her life there. In spite of the respondent's love and affection, her unwillingness to live with him may be seen in this background. A wife, generally and in the

*Khurshid Iqbal*



absence of her husband, particularly, would not simply expect but pin high hopes, and rightly so, on her in-laws to let her live with them in a conducive and congenial atmosphere within the four corners of the house. Given our social norms, a wife would ordinarily do her best to live peacefully. She would most often show resilience in the face of uncouth and even cruel behaviour of her husband and other in-law for the sake of her own as well as for the honour and dignity of her parents. She would complain either in extreme situation or not at all.

10. I shall now advert to the issue of maintenance for *iddat* period after the decree of dissolution of marriage on the basis of *khula*. The learned Courts below showed no reason for not granting the petitioner/wife maintenance for her *iddat* period of three months. I agree with concurrent view of the learned Courts below that the petitioner/wife failed to prove cruelty on part of the respondent and that he has maintained her. There could be no escaping from the fact that the respondent was bound to maintain her till the conclusive end of his *nikah* with her on the expiry of her *iddat* period. Though the petitioner is not entitled to her past maintenance, she couldn't be deprived of her maintenance during her *iddat* period.



**11.** As sequel to my above discussion, I pass a decree in favour of the petitioner/wife as under:

- i. The petitioner/wife is entitled to repayment of 04 tolas gold ornaments as her dower which the respondent sold for repayment of his debt. However, in the event of dissolution of marriage on the basis of *khula*, the respondent is held entitled to be discharged from its repayment;
- ii. The petitioner is entitled to maintenance at the rate of Rs. 5,000/00 per month for the period of *iddat* with effect from the date of decree of dissolution of marriage on the basis of *khula*; and
- iii. The decrees of the learned Courts below are modified in the above terms."

**Announced**  
**Dt: 15.02.2023**

  
**JUDGE**

office  
17/03/23