

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No. 4678 of 2021

Ruhi Farzana Shafi, etc
VS
Komal Iqbal, etc

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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22.04.2024. M/s. Samina Khan and Adnan Khan, Advocates for Petitioner.
Mr. Haroon Rashid, Advocate for respondents.

ARBAB MUHAMMAD TAHIR, J: Through the listed petition in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 petitioners (*Ruhi Farzana and Ahmed Sewhani*) impugned Judgments and decree dated 08.11.2021 and 24.06.2019 (***Impugned Judgments***) passed by learned Additional District Judge-West, Islamabad and Senior Civil Judge/Judge Family court-West, Islamabad whereby suit of respondent No. 1 for recovery of dower amount, dowry articles, personal belongings and gold/diamond ornaments or as an alternate remedy its present market price/value has been decreed in her favour and appeal against said judgment and decree, filed by petitioners, has been dismissed.

2. The fleetingly enumerated chronicles of the lis are that petitioner No. 2 and respondent No. 1 entered into wedlock on 09.02.2015 and after consummation of marriage, the couple was blessed with daughter on

08.01.2016. The marriage was solemnized against dower of Rs. 500,000/- which was deferred. However, due to some domestic disputes the respondent No.1 filed her suit for recovery of dower, dowry articles and gold/diamond ornaments before the Family Court, Islamabad, which was contested by petitioner No. 2 but partially decreed in favour of respondent No. 1. Thereafter the parties challenged the judgment and decree of the learned Family Court by dint of appeal, but the same were dismissed vide judgment dated 08.11.2021.

3. Learned counsel for the petitioners submitted that the lower Courts have not appreciated the factual matrix as well as evidentiary resume of the case and misinterpreted the facts of the case; that giving of dowry articles was acknowledged but its alternate value has not been properly determined by the Courts below; that the Courts below failed to appreciate the fact that parties are permanent resident of United Kingdom and purchase of dowry articles and its transportation to the petitioner's house has also not been proved; that the judgment of the trial court is silent about the residence of respondents while it was the firm stand of petitioners that only marriage was solemnized in Pakistan. Learned Counsel placed reliance on case laws reported as **2019 CLC 1008, PLD 2019 SC 527, 2019 CLC 71, 2020 YLR 282 and unreported Judgment passed in CP No. S-466 of 2021.**

4. Conversely, learned counsel for the respondent No.1 has vehemently opposed this petition and partially supported the impugned judgments and decree; that evidence put forward by the respondent are clearly mentioned and petitioners were bound to give the same as matter of right but learned Family Judge partially decreed the suit of the respondent No. 1 without perusal of record and evidence, therefore impugned judgments are result of misreading and non-reading of evidence of the parties; that lower courts failed to follow the law and dictums laid down by the superior courts which are binding therefore, instant petition is liable to be dismissed and decree is liable to be modified in favour of respondent No. 1.

5. Arguments heard and file perused from cover to cover.

6. The nub of the matter is the contest between the parties in respect of the dower amount, dowry articles, gold and diamond articles given by petitioners to respondent No. 1 which has allegedly been stolen by respondent No. 1. Petitioners called the police and lodged FIR No. 243/16 against the respondent under Section 392 PPC with Police Station Margalla, Islamabad which matter is still pending before the Hon'ble Apex court.

7. This Court is of the opinion that right of a wife to receive dower from her husband as stipulated in the

nikahnama or otherwise agreed, as and when becomes due under the law, is an inherent ingredient of the very concept of the marriage in Islam. For the reason that dower, in the context of Muslim marriage, is an obligation under the Holy Quran and Sunnah. Burden to prove that said obligation has been discharged by the husband at the time of marriage or during the existence of the marriage. Said burden can be discharged through an overt act like execution of an affidavit having received the dower or producing the witness(es) in whose presence said obligation was discharged. However, petitioners failed to produce any kind of such evidence in their favour. Therefore, in such eventualities, the Courts are required to carefully examine the evidentiary resume of a case to ascertain whether or not a groom/husband has paid the dower at the time of *nikah* or on demand of the wife. Having held so, it is imperative to examine the statement of the parties that persuaded the lower Courts in setting up the impugned findings.

8. In the instant case, there is no dispute as to the amount that was fixed as dower in terms of Columns No.13 of the *nikahnama*. It is the effect of how Column No. 15 of the *nikahnama* has been dealt with by the parties at the time of solemnization of their *nikah* and also their statements during the cross examination that persuaded the Courts to set the findings. Admittedly, the term "*Deferred*" dower means '*later on*' or '*postponed*' as also the payment '*on demand*' as contemplated in para

290 of the principles of "Muhammadian Law by D.F. Mulla that reads as under:

**"290 "Prompt" and "deferred"
dower.-----**(1) *The amount of dower is usually split into two parts, one called "prompt," which is payable on demand, and the other called "deferred" which is payable on dissolution of marriage by death or divorce."*

9. In case of "*Muhammad Qayyum Anjum v. Additional District Judge, Muzaffargarh and 2 others*" [2022 MLD 416 Lahore (Multan Bench)], the moot point as to how above referred Columns of the *nikahnama* deal with the dower and its kinds, keeping in view the scope of Section 10 of the Muslim Family Courts Ordinance, 1961, came under discussion and the Lahore High Court held as under:

"8.Here it is relevant for the present purposes to traverse through the wording of columns No. 13 to 16 of the *nikahnama*. In column No. 13, the word "Raqm (رقم) ("(amount) has been used; column No.14 also uses the word "Raqm (رقم)" (amount) whereas columns No. 15 and 16 use the word "Mahr" (dower) that also reveals the intention of the legislature with regard to amount of dower, which can be incorporated and settled by the parties, under columns No.13 and 14 and other valuables as dower under columns No. 15 and 16. Entries in columns No.13 to 16 together become 'dower overall'. Thus, entry in column No. 13 of the *nikahnama* is to contain the amount of dower, entry 14 envisages the break-up of such amount of dower spelled out by the parties by virtue of entry under column No.

13 into prompt and deferred whereas entry in column No. 15 may contain anything given or paid out of the amount envisaged under entry 13 or in addition thereto forming as part of the dower overall.....entries under columns No. 13 to 16 of the nikahnama envisage reflection and manifestation of the parties as to amount/Raqm (رقم) (and other articles and/or property given or to be given by husband to wife as the dower overall. Therefore, anything other than an amount, forming part of dower overall and incorporated under columns No. 15 and/or 16 has also to contain the time and mode of payment and giving of the same by husband to wife. Failure to spell out the mode and time of dower contained in entry 15 and/or 16 would entail the attraction and applicability of Section 10 of the Ordinance.”

10. In the instant case, there is no dispute upon the amount of dower. As per column No. 13, the amount of dower was fixed as Rs. 500,000/- and nature of dower was described in column No. 14. *Nikahnama* is considered as registered document in light of Section 6 of Muslim Family Laws Ordinance, 1961, therefore, presumption of correctness is attached to the entries therein. Very cogent evidence was required to rebut the entries of *nikahnama* and the stance of the petitioners that respondent has withdrawn dower amount from MCB account does not prove payment of dower to respondent No. 1 unless it is proved through independent evidence but no such evidence was placed on record by petitioners, Hence, this Court is of the view that claim of respondent No. 1 has force and the lower Courts rightly relied on her statement while deciding the payment of dower in her favour.

11. In writ jurisdiction, the High Court has to see as to whether the lower Courts have committed jurisdictional error, uncondonable in nature or in the exercise of jurisdiction had committed patent legal error, causing serious miscarriage of justice because the Hon'ble Apex Court has consistently held that the High Court in its constitutional jurisdiction is not supposed to decide such matters, as a Court of appeal by making reappraisal of the evidence and to form a different opinion from the one held by the Courts below, even if it is possible.

12. The learned Additional District Judge as well as the learned Judge Family Court have attended to all the material aspects of the case and have considered each and every important piece of evidence and after its proper appraisal recorded concurrent findings on each and every issue. I have minutely attended to both the impugned judgments but could not discover any gross misreading or non-reading of evidence, causing miscarriage of justice to attract the extra ordinary writ jurisdiction of this Court.

13. The Family Court is a Special Tribunal, constituted with the object to decide domestic disputes. It has the benefit of reading the mind of the spouses during pre-trial and post-trial reconciliation, besides noting the demeanor of the witnesses and conduct of the parties during the trial. Similarly, the Court of appeal is a Court of fact and law both and when both such Courts decide any dispute

in a legal manner then, the High Court has to exercise maximum restraints in interfering with findings of these Courts, unless and until it is shown that these were the result of misconstruction of duly executed documents and / or based on misreading and non-reading of material evidence on record, resulting into miscarriage of justice, in my view, the case in hand does not fall within that category.

14. In view of the above discussion, this Court is of the opinion that instant petition has no merits and the findings of the Appellate Court as well as trial Court merits no interference by this Court, therefore, hereby upheld.

15. Instant petition is ***dismissed*** accordingly.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on _____ **.2024.**

JUDGE

Sherazi