

# ORDER SHEET

**Case No. W. P. No. 2945/2013.**

Harm Aneeqa etc.

23.04.2014. Mr Muhammad Faisal Butt, Advocate for the petitioner.  
Ch. Muhammad Uffan Iftikhar, Advocate for  
respondents No.1

Dismissal of appeal by the learned Addl. District Judge, Gujar Khan vide order dated 21.10.2013 is challenged in this petition. The appeal was filed against judgment and decree dated 01.07.2013 passed by the Judge Family Court, Gujar Khan. The decisions of both courts, are assailed on issue of maintenance and recovery of 20 tola gold ornaments received by respondent No.1 as bridal gift.

2. Facts briefly, as available in impugned order, are that Nikah of the petitioner was solemnized with respondent No.1 on 03.04.2012 and respondent No.1 allegedly deserted the house of the petitioner on 20.09.2011, at demise of her brother. Due to unsuccessful relationship, divorce was effected on 03.09.2012. Soon after the divorce, suit for recovery of dowry articles, maintenance and gold ornaments was filed on 08.09.2012, which was decreed in favour of respondent No.1. The appeal filed by the petitioner against the decree was dismissed.

3. Learned counsel for the petitioner has argued that an apparent contradiction in the pleadings as well as

statement of respondent No.1 was overlooked by the courts below. He has read paragraphs No.4 & 10 of the plaint along with Exh-P1 (the statement on oath of respondent No.1 as PW-1). In the paragraph No.4, it was asserted that 20 tola gold ornaments, given as bridal gift, were taken back by the petitioner on a pretext to verify whether the same were properly crafted and weighed. Whereas, in paragraph No.10 of the plaint, it is written that all the gold ornaments (جملہ زیورات) were left behind by respondent No.1, while going to her parent's house. Learned counsel for the petitioner has also read the cross examination to assert that no issue was framed regarding possession of the gold ornaments and issue No.2 did not cover this aspect, which is reproduced: -

“2. Whether the plaintiff is entitled to gold ornaments and bridal gift weighing 20-tolas or alternate its price Rs.12,00,000/-? OPP.

4. In reply, learned counsel for respondent No.1 asserted that the claim of 20 tola gold ornaments as bridal gift was supported by the statement of PW-2. He explains that the ornaments left at the house of the petitioner were those which were given to her by her parents at the time of marriage i.e. 3 tola of gold ornaments. It is argued that 20 tola gold ornaments given as bridal gift were taken back by the petitioner.

5. Heard both learned counsel, record perused.

6. From perusal of the pleadings and evidence led, it transpires that the petitioner claimed to have given only 5 tola of gold ornaments as bridal gift against respondent No.1's claim of 20 tola. The respondent No.1 alleged that possession of gold ornaments was with the petitioner, but he had pleaded that respondent No.1 had taken it away. In this backdrop of conflicting claims, this is a case of mis-reading of the evidence. In

my considered opinion, the issue No.2 was not framed properly, therefore, evidence led by the parties was not focused on the dispute regarding quantity and possession of the gold ornaments. The findings arrived at on the available evidence and pleadings, at variance are incorrect. The jurisdiction exercised by the trial court and ratified by appellate court, suffers from incurable jurisdictional defects.

7. The Apex Court in the case of Auqaf Department through Chief Administrator Auqaf, Punjab, Lahore versus Secretary, Ministry of Religious Zakat, Ushar and Minorities Affairs Government of Pakistan, Islamabad and 3 others (2009 SCMR 210) has enshrined the grounds in presence of which a writ of “*Certiorari*” can be issued, relevant expression is reproduced: -

“8 ...in regard to finding of fact recorded by the respondent writ of “*certiorari*” could only be issued, if in recording such findings, the respondent had acted on evidence which was legally inadmissible or had refused to accept admissible evidence or if the findings were not supported by any evidence at all. If in such cases error would amount to error of law...”

For the reasons given above, both the orders below on the issue of gold ornaments are set aside and the case is remanded to the trial court with direction to reframe the issue No.2, in light of the observation (ibid) and decide the case within a period of two months from receipt of this order. Both learned counsel for the parties have undertaken that they will cooperate before the learned trial court and no unnecessary adjournment will be sought.

8. So far, the issue of maintenance is concerned, learned counsel for the petitioner could neither convince

that the findings by the courts below are against the evidence nor any jurisdictional defect is pointed out. Therefore, this petition to the extent of the issue of maintenance is dismissed.

9. This petition is partly allowed.

**(Shahid Jamil Khan)**  
**Judge**

**APPROVED FOR REPORTING**

*'Javaid'*