

**2012 Y L R 2693**

**[Lahore]**

**Before Malik Shahzad Ahmad Khan, J**

**HAMID ALI---Petitioner**

**versus**

**Mst. NABILA RIAZ and 2 others---Respondents**

Writ Petition No.22327 of 2011, decided on 17th January, 2012.

**West Pakistan Family Courts Act (XXXV of 1964)---**

----S.5 & Sched.---Constitution of Pakistan Art.199---Constitutional petition---Suit for recovery of maintenance allowance and dowry articles---Petitioner (husband) assailed order of Appellate Court whereby suit of respondent for recovery of maintenance allowance and dowry articles was decreed---Contention of petitioner was that neither the list of dowry articles was prepared at the time of marriage nor receipts of said articles had been produced by the respondent (wife) before the Trial Court---Validity---Non-preparation of list of dowry articles and non-production of receipts of said dowry articles were not fatal to the case of the respondent---Record revealed that ordinary items were mentioned in the said list---Said list was prepared by the respondent who had appeared in the Trial Court as a witness, and her evidence had been corroborated by other witnesses who were cross-examined at length and nothing favourable to the petitioner had been brought on the record---Contradictions in such evidence pointed out by the petitioner were insignificant---Minor variations in the statement of witnesses did occur when their statements were recorded after a considerable period of time---Respondent could not be non-suited on ground of such minor contradictions in the statement of her witnesses when such statements were recorded after about five years

from when the marriage between the parties was solemnized---No illegality, material irregularity or infirmity having been pointed out in the order of the Appellate Court warranting interference by the High Court in its constitutional jurisdiction---Constitutional Petition was dismissed, in circumstances.

Muhammad Habib v. Mst. Safia Bibi and others 2008 SCMR 1584; Saheb Khan through Legal Heirs v. Muhammad Pannah PLD 1994 SC 162 and Abdul Qayyum through Legal Heirs v. Mushk-e-Alam and another 2001 SCMR 798 ref.

Muhammad Akhtar Rana for Petitioner.

Raja Tassawar Iqbal for Respondent No.1.

## **ORDER**

**MALIK SHAHZAD AHMAD KHAN, J.**---This writ petition has been filed against the judgment and decree dated 20-9-2011, passed by the learned Addl. District Judge, Ferozewala, District Sheikhupura.

2. As per brief facts of the present case, respondent No.1 filed a suit for recovery of maintenance allowance and for recovery of dowry articles. The suit for maintenance allowance was decreed in favour of the minor plaintiff namely Laiba whereas the suit for recovery of dowry articles was dismissed by the learned Judge Family Court, Ferozewala, District Sheikhupura vide the judgment and decree dated 11-5-2011. Respondent No.1 filed an appeal which was accepted by the learned Additional District Judge, Ferozewala vide the impugned judgment and decree dated 20-9-2011 and suit of the plaintiff/respondent No.1 was decreed excluding articles mentioned at Serial Nos. 39, 40, 43, 45 or in the alternative their approximate price of Rs.2,50,000. The findings of the learned Judge Family Court, Ferozewala were not challenged any further on the issue of recovery of maintenance allowance, therefore, the said findings had attained finality, hence, the present writ petition.

3. It is contended by the learned counsel for the petitioner that the plaintiff/respondent No.1 could not establish her claim regarding the recovery of dowry articles; that neither the list of the dowry articles was prepared at the time of marriage nor receipts of said articles were produced by the plaintiff/respondent No.1 during the trial; that there are material contradictions in the statement of the plaintiff/respondent No.1; that the plaintiff/respondent No.1 while appearing in the Court (as P.W.1) has stated that receipts of the dowry articles were received at the time of purchase whereas P.W.2, Riaz Ahmad has stated that no such receipts were collected; that P.W.3 Muhammad Ashfaq has stated that he was not present at the time of purchase of dowry articles, therefore, the petitioner/defendant could not establish her claim regarding the recovery of dowry articles, hence the impugned judgment and decree is liable to be set aside.

4. On the other hand, this writ petition has been opposed by the learned counsel appearing on behalf of respondent No.1/plaintiff on the grounds that the non-preparation of list of dowry articles at the time of marriage or non-production of receipts of the said articles is not fatal to the case of the plaintiff/respondent No.1; that contradictions pointed out by the learned counsel for the petitioner/defendant are immaterial, therefore, this petition may be dismissed.

5. Arguments heard and record perused.

6. The plaintiff/respondent No.1 filed a suit for recovery of maintenance allowance and dowry articles, which was dismissed to the extent of dowry articles by the learned Judge Family Court, Feroze-wala whereas in appeal the said suit was decreed vide the impugned judgment and decree dated 20-9-2011. The non-preparation of list of dowry articles at the time of marriage and non-production of receipts of the said dowry articles is not fatal to the case of the plaintiff/respondent No.1. In this respect reference may be made to the case reported as Muhammad Habib v. Mst. Safia Bibi and others (2008 SCMR 1584). A perusal of list Exh. P-2 shows that ordinary items are mentioned in the said list. The above-mentioned list was prepared by the plaintiff has appeared in the Court as P.W.1. She has been corroborated by the evidence of P.W.2 and P.W.3 namely Riaz Ahmad and Muhammad Ashfaq. The above-mentioned witnesses were cross-

examined at length but nothing favourable to the defendant/petitioner could be brought on the record. The contradictions pointed out by the learned counsel for the petitioner are insignificant. The minor variations in the statement of the witnesses do occur when their statements are recorded after considerable period of time. In this case marriage between the petitioner and respondent No.1 was solemnized on 29-1-2006 whereas the statements of the plaintiff's witnesses were recorded on 6-12-2010. The plaintiff can not be non-suited on the ground of minor contradictions in the statement of her witnesses when such statements were recorded after about five years from the marriage of parties. Reference in this context may be made to the cases of Saheb Khan thorough Legal Heirs v. Muhammad Pannah (PLD 1994 Supreme Court 162) and Abdul Qayyum through Legal Heirs v. Mushk-e-Alam and another 2001 SCMR 798.

7. The learned counsel for the petitioner is unable to point out any illegality or material irregularity or infirmity in the impugned judgment and decree of the learned Additional District Judge, Ferozewala, District Sheikhupura, warranting interference by this court in its constitutional jurisdiction, therefore, this writ petition is, hereby, dismissed. There is no order as to costs.

KMZ/H-4/L

Petition dismissed.