

JUDGEMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH
(Judicial Department)

W.P No. 755-B/2019


Muhammad Naeem
Vs
Mst. Nazeelat Rehman

For petitioner Mr. Zahidullah Khan Advocate

For respondent Mr. Amanullah Jan Khattak, Advocate

Date of hearing 21.01.2021

JUDGMENT



Sahibzada Asadullah, J.-Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question the judgments and decrees of the learned Judge Family Court/Civil Judge-I Lakki Marwat and Learned Addl. District Judge-I Lakki Marwat, dated 31.10.2018 and 19.06.2019 respectively, where the suit of the respondent No.1 was decided and decreed in her favour.

2. Precise facts of the case are that the respondent No.1/wife filed a suit against the petitioner/husband for:

(Alif). Dissolution of marriage on the basis of cruelty;

(*Bay*). Dower in the shape of 15 Tolas gold ornaments or value thereof;

(*Jeem*). Maintenance @ RS.12,000/- per month for two months prior to filing of suit and onward till expiry of Iddat; and

(*Daal*). Return of dowry articles per list annexed with the plaint.

3. The petitioner/defendant/husband submitted written statement and the learned Judge Family Court after framing of issues invited the parties to produce their evidence which they did and after close of evidence the parties were heard at length and the learned Judge Family Court/Civil Judge-I, Lakki Marwat, was pleased to decide the lis in favour of the respondent vide judgment dated 31.10.2018, in the following manner:

- a. dissolution of marriage;
- b. recovery of dower 15 tolas gold ornaments;
- c. maintenance allowance @ Rs.6,000/- per month from 01.10.2017 till Iddat period; and
- d. a decree for the return of dowry articles per list annexed with the plaint or in alternative the price thereof.

4. The petitioner feeling dissatisfied with the judgment / decree passed by the Judge Family Court impugned the same in appeal before the learned Addl. District Judge-I Lakki Marwat, which was dismissed vide Judgment dated 19.06.2019. Feeling aggrieved the petitioner approached this Court through the instant writ petition.

5. The learned counsel for the parties were heard at length and with their valuable assistance the record was gone through.

6. The record reveals that the respondent/wife sought decree for dissolution of marriage on the basis of cruelty alleging her forcible expulsion from the house by the defendant/husband. On the contrary the petitioner came forward with a counter claim that the respondent / wife was in touch with strangers on her mobile phone and it was one of the source of strained relations between the two. The allegations so levelled by the petitioner find mention in Para No.3 and 6 of his written statement which are reproduced for ready reference:

"3- --- مدعیہ غیر اشخاص کے ساتھ موبائل فون پر رابطے میں تھی۔
مدعیہ اپنے موبائل نمبر 5679-881-0301 و دیگر نمبرات پر غیر
اشخاص کے ساتھ رابطے میں تھی۔

6- --- مدعیہ غیر اشخاص کے ساتھ اکثر اوقات رابطے میں تھی۔"

7. The petitioner was examined as DW-02, who on one hand admitted the noble character of his wife, whereas on the other he levelled unfounded allegations regarding her involvement with one Mumtaz on his mobile phone and that it was the petitioner who caught her red handed while busy in conversation. I deem it appropriate to reproduce the relevant portion of his cross-examination which reads as:

"مدعیہ ایک نیک اور شریف خاتون ہے اور اس وجہ سے میں مدعیہ کو اپنے ساتھ آباد کرنا چاہتا ہوں لیکن مدعیہ سے میرا اس طور شکوہ ہے کہ مدعیہ غیر اشخاص کے ساتھ گھنٹوں گھنٹوں مصروف رہتی تھی۔ جس کا ثبوت میں عدالت آنجناب میں پیش کر چکا ہوں۔ مدعیہ ممتاز کے ساتھ موبائل فون پر باتیں کرتی تھی۔۔ ممتاز کے ساتھ جب مدعیہ فون پر باتیں کر رہی تھی تو میں اُن کو نہیں سُن رہا تھا۔ مدعیہ میرے سامنے بھی ممتاز کے ساتھ 24 گھنٹے باتیں کر رہی تھی۔"

8. What has been stated above, indicates that the petitioner with passage of time had developed mistrust on the respondent and that it was one of the annoying factors that drifted away both the husband and his wife and a turmoil was created in their peaceful domestic life. True that in this society particularly in Khyber Pakhtunkhwa, a husband cannot tolerate of his wife's engagement with strangers on phone and if she was found involved in the like activities dangerous results would follow, but if the allegations so levelled were found unreasonable then the development of hatred inter se is an unavoidable consequence and in the like situation it is hard for a husband to retain the trust of his faithful wife which he once had. There is no denial to the fact that the allegations so levelled if proved unfounded would drag away a faithful wife to physiological consequences and ultimately would give birth to hatred and hatred, such is the case in hand. Even otherwise, such type of allegations against one's wife that too without proof leads to create a sense of cruelty and in alternative turns the husband unbearable for his wife.

9. I have made a careful scrutiny of the record but no logical proof as to the purported telephonic affairs of the wife with someone else is available. Besides, petitioner himself admitted that his wife was a noble lady therefore, stigmatizing the character of respondent by the petitioner is a strong proof of cruelty. The record tells that the allegations levelled by the petitioner are not restricted only to the character of the respondent rather he levelled the same allegations in respect of his first wife namely Mst. Nighat. The petitioner alleged that his first wife too had developed intimacy with another person and without getting divorced performed nikah with another person. The relevant portion from the cross-examination of the petitioner where he was examined as DW-2 is reproduced as under:

"نگہت نے میرے خلاف ضلع نوشہرہ میں تنسیخ نکاح وغیرہ کا دعویٰ دائر کیا تھا جو کہ بعد م پیروی خارج ہوا۔ نگہت کو میں نے طلاق نہیں دیا ہے۔ نگہت نے دوسرے آدمی کے ساتھ شادی کی ہے۔"

10. This is surprising that the petitioner and his witnesses are not on the same page, rather they contradicted each other to a greater extent. The very statement of the petitioner regarding Mst. Nighat (first wife) was contradicted by his brother, who was examined as DW-03, who stated that the petitioner entered into a second marriage with the respondent after divorcing his first wife. In order to judge the credibility of

the petitioner I would like to reproduce the relevant portion of the cross-examination of DW-03 (his brother), which reads as:

"نعم خان نے اپنی پہلی بیوی نگہت کو مدعیہ کی شادی سے پہلے نگہت کو طلاق دیا تھا۔"

11. The petitioner could not convince the learned courts below as well as this Court regarding the payment of 15 tolas gold ornaments as dower to the respondent and even he could not succeed to bring on record positive evidence in that respect. The findings of the learned Family Court in this respect are well reasoned, though an attempt was made by the petitioner to establish his claim against the respondent by producing some receipts of gold ornaments but this is unfortunate on his part that he could not produce any evidence in respect of the collected receipts and could not convince the trial Court to hold as he desired. The approach of the learned Judge Family Court to this particular aspect of the case is not only well reasoned, but is perfect in all respects.

12. Likewise, the petitioner could not rebut the claim of respondent pertaining to her dowry articles. The plaintiff had claimed specific articles which at the time of marriage were given to her according to the list, exhibited as Ex.P.W.2/1, which contains particulars of each and every item of the dowry articles. The petitioner when appeared as DW-2, was examined and cross-

examined on this particular aspect of the case, but he could not rebut the claim of the respondent rather he denied and his denial is evasive. The respondent established on record the dowry articles she took to the house of her husband at the time of *Rukhsati*, and even otherwise, there is no denial to the fact that parents do prepare dowry articles for their daughters and such is the case in hand. This is strange to see that the petitioner denied of the dowry articles stating therein that she did not bring the same to his house and even her parents did not provide her the same, but in this part of the country it will be a rare occasion if the daughter is sent without dowry articles, rather it is always and always the wish of a father how poor he is to arrange dowry articles for his daughter as it is one of the source of his personal satisfaction. Though the learned counsel for the petitioner time and again stressed hard that the respondent could not succeed in establishing her case to the extent of dowry articles, but this court does not accede to what the learned counsel submitted, as the learned trial Court dealt with the situation comprehensively, and applied its judicial mind to the facts and circumstances of the case and reached to a correct conclusion which hardly calls for interference. In respect of the dowry articles the superior courts are consistent in their view and less burden is put on the shoulders of a wife to establish the claim of dowry articles, what to say of producing the receipts so collected and prepared. I am

fortified with the judgment of **“Shafique Sultan Vs Mst. Asma Firdous and others (2017 SCMR 393)**, wherein it is held that:

“We have also gone through the list of dowry articles (Ex.P2) and found that the same consist of articles of daily use which are generally given to brides at the time of their marriages. We have not found any article(s) which may be termed as extravagant or beyond the financial resources of the respondent's family. Giving dowry articles to daughters is in line with custom/tradition and practices which are deeply rooted in our society and are followed by parents of all classes irrespective of their financial status.”

13. This court is conscious of the fact that the constitution of the Islamic Republic of Pakistan, 1973, has blessed this Court with limited jurisdiction and it cannot go beyond the provided and permitted limits. Even otherwise, for the sake of justice this Court with valuable assistance of the learned counsel for the parties, scanned the record from cover to cover and also the impugned judgments, but could not come across any illegality or irregularity, to have been committed by the learned trial Court and thereafter by the learned lower appellate Court, rather both the courts dealt with the matter comprehensively that too by applying their judicial mind to the facts and circumstances of the case, which calls for no interference. This Court cannot lose sight of the fact that the

respondent got favourable findings from both the Courts below which have been questioned by the petitioner by requesting its indulgence in the matter, which this Court finds hard to intervene, that too in case of concurrent findings. In this regard I am fortified by the view rendered by the Hon'ble Supreme Court of Pakistan in the case of "Dilshad Khan Lodhi Vs. Allied Bank of Pakistan and others" (2008 SCMR 1530) and "General Manager National Radio Telecommunication Corporation Haripur, District Abotabad Vs. Muhammad Aslam and others (1992 SCMR 2169). Reliance is also placed on the case titled Maqsood Ahmad VS. Samina Shaheen and 2 others (PLD 2006 Peshawar 99).

14. After judicial application of mind to the available evidence on file, this Court reaches to the safest conclusion that the petitioner could not succeed in making out a case for indulgence of this Court. This petition is bereft of merit stands dismissed.

Announced.


21.01.2021

Azam/P.S



JUDGE

(S.B) Hon'ble Mr. Justice Sahibzada Asadullah



SCANNED

16 FEB 2021

Khalid Khan