Form No:HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

W.P. No.25342/2015

Fehmeeda Younas through LRs **Versus** **Addl. District Judge and others**

S.No. of order/ proceeding.	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
	27.01.2021	Mr. Ghulam Rasool Chaudhary, Advocate for the petitioners. Mr. Ashfaq Qayyum Cheema, Advocate for respondent No.3. This Constitutional petition challenges judgment and decree dated 30.4.2015 passed by learned Addl. District Judge, Sheikhupura wherein decree of learned Judge Family Court, Sheikhupura to the extent of articles of dowry was set aside. 2. Mst. Fehmeeda Younis, now deceased, was married to respondent No.3. The marriage could not succeed, a suit for dissolution of marriage, maintenance and recovery of dowry articles was instituted by her. During the proceedings in the suit the marriage was dissolved on 15.10.2011 and the suit proceeded for determination of maintenance allowance as also the claim with respect to dowry articles. The learned Judge Family Court after considering evidence allowed maintenance allowance @ Rs.5,000/- per month to the now deceased for her *Iddat* period and also a decree for recovery of articles of dowry or in the alternative Rs.7,23,800/- as price thereof vide judgment dated 07.2.2013. Respondent No.3 preferred an appeal which was partly allowed by learned Addl. District

Judge. In result, decree for maintenance during the period of *Iddat* was affirmed while the decree for recovery of dowry articles was set aside. In this Constitutional petition, the issue only relates to dowry articles.

3. Learned counsel for the petitioner submitted that learned Addl. District Judge set aside the decree to the extent of dowry articles illegally despite the fact that the judgment of the learned Family Court was well-reasoned and was passed on correct analysis of evidence and that the reasons given by the learned Trial Court were completely overlooked and that the learned Addl. District Judge mainly proceeded by his alleged comparison of the signatures on Exh.D1, ignoring the observation by the experts from Forensic Science Laboratory and that the view formed by the learned Addl. District Judge was contrary to record and was also not supported by any legally admissible evidence.

4. Learned counsel for respondent No.3, on the contrary, supported the impugned judgment and argued that the learned Addl. District Judge correctly analyzed the evidence and that no ground existed for interference.

5. Scrutiny of the copies of record of the suit annexed with the petition, reveals that late Fehmeeda Younis asserted in her plaint that she was given dowry articles which was shifted to the house of respondent No.3; she lived with respondent No.3 but was later turned out of the house and that the articles of dowry were withheld and that she was entitled to recover the

articles of dowry as per adduced list or alternatively a sum of Rs.21,61,300/- as price thereof. Respondent No.3 to the contrary claimed that father of the petitioner approached him and his parents expressed their desire to settle respondent No.3 in some business at Sheikhupura and that after permission, the spouses accompanied the father of late petitioner to his residence along with articles of dowry which were received by him against the alleged receipt of acknowledgement produced as Exh.D1.

6. In evidence, late Mst. Fehmeeda Younis appeared as P.W.1, made a detailed statement, produced a list of dowry articles Exh.P2 and also receipts of various articles including Exh.P3/1 to Exh.P3/15. She was extensively cross-examined but nothing could be extracted in cross-examination and she remained consistent in her stance that the treatment of respondent No.3 was cruel and she was turned out of the matrimonial home; the articles of dowry were never returned; the alleged Exh.D1 was never executed by her father nor was it written by him and that the articles were never received by her father. She also vehemently denied the claim of respondent No.3 about the alleged shifting of the spouses with articles of dowry to the house of late petitioner's father. In addition thereto, P.W.2, namely, Waheed Ahmad and P.W.3, Sheikh Muhammad Younis, father of the deceased petitioner also entered witness-box and corroborated the stance of the late petitioner. Respondent No.3 produced one Ibrar Ahmad,

his real brother as D.W.1, who deposed that on 27.6.2008, Sheikh Muhammad Younis the father of the petitioner took the articles of dowry and that the spouses also went with him with the intent to settle respondent No.3 in some business and allegedly signed Exh.D1 and one Sarwar arranged vehicle from Faisalabad and loaded the articles and that Sarwar started writing the receipt/acknowledgment, which he could not do and at this Muhammad Younis, the father of the late petitioner drafted the document, Exh.D1, upon which he affixed his signatures as Exh.D1/2. He claimed that Sarwar, Muhammad Younis and his father Muhammad Rafique also signed the receipt. In his cross-examination he admitted that he had not participated in *Nikah* and that he did not know about every person but had participated in the said ceremony and that he was a resident of Karachi. He even admitted that he could not tell complete name of "Sarwar" and stated that he only knew that Sarwar was resident of Jhang and admitted that neither his CNIC number nor those of Sarwar, Muhammad Younis or his father Muhammad Rafique were entered in Exh.D1. He admitted that Exh.D1 was not signed by the deceased father and claimed that the document was prepared late at night around 11:30 p.m. to midnight. He was unable to disclose the number of truck in which articles of dowry were allegedly loaded nor did he know the name of truck driver. Muhammad Rafique appeared as D.W.2. Curiously, he claimed that the dowry articles were loaded in

the trucks and that it was about 11:30 p.m. to midnight and that at the time of loading the articles of dowry, apart from the family members the entire *Mohallah* was watching the process of loading. On being asked he claimed that Ibrar, Faisal, Tahir, Gulzar and Saleem were among those who were present and witnessed the episode but none of them was produced in evidence. Respondent No.3 himself appeared as D.W.3 and claimed that the articles of dowry were shifted to the house of father of the late petitioner. In cross-examination he claimed that the articles of dowry were loaded in two Mazda trucks and that he did not know the number of the trucks or names of the drivers and alleged that Sarwar arranged the trucks from Faisalabad.

7. The learned Judge Family Court after thorough scrutiny of evidence observed that in view of the stance taken by respondent No.3, the fact that the dowry articles were given at the time of marriage, taken to the house of respondent No.3 and the value thereof was not in issue for the reason that respondent No.3 claimed return thereof, was thus under a heavy onus to prove that the articles of dowry were returned. It was observed that late Fehmeeda Younis appeared as P.W.1, produced list of articles of dowry as Exh.P2 and receipts for purchase of the articles as Exh.P3/1 to Exh.P3/15 and that the statement of the P.W.1 and that the statement of P.W.1 was not cross-examined as to the contents of Exh.P2 or as to the monetary value of the articles of dowry mentioned

therein and that, being so, the detail of articles and also the price thereof was no longer an issue. It was also observed that no independent witness was produced; respondent No.3 and his witnesses claimed the presence of the entire *Mohallah* at the time of alleged loading of dowry articles in the trucks and named five persons in particular i.e. Ibrar, Faisal, Tahir, Gulzar and Saleem but none of them was produced to testify in support of this alleged event. It was also observed that, Muhammad Sarwar, according to the version of respondent No.3 was the most important witness and who allegedly arranged the Mazda trucks for transporting all the articles of dowry, allegedly made an attempt to prove the acknowledgement/receipt and was allegedly a witness; but he was not produced. There were glaring discrepancies in the stance taken by respondent No.3 and the contents of Exh.D1 and that the execution of Exh.D1 could not be proved by any admissible evidence. Taking into consideration all these factors, the conclusion drawn by the learned Trial Court was that respondent No.3 had failed to prove the return of articles of dowry to the deceased Muhammad Younis.

8. In appeal the learned Addl. District Judge, completely overlooked the material reasons recorded by the learned Trial Court and also other factors present on record, as noted in the judgment of the learned Judge Family Court and instead casually referred to the statement of the witnesses and respondent No.3, without attending to the cross-examination;

which would show that the witnesses were not confidence inspiring, trustworthy or credible and that not much stock could be laid by their testimony. So much so, learned Addl. District Judge took upon himself the exacting responsibility of carrying out an ocular comparison of the signatures on Exh.D1 for determination of the genuineness or otherwise thereof; and persuaded by his own inferences, which were not supported by any logical reasoning, proceeded to conclude that Exh.D1 stood proved and that dowry articles had been shifted. It is plain from the judgment of the learned Trial Court that on the application of the deceased Fehmeeda Younis the disputed signatures of Exh.D1 and also the specimen signatures of her father Muhammad Younis were sent to the Forensic Laboratory, Lahore for expert opinion and that the responses was that the signatures having been cautiously made, it will not be possible to formulate an opinion and that similar signatures of the Muhammad Yonis on other documents should be sent for comparison and final report. The learned Judge Family Court observed that the signatures were very simple which could be replicated by anyone and it would not be difficult for a son-in-law to obtain signatures of his father-in-law and also that the claim of dowry valuing Rs.21,61,300/- could not be decided merely on the basis of comparison of signatures, especially in view of the stance of respondent No.3 about the return of dowry articles by him and that the matter would need to be proved by

other corroborative evidence. It was only after making this observation that the learned Trial Court made indepth analysis of the entire evidence and reached the conclusion that the return of articles of dowry could not be proved. Despite that the claim was partly accepted, excluding the jewelry items and other articles which were gifted to the groom or his family and were found to be non-returnable.

9. Perusal of the impugned in judgment shows that the learned Addl. District Judge, attempting to examine the document Exh.D1 for formulating an opinion as to the genuineness or otherwise assumed in his own understanding that the style and structure of the formation in both writings were identical. It is strange that the Forensic Expert had opined that comparison could not be made with the specimen signatures nor conclusive findings could be given on the basis thereof and that for forming an opinion the expert would require the other documents containing the specimen of the writings of Muhammad Younis but the learned Addl. District Judge by ignoring the expert view, proceeded to rely on the same specimen for his decision which in view of the expert could not be made the basis to record reliable findings and conclusions. There appeared to be no reason to ignore the expert view and if he was unable to form his opinion because of foundational reason, the learned Addl. District Judge could not ignore the same and that too without recording any valid ground for doing so. Even otherwise, the impugned order does

not show any technical or specific reason for reaching the conclusion to the similarity as to signatures.

10. It is observed that although in law, Court is competent to examine the signatures for forming an opinion yet this exercise has never been considered to the safe or reliable, particularly, when the judgment does not reflect any good technical reasons for reaching the conclusion. In "*Dr. Major Abdul Ahad Khan through his Legal Representatives v. Muhammad Iqbal through his Legal Representatives*" (**PLD 1989 Kar 102**) it was observed that it was highly unsafe for the court to take upon itself the determination of genuineness or otherwise of the signatures without availability of proper assistance of an expert witness and in case the court adopted the method of determination by itself, it will be objectionable, particularly, when the exercise is made in the absence of counsels for the parties and also without the help of any expert. It was observed that if without supply of the required information to the handwriting expert and without waiting for the final report of expert, the court took upon itself the task of comparing the disputed signatures with admitted signatures, in chambers and that too without the assistance of the counsel for the parties and reaches the conclusion that the signatures on a disputed document are similar to the admitted signatures, without disclosing the procedure adopted for such comparison of the two signatures by the learned judge in chambers, the same will be objectionable. It was further observed that it was

not mentioned that any aid from magnifying glass or some other technical process was employed by the court while comparing the two signatures in chambers in the absence of counsel for the parties and that such procedure adopted by the court would be totally contrary to the rule of prudence laid down by the Superior Courts in this context and in a case where the signatures were totally denied by one party it will be highly unsafe for the court to have taken upon itself to determine the genuineness or otherwise of the signatures without having available to it the aid and the assistance of some expert witness.

11. It is discernable from the impugned judgment that it does not disclose nor shows if the court took the aid of any technical process for arriving at the conclusions or that the comparison was made in the presence of the learned counsel for the parties. The procedure thus adopted for comparison of the two signatures was in complete ignorance of the rule of prudence as laid down by the Superior Courts which was highly objectionable and, therefore, the opinion formed could not be approved.

12. In fact, in the peculiar circumstances of the case, the learned Judge Family Court had rightly observed that the question pertaining to return of dowry articles ought to be considered on the basis of evidence produced by the parties and after considering the said evidence and analyzing the

same, conclusion was rightly drawn that respondent No.3 had failed to prove the return of dowry articles

13. Deeper consideration of the judgment of the learned Appellate Court makes it clear that the learned Addl. District Judge overlooked the material factors apparent on the face of the record which if he had kept in view would have raised serious doubt as to the genuineness of the alleged receipt/acknowledgement Exh.D1 let alone to use it as a piece of admissible evidence to non-suit the late petitioner Fehmeeda Younis. Bare perusal of the document shows that it was just a volunteered declaration from Muhammad Rafique about alleged delivery of articles by him instead of being a receipt/acknowledgment from the recipient; as the language of the document suggests as if Muhammad Rafique was declaring that he was handing over the alleged dowry articles to one Younis whose complete name was not mentioned nor his CNIC number was stated; his parentage and address were also omitted. It is anybody's guess who Muhammad Sarwar and Sh. Muhammad Younis were to whom the document was attributed, as material particulars to identify these persons were missing from documents. Even otherwise, the suit was filed by late Fehmeeda Younis and undisputedly she was not shown to be a party in the disputed document nor a signatory thereto. Being so, she could not be denied a right to recover dowry articles which were undisputedly received at the house of respondent No.3. In view of these circumstances, the

learned Judge Family Court rightly declined to accept the document as a valid piece of evidence to deny the relief to respondent No.3 while the learned Addl. District Judge fell in error in non-suiting the petitioner/plaintiff on the basis of inadmissible evidence and complete misreading of the record. The judgment of the learned Addl. District Judge in the circumstances suffers from serious legal infirmities and jurisdictional defects and is not legally sustainable.

14. For the reasons above, instant writ petition is ***allowed***; the judgment and decree dated 30.04.2015 of the learned Addl. District Judge, Sheikhupura is hereby declared to be illegal and without lawful jurisdiction and accordingly set aside and in consequence thereof the judgment and decree dated 07.02.2013 of the learned Judge Family Court, Sheikhupura stands restored.

(RASAAL HASAN SYED)
JUDGE

Announced in open Court on ***04.2.2021***.

Judge

Approved for Reporting

Judge

Waseem