

Stereo. H C J D A 38.
JUDGMENT SHEET
IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

W.P. No.12103/2014

Muhammad Qayyum Anjum *Versus* Additional District Judge etc.

J U D G M E N T

Date of Hearing:	14.06.2021
Petitioner by:	Syed Azhar Abbas Haider, Advocate.
Respondent No.3 by:	Mr. Muhammad Shafi Murali, Advocate.

“At the time of marriage, give the women their dowers willingly as an obligation, but if they, by their own free will, give up to you a portion of it then you may enjoy it with pleasure”¹

Anwaar Hussain, J. The petitioner, namely, Muhammad Qayyum Anjum (hereinafter “the **petitioner**”) was married to respondent No.3 namely, Mst. Rehana Shamas (hereinafter called “the **respondent**”) and their *nikahnama* envisages terms and conditions of their marriage. The respondent instituted suit for recovery of dower, maintenance allowance, dowry articles and dissolution of marriage which, except to the extent of dissolution of marriage, was decreed by the learned Family Court, Muzaffargarh in favour of the respondent *vide* judgment and decree dated 16.07.2011. The appeal was preferred by the petitioner, against the judgment and decree dated 16.07.2011, which was also dismissed by the learned Additional District Judge, Muzaffargarh *vide* judgment and decree dated 11.02.2012. The concurrent findings of learned courts below have been assailed through the instant constitutional petition.

2. Learned counsel for the petitioner submits that he is aggrieved of the Impugned Judgments only to the extent of grant of dower, i.e,

¹ Sura Nisa, Verse No. 4

05 Marla House consisting of two rooms, situated in *Mohallah Sheikhupura*, Muzaffargarh and does not challenge the validity of Impugned Judgments to the extent of maintenance allowance as already expressed by him before this Court on 14.03.2018. The learned counsel for the petitioner contends that since the term and condition, of their marriage, related to transfer of house referred above is envisaged in column No. 16, the same is in the nature of deferred dower and the marriage of the parties is still intact, therefore, the respondent is not entitled to receive the same during subsistence of the marriage. He has placed reliance on the law laid down by the Honourable Apex court in Saadia Usman v. Muhammad Usman Iqbal Jadoon.²

3. Conversely, learned counsel for respondent has referred to Section 10 of Muslim Family Laws Ordinance, 1961 (hereinafter referred to as “the **Ordinance**”) to contend that the dower was on demand and not deferred. Therefore, the petitioner is obligated to handover the house or alternate value thereof as per concurrent findings of the courts below.

4. Arguments heard, record perused.

5. The moot point in the instant case is to examine how various columns of the *nikahnama* deal with the dower and its kinds, keeping in view the scope of Section 10 of the Ordinance, and in the light of the examination thereof, whether in the instant case, house referred against column No. 16 of the *nikahnama* constituted part of prompt or deferred dower of the respondent.

6. In the context of Muslim marriage, dower is an obligation under Holy Quran and Hadith. It is the amount of some monetary value to be paid by the husband to the wife at the time of marriage, part of which can be delayed or deferred according to what has been

² 2009 S C M R 1458

agreed between them.³ It may be specified (*Mahr Musamma*) or unspecified (*Mahr al-Mithl*)⁴. When the dower is unspecified, it would still be an obligation and the law will award it on the demand of the wife. In such case, the amount would be determined keeping in view factors such as dower of the females of her class or of her father's family, the financial position of the groom, the social status of the bride, the prevalent custom of the time and place, and the agreement that the bride and the groom can reach over the amount.⁵ Similarly, the dower can be Prompt (*Mu'ajjal*) or Deferred (*Ghair Muajjal* or *Muwajjal*). Prompt dower is to be paid either at the time of marriage or on demand whereas Deferred dower is to be paid at such date or time as may be mutually agreed between the parties and in the absence of the same, it is to be paid at the dissolution of marriage. It is pertinent to point out that under Shariah there is no specification as to the nature, scope and extent of dower to be given. The Prophet, P.B.U.H said to a man, "Marry, even with (a Mahr equal to) an iron ring."⁶ Similarly, there is no upper limit for the fixation of dower in Islam.⁷ The inherent idea behind dower is that it is an obligation imposed upon the husband.⁸

7. Under the Ordinance, marriage is regarded as a civil contract and Section 5 thereof makes it necessary that the marriage shall be registered and the parties can settle their terms and conditions of marriage including dower, through said contract, for which Form II, used as *nikahnama*, is prescribed in terms of Rule 10 of the West Pakistan Rules made under the Ordinance. The relevant entries in this regard can be incorporated by the parties in columns No. 13 to 16, which relate to dower. Any entry, by way of an amount or an

³ Syed Sahid Ahammad, "A critical Analysis of Dower (Mahr) in Islam," *Journal of Humanities and Social Science*, Vol.21/7 (2016): 86

⁴ Asaf A Fayezzee, *Outline of Muhammadan Law*, 3rd Ed. London Oxford University Press

⁵ Jamal J. Nasir, "The Islamic Law of Personal Status", Chapter 4, Kluwer Law International New York, 3rd Edition 2002 (hereinafter 'Jamal J. Nasir).

⁶ Narrated by Sahl bin Sa'd: *Sahih al-Bukhari* 5150 Book 67, Hadith 85

⁷ Jamal J. Nasir *Supra*

⁸ Sura Nisa, Verse No. 24; Sura al Baqarah, Verse No.237

undertaking related to transfer of any property or other valuable such as ornaments etc., is the dower or part thereof.

Columns No.13 to 16 of the *nikahnama* read as under:

13. مہر کی رقم
14. مہر کی کتنی معجل ہے اور کتنی غیر معجل
15. آیا مہر کا کچھ حصہ شادی کے موقع پر ادا کیا گیا اگر کیا گیا ہے تو کس قدر۔
16. آیا پورے مہر یا اس کے کسی حصہ کے عوض میں کوئی جائیداد دی گئی ہے اگر دی گئی ہے تو اس جائیداد کی صراحت اور اس کی قیمت فریقین کے مابین طے پائی ہے۔

8. The honourable Supreme Court in Mst. Yasmeen Bibi v Muhammad Ghazanfar Khan and others⁹ held that the entries in various columns of the *nikahnama* are part of an undertakings related to the dower. 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**. In the same strain, entry under column No.16 is to also form part of the dower overall in addition to the amount/cash which may be stipulated by way of entry under column No.13 and also in addition to anything else given by way of entry under column No. 15. *Therefore, entries under columns No. 13 to 16 of the *nikahnama* envisage reflection and manifestation of the parties as*

⁹ PLD 2016 SC 613

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.

9. The reliance by the learned counsel for the petitioner, on the *dicta* laid down in *Saadia Supra*, is misplaced inasmuch as that in the said case the honourable Supreme Court dealt with a matter where some part of the dower amount was described as prompt and the other was recorded as deferred. The honourable Supreme Court in *Saadia Supra* held that, in such an eventuality where some amount is mentioned as deferred, the same cannot be claimed during the subsistence of marriage if no date or time has been specified for payment of the deferred dower. Moreover, it is also important to examine as to under or against which column of the *nikahnama*, such amount or property is mentioned. It is entry in column No. 14 of the *nikahnama*, if incorporated, will indicate the true intention of the parties in relation to the extent of amount (only) fixed as prompt and/or deferred dower. For other valuables such as gold or property, mode/time of payment is to be specified in corresponding entries/columns. If no detail about the mode of payment of the dower is specified in the *nikahnama*, Section 10 of the Ordinance comes into play, which states as under:

“10. **Dower:** Where no details about the mode of payment of dower are specified in the *nikahnama* or the marriage contract, the entire amount of the dower shall be presumed to be payable on demand”

(Emphasis provided)

10. Perusal of Section 10 of the Ordinance, brings forth the legislative *fiat* that where no details about the mode of payment of

dower has been spelled out by the parties to confer certainty to it under the marital contract, the omission or failure of the parties to fill in and/or reflect their intention in a perspicuous manner, the legislature has stepped in to fill in such omission of the parties through Section 10 of the Ordinance which clearly states that, in such like situations, the entire amount of the dower shall be presumed to be payable on demand. The statutory presumption embodied under Section 10 of the Ordinance is rebuttable; however, the same has to be rebutted through positive evidence. In Syed Sajjad Hussain v. Judge Family Court etc.¹⁰, this Court has held that even the condition as to entitlement to deferred dower at the time of dissolution of marriage or death of husband may not remain absolute and invariable condition and may be waived by the parties through consent or conduct, which is not the situation in the instant case.

11. Having examined the law on the subject of prompt and deferred dower as enunciated by the august Supreme Court, the facts of the instant case can be analysed in the light thereof. The relevant columns in the *nikahnama* dated 05.07.2008 duly registered read as under:

شریعت محمدی 1000 روپیہ	13. مہر کی رقم
	14. مہر کی کتنی رقم معجل ہے اور کتنی غیر معجل
تین تولہ زیورات طلائی	15. آیا مہر کا کچھ حصہ شادی کے موقع پر ادا کیا گیا اگر کیا گیا ہے تو کس قدر۔
5 مرلہ پلاٹ بمعہ مکان مشتمل دو کمرہ جات حویلی یختہ واقع محلہ شیخوپورہ اوکاں والہ مظفر گڑھ	16. آیا پورے مہر یا اس کے کسی حصہ کے عوض میں کوئی جائیداد دی گئی ہے اگر دی گئی ہے تو اس جائیداد کی صراحت اور اس کی قیمت فریقین کے مابین طے پائی ہے۔

Reading of entry 16 of *nikahnama* of the parties in the instant case reveals that neither mode of transfer has been provided for nor the time for transfer of house promised under column No. 16 has been incorporated indicating the same to be part of deferred dower. Hence, there is failure to classify the house under column No. 16 as

¹⁰ 2019 CLC 1462 (Lahore)

deferred dower coupled with the omission to specify mode and time of payment thereof. In such an eventuality, by virtue of Section 10, the respondent is entitled to claim for the discharge of obligation, which the petitioner undertook in terms of entry under column No.16. Hence, the learned Courts below have rightly held the respondent entitled to the house specified in column No.16 of her *nikahnama*.

12. There is yet another aspect of the matter which revolves around the conduct of the petitioner in relation to his obligation related to payment of dower. The petitioner in his written statement stated as under:

”نمبر 1۔ یہ کہ فقرہ نمبر 1 عرضیدعوی شادی کی حد تک درست ہے باقی فقرہ غلط ہے۔ اندراجات نکاح نامہ بعد میں جعلسازی سے کئے گئے ہیں۔“

Whereas while appearing as DW-1, the petitioner during cross-examination asserted that:

”نکاح میری مرضی سے ہوا تھا۔ بوقت نکاح حق المہر میں تین تولے زیورات طلائی، پانچ مرلہ پلاٹ طے ہوا تھا۔ پلاٹ میں نے محلہ شیخوپورہ اوکانوالہ پر دینا طے کیا تھا۔“

The pleas taken by the petitioner *qua* entry contained in column No. 16 of his *nikanamma* are undoubtedly contradictory in nature. This Court while exercising equitable jurisdiction is certainly not inclined to extend any relief to such a litigant, on the basis of principle of "*allegans contraria non est audiendus*".¹¹ Therefore, on this ground, the concurrent findings of the Courts below cannot be interfered. Moreover, the present petition is also not maintainable on the basis of doctrine of *laches* inasmuch as the Impugned Judgments were passed on 16.07.2011 and 11.02.2012 by the learned trial court as well as the learned appellate court below respectively whereas the present petition has been filed on 06.09.2014 and hence, the same is badly hit by doctrine of *laches*. Reliance is placed on State Bank of Pakistan through Governor & another v. Imtiaz Ali Khan & others;¹² Messrs Blue Star Spinning Mills Ltd., v. Collector of Sales Tax &

¹¹ A person alleging contradictory facts should not be heard.

¹² 2012 SCMR 280

others;¹³ and Ghulam Hussain Ramzan Ali v. Collector of Customs (Preventive), Karachi.¹⁴

13. For the foregoing reasons, the instant petition is devoid of any merit and hence, **dismissed** with no order as to costs.

(ANWAAR HUSSAIN)
Judge

Approved for reporting.

Judge

Akram

¹³ 2013 SCMR 587

¹⁴ 2014 SCMR 1594