

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

JUSTICE YAHYA AFRIDI, CJ
JUSTICE MUHAMMAD SHAFI SIDDIQUI
JUSTICE MIANGUL HASSAN AURANGZEB

CPLA No.4072 of 2023

(Against judgment dated 26.09.2023 of the Lahore High Court, Rawalpindi Bench passed in W.P. No.1644 of 2023).

Mst. Naila

...Petitioner

Versus

Mehran Khan and others

...Respondents

For the Petitioner: Mr. Haroon Irshad Janjua, ASC.

For the Respondents: Mr. Bilal Firdous, ASC for respondent No.1.

Date of Hearing: 22.05.2025

ORDER

MIANGUL HASSAN AURANGZEB, J.- Through the instant petition the petitioner, Mst. Naila, assails judgment dated 26.09.2023 passed by the Lahore High Court, whereby writ petition No.1644 of 2023 filed by respondent No.1 was allowed and consequently, the judgment and decree dated 27.03.2023 passed by the appellate court only to the extent of 11 *tolas* of gold ornaments was set-aside and the judgment and decree dated 22.12.2022 passed by the family court, was restored.

2. For the purposes of the instant judgment, the essential facts are that on 31.07.2021, the petitioner / plaintiff filed a suit for *inter alia* the recovery of 11 *tolas* of gold ornaments from respondent No.1. In her suit, the petitioner had pleaded *inter alia* that 11 *tolas* of gold ornaments were gifted to her by respondent No.1, but were snatched from her in September, 2020 when respondent No.1 threw her out

from the matrimonial abode. In his written statement, respondent No.1 admitted that he had made 11 *tolas* of gold ornaments for the petitioner but denied having snatched them.

3. One of the issues framed by the family court was whether the petitioner was entitled to recovery of 11 *tolas* of gold ornaments from respondent No.1. The petitioner appeared through her father, Khursheed Ahmad (PW-1), whose deposition regarding the snatching of 11 *tolas* of gold ornaments was consistent with the pleadings in the suit. This testimony was not shaken during cross-examination of the said witness. Respondent No.1 appeared as DW-1 and during examination-in-chief, deposed that he had made 11 *tolas* of gold ornaments for the petitioner, which the latter took with her when she was dropped by respondent No.1 at her parents' house. It is crucial to bear in mind that respondent No.1 was not specifically cross-examined on his testimony that the petitioner had taken the 11 *tolas* of gold ornaments along with her. Respondent No.1, however deposed that he does not have the details of the petitioner's jewelry lying with him.

4. The family court, after referring to the evidence of PW-1 and DW-1, came to the conclusion that the petitioner had not been able to prove that the 11 *tolas* of gold ornaments were snatched from her by respondent No.1. Consequently, her claim for the recovery of the 11 *tolas* of gold ornaments was turned down by the family court in its judgment dated 22.12.2022.

5. The petitioner preferred an appeal against the said judgment of the family court. The appellate court took the view that the petitioner had not taken the gold ornaments with her when she left her matrimonial abode as she had no intention of living permanently with her parents. The appellate court also gave credence to

respondent No.1's testimony that he amicably left the petitioner at her parents' house, and more particularly to respondent No.1's testimony that he could not give details of the gold ornaments that were lying with him. This, as per the appellate court, was an admission by respondent No.1 that the gold ornaments were with him. Consequently, vide judgment and decree dated 27.03.2023 the appellate court allowed the petitioner's appeal by holding her entitled to the recovery of 11 *tolas* of gold ornaments from respondent No.1.

6. Respondent No.1 filed writ petition No.1644/2023 before the Lahore High Court against the appellate court's judgment and decree dated 27.03.2023. Since the judgments and decrees of the family court and the appellate court to the extent of the petitioner's entitlement to the recovery of 11 *tolas* of gold ornaments were at variance, the high court re-evaluated the evidence on the record and came to the conclusion that the appellate court's judgment was based on surmises and conjunctures. What appears to have prevailed over the high court in drawing the said conclusion was that the petitioner had not appeared as a witness herself, and that she had not been able to prove that the 11 *tolas* of gold ornaments were snatched from her. The high court allowed the said writ petition and restored the judgment and decree passed by the family court.

7. Indeed, the onus was on the petitioner to have proved that the 11 *tolas* of gold ornaments were snatched from her by respondent No.1 when the former left her matrimonial abode. The evidence on the record suggests that the petitioner was taken to her parents' house by respondent No.1. The factum as to the 11 *tolas* of gold ornaments having been given by respondent No.1 to the petitioner is admitted. As regards the snatching of such ornaments by

respondent No.1, we are of the view that the high court ought not to have substituted its views for those of the appellate court. We are also of the view that it is for the appellate court to reconsider respondent No.1's plea in the light of the observations made by the high court in the impugned judgment. Therefore, we deem it appropriate to convert the instant petition into an appeal and allow the same by setting aside the said judgment and decree dated 27.03.2023 and remanding the matter to the appellate court with the direction to decide the question regarding the petitioner's entitlement to the recovery of 11 *tolas* of gold ornaments on the basis of the evidence on the record.

Chief Justice

Judge

Judge

Islamabad, the
22nd May, 2025
Not approved for reporting
Ahtesham Majid