

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Yahya Afridi, CJ

Mr. Justice Miangul Hassan Aurangzeb

Civil Petition No.354-P of 2025

*(Against the judgment dated 03.03.2025 of the Peshawar High Court,
Peshawar passed in W.P.No.1263-P/2022)*

Saleh Muhammad and another

...Petitioner(s)

Versus

Mst. Mehnaz Begum and others

...Respondent(s)

For the Petitioner(s):

Mr. Muhammad Arif, ASC
(via video link, Peshawar)

For the Respondent(s):

Not represented

Date of Hearing:

30.06.2025

ORDER

Yahya Afridi, CJ.- This petition of the petitioner-husband for leave to appeal is directed against the judgment of the learned High Court, which, in affirming the concurrent findings of the courts below, allowed the claim for dower, dowry articles, and maintenance of the respondent-wife.

2. Having perused the record and attended to the submissions of the learned counsel of the petitioner, this Court is not persuaded to grant leave. It is settled law that this Court will not disturb concurrent findings of the courts below, save on grounds of legal error apparent on the face of the record. No such grounds have been made out here. The judgements of the learned courts below are all well-reasoned, grounded in the record, and legally unassailable.

3. However, while the legal merits of the petition can be disposed of in the aforementioned terms, there remains an aspect of this case that demands urgent attention of this Court. The observations in this regard are recorded herein below.

Background:

4. By way of necessary background, the petitioner-husband ("**petitioner**") and the respondent-wife ("**respondent**") were engaged in 2003, and their *nikkah* was solemnized in 2006. Not long after, in 2007, the respondent was left at her parental home by the petitioner following the alleged infliction of physical abuse on her person by the petitioner.

5. The petitioner then proceeded abroad, severed all contact with the respondent, refused to provide maintenance, and essentially abandoned his wife within a year of marrying her. Three years after marrying the respondent, he also contracted a second marriage, and has two children from that union.

6. Left with no other recourse, the respondent in 2015 initiated a suit for recovery of her dower, dowry articles, and maintenance. The petitioner, rather than contesting the claim of the respondent on any credible ground, persisted in advancing a line of argument that the respondent was medically unfit to perform conjugal rights and bear children, and hence disputed her status as a "female" under the law, thereby seeking to deny her dower and maintenance altogether. While it is possible that the petitioner viewed this as a genuine grievance or felt wronged in some manner, the manner in

which this allegation, targeting the very identity of the respondent was pursued remains troubling. It was pressed persistently and aggressively through three tiers of judicial scrutiny, unnecessarily so given that all forums rendered findings effectively refuting it, thereby subjecting the respondent to what this Court recognizes as profound personal humiliation.

Proceedings in the Courts below:

8. For proper appreciation of how this line of allegation persisted throughout the litigation, it is necessary to recount the way it was repeatedly advanced before every forum, even though each Court addressed it and rendered findings intended to lay it to rest.

9. At the trial Court level, the petitioner insisted upon pressing the allegation that the respondent was not only medically unfit to bear children, but in fact, according to him, did not qualify as a “female” in legal terms, and was therefore, not entitled to dower or maintenance. This allegation was not made in passing, but advanced forcefully, as the primary defence, leading to the respondent being subjected to medical examination by a standing medical board as per the instructions of the trial court. The report of the standing medical board, although falling short of a fully conclusive determination, nonetheless expressly noted that the case presented as feminine, on the basis of which the trial court ruled in favour of the respondent.

10. When pushed at the District Court level, the learned District Judge, in addressing the aforesaid finding, rightly observed that

regardless of the medical report, the decisive element in determining entitlement to dower was the fact of consummation of marriage. This, on evidence, stood fully proven as the parties had lived together as husband and wife for over a year and hence, the District Court too ruled in favour of the respondent.

11. Despite the clear and cogent reasoning, the petitioner deemed it reasonable to renew the same allegation before the learned High Court and once again, at the zealous insistence of the petitioner contesting her identity as a female, the respondent was directed to undergo yet another invasive medical examination.

12. The resulting medical report from this second medical examination was entirely conclusive and categorically affirmed that the respondent is indeed a female. Out of respect for the dignity of the respondent, and in recognition of the fact that unfortunately, she has already been subjected to more than enough invasive and traumatizing scrutiny in the course of this litigation, we consider it neither necessary nor appropriate to rehearse the contents of these medical findings in detail. It is sufficient to note that nothing in this report lends the slightest support to the allegations of the petitioner. It has been confirmed, unequivocally, that the respondent is a female with no features or characteristics suggesting otherwise. As to the question of infertility, the report did not yield any conclusive determination, and the respondent declined further intrusive testing in this regard – a choice both lawful and eminently reasonable given the trauma already inflicted upon her.

13. It is truly a travesty that despite the findings of the lower courts, as reiterated above, the learned counsel for the petitioner displayed the audacity to try to press the same line of argument even before this Court.

Necessary observations:

14. This Court cannot but record in the strongest possible terms its disapproval of the manner in which the respondent – a woman already abandoned, denied maintenance, and left to the mercy of litigation – was subjected to repeated, invasive, and demeaning scrutiny of her very personhood at the behest of a frivolous and cruel defence.

15. It is a sorrowful truth of our society that infertility, or even the suspicion of it, is often weaponized against women. This social prejudice routinely results in courts of law becoming venues for humiliating a woman under the guise of litigation. However, it must be acknowledged without equivocation that infertility, even if present, is no ground to deny a woman her dower or maintenance. It is certainly no ground to challenge her womanhood. To convert such personal pain into a legal weapon is not only an abuse of the process, but an affront to human dignity that should not be enabled.

16. It also bears emphasis that our religion and culture treat the marital bond as a sacred covenant. The Holy Quran has described the spouse as a garment; the relationship between a husband and wife is likened to that of *libaas* in our religion, and therefore, the ideals of protection, mutual respect, and dignity in marriage must not be compromised in any event.

17. Lest we forget: women in our society constitute a vulnerable group, whose dignity requires vigilant protection and care. The courts cannot, and will not, be passive venues for the perpetuation of social prejudices that harm women and subject them to one trauma after the other. It is not a matter of judicial discretion but of constitutional and moral obligation that the personal dignity of all who appear before the courts be duly safeguarded, particularly where the power imbalance between the parties is so manifest.

Disposition:

18. The power to award exemplary costs is one means by which the Court seeks to deter frivolous, abusive, and malicious litigation. In the present case, the petitioner has not merely wasted judicial time – he has caused a woman already in a position of vulnerability to suffer degradation and personal trauma over the course of protracted litigation in three forums spread over a decade. This Court would be remiss in its duty were it to allow such conduct to pass without sanction.

19. Accordingly, this petition is dismissed with costs of Rs. 500,000/- (Rupees five hundred thousand only), imposed primarily as an expression of the strong disapproval of this Court towards the misuse of judicial process by the petitioner to inflict gratuitous humiliation upon the respondent, which shall be paid to the respondent. If the said amount of costs is not paid by the petitioner, the same shall be recovered by way of arrears of land revenue.

20. It is hoped that this order serves as a reminder to all litigants and counsel that the dignity of every individual, particularly of women, must be respected in all judicial proceedings. Frivolous allegations attacking the personal identity and dignity of a woman will not be countenanced in any court of law.

21. Office is directed to send a copy of this order to the respondent for information.

Chief Justice

Judge

Islamabad, the
30th of June, 2025
Approved for reporting