IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE YAHYA AFRIDI, CJ
MR. JUSTICE MUHAMMAD SHAFI SIDDIQUI
MR. JUSTICE MIANGUL HASSAN AURANGZEB

C.P.L.A. NO.923-P OF 2023
(Against the judgment dated 13.10.2023 of the Peshawar High Court, Peshawar passed in W.P. No.6921-P of 2019)

Murad Khan etc.

...Petitioners

Versus

Mst. Humaira Qayyum etc.

...Respondents

For the Petitioners: Mr. Abdul Ahad Khan, ASC.

For the Respondents: Mr. Zia ur Rehman Khan, ASC (via video link, Peshawar) for respondent No.1.

Date of Hearing: 17.02.2025

ORDER

MIANGUL HASSAN AURANGZEB, J.- Through the instant civil petition, the petitioners have called in question the judgment dated 13.10.2023 passed by the Peshawar High Court, whereby writ petition No.6921-P/2019 filed by respondent No.1 against the judgment and decree dated 30.08.2019 passed by the learned appellate Court, was partly allowed in that the said judgment and decree was modified by holding that respondent No.1 was entitled to receive maintenance at the rate of Rs.10,000/- per month from the date of the institution of the suit till the end of her *iddat* period. Furthermore, it was held that the

recovery of 04 *tolas* of gold ornaments from petitioner No.1 was respondent No.1's legal right.

2. The record shows that on 12.05.2015, respondent No.1 had instituted a suit for dissolution of marriage on the basis of cruelty, recovery of maintenance, recovery of 04 *tolas* of gold ornaments and dowry articles. Although the learned Family Court had held respondent No.1 entitled to *inter alia* the recovery of 04 *tolas* of gold ornaments or its present market value as well as to the recovery of maintenance allowance at the rate of Rs.3,000/- per month from January, 2015, the learned appellate Court after re-appraisal of the material on the record interfered with the judgment and decree passed by the learned Family Court by disentitling respondent No.1 to recover 04 *tolas* of gold ornaments from petitioner No.1. The learned appellate Court also modified the relief granted by the learned Family Court qua respondent No.1's entitlement to the recovery of certain dowry articles.

3. The High Court, while deciding respondent No.1's writ petition against the appellate Court's judgment and decree dated 30.08.2019, yet again re-appraised the evidence and came to the conclusion that there was no wrong committed by respondent No.1 and that she was compelled to part her ways with petitioner No.1 on account of extreme hatred. Respondent No.1's father appeared as PW-5 and had deposed that his daughter had been subjected to cruelty. He was not cross-examined on this testimony. The High Court also appears to have been swayed by the evidence of several witnesses to the effect that respondent No.1 had been kept in her parents' house without maintenance. On this basis, the High Court held respondent No.1 entitled to the recovery of maintenance at the rate of Rs.10,000/- per month from the date of the filing of the suit till the expiry of the *iddat* period.

4. Where the High Court, in exercise of its jurisdiction under Article 199 of the Constitution, feels that the findings of a Court or a Tribunal below are based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of facts, patent errors of law or consideration of inadmissible evidence, interference with such findings would be warranted. Where however the orders passed by a Court or a Tribunal below are interfered with by the High Court by issuing a writ of *certiorari*, it has the discretion to remand the matter to the Court or Tribunal so as to enable it to decide the matter in accordance with the law and evidence on record bearing in mind the observations of the High Court in the order for the issuance of such writ. The High Court, while exercising its powers of judicial review with respect to orders passed by Courts or Tribunals, ought not to substitute its own findings for those of such Courts or Tribunals. In the case of Nawaza Vs. The Additional Settlement and Rehabilitation Commissioner (PLD 1970 SC 39), this Court set-aside the High Court's orders for the issuance of a writ of *certiorari* with respect to orders passed by the rehabilitation authorities. The High Court had substituted its findings with those of the rehabilitation authorities. This Court held that the proper course was for the High Court to have remanded the matter to the rehabilitation authorities where it found the orders to be suffering from misreading of the evidence. The relevant portion of the said report is reproduced herein below:-

> *"The facts said to have been noticed by the learned Single Judge in the course of examination of the record called for from the Central Record Room gave rise to certain questions of fact. As, however, those questions were not considered and decided by the Rehabilitation Authorities, the learned Judge should have left the same to be decided by the said Authorities instead of deciding them, himself. He should have remanded the case to the Rehabilitation Commissioner with whose decision the impugned order of the Assistant Rehabilitation Commissioner had merged. The High Court, in the exercise of its writ jurisdiction, in a case like this, does not act as a Court of facts and ought not to enter into and decide disputed questions of fact, although it can interfere with a finding of fact*

given by a subordinate Court or a tribunal or other authority if the finding is based on no evidence or is based on a complete misreading of the evidence. In the present case, the learned Single Judge himself decided certain questions of fact which the Rehabilitation Authorities had no occasion to determine. In this circumstance, the judgment and order of the learned Judge are plainly wrong inasmuch as he exceeded the writ jurisdiction available to the High Court and usurped the functions of the Rehabilitation Authorities. The judgment of the Letters Patent Bench which affirmed the decision of the learned Single Judge is, therefore equally bad in law."

5. Respondent No.1, in her writ petition filed before the Peshawar High Court was seeking the issuance of a writ of *certiorari* under Article 199(1)(a)(ii) of the Constitution with respect to the judgment and decree passed by the learned appellate Court. *Certiorari* is an order which brings up to the High Court a decision of an inferior Court or Tribunal for it to be quashed. A decision of an inferior Court or Tribunal may be quashed by issuing a writ of *certiorari* where that Court or Tribunal acted without jurisdiction, or exceeded its jurisdiction, or failed to comply with the rules of natural justice in a case where those rules are applicable, or where there was an error of law on the face of the record, or a decision is unreasonable in the *Wednesbury* sense. However, the High Court will not, in exercise of writ jurisdiction, act as a Court of appeal from the Court or the Tribunal concerned. The High Court cannot substitute its decision for the one taken by the subordinate Courts or Tribunals provided it is based on evidence. Where the High Court quashes a decision, it has the discretion either to take judicial notice and rectify a jurisdictional error in the order or to remand the matter to the Court, Tribunal or the authority concerned with a direction to reconsider it and to reach a decision in accordance with the judgment given by this Court while deciding a writ of *certiorari*. In the case of Chief Constable of North Wales Police Vs. Evans [1982] 3 All ER 141, Lord Hailsham L.C. held that it is important to remember in every case that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment

by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. Additionally, in the said case, Lord Brightman held that if the Court was to attempt itself the task entrusted to that Court or Tribunal or authority by the law, the Court would, under the guise of preventing the abuse of power, be guilty itself of usurping power.

6. Having said that we are sanguine that there is sufficient material on the record which persuaded the High Court to hold that respondent No.1 was compelled by the circumstances created in her former matrimonial abode to leave the same. The High Court has aptly referred to the testimony of the 14 witnesses in holding that respondent No.1 was kept in her parents' house without maintenance, and that this would entitle her to a higher quantum of maintenance than that granted to her by the Courts below. After observing so, the High Court was well within its rights to have partially set-aside the judgment and decree of the learned appellate Court, but given the facts and circumstances of the instant case, we are of the view that the High Court ought to have remanded the matter to the learned appellate Court for a decision in the light of the observations of the High Court. We, therefore, deem it appropriate to interfere with the judgment of the High Court only to the extent whereby it has substituted its findings with those of the learned appellate Court. Since we are not interfering with the decision of the High Court to issue a writ of *certiorari* with respect to the judgment and decree passed by the learned appellate Court, the matter is remanded to the learned appellate Court which shall decide the appeal (on the question whether respondent No.1 is entitled to the recovery of 04 *tolas* of gold ornaments and a higher quantum of maintenance) in the light of

the observations made by the High Court in its judgment dated 13.10.2023. Since the litigation between the contesting parties has been pending since 2015, it is expected that the learned appellate Court would decide the appeal after hearing the contesting parties expeditiously and preferably within a period of three months from the date of the receipt of this order.

7. The petition is converted into an appeal and allowed in the above terms. No costs.

Islamabad, the
17 February 2025
Not approved for reporting
Ahtesham Majid