

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)



Bench-II:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Aqeel Ahmed Abbasi

C.P.L.A.3284-L/2022

(Against the order dated 17.10.2022 passed by the Lahore High Court, Lahore in W.P. No.63770/2022)

Muhammad Sajid

... ***Petitioner(s)***

Versus

Mst. Shamsa Asghar, etc.

.... ***Respondent(s)***

For the petitioner(s): Ch. Zulfiqar Ali Dhudi, ASC
(Through V.L. Lahore Registry)

For the respondent(s): Mr. Maqsood ul Haq, ASC

Assisted by: Umer A. Ranjha, Judicial Law Clerk

Date of hearing: 15.04.2025

JUDGMENT

Syed Mansoor Ali Shah, J.- The marriage between Muhammad Sajid ("petitioner") and Shamsa Asghar ("respondent") was solemnized on 05.02.2018. Out of this wedlock, a daughter was born. However, the relationship between the parties became strained, ultimately culminating in a divorce. The respondent thereafter instituted a suit for recovery of maintenance allowance and dowry before the learned trial court. The suit was partially decreed to the extent of dowry and maintenance *vide* judgment dated 10.03.2022. Aggrieved by the quantum of the decree, both parties filed appeals before the learned Additional District Judge, Sialkot. As far as the petitioner is concerned, he filed an appeal for the reduction of the maintenance allowance while the respondent filed an appeal for the enhancement of the quantum of the decree regarding dowry. The said appeals were partially allowed¹, and more importantly, the valuation of dowry was enhanced while the claim for maintenance was dismissed *vide* judgment dated 19.09.2022 ("impugned judgment"). Subsequently, the petitioner preferred a

¹ The extent of articles mentioned at Sr. No. 22, 23, 25, 38 and 39 were discarded from the list of dowry articles.

civil revision before the Lahore High Court, Lahore, which was dismissed *vide* order dated 17.10.2022 (“impugned order”). Hence, the instant petition for leave to appeal before this Court.

2. We have heard the learned counsel for the parties at length and examined the impugned order of the High Court and the record of the case.

3. The primary legal question before us is whether the “dowry” claimed by the bride includes “presents” given to the groom or his family.

4. It is important to note that, at the time of the marriage, the respondent’s parents had provided her with dowry as per the list appended to the plaint and exhibited as Exhibit P.2 before the learned trial court. The courts below have examined this list failing to appreciate the distinction between “dowry” and “presents”. In order to address this issue, we turn to the governing legal framework, namely, the Dowry and Bridal Gifts (Restriction) Act, 1976 (“Act”). This legislation was enacted to regulate the practice of giving and receiving “dowry”, “bridal gifts” and “presents” in the context of marriage, with the express purpose of limiting the value and extent of such exchanges. The Act defines the above terms in Sections 2(a), 2(b), and 2(e) in the following manner:

2. Definitions. In this Act, unless there is anything repugnant in the subject or context,

- (a) “bridal gift” means any property given as a gift before, at or after the marriage, either directly or indirectly, by the bridegroom or his parents to the bride in connection with the marriage but does not include *Mehr*;
- (b) “dowry” means any property given before, at or after the marriage, either directly or indirectly, to the bride by her parents in connection with the marriage but it does not include property which the bride may inherit under the laws of inheritance and succession applicable to her;
- (c) ...
- (d) ...
- (e) “present” means a gift of any property not being a bridal gift or dowry, given before, at or after the marriage, either directly or indirectly, to either party to a marriage in connection with the marriage or to the relatives of the bride or bridegroom but does not include *neundra* and *salami*;
- (f) ...
- (g) ...

A perusal of these definitions reveals that the legislature has drawn a clear distinction between three categories of property exchanged in connection with marriage: “dowry²,” “bridal gifts,” and “presents”. Dowry originates from the bride’s parents to the bride; bridal gifts are conferred by the groom or his parents upon the bride; and presents constitute a residual category of gifts given to either party to a marriage (i.e., bride or groom) or their relatives in connection with the marriage.³ Further, Section 5 of the Act provides:

5. Vesting of dowry etc., in the bride. All property given as dowry or bridal gifts and all property given to the bride as a present shall vest absolutely in the bride and her interest in property however derived shall hereafter not be restrictive, conditional or limited.

The above stipulates that all property given to the bride as dowry, bridal gifts, or presents shall vest absolutely in her.⁴ The use of the phrase “shall vest absolutely” confers exclusive and unqualified proprietary rights upon the bride, thereby barring any adverse claim by the husband or his relatives. The subsequent part “and her interest in property however derived shall hereafter not be restrictive, conditional or limited” acts as a safeguard to protect the bride’s proprietary autonomy from customary or familial encumbrances. This absolute vesting of rights in the bride remains unaffected by any subsequent separation or divorce, thereby reinforcing her enduring and independent entitlement to such property.

5. The legislative intent underpinning Section 5 is to secure the independent proprietary status of the bride and to shield her from dispossession, particularly in the event of marital breakdown. A purposive interpretation of this provision necessarily confines the scope of recoverable property to that which is demonstrably intended for the bride. Accordingly, items gifted to the groom or his relatives, unless clearly shown to be intended for the bride’s use or

² Under the Indian Dowry Prohibition Act, 1961, “dowry” means “any property or valuable security given or agreed to be given either directly or indirectly, (a) by one party to a marriage to the other party to the marriage; or (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.”

³ Family Law Report on Women’s Marriage Rights in Pakistan, Centre for Human Rights (2023) <https://cfhr.com.pk/wp-content/uploads/2023/09/FLR-Report_Final.docx.pdf> accessed 18 April 2025.”

⁴ Fawad Ishaq v. Mrs. Mahreen Mansoor PLD 2020 SC 269; Dawlance United Refrigeration v. Muhammad Asim PLD 2016 Lahore 425; Muhammad Arshad v. Additional District Judge 2015 CLC 463; Mussarat Iqbal Niazi v. Judge, Family Court 2013 CLC 276; Abdul Sattar v. Chairman Railways 2011 YLR 1033; Gul Sher v. Maryam Sultana 2011 YLR 1000; Najeib Ullah v. Makhdoom Akhtar 2009 YLR 1823; Shahnaz Begum v. Muhammad Shafi PLD 2004 Lahore 290; Ghulam Rasool v. Judge, Family Court 1991 CLC 1696 and Masud Sarwar v. Farah Deebe 1988 CLC 1546.

held in trust for her benefit, fall outside the protective ambit of the Act.

6. In furtherance of this protective scheme, Section 7 of the Family Courts Act, 1964, read with the Schedule [Part I] appended thereto, vests the Family Court with jurisdiction to adjudicate claims relating to “dower”, “maintenance”, “dowry”, and “personal property and belongings of a wife”⁵. This framework empowers a wife to initiate proceedings for the recovery of property, whether classified as dower, dowry, bridal gifts or presents (given to the bride). In such cases, these items vest absolutely in her as personal property and are recoverable under the Family Courts Act.⁶ However, this entitlement does not extend to “presents” given to the groom or his relatives, as such items do not vest in the bride and therefore fall outside the scope of “personal property and belongings of a wife” as contemplated by the law.

7. The right of a bride to her property and belongings under Section 5 is further reinforced by the constitutional guarantees enshrined in Articles 23⁷ and 24⁸ of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”), which recognize her right to hold, and dispose of her property irrespective of her marital status. It is further buttressed by Article 25 of the Constitution which guarantees equality before the law and equal protection of the law, obligating the State to eliminate all forms of discrimination against women.⁹ Additionally, Article 35 of the Constitution obligates the State to protect the marriage, the family, the mother, and the child.¹⁰ In construing Section 5, courts must therefore

⁵ Muhammad Khalid Karim v. Saadia Yaqoob PLD 2012 SC 66; Syed Mukhtar Hussain v. Saba Imtiaz PLD 2011 SC 260; Ejaz Naseem v. Fareeha Ahmad 2009 SCMR 484 and Muhammad Akram v. Hajra Bibi PLD 2007 Lahore 515.

⁶ Taimoor Aslam Satti v. Alia Bibi 2016 YLR 765; Shamim Akhtar v. District Judge 2016 MLD 242 and Nomial Zia v. Adnan Riaz 2014 CLC 87.

⁷ **Article 23. Provision as to property.** Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest. See Pakcom Limited v. Federation of Pakistan PLD 2011 SC 44.

⁸ **Article 24. Protection of property rights.** (1) No person shall be deprived of his property save in accordance with law.

(2) ...

(3) ...

(4) ...

See Farhan Aslam v. Nuzba Shaheen 2021 SCMR 179.

⁹ **Article 25. Equality of citizens.** (1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children. See Government of Khyber Pakhtunkhwa v. Syed Sadiq Shah 2021 SCMR 747.

¹⁰ **Article 35. Protection of family.** The State shall protect the marriage, the family, the mother and the child. See Farhan Aslam v. Nuzba Shaheen 2021 SCMR 179.

interpret the statutory language in harmony with these constitutional principles, ensuring that women's economic autonomy is upheld and not subordinated to any patriarchal or customary practices.

8. A parallel foundation for this interpretation exists in classical Islamic jurisprudence. As articulated in D. F. Mulla's *Principles of Mohammadan Law*, any property, movable or immovable, given to the wife at the time of the marriage, whether by her own family, the husband, or his family, is presumed to be her exclusive property unless clear and cogent evidence is led to rebut this presumption.¹¹ Under Hanafi law, gifts (*hiba*)¹² made to the bride in connection with marriage are deemed irrevocable and confer absolute ownership in the bride.¹³ This includes dowry, *Mehr* and any other wedding gifts. Although such gifts exchanged between spouses are considered irrevocable, neither party may subsequently seek their recovery or revocation.¹⁴ The presumption of exclusive ownership reflects a deliberate policy of financial empowerment of women. Any interpretive approach that seeks to include property never delivered to or intended for the bride would distort both the legislative intent and well-settled Islamic principles.

9. Consequently, "presents" given to the groom's family cannot be claimed by the bride under the Act unless it is clearly established that they were intended solely for her use or benefit. The definitional framework provided in Sections 2(a), (b), and (e), read in conjunction with Section 5, establishes a clear threshold: *only property that legally vests in the bride is afforded protection under the statute*.¹⁵ Accordingly, the term "present" under Section 2(e) must be interpreted restrictively to exclude items given to the groom's family or relatives, as such items do not vest in the bride and are therefore not recoverable by her.

¹¹ M. Mahmood, *D.F. Mulla's Principles of Mohammadan Law* (10th Edition, 2023).

¹² According to Baillie, *hiba* is the "conferring of a right in property in something specific, without an exchange." Sahih Muslim defines it as the "transfer of possession of property, movable and immovable, from one person to the other willingly and without reward."

¹³ Muhammad Zubair Abbasi and Shahbaz Ahmad Cheema, *Family Laws in Pakistan* (Oxford University Press, 2018).

¹⁴ M. Mahmood, *D.F. Mulla's Principles of Mohammadan Law* (10th Edition, 2023); Neil B.E. Baillie, *A Digest of Moohummudan Law* (Smith Elder, 1865) and Abdur Rahim, *The Principles of Muhammadan Jurisprudence* (S.P.C.K Press, 1911).

¹⁵ *Diagnostic Study of Nikkahnamas in Punjab: A Review of Women's Marriage Rights*, Centre for Human Rights & Musawi (2023) < <https://cfhr.com.pk/wp-content/uploads/2023/09/Diagnostic-Study-of-Nikkahnamas-in-Punjab.docx.pdf> > accessed 19 April 2025.

10. We also find it necessary to clarify the reasoning adopted by the High Court in interpreting the term “dowry” under Section 2(b) of the Act.¹⁶ The phrase “directly or indirectly” must be construed purposively to encompass the various modes through which dowry may be given, rather than focusing on its formal classification. This means that dowry need not be transferred in a direct or documented manner; it may be conveyed through intermediaries, informal channels, or third parties, so long as its origin lies with the bride’s parents and the transfer is linked to the marriage, and the bride is the ultimate beneficiary.

11. While this judgment is confined to interpreting the statutory protections afforded to the bride, we find it necessary to acknowledge the broader social realities surrounding the practice of dowry. When socially imposed, dowry can exert severe pressure on families, especially those with limited financial resources.¹⁷ In contrast, Islam designates *Mehr* as the sole obligatory provision, an unconditional gift from the groom to the bride, intending to secure her financial autonomy without burdening her family.¹⁸ Dowry, unless given voluntarily and free from coercion, or social pressure, perpetuates inequality and exploitation, running contrary to the ideals of equitable marriage enshrined in both constitutional and Islamic frameworks. Thus, this ruling must not be misconstrued as an endorsement of dowry; rather, it serves as a firm reminder that any property received by the bride remains exclusively hers and is not subject to claim or appropriation by the groom or his family. No misplaced expectations or entitlements should arise in this regard. Society must strive to abandon regressive dowry practices, and instead promote a model of marriage rooted in simplicity, mutual dignity, and the groom’s financial responsibility through *Mehr*. As a matter of public policy, any gifts or contributions made by the bride’s family should be entirely voluntary, and given without societal

¹⁶ Paragraph 3 of the impugned order.

¹⁷ Siwan Anderson, ‘The Economics of Dowry and Brideprice’ (2007) 21(4) Journal of Economic Perspectives 151; Rossella Calvi and Ajinkya Keskar, ‘Dowries, Resource Allocation and Poverty’ (2021) 192 Journal of Economic Behavior & Organization 332 and Momoe Makino, ‘Dowry and Women’s Empowerment: Why Does the Practice Remain in South Asia?’ (Institute of Developing Economies, 2022) https://www.ide.go.jp/English/ResearchColumns/Columns/2022/makino_momoe_02.html accessed 20 April 2025.

¹⁸ Haseen Ullah v. Naheed Begum PLD 2022 SC 686.

pressure, thereby preserving familial dignity and reaffirming the constitutional commitment to equality and human dignity.

12. In view of the above, the list provided by the respondent shows that certain items, given to the family of the groom, fall outside the scope of dowry and bridal gifts and pass as “presents”, as defined under the Act. These items are listed at Sr. No. 65 to 72 in Exhibit P.2 which cannot be decreed in favour of the bride. Therefore, the impugned judgment is modified to exclude these items, while the suit decreed in favour of the respondent to the extent of the remaining items is maintained.

13. This petition is hereby converted into an appeal and allowed in the terms set out above. Accordingly, the impugned order of the High Court stands set aside.

Judge

Islamabad,
15th April, 2025.

Approved for reporting
Iqbal

Judge