

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE AMIN-UD-DIN KHAN
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NO. 1451 OF 2020

(Against the judgment dated 26.02.2020
passed by the Lahore High Court,
Rawalpindi Bench in W.P.No.2643 of 2014)

Sajid Mehmood

...Petitioner

VERSUS

Mst. Shazia Azad and others

...Respondents

For the Petitioner: Raja Mehfooz Ali, ASC
Syed Rifaqat Hussain Shah, AOR

For Respondent: N.R.

Date of Hearing: 07.11.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Petition for leave to appeal is directed against the Judgment dated 26.02.2020, passed by the learned Lahore High Court, Rawalpindi Bench in W.P.No.2643/2014, whereby the writ petition filed by the petitioner was dismissed.

2. The fleetingly enumerated chronicles of the *lis* are that the respondent No.1 was married with the petitioner on 23.02.2008 in lieu of 10-tola gold ornaments as dower. The respondent No.1 also claimed that her parents gave her dowry articles amounting to Rs.3,20,000/- at the time of marriage. After consummation of marriage, the couple on 31.08.2009 was blessed with a daughter, Ayesha Sajid. However, due to some domestic disputes the respondent No.1 filed her suit for recovery of dower, dowry articles and maintenance before the Family Court, Rawalpindi. The petitioner voluntarily moved an application for making an offer to

the respondent No. 1 and her father to take special oath with regard to the dowry articles worth Rs.3,20,000/- that were allegedly given to the respondent No.1 at the time of her marriage and vis-à-vis the further allegation that the petitioner sold out the gold ornaments. When this offer was put forward in writing, the respondent No.1 accepted the offer and took special oath on 04.10.2013 and she categorically and downrightly affirmed that at the time of marriage her father gave dowry articles as catalogued in Exhibit-P-3, except the articles listed at Sr. Nos. 36 and 37 and in one fell swoop, she added together in her special oath testament that gold ornaments worth Rs.1,18,000/- given as dower were sold out by the petitioner.

3. After recording the statement on special oath as proposed by the petitioner to the respondent No.1, the learned Family Court *vide* judgment dated 04.10.2013 decreed the suit to the extent of dower and dowry articles. Thereafter the Petitioner challenged the judgment and decree of the learned Family Court by dint of appeal under Section 14 of the Family Courts Act, 1964 ("**1964 Act**"), but it was dismissed *vide* judgment dated 20.05.2014.

4. The learned counsel for the petitioner argued that under Section 17 of the 1964 Act the provisions of the Qanun-e-Shahadat Order, 1984 ("**QSO 1984**") are not applicable to proceedings before the Family Court in respect of Part-I of the Schedule. However, he admitted that the petitioner himself filed an application for taking special oath by the respondent No.1, but contended that instead of decision on the statement recorded by means of special oath, the Family Court should have decided the case on merits. He further averred that the learned High Court as well as the Family Court and its Appellate Court all failed to advert to the case on merits.

5. Heard the arguments. It is a self-confessed position that the petitioner filed an application for special oath which was accepted by the respondent No.1 and the special oath was taken in the mode and manner proposed by the petitioner. Nevertheless, under Section 17 of the 1964 Act, the application of the QSO 1984 and the provisions of the Code of Civil Procedure 1908 ("**CPC**"), except Sections 10 and 11 have been excluded and made inapplicable to

the proceedings before the Family Court in respect of Part-I of the Schedule, but concomitantly under Sub-section (2) of Section 17, it is enumerated in tandem that Sections 8 to 11 of the Oaths Act, 1873 ("**Oaths Act**") shall apply to all proceedings before the Family Court. The power of the Court to tender certain oaths is provided in Section 8 of the Oaths Act which envisages that if any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him. Whereas under Section 9 of the Oaths Act, if any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in Section 8 if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question. So far as the conclusiveness and unwaveringness of evidence as against the person offering to be bound is concerned, Section 11 elucidates lucidly and unambiguously that the evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated. The phraseology "conclusive proof" brings into play inconspicuously the general principle of estoppel and sets forth that a party, who offers to be bound by the evidence given by the opposite party or a witness on special oath, shall not have the right to challenge the evidence which shall be conclusive and definitive proof of the matter.

6. The letter of the law makes it unequivocally clear that under the provisions of the Oaths Act, a party in litigation can offer the opposite party to accept or reject the claim on special oath, but they cannot compel each other to take the special oath, however if the offer is accepted by the other party then a binding agreement comes into existence and the party making the offer has no right and authority in law to resile from it. When the Court

communicates the offer to the other party and gets hold of his assent or refusal, as the case may be, it in fact plays a role as an intermediary between the parties and when the offer is accepted by the other party, the acceptance is transmitted to the party inviting the other to take special oath, thereafter the agreement is completed between the parties unless the offer is withdrawn before its acceptance by the other side. The stipulations of the Oaths Act cannot be construed to give an unfair or inequitable advantage to one party over the other, so in the event of an offer or proposal to be bound by the oath of the opposite party, then obviously, due to the mutuality of the promise between them, the party making an offer has no right to resile from it after the offer is accepted and the special oath is taken. In the absence of any such satisfactory or sufficient cause the Court is obligated to implement the agreement and to record the statement of the party concerned to make a decision in the case accordingly. The petitioner cannot wriggle out or withdraw his offer which was given by him voluntarily before the Family Court and the same acted upon according to his will.

7. In the case of Muhammad Ali Vs Major Muhammad Aslam and others (PLD 1990 SC 841), it was held by this Court that the words "be conclusive proof of the matter stated" in Section 11 of the Oaths Act, 1873 obviously means that the evidence on oath so given shall be conclusive proof in the suit in which such evidence is recorded of the matter in respect of which the parties have agreed to be bound. Whereas in the case of Muhammad Mansha and 7 others Vs Abdul Sattar and 4 others (1995 SCMR 795), this Court held that the offer was voluntarily made by the plaintiff which was accepted there and then by the defendant and, as such, the Trial Court rightly disallowed the plaintiff to resile from it and after administering the oath according to the desire of the plaintiff, dismissed the suit of the plaintiff and the appellate Court as well as the High Court rightly concurred with it. While in the case of Mahmood Ali Butt Vs Inspector-General of Police, Punjab, Lahore and 10 others (PLD 1997 SC 823), it was held by this Court in paragraph 10 of the judgment that "the special oath is administered to a party or nominated person or a witness when a party offers to bind itself to the statement to be made on oath by the other party. In Mst. Asifa Sultana v. Honest Traders, Lahore

and another (PLD 1970 SC 331) it was observed that the offer to abide by the oath of opposite-party and its acceptance by the other party was in the nature of an agreement and the question whether the party who offered can resile from it depends on the facts and circumstances of each case. Again, in the cases of Muhammad Akbar and another v. Muhammad Aslam and another PLD 1970 SC 241; Attiqullah v. Kafayatullah 1981 SCMR 162; Muhammad Mansha and 7 others v. AbdqI Sattar and 4 others 1995 SCMR 795; Muhammad Rafique and another v. Sakhi Muhammad and others PLD 1996 SC 237; Maulvi Muhammad Ramzan v. Muhammad Ismail 1982 SCMR 908 and Saleem Ahmad v. Khushi Muhammad 1974 SCMR 224 the principle laid down is that a party offering to have a cause decided on oath and undertaking to abide by the special oath of a person (party or not a party to the suit) cannot be allowed to resile from it, for it amounted to a binding contract unless it was found to be void or stands frustrated. So validity of decisions given on the basis of special oath was upheld under the provisions of Oaths Act, 1873. It will, therefore, be seen that "special oath" made basis of the decision in the instant case is not covered by Article 163 of the Qanun-e-Shahadat and reference to Article 163 and alleged violation of any supposed prescribed procedure urged by the learned counsel is misconceived".

8. As a result of the above discussion, we do not find any irregularity or perversity in the impugned judgment passed by the learned High Court. Accordingly, this civil petition is dismissed and leave is refused.

Judge

Judge

Judge

Islamabad the
7th November, 2022
Khalid
Approved for reporting.