

ORDER SHEET**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT****Case No: WP No.29823-2014**

Abdul Rafay Butt

Versus

ADJ etc

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary.
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12.11.2014 Mr.Muhammad Latif, Advocate for the
petitioner.

Petitioner has invoked the constitutional jurisdiction of this Court under Article 199 to impugn the judgment and decree dated 03.9.2013 passed by learned Judge Family Court Gujranwala and the judgment and decree dated 11.7.2014 passed by learned Additional District Judge Gujranwala.

2. Succinctly facts leading to this petition are that Faiza Meer respondent No.3 (to be called hereinafter as respondent) was wedded to the petitioner on 29.10.2010 in lieu of dower i.e. gold bangles weighing 8 tolas valued Rs.3,50,000/-. Petitioner is MBBS doctor by profession. After few weeks of the marriage he left for Saudi Arabia in connection with his employment. Unfortunately the wedlock could not prolong and on 09.2.2011 the respondent filed suit for dissolution of marriage and also claimed recovery of dower, maintenance allowance and dowry articles against the petitioner. Suit was resisted by

the petitioner through his real brother Toqeer Daud as special attorney. During the pre-trial reconciliation proceedings on 06.7.2011 before learned Judge Family Court petitioner claimed dissolution of marriage on the basis of 'Khula'. Special attorney of the petitioner did not contest the plea of 'khula' however contended that for grant of 'khula' respondent had to return the dower. Consequently learned Judge Family Court vide order dated 06.7.2011 dissolved the marriage in terms of section 10(4) of the West Pakistan Family Court Act 1964 however keeping in view the divergent pleadings of the parties framed following issues with regard to remaining controversies between the parties:-

1. Whether the plaintiff is forcibly deserted wife and is entitled to decree for recovery of maintenance allowance @ and period as prayed for?OPP
2. Whether the plaintiff is entitled to decree for recovery of dowry articles as prayed for?OPP
3. Whether the plaintiff is entitled to decree for recovery of Haq-Mehr as prayed for?OPP
4. Whether the defendant has discharged his liability of payment of Haq-Mehr?OPD
5. Whether the suit of the plaintiff is liable to be dismissed in view of preliminary objections raised by the defendant in his written statement and defendant is entitled to get back his gold ornaments, burri and other gold ornaments as narrated in the written statmenet?OPD
6. Relief.

After recording the evidence of the parties learned Judge Family Court decreed the respondent's suit against the petitioner in the following manner:-

- (i) Issue No.1 was decided against the respondent and she was found not entitled to maintenance allowance.
- (ii) Issue No.2 was partially decided in favour of the respondent and she was found entitled to recover the

dowry articles excluding the articles mentioned at serial No.1 to 5 and 32 to 35 of the list (Exh.P2).

- (iii) Issue No.3 was decided against the respondent and her claim for recovery of dower was declined.
- (iv) Issues No.4&5 were decided against the petitioner.

Both the parties being dis-satisfied with the judgment and decree dated 03.9.2013 passed by learned Judge Family Court assailed the same through separate appeals. The learned Appellate Court after hearing the parties vide consolidated judgment and decree dated 11.7.2014 dismissed the appeal lodged by the petitioner however appeal lodged by respondent was partly allowed with certain modifications in the following manner:-

- (i) Respondent is entitled to get maintenance allowance at the rate of Rs.15000/- per month for “iddat” period only.
- (ii) Respondent is entitled to recover the dowry articles as per list except Articles No.1 to 5 & 32 to 35 or in alternate Rs.3,77,100/- as price of the remaining articles.

3. Learned counsel for the petitioner has vehemently argued that:-

- (i) learned Appellate Court erred in law while granting maintenance allowance with regard to period of ‘Iddat’ in favour of the respondent;
- (ii) that petitioner left for abroad for his employment in the month of November 2010 leaving the respondent behind residing in his house who later on left the petitioner’s house without his permission and also took away the gold ornaments owned by the petitioner; that alternate price of the dowry articles were wrongly fixed to the tune of Rs.3,77,100/- by the learned Appellate Court;

- (iii) that respondent is bound to return dower i.e. gold bangles weighing 8 tolas valuing Rs.3,50,000/- to the petitioner in consideration of 'Khula' granted by learned Judge Family Court;
- (iv) that the impugned judgments and decrees of the learned Courts below are based on misreading and non-reading of evidence, against law and facts and without application of judicious mind;
- (v) that learned Courts below wrongly exercised the jurisdiction while passing the impugned judgments and decree which are liable to set aside.

4. Arguments heard. Record perused.

5. It is an established principle that findings on fact recorded by a competent court in exercise of lawful jurisdiction cannot be agitated by invoking writ jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 unless the same suffer from perversity causing serious miscarriage of justice.

6. As regards recovery of dowry articles it is pertinent to mention that respondent in Paragraph No.3 of her plaint has categorically alleged that dowry articles comprising clothes, furniture, electronic appliances, utensils and gold ornaments etc. detailed in the annexed list were given to her at the time of marriage which are lying in possession of the petitioner. The said list (Exh.P2) is produced in the evidence. Record reveals that petitioner while filing the written statement replied paragraph No.3 of the plaint as under:-

'That the paragraph No.3 is not admitted because the plaintiff has taken the ornaments mentioned at serial Nos.1 to 5 and 32 to 35 attached with the plaint, and some items are mentioned in the list through exercising misrepresentation and false version.'

Bare reading of the above paragraph transpires that in the written statement petitioner has not mentioned that which articles of

the list were not brought by the respondent at the time of marriage. It is also not contended by the petitioner that he is not in possession of other articles of dowry mentioned in the list. Even petitioner's brother/special attorney Touqeer Daud (DW-2) in his affidavit (Exh.D2) did not mention that the respondent had not brought the dowry articles mentioned in the list at the time of marriage or the same were not lying in possession of the petitioner. His statement as DW-1 is also silent in this regard. In view of the above findings of the learned Appellate Court on issue No.2 can not be termed as based on misreading or non-reading of evidence available on the record.

7. There is no cavil to the proposition that in a suit for dissolution of marriage if reconciliation fails it is bounden duty of the Family Court to pass a decree for dissolution of marriage forthwith in terms of section 10(4) of the Family Court Act 1964 and shall also restore to the husband the Haq Mehr received by the wife in consideration of khulla. It will be expedient to reproduce the provisions of section 10(4) of the Family Court Act 1964 which reads below:-

***“Section 10(4): If no compromise or reconciliation is possible the Court shall frame the issues in the case and fix a date for recording of the evidence
Provided that notwithstanding any decision or judgment of any Court or tribunal, the Family Court in a suit for dissolution of marriage, if reconciliation fails, shall pass decree for dissolution of marriage forthwith and shall also restore to the husband the Haq Mehr received by the wife in consideration of marriage at the time of marriage.”***

The expression ‘Haq Mehr received by the wife in consideration of marriage at the time of marriage’ used in the above noted provision is very significant. In this case it is not disputed that at the time of marriage between the parties eight bangles of gold were fixed as dower as recorded in column No.13 of the Nikahnama (Exh.P3). Column No.14 of the Nikahnama pertains to the type of dower i.e. *prompt* or *deferred*. It bears the entry .

Petitioner's contention is that eight gold bangles fixed as prompt dower were paid to the respondent at the time of Nikah whereas respondent's case is that she did not receive any dower. To resolve this controversy it will be expedient to go through the ocular and documentary evidence produced by the parties on the record. In Nikahnama (Exh.P3) column No.15 bears the heading '*as to whether any part of the dower was paid at the time of marriage if so to what extent*'. This column is left blank. It therefore fails to reflect that the dower fixed at the time of Nikah was paid to the respondent at the time of marriage. Petitioner himself did not appear in the witness box rather on his behalf case was defended by his real brother Toqeer Daud (DW-1) as special attorney who in his affidavit Exh.D2 stated that at the time of marriage eight tolas gold bangles were given to the respondent as dower. This part of his statement is duly cross-examined by the respondent contending that no dower was paid to her. The other witnesses namely Tanveer Daud (DW-2) and Wasiq Daud (DW-3) are also real brothers of the petitioner. Attiq ur Rehman (DW-4) and Farooq Azam (DW-5) are not witnesses of the Nikah between the parties. They are also not relatives of the parties. As per contents of the Nikahnama (Exh.P3) Muhammad Shahzad Butt is a witness of Nikah between the parties. Neither the said witness of the Nikah nor the Nikah Registrar was produced by the petitioner to substantiate his contention that dower was paid to respondent at the time of marriage. In the attending circumstances petitioner has not been able to prove the payment of dower i.e. eight tolas gold bangles to the respondent at the time of Nikah. Findings of the learned trial Court on issues No.4 and 5 lawfully maintained by learned lower Appellate Court after careful scrutiny of the evidence do not call for any interference by this Court.

8. The learned Appellate Court in the impugned judgment and decree dated 11.7.2014 while deciding issue No.1 has declared that the respondent is entitled to get maintenance allowance @

Rs.15000/- per month for 'Iddat' period only. Learned counsel for the petitioner has vehemently argued that in this case respondent was not entitled to the maintenance allowance even for the 'Iddat' period and that the Appellate Court's order in this regard is illegal and liable to set aside.

9. Proposition in hand deals with the divorced wives' right for maintenance during the period of 'Iddat'. A Muslim divorced woman cannot remarry for three months and in case of death of husband for four months and ten days. This period of probation is called 'Iddat'. She is entitled to get maintenance allowance for this period on account of above condition. In case of a divorce to a pregnant woman the Holy Qur'an in Verses No.4 to 6 of Surah Al-Tallaq entitles her to maintenance till the delivery of child. Surah Al-Tallaq comprises 12 verses. To understand the spirit of the Commands of Allah on the subject it will be expedient to reproduce the English translation of these verses as under:-

English Translation of Surah Al-Tallaq

“1. O Prophet! (Say Unto the Muslims) When ye put away women, put them away for their (legal) period and reckon the period, and keep your duty to Allah, your Lord. Expel them not from their houses nor let them go forth unless they commit open immorality. And these are the limits imposed by Allah; and whose transgresseth Allah's limits, he verily wrongeth his soul. Thou knowest not: it may be that Allah will afterward bring some new thing to pass.

2. Then, when they have reached their term, take them back in kindness or part from them in kindness, and call to witness two just men among you, and keep your testimony upright for Allah. Whoso believeth in Allah and the Last Day is exhorted to act thus. And whosoever keepeth his duty to Allah, Allah will appoint a way out for him-

3. And will provide for him from (a quarter) whence he hath no expectation. And whosoever putteth his trust in Allah, He will suffice him. Lo! Allah bringeth His command to pass. Allah hath set a measure for all things.

4. And for such of your women as despair of menstruation, if ye doubt, their period (of waiting) shall be three months, along with those who have it not. And for those with child, their period shall be till they bring forth their

burden. And whosoever keepeth his duty to Allah, He maketh his course easy for him.

5. *That is the commandment of Allah which He revealeth unto you. And whoso keepeth his duty to Allah, He will remit from him his evil deeds and magnify reward for him.*

6. *Lodge them where ye dwell, according to your wealth, and harass them not so as to straiten life for them. And if they are with child, then spend for them till they bring forth their burden. Then, if they give suck for you, give them their due payment and consult together in kindness; but if ye make difficulties for one another, then let some other woman give suck for him (the father of the child).*

7. *Let him who hath abundance spend of his abundance, and he whose provision is measured, let him spend of that which Allah hath given him. Allah does not lay on any soul a burden save that which He hath given it. Allah will vouchsafe, after hardship, ease.*

8. *And how many a community revolted against the ordinance of its Lord and His messengers, and We called it to a stern account and punished it with dire punishment.*

9. *So that it tasted the ill-effects of its conduct, and the consequence of its conduct was loss.*

10. *Allah hath prepared for them stern punishment; so keep your duty to Allah, O men of understanding! O ye who believe! Now Allah hath sent down unto you a reminder-*

11. *A Messenger reciting unto you the Revelations of Allah made plain, that He may bring forth those who believe and do good works from darkness unto light. And whosoever believeth in Allah and doeth right, He will bring him into Gardens underneath which rivers flow, therein to abide for ever. Allah hath made good provision for him.*

12. *Allah it is Who hath created seven heavens, and of the earth the like thereof. The commandment cometh down among them slowly, that ye may know that Allah is Able to do all things, and that Allah surroundeth all things in knowledge."*

10. Reference to the proposition three other verses of the Holy Qur'an are also relevant. English translation of these verses read below:-

Verse No.236 of Surah Al-Baqrah

"236. It is no sin for you if ye divorce women while yet ye have not touched them, nor appointed unto them a portion. Provide for them, the rich according to his means, and the straitened according to his means, a fair provision. (This is) a bounden duty for those who do good."

Verse No.241 of Surah Al-Baqrah

"241. And for divorced women is a provision in kindness. A duty for those who ward off (evil)."

Verse No.49 of Surah Al-Ahzab

“49. O ye who believe! If ye wed believing women and divorce them before ye have touched them, then there is no period that ye should reckon. But content them and release them handsomely.”

11. In the above quoted three verses husbands have been directed to give ‘Mata’ to their divorced wives. In verse No.6 of Surah Al-Tallaq a husband has been directed to give ‘Nafaqah’ to a pregnant divorced wife. The Arabic words ‘Nafaqah’ and ‘Mata’ used in the Holy Qur’an are ordinarily translated as ‘maintenance’ and ‘provision’ respectively by various English Translators and Interpreters of the Holy Qur’an. Some of the Arabic Scholars expressing their dis-satisfaction over the English translations have opined that these are poor translations. Needless to say that rendering the depth and shades of meaning of words of one language into another language and finding the equivalent is a difficult task. So many English translators have confessed that the Holy Qur’an is not translatable because of this and perhaps for this reason they have titled their translations as interpretations. In various Arabic lexicons the word ‘Mata’ means ‘temporary gain’ or ‘benefit’. The *Qamus-al-Quran al Wajuh An-Nazair* published in Beirut gives the meaning of the word ‘Mata’ as ‘Munafah or profit or gain’. *Imam Raghīb Asgahani* in his lexicon namely *Mufradat* defines the word ‘Mata’ as ‘something given to a divorced woman from which she can derive benefit’. According to it the word ‘Nafaqah’ means living expenses. The lexicon *Tartibul Qamus* published in Egypt says that ‘Mata’ is a kind of maintenance given to a woman. *Al-Qamus-ul Asri* (Modern Dictionary from Arabic to English) defines the word ‘Nafaqah’ as expenses on living and the word ‘Mata’ as ‘effects’ or ‘goods’. *Imam Razi* writes in *Tafsir Kabir* that ‘Mata’ covers only articles of temporary benefit given as a parting or a consolation gift. The author of *Lisan ul Arab* opined that ‘Mata’ is only a one time gift and not like maintenance which is payable over a period of time.

12. The Arabic words (wa matee o hunna) and ~~رَزَقْنَاهُمْ~~ (mata m bilmaroof) used in verse No.236 of Surah Al-Baqrah are translated as 'provide for them' and 'a fair provision' respectively. The Arabic word ~~رِزْقًا~~ (Mata um bilmaroof) used in verse 241 of Surah Al-Baqrah is translated as 'provision of kindness'. The Arabic words (fa matte o hunna wa saree hohunna sarahan jamila) used in verse 49 of Surah Al-Ahzab are

(fa anfiqo) (to)' used in the

unna)(to provide)' and

translated as “*but content them and release them handsomely*’. The

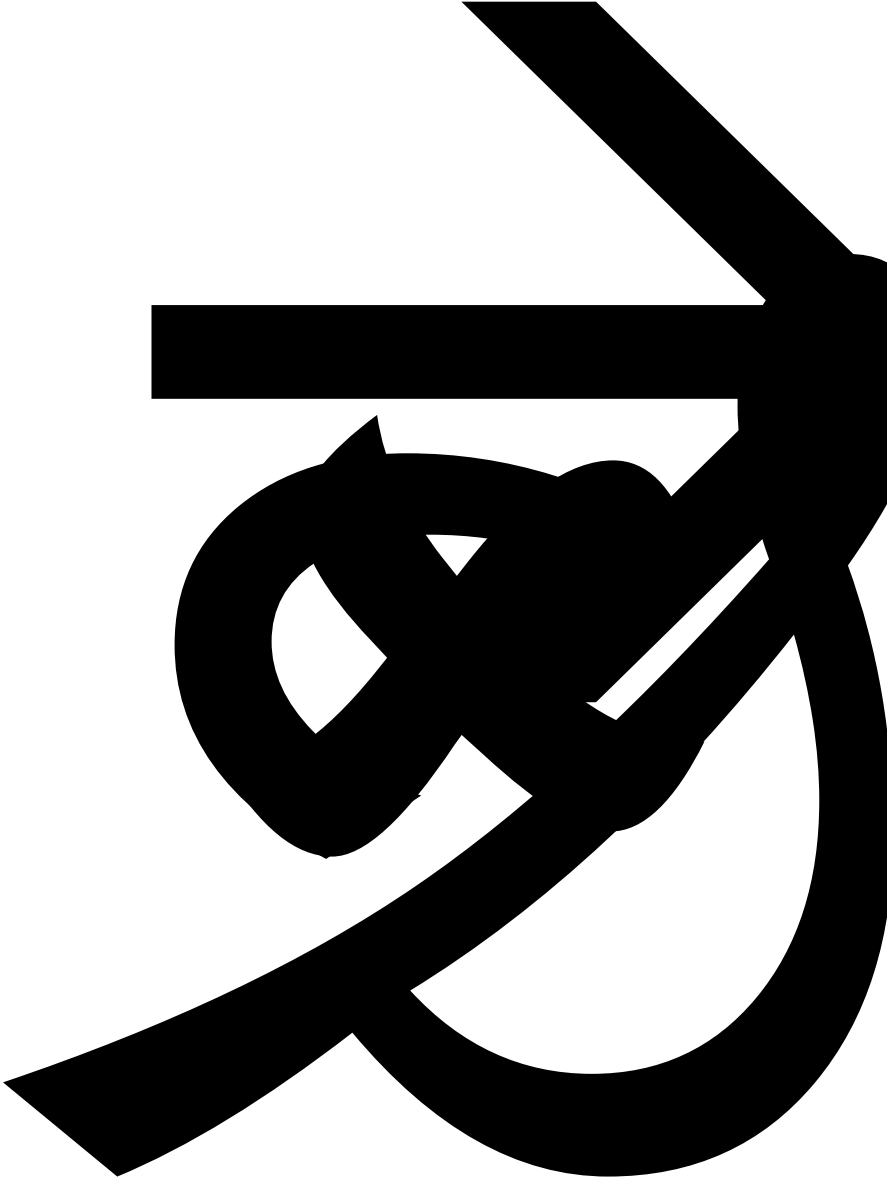
Hamlin fa unfiqo alihina hatta yazana hamlahun) used in verse No.6 of Surah Al-Tallaq are translated as ‘*and if they are with child, then spend for them till they bring forth their burden*’. The words

(leyunfic) and *(fal unfic)* used in verse No.7 of Surah Al-Tallaq

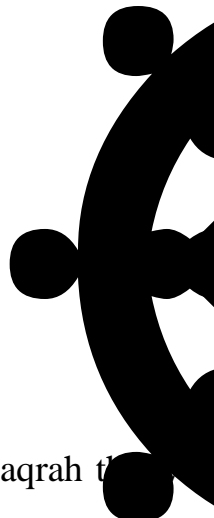
are translated as ‘to spend’. The Arabic words ~~فَاعِلَاتِي~~ (*Fa amati o*

H

ur'an).



above noted verses of Holy Qur'an are very significant. (*Above quoted English translations are endeavored by a renowned scholar Muhammad Marmaduke Pickthall in his Translation of the Holy Q*



13. In verse No.241 of Surah Al-Baqrah the word '*Mata*' is qualified by the word (*bil maroof*) which means '*well known*' or '*customary*'. The Arabic text of verse No.241 of Surah Al-Baqra

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~~XXXXXXXXXXXXXXXXXXXX~~ (Walil Mutallaqaat-e-Mataum bil Maroof; Haqqan Alal Muttaqeen) is translated by Abdullah Yusuf Ali as ‘for divorced women, maintenance (should be provided) on a reasonable scale. This is a duty on the righteous.’ Last part of verse No.241 manifests that the above said command is for those who fear Allah. In various Ahadith it is reported that the Holy Prophet Hazrat Muhammad (Peace be upon him) said that ‘Mata’ should be given even by those in straightened circumstances and it may be a few

kilograms dates, some clothes or grain if they cannot give any thing better.

14. The ordains of Almighty Allah as revealed in the Holy Qur'an and practised by the Holy Prophet Hazrat Muhammad (Peace be upon him) manifest complete code of life to enable us to order our lives in the individual and collective spheres in accordance with the teachings of Islam. The words *(Fa mate o hunna) (to provide)* and *(fa anfiqo) (to spend)* used in above referred verses of the Holy Qur'an reveal the commands of Allah to a Muslim husband rendering him under obligation to maintain his divorced wife during the period of 'Iddat' as per injunctions of Islam. It may be a one time provision or in shape of affordable installments for the period of 'Iddat'. Needless to say that intent and spirit of above referred Commands of Allah is to provide for maintenance to a divorced wife d u r i n g t h e p e r i o d o f 'Iddat' for the simple reason that as per injunctions of Islam a divorced woman cannot remarry during the period of 'Iddat'. Above notwithstanding, Commands of Allah therefore create a right of maintenance for a divorced wife and an obligation upon a husband to maintain her during the period of 'Iddat'. In our country such right is enforceable by a Family Court having jurisdiction under Family Court Act 1964. I therefore find no infirmity or jurisdictional error in the findings of the District Court declaring the respondent entitled to maintenance for 'Iddat' period.

15. For the above reasons, this constitutional petition having no merit is dismissed *in limine*.

[Redacted Signature]

(ABDUS SATTAR ASGHAR)
JUDGE

Approved for Reporting.

JUDGE