

ORDER SHEET  
HIGH COURT OF SINDH CIRCUIT COURT,  
HYDERABAD

C.P No.S-172 of 2025

[Annus Ali vs. Mst. Amreen and another]

DATE	ORDER WITH SIGNATURE OF JUDGE
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Petitioner	Annus Ali: <b>Through Mr. Shahzad Ahmed Narejo advocate</b>
Respondent	Mst. Amreen: <b>Through Ms. Noreen Shaikh advocate</b>
Date of hearing	12.09.2025
Date of Order	____09.2025

**ORDER**  
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**Tasneem Sultana J**:-Through this constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (**The Constitution**) the petitioner has challenged the legality and veracity of judgment dated 07.04.2025 passed by learned Additional District Judge-IX Hyderabad (*Appellate Court*) in Family Appeal No.157 of 2024, whereby said appeal was allowed and in result whereof the judgment and decree dated 15.10.2024 passed by learned Family Judge-V Hyderabad (*Family Court*) in Family Suit No.410 of 2023 were modified.

2. Facts of the matter in bird’s eye view are that petitioner and respondent entered into Nikah on 21.10.2021 and such rukhsati was held on same day. Out of said marriage one Issue baby girl took birth. However, the marriage dissolved by way of khula vide Order dated 05.09.2023 passed in aforesaid Family Suit filed by respondent/plaintiff. In said suit besides praying for khula, the respondent/plaintiff also prayed for (i) *monthly maintenance of Rs.50,000/- for minor*, (ii) *return of dowry articles as per attached list including gold ornaments both valued of Rs.10,00,000/-* and (iii) *maintenance for herself (plaintiff /respondent) at Rs.5,000/- from the date of leaving the house of petitioner/defendant till existence of marriage*. Upon service the defendant/petitioner filed his

written statement, denying the allegations leveled in the plaint of suit. Out of the pleadings learned Family Court framed following three Issues:

- (i) *Whether the plaintiff is entitled for maintenance of minor baby Fatima at the rate of Rs.50,000/- per month?*
- (ii) *Whether the plaintiff is entitled for her dowry articles as per list including gold ornaments or its alternate value Rs.10,00,000/-*
- (iii) *What should the decree be?*

3. On the aforesaid Issues respondent/plaintiff examined herself as well as her father, whereas the defendant besides examining himself also produced two witnesses in support of his case. Finally the learned Family Court after hearing the parties vide judgment and decree dated 15.10.2024 partly decreed the suit of respondent/plaintiff thereby allowed the maintenance for minor at Rs.4,000/- per month with 10% annual increment since her birth till her legal entitlement or parties rejoins each other, however, declined remaining prayers. The respondent/plaintiff being aggrieved preferred Family Appeal No.157 of 2024 before learned Appellate Court and the learned Appellate Court after hearing the parties vide impugned judgment dated 07.04.2025 modified the judgment and decree passed by Family Court, whereby maintenance of minor has been enhanced from Rs.4,000/- to Rs.5,000/- per month and *additionally* petitioner/defendant has been directed to pay maintenance to respondent/plaintiff at Rs.5,000/- per month during Iddat period so also return her dowry articles or in lieu thereof pay her Rs.1,00,000/-. The petitioner/defendant aggrieved by such modification and addition preferred this petition.

4. Learned counsel for the petitioner/defendant precise his arguments and contended that petitioner/defendant is in private employment having low salary and the minor baby is not school going therefore maintenance of Rs.4,000/- per month is enough; that respondent/plaintiff had not observed Iddat period and she was regularly attending the Family Court

even after dissolution of marriage, therefore, she is not entitled for maintenance during Iddat period and that dowry articles were taken by the respondent/plaintiff at the time of leaving house and same was proved by the evidence of independent witnesses, as such directions for return of dowry articles or in lieu thereof Rs.1,00,000/- are not warranted in the matter. He prayed for allowing this petition and setting aside of the impugned judgment passed by Appellate Court.

5. Contrary learned counsel for the respondent/plaintiff challenged the maintainability of instant petition and prayed for its dismissal and contended that petitioner/defendant is drawing a handsome salary, therefore, maintenance of Rs.5,000/- per month for minor is not a high amount in this inflation era; that respondent/plaintiff during evidence produced the receipts of dowry articles while petitioner/defendant himself admitted during evidence that dowry articles were delivered to his house, therefore, he is bound under the law to return the same or in lieu thereof pay their value. In support of her arguments she placed reliance on the cases of Muhammad Asim and others vs. Mst. Samro Begum and others (PLD 2008 SC 819), Muhammad Sagheer vs. Aneesha Shabir and another (PLD 2022 SC AJ&K 26), Mst. Naureen vs. Nadir Ali Rajpur and 2 others (2019 MLD 1936), Mst. Rabiya Bibi vs. Matiur Rehman and others (2022 CLC 686) and Sohail Abbasi vs. Mst. Khshboo and others (2021 CLC 1904).

6. Arguments heard and record perused.

7. In family proceedings once the issue is finally decided by the Courts below, same is not open to challenge before High Court under writ jurisdiction unless the order impugned suffers from glaring illegality, as the legislature intended to place full stop after decision by the Appellate Court. The purpose behind this was to expeditious decision in the family

matters. I am fortified in my view by the case of *Arif Fareed*<sup>1</sup>, wherein the Apex Court while dealing with the matter observed as under:

*“7. Before parting with this judgment, we may reiterate that the right of appeal is the creation of the statute. It is so settled that it hardly needs any authority. The Family Courts Act, 1964 does not provide the right of second appeal to any party to the proceedings. The legislature intended to place a full stop on the family litigation after it was decided by the appellate court. However, we regretfully observe that the High Courts routinely exercise their extraordinary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as a substitute of appeal or revision and more often the purpose of the statute i.e., expeditious disposal of the cases is compromised and defied. No doubt, there may be certain cases where the intervention could be justified but a great number falls outside this exception. Therefore, it would be high time that the High Courts priorities the disposal of family cases by constituting special family benches for this purpose. Accordingly, leave to appeal is refused and petition stands dismissed”.*

8. I have carefully gone through both the judgments passed by Courts below. It appears that though respondent/plaintiff specifically pleaded for her maintenance during Iddat period, yet the Family Court neither framed Issue in this regard nor gave any findings as to why maintenance of respondent/plaintiff is being declined, despite the fact that maintaining a legally wedded wife is the legal obligation upon the husband. Reliance can be placed on the case of *Tanveer Aslam Dar*<sup>2</sup>, wherein the Superior Court of Azad and Jamu Kashmir observed as under:

*“.....The relationship of the spouses is based on mutual confidence, respect, harmony, sacrifice and sympathy, whereas, the absence of such ingredients create the atmosphere unsuitable for wife and in these circumstances the desertion is a natural consequence and the wife cannot be blamed that she has voluntarily opted for desertion and failed to discharge her matrimonial obligations amounting to disentitle her for maintenance allowance.”*

9. While taking guidance from the supra case law it can be easily held that respondent/plaintiff was entitled for maintenance during Iddat period and the Appellate Court has rightly held so.

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<sup>1</sup> 2023 SCMR 413

<sup>2</sup> 2017 CLC 758 SC AJ&K

10. As regards the maintenance of minor, it appears that Family Court fixed the maintenance of minor @ Rs.4,000/- per month while the Appellate Court only enhanced Rs.1000/- per month in said maintenance. The petitioner/defendant did not prefer any appeal against said decision of Family Court, meaning thereby he was satisfied to pay Rs.4,000/- per month to minor and only aggrieved with the enhanced of Rs.1000/-. It may be observed that a father is bound by the law to maintain his child, which includes ensuring access to education, shielding from exploitation and fostering an environment conducive to his/her/their growth and reintegration into society. Keeping such necessities in view I am of the opinion that maintenance of Rs.5,000/- per month allowed to the minor by the Appellate Court in high inflation era is not huge one rather reasonable.

11. As far as addition of return of dowry articles on in lieu thereof payment of Rs.1,00,000/- is concerned, record reflects that in support of her case respondent/plaintiff during evidence had produced receipts of purchase of dowry articles, whereas during evidence the petitioner/defendant on one hand deposed that dowry articles were purchased by him, contrary during cross-examination he deposed that same were taken away by the respondent/plaintiff with her father. He, however, did not produce any proof, i.e video recording and/or photographs to support his claim.

12. Further the Family Court while declining the plea with regard to return of dowry articles founded its observations on the evidence of DWs produced by the petitioner/defendant, despite the fact that all i.e petitioner/defendant and DWs produced by him are/were residing at different addresses and the DW-1 is stranger and not even the relative of petitioner/defendant, yet it is amazing rather shocking to note that both DWs were aware about each and every development of life of the spouse. They even, through their affidavit-in-evidence filed before the Family Court, denied and admitted the contents of plaint. Such conduct

on part of the petitioner/defendant and witnesses examined by him does not attract to a prudent mind and reflects on me that prima facie they were set up witnesses, therefore, their evidence cannot be said to be trustworthy and was not liable to be relied upon. The Appellate Court, as such, rightly made modification and addition in the judgment and decree passed by Family Court.

13. The above discussion led me to hold that judgment passed by Appellate Court is well-reasoned and it does not suffer from any illegality, infirmity, perversity or jurisdictional defect, requiring inference by this Court in exercise of jurisdiction under Article 199 of the Constitution. Accordingly, this petition is not maintainable and the same stands dismissed, however, with no order as to cost.

**JUDGE**

Sajjad Ali Jessar