

# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

## Constitution Petition No.S-180 of 2022

Petitioner : Rana Mudasir Ali son of Rana Sarwar Ali Rajput, through his special attorney Rana Taswar Sarwar, through Mr. Abdul Qadir Khanzada, Advocate.

Respondent No.1 : Additional District Judge, Moro, through Mr. Ghulam Abbas Kuber, Assistant Advocate General Sindh

Respondent No.2 : Mst. Fouzia Latif, through Ms.Tahmina Subhan, Advocate.

**Date of Hearing: 05.05.2025.**  
**Date of Order: 26.05.2025.**

### ORDER

**Abdul Hamid Bhurgri, J:-** By means of this petition, the petitioner has invoked the extraordinary constitutional jurisdiction of this Court to impugn the Judgment and Decree dated 04.10.2022, rendered by the learned Additional District Judge, Moro, in Family Appeal No.38/2022, whereby the petitioner's appeal was dismissed. Consequently, the Judgment and Decree dated 28.02.2022, passed by the learned Family Judge, Moro, in Family Suit No.152/2018 wherein the suit instituted against the petitioner was partly decreed stood affirmed.

**2.** According to the petitioner, Respondent No.2 instituted a suit before the learned Family Judge, Moro, seeking recovery of dowry articles. In her pleadings, she averred that the marriage between the parties was solemnized on 17.12.2017, and that the dowry articles in question had been provided to her by her parents, the particulars of which are delineated herein below:-

Sr.No.	Particular	Quantity	Price
1	Suit Fancy cotton	1	Rs.35,00/-
2	Suit Loan Gul Ahmed	1	Rs.22,00/-
3	Suit ladies cotton loan	10(1500)	Rs.15,000/-
4	Suit Gul Ahmed cotton	10(1600)	Rs.16,000/-
5	Suit ladies Saifoon	7(1400)	Rs.9,800/-

6	Suit gents	7(1300)	Rs.9,100/-
7	Gents Shaal (Loee)	2	Rs.8,000/-
8	Ladies Shaal (Loee)	1	Rs.25,00/-
9	Suit Gul Ahmed original cotton	15(2000)	Rs.30,000/-
10	Gents Polisher Swiss	2(1800)	Rs.3,600/-
11	Suit ladies fancy	1	Rs.35,00/-
12	Dulhan Sharara	1	Rs.65,000/-
13	Dulhan Feraq	1	Rs.20,000/-
14	Dulhan Suit	1	Rs.22,000/-
15	Dulhan cotton Amber Bursha	3(16000)	Rs.48,000/-
16	Ladies Dulhan Suit	20(15000)	Rs.3,00,000/-
17	Crockery items	7	Rs.13,500/-
18	Crockery items	14	Rs.30,000/-
19	Crockery items	14	Rs.13,000/-
20	Crockery items	27	Rs.69,000/-
21	Room Furniture set	1	Rs.1,15,000/-
22	Electronics items	8	Rs.1,60,600/-
23	Golden ornaments	2	Rs.48,360/-
24	Golden ornaments	4	Rs.75,880/-
25	Golden ornaments	4	Rs.3,66,756/-
Total			Rs.14,50,296/-

The petitioner, however, allegedly adopted a hostile and cruel demeanor after some time into the marriage, and willfully failed to provide maintenance. In June 2018, while she was pregnant, she was ousted from the matrimonial home. On 11.10.2019, a formal *Talaqnama* was sent to her via courier (TCS). Nonetheless, Respondent No.2 proceeded to file the suit, seeking the following reliefs:-

- (a) *That Honourable Court may kindly be pleased to direct the defendant to return dowry articles as mentioned above in the para No.12.*
- (b) *That the costs of the suit may be awarded to the plaintiff.*
- (c) *That any other relief which this Honourable Court deems fit and proper be awarded to the plaintiff.*

**3.** Learned counsel for the petitioner submitted that both the Courts below had committed errors of law and fact in disregarding the evidence

adduced on record. He asserted that, although receipts pertaining to the dowry articles were indeed produced, the Courts failed to appreciate that the vendors from whom such articles were allegedly purchased were never summoned or examined as witnesses.

It was contended that the non-production of these vendors as witnesses materially weakens the respondent's version. Learned counsel further argued that the family of Respondent No.2 is not of sufficient financial standing to afford the quantum of dowry claimed. In this context, he submitted that the father of Respondent No.2 is a stamp vendor and her brothers, while described as advocates, are not in active legal practice. Accordingly, the learned counsel contended that the reliance placed by the Courts below on the financial and professional status of the respondent's family was misplaced, speculative, and not supported by evidence. He, therefore, prayed that the concurrent findings of both Courts be set aside.

**4.** In reply, learned counsel appearing for Respondent No.2 contended that sufficient documentary evidence was brought on record to substantiate her claims. She argued that the inability to examine the shopkeepers from whom the dowry articles were allegedly purchased ought not to be construed as a fatal omission, particularly in view of the strength of the documentary record. She further submitted that the petitioner had merely offered oral denials, which cannot displace the documentary evidence produced, especially where such evidence remained uncontroverted.

It was further submitted that Respondent No.2 had resided with the petitioner for only six months and that all dowry articles continued to remain in the petitioner's possession. As such, she is justifiably entitled to recover the same. Learned counsel concluded by submitting that both the learned trial and appellate courts had correctly appreciated the evidence and had rightly decreed the suit. Accordingly, she prayed for dismissal of the present petition.

**5.** Learned Assistant Advocate General states that there is dispute between private parties, however he supports the orders passed by the Courts below.

**6.** Heard and perused the material.

The record reveals that the respondent No.2 has successfully established her claim regarding the articles of dowry given to her at the time of marriage. The production of receipts issued by the shopkeepers along with the list of dowry articles lends credibility to her version. In the absence of any substantial rebuttal or evidence to the contrary from the petitioner, the presumption under the law favours the claim of woman/respondent No.2 regarding dowry articles particularly when such claim is corroborated by documentary proof and the customary practice in the society. The Courts have consistently held that the dowry articles form part of the women's property, and once their delivery is established through cogent evidence such receipts and other testimonies, she becomes entitled to their return or compensation to be given thereof. It is settled principle of law that articles given in the dowry by the parents of the bride are not gift for a husband or his family but are entrusted of the bride to her personal use and benefit. The evidence brought on record clearly demonstrate that articles were provided by the parents of the respondent No.2 as a part of the customary dowry arrangement, in such matters, the burden shifts upon the petitioner to disprove the existence or possession of said articles which he has failed to discharge in absence of any plausible explanation and counter evidence adverse inference may be drawn. Hence the respondent No.2 is well within her right by filing suit to return of dowry articles or their monetary value and these constitute her personal property protected under law.

**7.** As far as the contention of the petitioner's counsel that the respondent No.2 failed to examine the shopkeeper from who she had purchased the dowry articles, this argument of the petitioner has no force and same are misconceived. The non examination of the shopkeeper from whom the dowry articles were purchased does not, by itself, render the respondent No.2's claim doubtful or unworthy reliance. According to Section 17(1) of the West Pakistan Family Courts Act, 1964, the

provisions of Qanoon-e-Shahadat 1984 shall not apply to the proceedings before any Family Court. For convenience section 17 of the Act ibid is reproduced herein below:-

*“Provisions of Evidence Act and Code of Civil Procedure not to apply:-*

*(1) Save as otherwise expressly provided by or under this Act, the provisions of the (Qanun-e-Shahadat, 1984 (P.O No.10 of 1984) and the Code of Civil Procedure, 1908 (except section 10 and 11) shall not apply to proceedings before any Family court, [in respect of Part I of Schedule].*

*(2) Sections 8 to 11 of the Oaths act, 1973, shall apply to all proceedings before the Family Courts.”*

Bare perusal of above provision makes it abundantly clear that provisions of Qanun-e-Shahadat Order, 1984 are excluded and it is well established from the above section that strict rules of evidence are not to be applied in family and matrimonial matters, particularly where claims are based on customary practices and supported by credible documentary evidence such as receipts and list prepared contemporaneously. Testimony of bride or her close relative if found trustworthy corroborated by receipts, is sufficient to prove the claim. Therefore, in the present case the failure of examination of shopkeeper does not effect the right of respondent No.2 for recovery of dowry articles.

**8.** In the case of Muhammad Habib v. Mst Safia reported in 2008 SCMR 1584, the Honourable Supreme Court has held as under:-

*“4. Having heard learned counsel for the petitioner in the light of the material on file, we find that learned High Court has rightly observed that "the evidence of the petitioner is insufficient to rebut the version of after proper appreciation of the evidence on record modified the decree of learned Judge Family Court and accepted the appeal of the plaintiff/respondent regarding her whole claim of Rs.1,80,7000. The perusal of A list Exh. P.1 reveals that these are the articles which are ordinarily given to a bride at the time of her marriage. Both the Courts below have given concurrent findings which are based upon substantial evidence and the petitioner has not been able to controvert the same during the trial, as such the petitioner has failed to show any illegality or irregularity committed by the Courts below in the impugned judgments so as to warrant interference by this Court in exercise of its constitutional jurisdiction”.*

**9.** This Court relies upon case of Muhammad Iqbal v. Mst. Zahida and 2 others, reported in 2013 MLD 800, wherein the Court has held as under:-

*“10. Even otherwise, in our society, it is not possible for any bride/wife to keep the record of purchase receipts, prepare the list of dowry articles, and obtain signatures from bridegroom/ husband side. In my observation, mothers start collecting, purchasing and preserving of articles for her daughter, when she starts growing. It is also a tradition that in-laws of any bride/wife are extended esteem respect and it is considered an insult to prepare the dowry list for the purposes of obtaining signature from them”.*

**10.** I am also fortified with the ratio of the apex Court provided through case of Mirza Arshad Baig v. ADJ reported in 2005 SCMR 1740.

**11.** The law recognizes dowry as exclusive property of the wife and she retain the right to recover it from her husband or his family, where woman proves the dowry items through oral or documentary evidence and the husband fails to rebut, she is entitled to recovery or compensation.

**12.** While this Court agrees with the findings of the both the Courts regarding the recovery of the dowry articles, however, upon careful evaluation of the pleadings and evidence observes that the dowry articles in question most notably the crockery and the electronic appliances remained in the constructive custody of the petitioner and has neither been demonstrated to be in active of prolong use nor shown to have sustain any material damage, accordingly in consonance with principle of a fiduciary responsibility guided by the accounting standards articulated under International Accounting Standards (IAS 16) (property, plant and equipment), the court is of the view that these items being capital in nature and not subjected to depreciation through ordinary wear and tear, retain their fair market value for the purpose of their recovery (IAS 16) prescribed that depreciation is to be applied only when asset is available for use and begins to contribute to the economic activities of the holder. In the absence of any evidence indicating that the aforementioned items were utilized in a manner warranting depreciation, their full value is being recoverable by the claimant.

**13.** As regard the clothing items, this Court recognize that these falls within the category of consumer personal effects. By their very nature such items are subject to personal wear and temporal obsolescence. It is settled accounting and legal proposition that such article, particularly when sometime have passed do not retain their original value. Since it is admitted that respondent No.2 resided with the petitioner for six months the wear and tear of the clothes cannot be ruled out. Hence, applying reasonable detection on account of wear and tear is both justified and equitable. This Court is of the view that due to the wear and tear of the clothes shown in the list, this Court deduct the amount of 25% which is considered fair, based on the short passage of time and presumed limited use.

**14.** In view of the above decree of both the Courts are modified to the extent that articles shown in the list from Serial No.1 to 16, the amount which has been calculated by the Courts below, this Court deducts 25% from the above amount, however, the value of the other articles including crockery, room set and electric items valuation remains the same as shown in the decree. The total amount after deduction would come to Rs.8,19,750/-. The trial Court is directed to modify the decree to the tune of Rs.8,19,750/-, the plaintiff/respondent No.2 is entitled for the above amount, the petitioner is directed to return the dowry articles or alternatively pay amount of Rs.8,19,750/-, within three months of this order, the petition is disposed of in above terms with no order as to costs.

Judge

*ARBROHI*