IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-273 of 2011

[*Bilal Hussain Khan vs. Dr. Saadia Farooqui*]

Petitioner	:	through Mr. Shehzad Mehmood, Advocate.
Respondent No.1	:	through M/s. Chaudhary Abdul Rasheed & Arshad Hussain Lodhi Advocates
Date of Hearing	:	08.04.2026
Date of Announcement	:	25.05.2026

JUDGMENT

MUHAMMAD HASAN (AKBER), J.- The Petitioner [**husband**] has invoked writ jurisdiction of this Court under Article 199 of the Constitution by assailing the Judgment dated 10.01.2011 passed by the learned Vth Additional District Judge, Karachi (East), in Family Appeal No.65/2010 [**impugned Judgment and decree**] concurrently upholding the original Judgment and decree dated 11.02.2010 passed by the learned XXth Civil & Family Judge, Karachi (East), in Family Suit No.676/2007, whereby the Family Suit filed by Respondent No.1 [**wife**] for recovery of dowry articles was decreed in her favour.

2. Brief background of the controversy is that the parties [**husband and wife**] were married on 18.10.2002 at Karachi, with an agreed dower amount of Rs.100,000/-. It was claimed by the wife in her Suit that at the time of marriage, her parents gave various dowry/ *jahaiz* articles, which included jewellery, furniture, crockery, electric items, and utensils etc. all of which were handed over to the husband and his parents in the presence of witnesses. The wife further claimed that her gold ornaments and jewellery were kept by the husband in a security Locker No. M-4384 at BRR Security Vault, 187-G, Block-2, Shahrah-e-Quaideen, PECHS, Karachi, which was hired by the husband in the joint names of himself and his mother, Mst. Surayya. Wife further claimed that the key to the said Locker always remained with the Petitioner and his mother, and she was not permitted to operate the same independently. She stated that on 10.07.2006, she left the house of the Petitioner, only in her wearing clothes, accompanied only by her two minor sons, and carrying nothing else with her. The husband thereafter divorced her on 04.01.2007. She prayed for the recovery of all dowry articles as per the list annexed to the plaint.

3. In his written statement, the husband denied the entire claim and contended that the list of *jahaiz* articles filed by the wife was a self-prepared, fabricated document not signed by the wife, or the husband, or any witness. He further contended that the wife herself operated the BRR Security Locker on multiple occasions singly, and that on 10.07.2006, she left the house and took away all her jewellery. He further claimed that the Locker, after the last operation by Respondent No.1, was exclusively used by his mother Mst. Surayya. He further pointed out that the wife had also filed a separate suit for maintenance before the Family Court District South, which showed her *mala fides* in splitting her claims across multiple Courts.

4. The learned Trial Court framed the following issues:

1. Whether the plaintiff was given dowry as per her list Annexure "A" handed over to the defendant?

2. Whether the jewelry of the plaintiff was kept by the defendant in Security Vault 187-G, Block No.2, Shahrah-e-Quaiden, PECHS in his name and in the name of his mother?

3. Whether the defendant is still in possession of the dowry?

4. Whether Honda City Car Model No. 2005, bearing Registration No. AHB-869 was purchased from the money of the plaintiff?

5. What the order should be?

5. The parties led their evidence. The wife examined herself and also produced two witnesses, PW-1 Sadiq Hussain (her father), and PW-2 Ahsan Baseer. The Husband examined himself, whereas the Service Manager of BRR Security Bonds was examined as Court Witness CW-1, who produced the Locker Operation Record. After examining the evidence and hearing the parties, the learned Trial Court decreed the wife's suit in respect of the dowry list, except the two items described as 'Bilal Clothes' and 'Bilal Family Clothes' on the ground that these were gifts which could not be revoked. Issue No.4 regarding the car was deleted, as being beyond the competence of the Family Court. The aggrieved husband preferred Family Appeal No.65/2010 before the learned Vth Additional District Judge, Karachi (East), which dismissed the appeal vide the impugned Judgment and decree.

6. Heard arguments advanced by both learned counsels for the parties and have carefully perused the record.

7. The core controversy in this case revolved around the question of who was in possession of the dowry articles and jewellery of the wife at the relevant time. Perusal of the husband's own pleadings and evidence revealed certain contradictions touching the root of the case. Firstly, as regards the List of dowry articles, learned counsel for the Petitioner argued that the same was a self-prepared, unreliable and inflated document. At

the same time, in his written statement, the list was largely admitted by the Petitioner himself, where he showed willingness to return the non-gold items. Paragraph 8 of the written statement showed that the Petitioner had admitted the existence of a substantial portion of the dowry and had expressed willingness to return the same. His wholesale denial of the list in some portions of the written statement, while simultaneously admitting other portions, created an internal inconsistency which the Courts below rightly resolved against him. A party cannot selectively admit part of a list and then contend that the entire list is fabricated.

8. Secondly, in his reply to the legal notice dated 23.02.2007, the Petitioner did not deny that the jewellery of his wife was kept in his locker. His reply only mentioned furniture and other dowry items being available and did not address the gold ornaments at all. This selective silence was rightly noticed by the learned Trial Court and amounts to an implied admission regarding the jewellery. Thirdly, in his written statement, the Petitioner took a new and self-contradictory position that from the very outset of the marriage, most of the jewellery had been in the possession of her mother, as the wife used to tell him, and that she had taken her gold ornaments away piece by piece whenever she visited her parents. Such a plea was an improvement which was inconsistent with his earlier stance, as was taken in the reply to the legal notice. These two pleas could not be reconciled. When a party takes inconsistent stances at different stages of the same litigation, the court is entitled to treat such inconsistency as a circumstance weighing against that party. Both courts below were right to draw an adverse inference from this conduct.

9. Fourthly, the Locker operation record produced by the witness listed by the petitioner and called by the Court, CW-1 Parvez Majid, Service Manager of BRR Security Bonds, shows that the locker was booked in the name of the husband as principal licensee, along with the husband's mother Mst. Surayya as Joint Licensee. The record further shows that the wife had operated the locker on a number of occasions, sometimes singly and sometimes jointly with others. As admitted by both parties, the date of departure of the wife from the matrimonial home was 10.07.2006, and it is the Petitioner's claim that Respondent No.1 had removed all her jewellery from the locker during her visits and had taken everything with her when she left in July 2006. The chronology of locker operation is therefore most significant for the present dispute. There is no record of her visiting or operating the locker, singly or jointly, for two months, from 04.05.2006 till 10.07.2006, the date of her leaving the home and her departure. Record confirms that after the last operation of the locker by the wife on 04.05.2006 (and for two months till her leaving on 10.07.2006) from 21.06.2006 onwards, the locker was operated solely and exclusively by the husband's mother Mst. Surayya. The Court witness CW-1 confirmed in cross-examination that neither Bilal nor his mother Surayya ever made any complaint or gave any application to BRR Security stating that any gold ornaments were missing. This is a

striking omission. The locker was lastly operated by the wife on 04.05.2006, the wife left in July 2006, and the Family Suit was filed by the wife in 2007. Had the wife taken away jewelry belonging to the Petitioner, as alleged by the Petitioner, one would expect an immediate reaction or some complaint to the bank or locker authorities, or a legal notice would have been served upon the wife, or even the matter would have been taken up at the level of families of the parties and in this regard, witnesses would have been produced before the learned trial Court by the husband's side to establish such fact. However, no such evidence has been placed on record in this regard. From 04.05.2006, there was complete silence, and in the trial, there was a complete absence of any proof or witness to the effect. Such a silence without any action/ complaint/ witnesses, over a period of years and even during the pendency of litigation, strongly supports the conclusion that the husband has not been able to establish his allegation in evidence that the wife took away all the jewellery.

10. Fifthly, the Courts below have also discussed another relevant issue which sheds light on the conduct of the parties and Court's assessment of their credibility, i.e. the issue of Special Oath. Throughout the proceedings, the wife and her witnesses repeatedly offered that if the Petitioner takes Special Oath under the Qanoon-e-Shahadat Order 1984 that the jewellery is not in his possession, she will withdraw from her entire claim. The husband persistently declined to take such an oath. The learned Trial Court rightly noted that while the refusal to take Special Oath does not, strictly speaking, give rise to an adverse presumption in law against a defendant under the applicable provisions, it does however reflect adversely on his good faith and establishes the *bona fide* of Respondent No.1. The fact that the Respondent was willing to forego her entire claim on the basis of a solemn oath by the Petitioner, and that the Petitioner consistently avoided taking such oath, is a circumstance which the court can be taken into account in evaluating the credibility of the parties. Both the Courts below were on sound footing in noting this aspect. Though not entirely, nevertheless, this factor has been considered as the fifth component in addition to the above other material factors, while deciding this case.

11. Considering the above multiple aspects, both the judgments of the learned Trial and Appellate Courts. The Trial Court's judgment, though not elaborate in form, did address the key issues, examined the evidence in detail, considered the contradictions in the Petitioner's pleadings and statements, analysed the locker operation record, and gave cogent reasons for its findings. The appellate court similarly examined the arguments and affirmed the Trial Court's findings with reasons. The judgments do not seem to suffer from an absence of reasoning of the kind that would render them void or a nullity. A judgment is not required to be a treatise on every conceivable point. So long as it addresses the issues framed and gives reasons for the decision, it satisfies the requirements of law. That standard was met by both courts below in this case.

12. The scope of interference by this Court under Article 199 of the Constitution in family matters which have been decided concurrently by two courts below is much narrower than the scope of an appeal. Neither can it be treated as an appeal over findings of fact recorded by the Courts below, nor can it be used to disturb such findings only because a different view could be taken of the same evidence. Constitutional jurisdiction may be invoked only where there is a jurisdictional defect, a clear violation of law, or such a clear misreading/ non-reading of evidence as to result in a patent miscarriage of justice. Regarding concurrent findings on facts by two Courts below, even the Honourable Supreme Court in ***'Ehsan-Ul-Haq v. Shahnaz Begum and others'*** (1991 SCMR 362) refused to interfere with findings of the Family Court, where no good ground existed for interference. In the present case, concurrent findings of two courts below that the dowry articles, including gold ornaments of Respondent No.1 remained in the possession and control of the Petitioner's side, are well supported by the record. These findings are not perverse, not contrary to evidence, and do not reflect any misreading of material evidence.

13. Upshot of the above discussion is that the petitioner has not been able to make out a case of jurisdictional error, or blatant violation of law, which could justify interference under writ jurisdiction of Article 199 of the Constitution, as against concurrent findings of facts by the two Courts below. This petition is therefore dismissed, along with pending applications, with no order as to costs.

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