

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-481 of 2025

‘Anmol daughter of Muhammad Saddiq vs. Imran Khan and others’

Petitioner:	through Mr. Naseerullah Khatri, Advocate
Respondent No.1:	Nemo
Respondents 2 & 3:	Mr. Ahmed Khan Khaskheli, Assistant Advocate General
Date of hearing:	22.04.2026
Date of announcement:	18.07.2026

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- The instant Constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 has been preferred by the Petitioner having assailed the Judgment and Decree dated 06.05.2025 [**impugned Decree**], passed by the learned Vth Additional District & Sessions Judge, Karachi West, in Family Appeal No. 97 of 2024.

2. Heard and perused the record. To avoid repetition, the respective contention of the parties will be discussed at the relevant portions in this Order, for brevity’s sake.

3. Briefly, Petitioner [**wife**] and Respondent No.1 [husband] were married on 30th December 2018, Rukhshati took place on 1st January 2019, dower was fixed at Rs.100,000 cash and five tolas of gold and a male child was born from the wedlock. The marriage ran into difficulties; the wife alleging that the husband subjected her to physical violence and mental torture and failed to provide her with maintenance and specifically alleged that the husband never paid the dower amount. The wife filed a Family Suit before the learned Family Judge- XXIII Karachi West, for dissolution of marriage by way of Khula and for recovery of dowry articles. The husband contested the suit, admitted the fact of marriage, but denied all allegations. He claimed that the dower of five tolas of gold was paid at the time of Nikah in the presence of witnesses and was duly recorded on the Nikahnama and alleged that the Petitioner left the matrimonial home of her own accord. The learned Family Judge dissolved the marriage on the ground of Khula vide Order dated 14th November 2023, framed issues, recorded evidence of the parties, and proceeded to decide the matters of dowry and dower, whereby the suit was partly decreed on 6.05.2024. It allowed the recovery of dowry articles, excluding gold ornaments and child items, with an alternate value of Rs.80,000/-. On the issue of dower, the trial Court recorded a finding that the husband failed to prove that the dower was paid. The learned trial Court therefore held that the Petitioner was not liable to return the dower amount.

4. In Family Appeal No.97/2024, the learned appellate Court reversed the Judgment by partly allowing the appeal, maintaining the findings of the trial Court regarding dowry articles; however, reversed the finding on the issue of dower by holding that the payment of dower stood established from the contents of the copy of the Nikahnama. The appellate Court directed the Petitioner to return the dower of five tolas of gold and Rs.100,000/-. The Petitioner is aggrieved by this finding and has filed the present constitutional petition.

5. The Petitioner’s side argued that the Judgment of the appellate Court is based upon misreading of evidence and is therefore liable to be set aside. He contended that the burden

to prove the payment of dower lies upon the husband. Respondent No. 1 admitted in his cross-examination that the original Nikahnama was in his custody, but he deliberately chose not to produce it before the Court. He also admitted that he had not produced any documentary proof of the payment of dower and had not produced any witness in support of his claim. Learned counsel argued that the appellate Court was gravely mistaken in placing sole reliance on a photocopy of the Nikahnama to overturn a well-reasoned finding of the trial Court. He submitted that the matter requires a proper determination and should be sent back to the trial Court. He placed reliance on 2013 CLC 94 Lahore, which holds that an order for restoration of *haq mehr* should not be made mechanically without first determining if it was actually received by the wife.

6. The sole controversy in this petition is whether the finding of the appellate Court on the issue of dower is based on a proper appreciation of evidence or whether the matter requires a fresh determination by the trial Court. The learned trial Court framed a specific issue regarding the payment of dower. The Court noted that the Petitioner consistently maintained that the dower was not paid. The Court then examined the evidence of Respondent No.1, who claimed payment. The trial Court recorded the crucial admissions made by Respondent No.1 during his cross-examination. He stated that the original Nikahnama was in his custody. He admitted that he did not produce it before the Court. He further admitted that he had produced no documentary evidence of the payment of dower. He also admitted that he had not produced any witness to support his claim. The trial Court, relying on the principle that the burden to prove payment of dower is on the husband, held that Respondent No.1 had failed to discharge this burden. The trial Court found that the dower amount had not been paid to the Petitioner. On the contrary, the learned appellate Court set aside this finding. The reasoning of the appellate Court was that the copy of the Nikahnama, which was brought on record by the Petitioner herself, mentions that the dower was paid. The appellate Court held that this document was undisputed. The Court further held that the non-production of the original Nikahnama was not fatal in view of Section 17 of the Family Courts Act, 1964. The appellate Court also relied on the statement of the Petitioner in cross-examination where she admitted that the copy of the Nikahnama was correct and bore her signature, while she voluntarily added that the dower was unpaid. The appellate Court concluded that the document itself was enough to prove payment.

7. Upon consideration of the two Findings, it appears that the approach of the learned appellate Court suffers from a fundamental error that touches the root of the matter. The trial Court had the advantage of seeing the parties and recording their evidence and found that Respondent No.1 had possession of the original Nikahnama and failed to produce it without giving any valid reason. This failure calls for an adverse inference. In ordinary civil law, when a party in possession of the best evidence fails to produce it, the Court may presume that the evidence, if produced, would be unfavourable to that party. Though strict rules of the Qanun-e-Shahadat Order may not apply with full force to family cases by virtue of Section 17, the principle that guides the Court in assessing the weight of evidence is universal. A Court cannot simply ignore the fact that the party bearing the burden of proof has suppressed the primary source of evidence. The learned appellate Court brushed aside this significant factor by simply stating that non-production of the original was not fatal. It

then placed absolute and sole reliance on the copy of the Nikahnama. While a copy of a document can be read in evidence under certain circumstances, to use it as the sole and conclusive basis to overturn the finding of the trial Court, while ignoring the conduct of the party who withheld the original, is an incomplete and legally flawed manner of appreciation. There is a further difficulty. The Petitioner admitted that the Nikahnama was the genuine document but maintained her stance that the dower was not actually paid. She gave her explanation by saying that the document itself is correct, but the fact recorded in the column regarding payment is not true. The learned appellate Court severed the voluntary part of her statement from the rest of her statement and relied only on her admission of the document's correctness. A witness's statement must be read as a whole. The admission and the explanation together formed her evidence. To accept one part and reject the other to her detriment without a proper inquiry into the truth of the explanation is not a safe approach. The matter of whether the dower was in fact paid or not required a deeper examination than simply looking at the written column of a photocopy. The situation now is that the appellate Court has made a finding on a photocopy in the absence of the original, the custodian of the original has offered no reason for its non-production, and the wife has consistently denied the fact of receipt. The trial Court was correct in holding that the husband failed to prove payment. The appellate Court's reversal of this finding, based on the reasoning it adopted, is a misreading of the evidence. The finding of the appellate Court is therefore not sustainable. However, the question remains whether this Court should simply restore the finding of the trial Court or give the trial Court another opportunity to determine the matter after a more thorough inquiry into the question of fact.

8. The case involves a dispute over a factual matter i.e. the actual payment/delivery/receipt of dower, which is fundamental to the rights of the parties. In '**Haris Bin Hassan Akhtar Jang vs. Judge Family Court and others**' (2013 CLC 94) it has been held that the matter of proof of *haq mahr* cannot be decided in a mechanical manner, but proper evidence on the actual factum of payment of *haq mahr* must be recorded. Applying the same principle, the original Nikahnama is a crucial piece of evidence and the trial Court should have the opportunity to call for its production. The trial Court may, if necessary, examine the Nikah Khwan or other witnesses who were present at the time of Nikah to ascertain the truth and may consider other documents to reach the truth. The trial Court can also more fully examine the circumstances under which the dower was allegedly paid and the reasons for the conflicting claims. This is a matter that deserves a proper trial and a finding based on a complete appreciation of all available evidence, including the original document. I am of the humble view that the interest of justice will be best served if the matter of dower is remanded to the trial Court for a fresh determination. By remanding the case, this Court does not express any final opinion on the merits of either party's claim. The trial Court shall decide the matter afresh on the basis of the evidence already on record and such further evidence as it may deem necessary to call for in the interest of justice. The trial Court is directed to direct Respondent No.1 to produce the original Nikahnama. The trial Court shall afford full opportunity to both parties to lead complete and further evidence on the specific issue of actual payment of dower, if they so desire, and the Court may also call witnesses to reach the truth, if required. The Court shall then record a fresh finding on the issue.

9. Lastly, the learned Court also lost sight of the legal position in the instant case, as propounded by the Honourable Supreme Court of Pakistan in the case of '**Mst. Yasmeen Bibi vs. Muhammad Ghazanfar Khan and others**' (PLD 2016 Supreme Court 613) wherein it was held that:

“15. In the case of dissolution of marriage on the basis of "Khula" a full Bench of the High Court in the case of Dr. Fakhr-ud-din v. Mst. Kausar Takreem and another (PLD 2009 Peshawar 92) while interpreting and construing all these new provisions introduced in the Family Courts Act held that the relevant provisions of the Family Courts Act, 1964 and that of Muslim Family Laws Ordinance, 1961 were ultra-vires to the extent that the wife has to return the dower in case of dissolution of marriage on the basis of "Khula" because under the Islamic injunction and according to the relevant verses of Holy Qura'an the wife has only to return the other benefits, given to her by way of gift etc. and not the dower amount because that is most essential consideration for valid contract of marriage being a civil contract, which cannot become binding and valid unless the consideration is paid. In the said judgment, many guidelines and principles have been laid down and till date the said judgment holds the field, which needs to be followed and regarded without any exception unless and until it is set aside by the Supreme Court.”

10. For the reasons stated above, this petition is therefore allowed, the impugned Judgment and decree dated 6th May 2025 passed by the learned Vth Additional District & Sessions Judge, Karachi West, in Family Appeal No. 97 of 2024 is partly set aside, only to the extent of its finding on the issue of actual payment of dower, which finding is hereby set aside whereas other reliefs in the impugned Judgment are not disturbed. The matter is therefore remanded back to the learned trial Court to decide the issue of legality of the claim for return of dower amount by the husband in the light of the Judgments in the cases of **Haris Bin Hassan Akhtar Jang** and **Dr. Fakhruddin** *supra*, so also the case of **Yasmeen Bibi** and also to decide the issue of actual payment/ delivery of dower amount to the wife afresh, after allowing opportunity to the parties, as recorded in the preceding paragraphs. The trial Court shall conclude the proceedings and decide the matter within a period of six months from the date of receipt of this Judgment, after service of notice on the parties.

The instant petition is therefore allowed in the above terms, with no order as to costs.

J U D G E