

**IN THE HIGH COURT OF SINDH  
BENCH AT SUKKUR**

*Constitutional Petition No. S-236 of 2019*

Mst. Lubna Shamshad Ali

**Petitioner**

**VERSUS**

Dilshad Ali

**Respondent**

Mr. Saleem Akhtar Shah, advocate for Petitioner.

Mr. Abdul Mujeeb Shaikh, advocate for respondent.

Mr. Noor Hassan Malik, Assistant Advocate General Sindh.

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**Date of hearing:** 22.11.2021

**Date of announcement:** 22.11.2021

**J U D G M E N T**

**KHADIM HUSSAIN TUNIO-** J. The captioned constitutional petition is directed against the judgment dated 09.08.2019, passed by Learned Additional District Judge Pano Aqil, whereby the learned Judge reduced the maintenance amount as awarded by the learned 2<sup>nd</sup> Civil/Family Judge Pano Aqil vide judgment dated 19.11.2018, from Rs. 2,500/- per month to the minors namely Azan and Ali Raza to Rs. 2,000/- per month and future maintenance to them from Rs. 4,000/- per month to Rs. 2,000/- per month.

2. Relevant facts for the disposal of the constitutional petition are that the petitioner and respondent married each other on 02.10.2015 in lieu of *Haq Mahar* settled at Rs. 10,000/= and they lived as husband and wife. During subsistence of their marriage, two sons namely Azan Ali aged one and a half year and Ali Raza aged 8 months were born to them. Allegedly, after 6 months of their marriage, the respondent ousted the petitioner from her house and

refused to pay maintenance to the children, therefore she instituted family suit No. 50 of 2018 for maintenance, dowry articles and dissolution of their marriage. In her suit, she made the following prayers:

1. *“To pass a judgment and decree in favour of plaintiff by dissolving the marriage between the spouses on the ground of Khulla.*
2. *To direct the defendant to pay maintenance for plaintiff at the rate of Rs. 10,000/- per month and Rs. 5,000/- per month for each child from date of driving out the plaintiff from his house til decision of the instant suit.*
3. *To direct the defendant for return of all dowry articles to plaintiff.*
4. *To award costs of the suit.*
5. *Any other relief which this Honourable Court may deem fit, proper and expedients in the circumstances of the case.”*

3. The matter was ordered to proceed against the defendant ex-parte after continued refusal from the defendant to participate despite service of summons through various means including publication. Trial Court framed issues, the plaintiff led her respective evidence and after hearing, the Family Judge passed on 19.11.2018, the judgment and decreed the suit in the following terms:

*“Forgoing discussions shows that, defendant is a scattered brain person and has remained failed to maintain his wife, the plaintiff and their children, therefore, the marriage of spouses is liable to be dissolve on the ground of Khulla and the defendant is liable to pay maintenance allowance at the rate of Rs.2000/= per month to the plaintiff from January 2018, till her iddat period, and being a father he is liable to pay maintenance for his minor children namely Azan and Ali Raza at the rate of Rs.25,00/- per month for each child from January 2018 till date of Judgment as past maintenance and Rs.4000/- (each) per month from dated of Judgment till they attend their age of majority as future maintenance. The defendant is also liable to return the entire dowry articles either used or unused to the plaintiff as per dowry article list OR their alternate market value (on the day of decree); except articles standing at serial No.15, 16, and 17 as same were gifts to groom and cannot be returned, article appearing at serial No. 30 i-e cradle it cannot be treated as dowry article. Furthermore, it has also been observed that, plaintiff has remained tailed to produce receipts of golden, silver ornaments and their details.”*

4. The respondent preferred an application u/s 9(6) of the West Pakistan Family Court Act 1964 for setting aside the decree, but the same was dismissed whereafter a Family Appeal was filed by the respondent before learned Additional District Judge, Pano Aqil,

who partly allowed the same by way of impugned judgment dated 09.08.2019 and disposed of the appeal in the following terms:

*“So far the question of financial position of the appellant is concerned neither the respondent nor the appellant had produced any proof with regard to the financial status of the appellant, therefore, looking to the circumstances, the maintenance allowance for the minor children Azan and Ali Raza is modified and reduced from Rs.25,00/- to Rs.2000/- per month for each children for maintenance. The future maintenance Rs.4000/- for each children is also modified and reduced to Rs.2000/- each per month from the date of Judgment till they attend their majority as future maintenance.”*

Being aggrieved with the same, the petitioner filed the instant petition.

5. Learned counsel for the petitioner has submitted that learned trial Court as well as learned Appellate Court have rightly allowed the maintenance to the children hence the concurrent findings of two courts below cannot be undone when it is prime duty of the father to provide maintenance to his child, however the learned Appellate Court erred in reducing the maintenance amount awarded to the children as well as the amount of future maintenance considering the current expenses of a growing child.

6. Learned counsel for the respondent argued that learned Appellate Court erred in maintaining the finding of learned Trial Court as to allowing the maintenance of children, the same being not in consonance with the evidence of the parties on record and considering the financial position of the respondent who is a mere labourer; that petitioner had failed to establish her case that the respondent was earning Rs. 50,000/- per month. Conversely, learned Assistant Advocate General supported the impugned judgment.

7. I have heard the learned counsel for the parties and perused the record available before me. Learned trial Court as well as learned Appellate Court have already considered all the facts and circumstances and have allowed the maintenance to the wife, minors

and the return of dowry articles, rightly so, by way of concurrent findings. In the circumstances, I do not feel inclined to upset the concurrent findings of the two courts below with respect to allowing the prayers of the petitioner with regard to her own maintenance and the return of dowry articles. However, with regard to the reduction in the maintenance cost of the two children, the learned Appellate Court erred into coming to the said conclusion despite observing that nothing was brought on record by either of the parties to establish the financial position of the respondent. It goes without saying that the court while considering the quantum of maintenance will take into consideration the fundamentals and necessities of the minors such as education, status, general expenses as has been clearly set out by the Hon'ble Apex Court in the case of "*Humayun Hassan v. Arslan Humayun and another*" (PLD 2013 SC 557). The court must also take into consideration reasonable probability of obtaining education and the ability to take care of the minors in a stable, safe and healthy environment. Without due consideration of all these factors, the appellate court could not have conclude that there needed to be a decrease in the quantum of maintenance. There is no hard and fast formula for determining quantum of maintenance and the main consideration for the Court is the ability of the father to maintain the minors. A father is obligated under the law to take care of his minor children and the quantum has to be determined as per his earnings, financial and social status and the ability that he may have to take care of the minors. A mere statement that he does not earn much will not discharge him of his obligation to take care of his children and his estranged wife. The basic objective for determining maintenance is to ensure that in all probability the minors are maintained by the father in dignified manner with reasonable comfort and that the mother of the child is not left to bear the burden of taking care of the minors.

The Courts are to keep the interest of minors in their mind and their comfort till they attain the age of puberty remains the prime concern of the Court and come this day and age of continuous inflation, a meager amount of Rs. 2,000/- is not even close enough to help with the basic necessities of the minors, therefore the learned Appellate Court did not keep the interests of the minors while decreasing the maintenance allowance to them, such judgment therefore is liable to be set aside.

8. In view of whatever has been discussed above, instant Constitutional Petition was allowed vide short order dated 22.11.2021. The judgment and decree dated 09.08.2019 passed by the learned Additional District Judge Pano Aqil in Family Appeal No. 17 of 2019 were set aside and the judgment and decree dated 19.11.2018 passed by the 2<sup>nd</sup> Civil Judge/Family Judge Pano Aqil in Family Suit No. 50 of 2018 was restored.

These are the reasons for the same.

**J U D G E**