

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

CP No. 3- 809 of 2021

Petitioner : Allah Ditta through
Mr. Allah Dino Dayo, Advocate who is called absent
today.

Respondent : Mst. Maryam present in person
Mr. Allah Bachayo Soomro, Addl.A.G.

Date of hearing
and Order : 19.08.2022

ORDER

ADNAN-UL-KARIM MEMON, J. Through instant constitutional petition, the petitioner has called in question the judgment dated 25.11.2021 passed by learned Additional District Judge-II / MCAC, Mirpurkhas in Family Appeal No. 49 of 2021, whereby the learned Judge while dismissing the appeal maintained the Judgment and Decree dated 5.8.2021 passed by trial Court in Family Suit No. 123 of 2020.

2. Petitioner has averred in the memo of the petition that respondent filed Suit for Dissolution of Marriage, Recovery of Dower, Dowry Articles and Maintenance against him, stating therein that she married with petitioner on 19-05-2017 against dower of Rs.50,000/- which was allegedly not paid by the petitioner. She further alleged that at the time of Rukhsati, her parents had given her dowry articles including silver ornaments which are lying in the house of the petitioner. Petitioner further submitted that out of wedlock two children namely Ambreen aged 2-1/2 years and Ghulam Mustafa aged 09 months were born. Per respondent she was maltreated by the petitioner and about three months back she was shunted out by her from his house with minors and since then she is residing with her parents. Efforts for reconciliation failed hence she filed suit with prayer as under:

- a. Dissolve the marriage between plaintiff and defendant by way of Khula.
- b. Direct the defendant to give a dower amount of Rs.5,000/- to the plaintiff.
- c. Direct the defendant to return back all the dowry articles to the plaintiff as per the list attached with the plaint.
- d. Direct the defendant to pay the maintenance of the plaintiff at the rate of Rs.10,000/- per month till the Iddat period at the same rate.
- e. Direct the defendant to pay maintenance allowance of minors at the rate of Rs.5,000/- per month till the age of majority with annual increment.

- f. Costs of the suit be borne by the defendant.
- g. Any other relief deemed fit and proper.

3. The petitioner contested the above family suit by filing written statement wherein he denied the allegations leveled against him in the plaint and prayed for dismissal of the suit. During pre-trial proceedings respondent filed statement for withdrawal of prayer clause for dissolution of marriage.

4. From the pleadings of the parties, following issues were framed:

- i. Whether defendant Allah Ditta is liable to pay the dower to plaintiff Mst. Mariam?
- ii. Whether the defendant is liable to return back the dowry articles to plaintiff No.1 or in alternative to pay their value to her?
- iii. Whether plaintiffs are entitled to maintenance by the defendant? If yes, at what rate and for what period?
- iv. What should the decree be?

5. Learned trial court recorded evidence of respondent who was cross-examined by the counsel for the petitioner. The evidence of the petitioner and his witness Shoukat was recorded and the matter was repeatedly fixed by the trial court for cross-examination but they did not appear hence the side of the petitioner was closed.

6. After hearing the counsel for the parties the suit was decreed with direction to the petitioner to return the dowry articles or in alternative pay their depreciated worth Rs.75, 000/- to the respondent; to pay maintenance of minors at the rate of Rs.2500/- per month from the date of filing the suit i.e. 12-10-2020 till today and onward at the same rate plus 10% annual increment till minor Ambreen is married and minor Ghulam Mustafa attains majority or they or any of them rejoins the petitioner. Prayer of dower and maintenance of respondent for herself was declined which was impugned in the Family appeal No. 49 of 2021. The said appeal was also dismissed. The petitioner being aggrieved by and dissatisfied with the aforesaid decisions has approached this Court.

7. I have noticed that the petitioner though served has chosen to remain absent as such this court has no option but to hear the respondent and learned AAG on the subject issue and with their assistance, perused the impugned judgments & decrees and material available on record.

8. As per the petitioner the impugned judgments and decrees passed by both the court below are opposed to law and facts as the trial court did not consider that the petitioner is poor labor having no permanent source of income; that respondent at the time of leaving house mostly took away the dowry articles though petitioner was ready to keep her she proved herself to be a disobedient wife. He prayed for

setting aside the impugned judgments and decrees of lower courts and prayed for allowing the instant petition.

9. It is well-settled law that the husband is bound to maintain his wife and minor children. The subsistence of the wife is incumbent upon her husband. When a woman surrenders herself into the custody of her husband, it is incumbent upon him thenceforth to support her with food, clothing, and lodging. Such an obligation arises from the moment the wife is subject to the moral control of her husband and in certain cases for a time even after it is dissolved.

10. After going through the record, it is clear that non-providing of maintenance to minors is itself a form of cruelty. As it is also proved from the evidence that the respondent has not been paid maintenance for the aforesaid period, therefore, in my estimation, the learned Family Judge, as well as the learned appellate court, has not committed any illegality while handing down the judgments and decrees.

11. Having examined the case from every angle, it is observed that the concurrent findings on facts arrived at by the two learned Courts are based upon a correct appreciation of evidence, no misreading or non-reading of the evidence is surfaced and no exceptional circumstance has even been alleged to interfere in the concurrent findings in constitutional jurisdiction where the scope is only to question the illegality or jurisdictional defect of any order of the subordinate court. Consequently, the instant petition fails and is accordingly dismissed.

JUDGE