

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Const. Petition No. S- 214 of 2022

(*Muhammad Farhan v. Mst. Afshan & others*)

Petitioner : Muhammad Farhan through Mr. Mushtaque Ahmed Shahani Advocate assisted by associate Mr. Waqar Ali Phulpoto, Advocate.

Respondent No.1 : Mst. Afshan through Mr. Abdul Samad Noonari, Advocate.

Respondents No.2&3 : Mr. Ahmed Ali Shahani, Assistant A.G Sindh.

Date(s) of Hearing : **07th & 10th April, 2023.**

Date of Judgment : **19th May, 2023.**

J U D G E M E N T

Zafar Ahmed Rajput, J. - Respondent No.1 herein filed Family Suit No.421 of 2020 against the petitioner before Family Judge, Sukkur for dissolution of marriage by way of *Khulla*, recovery of dowry articles and maintenance. The petitioner contested the Suit by filing his written statement. Learned trial Court vide order dated 17.02.2021 dissolved the marriage between the couple on account of failure of pre-trial proceedings and for other relief(s) claimed by the respondent No.1, it framed issues and after recording evidence of parties partly decreed the Family Suit for maintenance and dowry articles excluding golden ornaments vide judgment and decree dated 10.10.2022 in the following terms:

“12. In view of my findings on issues No.1,2,3,4 and 5, the suit of the plaintiff is partly decreed. The defendant could not prove that he has paid the remaining dower amount i.e. ring of gold and therefore he is only entitled for the dower amount of Rs.5000/ which he paid to the plaintiff. She is entitled for the dowry articles as per list of Rs.25000/- as alternate in case of damage or otherwise except cloths which she has already received. Plaintiff is not entitled for golden ornaments. Plaintiff is entitled for her past maintenance since July 2020 at the rate of Rs.3000/- per month till her date of *Khulla* i.e. 17.02.2021 and Rs.5000/- per month as *Iddat* maintenance and total Rs.15,000/- for whole of three months of *Iddat*. Plaintiff is also

entitled for the delivery expenses at the rate of Rs.25000/- from the defendant. She is entitled for the maintenance of minor since July, 2020 at the rate of Rs.3000/- per month till filing of this suit and Rs.5000/- per month since filing of this suit till she get marriage or otherwise or she joins the defendant with 20% annual increment. Suit is disposed of with no order as to cost. Pending applications, if any, are hereby disposed of being infructuous. Let such decree be prepared in accordance with law”.

Against said judgment and decree, the petitioner preferred Family Appeal No. 53 of 2022, which was heard and dismissed by learned Additional District Judge-IV (Hudood), Sukkur vide judgment and decree dated 08.11.2022. It is against that concurrent findings of the Courts below over issue of maintenance and dowry articles that instant constitutional petition has been preferred by the petitioner/defendant.

2. Learned counsel for the petitioner has mainly contended that the learned Courts below while deciding Family Suit and Family Appeal failed to apply judicious mind, hence impugned judgments and decrees are against the facts and record which are not sustainable in the law; that the learned Courts below failed to appreciate that list of dowry articles bears date as 22.12.2019 while marriage was solemnized on 17.11.2019, and the respondent No.1 has taken self-contradictory stance by asserting in the memo of plaint that her marriage was solemnized on 17.11.2019 and Rukhsati was taken place on the same date along with dowry articles, while in evidence she changed her said stance by deposing that Rukhsati was taken place on 22.12.2019 and the dowry articles were taken by her on the said date , which creates a reasonable doubt with regard to authenticity of the list of dowry articles; that the total expenses incurred on the birth of baby girl on 22.09.2020 was Rs. 10,000/- as per certificate issued by the Gynecologist, but the respondent No.1 claimed Rs. 25,000/-, which is an exorbitant amount; that past maintenance for the minor girl at the Rs. 3000/- has been granted from the month of **July, 2020**, while it is an admitted position that she was born on 24.09.2020, which fact alone is sufficient to establish that learned Courts below failed to consider the evidence on record and passed maintenance of minor from July,

2020 illegally; that learned Courts below failed to appreciate that the respondent No.1 was disobedient wife who deliberately avoided rather refused to join the petitioner, therefore, she was not entitled for the maintenance, even then the learned Courts below granted her maintenance at Rs. 15000/- for whole three months of iddat period; that the Courts below while passing impugned judgments and decrees did not consider the source of income of the petitioner for paying maintenance to the petitioner; that the impugned judgments and decrees passed by the Courts below being outcome of mis-reading and non-reading of the evidence on record are liable to be set aside by this Court under its constitutional jurisdiction. In support of his contentions, learned counsel relied upon cases of *Mst. Rabiya Bibi v. Matiur Rehman and others* **(2022 CLC 686)** and *Azra Bibi v. Lateef and others* **(2020 YLR 282)**.

3. On the other hand, learned counsel for the respondent No.1 has fully supported the impugned judgments and decrees by maintaining that the learned Courts below have passed the same after hearing learned counsel for the parties and perusing the material available on record which requires no interference by this Court under its constitutional jurisdiction. To fortify his contentions, he relied upon cases of *Muhammad Habib v. Mst. Safia Bibi and others* **(2000 SCMR 1584)**, *Ali Akbar v. Mst. Samina and another* **(2020 YLR 332)**, *Mst. Sharaini Bibi v. Additional District Judge & others* **(2023 MLD 51)**, *Muhammad Farhan v. Mst. Samina Siddique and others* **(2019 MLD 1145)** and *Muhammad Islam v. Mst. Rashidah Sultana and 4 others* **(2013 CLC 698)**.

4. Heard and record perused.

5. It reflects from the perusal of record that against the claim of the respondent No.1 regarding dowry articles, the petitioner has pleaded in para-3 of his written statement that the respondent No.1 belonged to a poor family and at the time of marriage, nothing was given to her as dowry articles or gold ornaments except some household articles and clothes, as the parents of the respondent No.1 had already expired

before her marriage with the petitioner and she was residing in a rented house with her elder sister, who was working as an Insurance Agent and she used to support her family. The petitioner also pleaded in para-7 of his written statement that Muhammad Ayoub and Khushi Muhammad directed him to handover dowry articles to Mst. Rizwana, the elder sister of the respondent No.1, thus, he handed over the same to Mst. Rizwana and her husband Muhammad Salahuddin, which they received on 04.09.2020 under receipt. The petitioner in his affidavit-in-evidence has specifically mentioned that all the dowry articles including jewelry was handed over to Mst. Rizwana and her husband on 04.09.2020; however, it reflects from alleged receipt that Mst. Rizwana and Muhammad Salahuddin received only 01-suit, 02-unswtcihd suits and 01-attache. Hence, in view of self-admission of the petitioner with regard to handing over the dowry articles including gold ornaments to sister and brother-in-law of the respondent No.1, it is immaterial as to whether *Rukhsati* was made on the same day of marriage i.e 17.11.2019 or on 22.12.2019 along with dowry articles.

6. As far expenses incurred on the birth of baby girl is concerned, it appears that respondent No.1 claimed Rs. 25,000/- which is objected by the petitioner on the ground that certificate of Gynecologist reflects total expenditure of operation as Rs.10,000/- only. It appears that same was claimed by the Gynecologist towards surgery of the respondent No.1, who remained hospitalized from 22.09.2020 to 24.09.2020 and the same does not include cost of post-operative care and medicines; hence, the claim of the respondent No.1 for medical expenses does not appear to be exorbitant.

7. So far contention of learned counsel for the petitioner with regard to grant of past maintenance to minor girl at the Rs. 3000/- from the month of July,2020 is concerned, it is an admitted position that baby girl was born on 24.09.2020, hence her maintenance should be from the day of her birth. Hence, judgment and decree so passed by the Courts below are modified entitling the respondent No.1 for receiving past maintenance of minor girl from 24.09.2020. So far grant of past maintenance to respondent No.1 up to *Iddat* period is

concerned, the findings of the Courts below requires no interference of this Court being well-reasoned.

8. For the above facts and circumstances of the case, instant petition stands **disposed of** along with pending application with the aforementioned modification of judgments and decrees, passed by the Courts below regarding date of maintenance of the minor girl.

J U D G E

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