

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. S – 212 of 2024

*(Zulfiqar Ali Chandio v. Mst. Reena Parveen Shaikh & others)*

Date of hearing : 21.10.2024

Date of decision : 21.10.2024

Mr. Khan Muhammad Sangi, Advocate for petitioner.

## ORDER

**Zulfiqar Ahmad Khan, J.** – Through this Constitutional Petition, the petitioner has impugned the judgment and decree dated 07.10.2023, passed by learned Family Judge-III, Khairpur in Family Suit No.34 of 2019, whereby the Suit filed by respondent No.1 was decreed, and the judgment and decree dated 28.09.2024, passed by learned Additional District Judge-IV, Khairpur in Family Appeal No.76 of 2023, through which the Appeal filed by the petitioner was partly allowed and partly dismissed.

2. It is the case of the petitioner (defendant) that he married to respondent No.1 (plaintiff) on 13.01.2008, and out of that wedlock they have a son namely Haider Ali, who resides with the petitioner since his birth. It is alleged that respondent No.1's behaviour was not good with the petitioner and his family. Moreover, since inception of their marriage, she demanded a separate house, and on refusal by the petitioner, she started misbehaving with him and his family members. The petitioner finding no other way to get rid of the said situation, creating mental stress for him, contracted second marriage with a lady, namely Shahida Kiran on 22.07.2011. The respondent No.1, being annoyed on that step, left the petitioner's house, who tried to reconcile the matter, but in vain. To end the controversy, he announced three *talaqs* to respondent No.1 verbally in presence of the witnesses, and then handed over all dowry articles to her.

3. Allegedly, concealing the above facts, respondent No.1 filed the aforementioned Suit for maintenance and recovery of dowry articles, which the petitioner contested. The learned Family Judge by judgment and decree dated 06.02.2021 decreed the Suit in the following terms:

*“In view of the above discussion, facts and reasons; the suit of the plaintiff is decreed. Divorce is not proved as alleged by defendant as discussed during resolving issue No.01, hence the plaintiff would be deemed as wedded wife, therefore she is entitled for the maintenance but she has not mentioned the exactly date and month of her claim of maintenance, neither she has filed any documentary proof in respect of actual income of defendant, but defendant himself has admitted that he is land lord. In such circumstances a reasonable amount keeping in view the Class of the parties would meet ends of justice. The plaintiff has neither pleaded nor she has filed any document to show that she has been leading a high Class life, I would therefore, allow maintenance for Plaintiff at rate of Rs.10,000/- (Rupees ten thousands only) per month with increase 10% per annum from filling of instant suit, as far as matter of dowry article is concerned, the plaintiff has proved her claim. Therefore she is entitled for recovery of her dowry articles as Gold ornaments 02 Tola or alternative via payment of that as per market value and all other articles if same are available with defendant, in case of non-availability of any article, then the defendant is liable to pay the payment as half price of each article, and pay full payment as per current rate of Gold Ornaments. Let such decree be prepared accordingly. The suit of the plaintiff stands disposed of being decreed in terms of above reasoning and findings with no order as to costs in the interest of justice.”*

4. Being dissatisfied, the petitioner filed Family Appeal No.24 of 2021, and the appellate Court through judgment and decree dated 12.04.2022 allowed the appeal and remanded the matter back to the learned Family Court with direction to frame the issues afresh as per the pleadings of the

parties, record their evidence and decide the matter appreciating the said evidence.

5. In the second round again, the learned Family Court decided the case in favour of respondent No.1 (plaintiff) by judgment and decree dated 07.10.2023 while observing as follows:

*“I am of the considered opinion that based on the above reasons and finding on the issues discussed above, the plaintiff has a right to receive totaling amount of Rs.7,50,000/- (Rupees seven lac and fifty thousand only) from the defendant in terms of her past maintenance and Iddat period. Additionally the plaintiff is entitled to her dowry articles, for which the defendant is ordered to return all the dowry articles as per list, except the gold, to the plaintiff or pay the depreciated rate of Rs.1,00,000/- (Rupees one lac) to the plaintiff. There is no order as to cost. Let the decree be prepared accordingly.”*

6. The petitioner assailed the second round proceedings of the learned Family Court through Family Appeal No.76 of 2023 before the learned appellate Court, which appeal has been partly allowed and partly dismissed through judgment and decree dated 28.09.2024, maintaining the judgment and decree of the learned Family Court. However, the modification in maintenance amount has been made by reducing it from Rs.7,50,000/- to Rs.5,00,000/-. Being aggrieved, the petitioner has filed this petition.

7. Heard learned Counsel for the petitioner and perused the material available on record.

8. A perusal of the written statement filed before the learned Family Court reflects that the petitioner (defendant) has claimed that he announced divorce in presence of his father Dur Muhammad and respondent No.1 (plaintiff)'s father Muhammad Saleh, but said Dur Muhammad, who is his

father, has not been examined by him before the learned Family Court. Moreover, his stance has been contradicted by his brother during evidence, who claimed that divorce was taken place in his presence also. The petitioner's written statement also lacks details about the divorce announcement, suggesting deceit to undermine the plaintiff's past maintenance claim. He did not provide the divorce deed or seek verification from the Union Council. Initially, claiming the divorce occurred in 2012, the petitioner later contradicted himself, stating it was in April / May 2013. His brother's testimony also lacked specifics. Therefore, the learned Family Court believed that divorce should be recognized as taking place on 16.03.2019, the date of filing the written statement, and accordingly, respondent No.1 has been declared as entitled to past maintenance from 16.03.2013 to 16.03.2019, totaling six years, plus maintenance for her Iddat period from 16.03.2019 to 16.06.2019. The petitioner was ordered to pay Rs.10,000/- monthly for the past maintenance, totaling Rs.7,20,000/- plus Rs.30,000/- for the Iddat period (a total of Rs.7,50,000/-) within one month.

9. Regarding the recovery of dowry articles, the respondent No.1 (plaintiff) has claimed items that are customary in marriages. However, as to the gold jewelry, the learned Family Court observed that no possession is more precious to a woman than her gold jewelry, which she typically keeps secure for her future. The evidence suggests that the respondent No.1's dowry articles are with the petitioner (defendant), who is obligated to return them according to the list in the plaint, excluding the gold. The petitioner's statements lack credibility, and the absence of receipts does not hinder the recovery of the dowry articles. Taking into consideration 15 years since their marriage, the learned Family Court has ordered that a depreciated value will be considered as an alternative. The petitioner was, therefore, ordered to return the dowry articles as listed, excluding gold, or pay Rs.1,00,000/- as a substitute.

10. Since the trial Court and the appellate Court have already held that dowry articles as per list provided by respondent No.1 be returned or depreciated value of Rs.1,00,000/- be paid as an alternative, and both the Courts below have not included the gold in that list, the only thing which has left is the past maintenance, which was though ordered by the learned Family Court as Rs.7,50,000/-, but has been reduced by the learned Appellate Court to Rs.5,00,000/-, which too is a favour for the petitioner.

11. In light of the foregoing reasons, the petitioner has failed to present sufficient grounds for this Court to interfere with the well-reasoned judgments of the Family Court and the Appellate Court. Therefore, the instant Constitutional Petition was **dismissed in *limine*** by my short order dated 21.10.2024, and these are the reasons for that decision.

J U D G E

Abdul Basit