

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Constitution Petition No.S-270 of year 2023

(Farooque alias Ayaz Ali Versus Ms. Asma)

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1. For Orders on office Objections at Flag "A"
 2. For Hearing of M.A No 781 /2023 (S/A)
 3. For hearing of main case

Petitioner:	Farooque alias Ayaz Ali Through Mr. Ahmed Bux Abro, Advocate.
Respondent No.1:	Ms Asma Through M/s. Abdul Khalique Bughio and Muhammad Afzal Jagirani, Advocates
Respondent No.2 & 3:	Through Mr. Aftab Ahmed Bhutto, Assistant Advocate General, Sindh.
Date of hearing:	22-04-2025
Date of Judgment:	22-04-2025

J U D G M E N T

Nisar Ahmed Bhanbhro J.- Through instant petition, the petitioner (Defendant) has challenged the Judgment and Decree dated 31.08.2023 (impugned Decree) passed by the Court of Learned 2nd Additional District Judge, Mehar (Appellate Court) in Family Appeal No18of 2023 Re Ms Asma Versus Farooq alias Ayaz Ali whereby judgment and decree dated17-04-2023 passed by the Court of Learned Family Judge Khairpur Nathan Shah (Trial Court) in Family Suit No32 of 2023 Re Ms Asma Versus Farooq alias Ayaz Ali was modified and maintenance amount was enhanced and plea for return of dowry articles was decreed as prayed.

2. The facts in brief for filing of instant constitution petition are that Respondent No 1 (Plaintiff) Mst. Asma filed a suit for maintenance, payment of dower amount and return of dowry articles before Trial Court, averring therein that marriage between the parties was solemnized on 19-12-2018. Plaintiff lived happily with Defendant but after passage of about 5 - 6 months she left his house due to maltreatment and joined her parents. She claimed that at the time of marriage defendant Farooq @ Ayaz Ali had promised to give Toyota Corolla Car as Haq Mahar (dower) which remained unpaid. She was given bridal gifts by her parents disclosed in paragraph No 3 of plaint and disclosed in list of articles attached with plaint. Plaintiff time and again approached Defendant for settlement but to no effect. Hence, she filed suit before trial court for grant of maintenance at the rate of Rs.10,000/- per month from 05-04-2019 and return of dower amount and dowry articles.

3. On notices Defendant appeared before Trial Court, filed his written statement, denied allegations of maltreatment. He averred that plaintiff was kept happy in home but she left defendant after 5 to 6 months of marriage of her own will without his permission. Thereafter she started blackmailing and harassing defendant. In reply to claim of plaintiff for bridal gifts / dowry articles defendant admitted in Para No.3 of written statement that she was given 25 pairs of unstitched clothes, one Burko, water set, sofa set, 4 pairs of Sandals, 4 purses, one fridge, one washing machine, one ceiling solar fan, one solar plate by her parents, which were lying in house but he denied claim of plaintiff for remaining articles. He contended that marriage between parties dissolved on 16-09-2019 as a result of divorce, which was pronounced in writing. He prayed for dismissal of suit as plaintiff had come before Court with unclean hands.

4. From divergent pleadings of the parties Trial Court framed 05 issues, parties led evidence in support of respective claims. Plaintiff examined herself and Haji Nazar Ali and Defendant examined himself. Trial Court after hearing parties partly decreed the suit by granting lump sum past maintenance allowance of Rs 230,000 and future maintenance of Rs 5000 per month till the subsistence of marriage between parties. Trial Court decreed the suit for dowry articles to the extent of admission made by defendant in para No 3 of Written Statement.

5. Aggrieved of the judgment and decree of Trial Court, Plaintiff filed appeal No.18/2023 before the Court of learned District Judge Dadu, which was assigned to Appellate Court for disposal in accordance with law. Appellate Court after hearing parties, vide impugned judgment and decree dated 31-08-2023, modified the decree of Trial Court and decreed the suit of plaintiff for maintenance and recovery of dowry articles as prayed.

6. The petitioner / defendant has assailed the judgment and decree of both the Courts below, when confronted that defendant did not file any appeal against the decree of Trial Court, Counsel for defendant frankly conceded that he would not press this petition to the extent of relief claimed against judgment and decree of Trial Court. Order accordingly.

7. Learned counsel for petitioner (defendant) submits that Trial Court passed well-reasoned judgment and decree, based upon correct appreciation of evidence and material available on record. The plaintiff could not prove her case for recovery of dowry articles and Haq Mahar and decree of Trial Court was passed on the basis of admission made by defendant in written statement and evidence. Appellate Court disturbed the findings of Trial Court without making proper appraisal of evidence and granted relief to Plaintiff which she failed to establish. He contended that admission of defendant for dowry

articles mentioned in ParaNo.3 of written statement, established his truthfulness but such an admission on his part would never amount to grant of decree in favor of plaintiff who otherwise failed to prove her case. He contended impugned judgment and decree of Appellate Court was not supported by oral as well as documentary evidence. He contended that plaintiff was burdened to prove her case on the basis of oral and documentary evidence, she cannot take any benefits of weakness in defendant case. He prayed for setting aside the impugned judgment and decree by upholding the judgment and decree of Trial Court.

8. Conversely Mr. Abdul Khalique Bughio assisted by Mr Muhammad Afzal Jagirani, Advocate Learned Counsel for Respondent No 1/ Plaintiff contended that plaintiff had proved her case for recovery of dowry articles through reliable evidence. She produced in evidence list and receipts of purchase of dowry articles. Her evidence could not be shattered despite of a lengthy cross examination. They prayed for dismissal of petition and maintaining the impugned judgment and decree.

9. Learned Assistant Advocate General supported the judgment and decree passed by Trial Court.

10. Heard Learned Counsel for parties and examined material available on record.

11. Scanning of material available on record transpires that plaintiff filed family suit for maintenance, payment of dower amount and recovery of dowry articles. Suit of plaintiff was partly decreed to the extent of maintenance, declined for dower amount and partly decreed for recovery of dowry articles by Trial Court. The issue involved in the present petition was recovery of dowry articles, dower and enhancement of maintenance allowance. I intend to take up these issues separately as there are conflicting findings of fact by Courts below.

12. Taking up the issue of recovery of dowry articles, as claim of plaintiff was partly admitted by the defendant therefore Trial Court framed issue No.3 to resolve this controversy for denied article, which reads as under:

3. Whether the plaintiff is entitled to receive remaining dowry articles as per her claim?

To establish her claim plaintiff examined herself and Haji Nazar Ali who is her father. Trial Court during proceedings of family suit at pre-trial stage directed plaintiff to lift the articles which were admitted by defendant in presence of Bailiff of the Court. Per directions of Trial Court Bailiff went to the house of defendant where relatives of plaintiff came and refused to take articles under an excuse that articles were not the same which were given to plaintiff at the time of her marriage, as such the reconciliation

efforts failed. The parties led evidence. In her evidence plaintiff did not depose that list of articles attached with plaint was prepared under her instructions, Plaintiff filed suit through attorney who is her sister, attorney of plaintiff was not produced as witness before Trial Court List produced in evidence did not contain signature either of plaintiff or her attorney under such a situation the contents of list cannot be safely relied upon. Plaintiff claimed bridal gifts of such a nature which are not ordinarily given to brides in village areas for multiple reasons. The quantity and cost of bridal gifts was quite high for which plaintiff and her father had to establish their financial capacity to afford such expensive dowry. Production of receipts of purchase of dowry articles in evidence was not sufficient to establish claim. Father of plaintiff in his evidence did not depose that he purchased articles mentioned in the list and delivered the same to the house of Defendant at the time of marriage. Defendant in his evidence produced video clip of house to show dowry articles, that piece of evidence remained unchallenged as defendant was not cross examined on that particular point. He was even not questioned about delivery of dowry articles from parents of plaintiff. Trial Court resolved this issue against plaintiff and decreed the suit for recovery of dowry articles to the extent of admission made by defendant. Trial Court took proper analysis of oral and documentary evidence, as it was plaintiff who was burdened to prove her case, which she failed.

13. Appellate Court while making reappraisal of evidence did not take into account evidence of parties but relied upon admission of defendant in written statement regarding availability of some of the dowry articles in his house. Appellate Court tendered reason for decree as prayed to the extent of dowry articles in the following manner:

“In so far as the question of recovery of dowry articles is concerned, the same requires reappraisal keeping in view of the dictum laid down by the Honorable Superior Courts. It will be noted that the learned trial court has allowed the recovery of articles which have only been admitted by the defendant that it is lying in his house.

However, perusal of record reveals that in fact the defendant has not denied rather admitted in his WS that parents of the plaintiff had given her dowry articles as mentioned in the list appended with the plaint vide Exh-P/1-B and she had taken the same to his house at the time of Rukhsati vide the Para No.3 of the WS. He further averred that out of which (said dowry articles) only 25 pairs of unstitched clothes, one veil/Burko, water set, soap set, new and old four pairs of sandals, four purses, on fridge, one washing machine, solar ceiling fan, solar plate are lying in his house, but he has not explained about the remaining dowry articles. The fact admitted needs not be proved.”

14. Appellate Court’s findings on recovery of dowry articles are self-contradictory, as Court has observed that a fact admitted need not to be proved and required explanation from Defendant for remaining articles. Law requires that person asserting

particular fact is burdened to prove the same through oral and documentary evidence, as enunciated under article 117 of the Qanun e Shahadat Order 1984. Suffice to say that interpretation of this provision of law in a different manner would render it redundant. Plaintiff was granted relief by Trial Court at pre-trial stage for taking dowry articles admitted in written statement and issue No 3 was framed for remaining articles which stood denied from defendant, and onus to prove such an assertion was upon plaintiff, such a burden would have shifted to defendant had the plaintiff successfully discharged it. The Family Courts Act, 1964 empowers family courts to deal with the issues specified in part 01 of the schedule, wherein dowry has been listed at serial No.8. Dowry amounts to a bridal gift given either by the parents of bride or by the groom to bride. A suit claiming the recovery of dowry articles has to be proved through evidence. The settled proposition of law is that person who alleges a particular fact is required to prove the same through oral or documentary evidence, as the case may be. The burden of proof is always on the party asserting a particular fact. In the present case, plaintiff claimed that she was given bounty of dowry articles at the time of marriage. Plaintiff claimed for the recovery of dowry articles as detailed in Para No.3 of the plaint but she could not establish through oral as well as documentary evidence that her bridal gifts contained listed articles, thus, any admission on the part of defendant would not form a fact as proved in totality, it will form a fact as proved to the extent of admission. The findings of Trial Court on this issue were based upon correct appreciation of evidence, thus need not to be disturbed by Appellate Court.

15. Honorable Supreme Court of Pakistan in the case of Mst. ALLAH RAKHI Versus TANVIR IQBAL and others reported in 2004 S C M R 1739 has held as under:

“2. We have gone through the evidence produced by the petitioner which consists of only of her own statement. She did not state that the list of articles appended with the plaint as Exh.P.A. was prepared at the time of Rukhsati. She stated that she did not know as to what articles hats been mentioned in this list. No evidence to corroborate her statement that she was given articles of dowry was produced.

3. The learned Judge of the High Court was legally correct in holding that the judgment of the First Appellate Court was based on no evidence, therefore, this petition has no merits, which is accordingly dismissed and leave refused.”

16. Plaintiff detailed the bridal gifts in paragraph No 3 of plaint and list attached thereto, which describes the articles Viz; 27 pairs of clothes amounting to Rs.124,000/, one Refrigerator amounting to Rs.60,000/, one Samsung LCD size 42 inches amounting to Rs.70,000/, one Air Condition amounting to Rs.65000/, one solar fan amounting to Rs.5000/, one solar plate amounting to Rs.10,000/, one Air Cooler amounting to Rs.18000/, one Iron box amounting to Rs.10000/, one Dinner set amounting to Rs.15000/, two tea sets amounting to Rs.3000/, two water set amounting to Rs.4000/, one washing machine amounting to Rs.15000/, one room set amounting to Rs.150000/, two blankets amounting to Rs.10,000/, 20 Rillies (quilt) amounting to Rs.20,000/, one gold set and 2 gold rings amounting to Rs.351000/, one gold ring for groom amounting to Rs.22000/, and 6 gold bangles amounting to Rs.376500/, given to her at the time of marriage. Custom of demanding and giving bounty of bridal gifts has badly affected our society resulting into no marriages or early separations which has demoralized society at large. Per reports in our Country many girls have crossed the age of 35 years and above without getting a suitable match on account of failure of families to arrange bridal gifts. Law regulating bridal gifts though strict but has yet to get implementation. Legislation in order to curb the excessive demands of bridal gifts enacted The Dowry and Bridal Gifts Restriction Act, 1976, (DBGRA) wherein a fixed the aggregate amount of bridal gifts through section 3 of the Act which reads as follows:

3. Restriction on dowry, presents and bridal gifts.(1) Neither the aggregate value of the dowry and presents given to the bride by her parents nor the aggregate value of the bridal gifts or of the presents given to the bridegroom shall exceed five thousand rupees;

Explanation. The ceiling of five thousand rupees specified in this sub; section does not in any way imply that the dowry, bridal gifts and presents of a lesser amount may not be given.

(2) No dowry, bridal gifts or presents may be given before or after six months of Nikah if Rukhsati takes place sometime after Nikah, after six months of such Rukhsati.

Section 8 of the Act further required the parents of parties to submit a list of bridal gifts articles to the Registrar. Section 8 of the Act is reproduced for the ease of reference:

8. List of Dowry, etc. to be furnished to Registrar.(1) The parents of each party to a marriage shall furnish to the Registrar lists of dowry, bridal gifts and presents given or received in connection with the marriage.

(2) The lists referred to in subsection (1) shall be furnished,

(a) in the case of property given or accepted before or at the time of the marriage; and

(b) in the case of property given or accepted after the marriage, within fifteen days of its being given or accepted.

(3) The lists referred to in subsection (1) shall

(a) Contain details of the property along with the value thereof; and

(b) Be signed or thumb marked by the person furnishing them to the Registrar and attested by at least two witnesses.

Section 6 of DBGRA also places an embargo on lavish wedding ceremonies, violation of the provisions of sections 3, 6 and 8, of DBGRA are offences punishable under section 9 of the Act and Family Court is empowered to take cognizance of complaint filed by Deputy Commissioner when an attendant of marriage ceremony moves Deputy Commissioner that expenses incurred on marriage ceremonies were more than those prescribed under the law. Such an offence is punishable up to Six months.

Our Religion Islam teaches us to live life with simplicity, this lesson is the basic principle of establishing a welfare state. Enactment of DBGRA 1976 reflects the wisdom of legislature to curb the curse of dowry and lavish ceremonial marriages. Though the provisions of law do not appear to be practically enforceable but since its enactment no effort on the part of society and state seems to have been taken to get the fruits of this legislation. The law requires modification to suit present day inflations. However it is incumbent upon Family Court to see whether the dowry articles claimed by parties are within the parameters of this enactment. If a claim to high value articles is agitated than Court should require the parties to furnish the list of articles furnished to the Registrar under section 8 of DBGRA 1976 containing signatures at least of two witnesses and list of articles be proved through evidence of those witnesses.

17. Reverting to the issue of haq Mahar, both the Courts below in its concurrent findings held that Plaintiff failed to prove her claim of Haq Mahar. Plaintiff asserted that she was promised for a Toyota Corolla car in Haq Mahar. Trial court framed a particular issue regarding Hag Mahar which was answered in negative as she failed to bring on record the Nikahnama. Appellate Court while dealing with issue of Haq Mahar (dower) concurred with the findings of Trial Court by observing that plaintiff claimed Toyota Corolla Car as Haq Mahar but did not produce Nikahnama or any witness to substantiate her claim. The marriage is contract between a man and a woman for passing marital life, under Muslim Family Laws Ordinance 1961 the terms and conditions of marriage contract are incorporated in the Nikahnama. The terms and conditions set out in Nikahnama are meant to secure the rights and privileges of both wife and husband. The

Nikah is a social contract between parties who are competent to enter into a marriage prescribed under the law of land. It is settled law that a presumption of truth is attached to the Nikahnama having status of a public document. A strong presumption of truth exists regarding entries recorded in Nikahnama in columns 13 to 16 which relate to dower, column 17 whereof relates to special conditions if any imposed by parties for perpetuity of marriage contract. Nikahnama is a document of marriage which provides complete details of terms and conditions of marriage and contains of four leaves, one copy for bride, Second copy for groom, Third copy for concerned Union Council and Fourth Copy retained by Nikah Registrar. Failure to produce copy of nikahnama in evidence rendered the claim of plaintiff nullity, the concurrent findings of Courts below on the issue of haq mahar were on a correct premise for appreciation of evidence and are maintained.

18. Adverting to the issue of grant of maintenance in favor of plaintiff, Trial Court fixed a monthly maintenance of Rs 5000 per month with Ten Per Cent increase per annum and a lump sum amount of Rs 230,000 for past maintenance. Appellate Court modified the decree and enhanced maintenance allowance to Rs 10,000 per month. Maintenance of wife no doubt was a responsibility on the shoulders of husband but for purposes of fixing maintenance allowance, financial status of husband was to be looked into. Plaintiff did not disclose the earning resources of defendant in her pleadings, even during evidence she did not utter a single word to establish capacity of defendant to pay maintenance. Trial Court therefore rightly fixed monthly maintenance allowance of Rs 5000 with an increase of 10 % per annum till the existence of marital relationship between parties. Appellate Court did not record its reasons for enhancing maintenance, which rendered its findings perverse.

19. This court under Article 199 of the constitution is bestowed with the balancing task to administer justice to all the parties without discrimination on the basis of gender and sex. The powers of this court under Article 199 are corrective and supervisory in nature and do not in any manner equates the powers of Court of appeal which is a statutory forum for appraisal of evidence. The ambit of writ petition, therefore, cannot be equated as a forum of appeal. However, in the cases where this court comes to the conclusion that the courts below have failed to appreciate the evidence on record and there was a misreading and non-reading of evidence and findings of fact were perverse to the material on record, the Courts below exercised the jurisdiction in excess, the court will step in to rescue the rights of party so affected on account of such illegalities and irregularities.

20. Honorable Supreme Court of Pakistan in the case of Muhammad Shamim Ali Versus Mst. Asma Begum and others reported in 2024 S C M R 1642 has held as under:

“9. Since the legislature has conferred exclusive jurisdiction upon the Family Courts, by virtue of section 5⁵ of the Family Act, to expedite family cases and tried to cordon off family litigation to the extent of a single family appeal, it would not reflect well on a Constitutional Court to interfere with the exclusive jurisdiction of the Family Courts under the Writ Jurisdiction as provided under Article 199 of the Constitution, unless the jurisdiction exercised by the Family Courts was contrary to law and/or findings reached in exercise of said jurisdiction are perverse and without proper appreciation of evidence that non-interference would lead to a grave miscarriage of justice or for that matter injustice. It is pertinent to state here, at the expense of reiteration, that the learned Counsel for the Petitioner's assertions about supposedly fake and fabricated receipts of dowry articles is a factual inquiry, which was undertaken by the Family Court and the Appellate Court and could not have been done by the High Court in its jurisdiction under Article 199 of the Constitution, or this Court under its jurisdiction under Article 185 (3) of the Constitution. Therefore, the High Court, in the impugned judgment, dated 28.02.2024, rightly declined to interfere in the findings of the two fora below.”

21. Sequel to the above discussion I am of the considered view that findings of fact arrived at by the Appellate Court suffered from misreading and non-reading of evidence on record, were perverse and contrary to material on record, therefore, it is a fit case for indulgence by this court under its writ jurisdiction conferred under Article 199 of the Constitution. Consequently, instant is accepted, the judgment and decree dated 31-08-2023 passed in Family Appeal No.18 of 2023, RE (Mst. Asma V. Farooq @ Ayaz Ali) are set aside and judgment and decree dated 17-04-2023 passed by Trial Court in Family Suit No 32 of 2023 RE (Mst. Asma V. Farooq @ Ayaz Ali) are maintained.

22. This petition was allowed through a short order reproduced below in the earlier part of the day and these are the reasons for the same:

“For the reasons to follow, instant petition is allowed. Judgment and Decree dated 31.08.2023 passed by the Court of Learned 2nd Additional District Judge, Mehar in Family Appeal No.18/2023 Re Ms Asma Versus Farooq alias Ayaz Ali are set aside and judgment and decree dated 17-04-2023 passed by the Court of Learned Family Judge Khairpur Nathan Shah in Family Suit No.32 of 2023Re Ms Asma Versus Farooq alias Ayaz Ali are upheld.”

The Petition stands disposed of along with listed applications.

JUDGE

