ORDER SHEET

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Const. Petition No. S-465 of 2024

(Imtiaz Ali v. Mst. Sameena and others)

DATE	ORDER WITH SIGNATURE OF JUDGE

Date of hearing and Order: 17.03.2025

Mr. Nisar Ahmed Abro, advocate for the petitioner.
Mr. Muhammad Bilal Bhutto, advocate for respondent No.1
Mr. Abdul Waris K. Bhutto, Assistant A.G for the State.

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ORDER

Adnan-ul-Karim Memon, J: The Petitioner prays that this Court set aside the impugned judgments and decrees dated 26.08.2024 and 28.11.2024 passed by the learned trial/Family Court and the learned appellate Court, and dismiss the suit for dissolution of marriage filed by the respondent No. 1.

2. Respondent claims a 16-year marriage with the petitioner, with unpaid Haq mehr. They have three children. The petitioner allegedly abused and evicted her twice. She seeks maintenance, divorce (Khulla), and documents for her children. She claims the petitioner, a Deputy Director, is financially capable of providing maintenance. She filed suit with prayer for Dissolution of marriage by Khulla. Maintenance for herself during Iddat (Rs. 20,000/month).Child maintenance (Rs. 50,000/month, with a 20% annual increase).Past child maintenance (Rs. 1,440,000).Past maintenance for herself (Rs. 480,000).Handover of Nikahnama and CNIC for children's B-Forms.In his written response, the petitioner completely denied the respondent's claims, asserting that she was not his wife and that no Nikah was ever solemnized between them. He stated that he had already married to Mst. Hameedan Khatoon, with whom he has seven children. He further submitted that the respondent had previously filed a petition (C.P. No. 848/2012) in this court, where she claimed he had divorced her five months prior. He alleged that the respondent suffers from a mental health condition and fabricated the entire story to obtain maintenance, and therefore, requested the court to dismiss her suit. However, the trial court decision dated August 26, 2024. The trial court decreed the family Suit No. 815 of 2023 (Mst. Sameena v. Imtiaz Ali), granting the respondent's marriage dissolution request. Additionally, the trial court awarded her a lump sum of Rs. 30,000 for maintenance during the Iddat period and granted Rs. 10,000 per month for each of their three minor children, effective from the date the suit was filed, with a 10% annual increase until they reach legal adulthood. The petitioner filed Family Appeal No. 43 of 2024, which was subsequently dismissed by a judgment dated November 28, 2024.

3. The appellate court upheld the trial court's decision, finding that the petitioner had never asserted a divorce from the respondent, either in the court below or in the present appeal. Additionally, the petitioner did not contest the paternity of the children. The court concluded that the respondent remained the petitioner's wife until the Khulla was granted, and was therefore entitled to seek dissolution of marriage and maintenance for herself and the children, which are the petitioner's legal obligations as husband and father. The court deemed the respondent's suit to be properly filed. Regarding the maintenance amounts, the appellate court noted that the petitioner did not challenge them in the appeal, nor did his counsel address them during arguments. Furthermore, the petitioner did not dispute the respondent's claim that he held a well-paying position as a Deputy Director in local government. Considering the petitioner's financial status and his responsibilities to another wife and seven other children, the court found the maintenance amounts to be reasonable.

4. Learned counsel for the petitioner submits that the trial/family court and appellate court judgments are flawed in law and fact. The courts failed to consider crucial legal and factual aspects of the case and did not properly evaluate the evidence presented. The courts misread and ignored material evidence, specifically, the plaintiff/respondent's prior petition (C.P. No. S-848/2012) which contained contradictory statements regarding her marital status and children. The prior petition indicated the plaintiff's marriage was dissolved by Talaq, and mentioned only one child, which does not adequately address the petitioner's defenses and evidence presented in the written statement. The appellate court dismissed the petitioner's appeal without, contradicting her claims. The plaintiff/respondent failed to provide sufficient evidence to support her claims. The judgments are contrary to relevant legal principles. The courts did proper consideration of the merits. The judgments are harsh and require being set aside. He prayed for setting aside the impugned judgments and decrees of the trial/family court and appellate court and dismissing the plaintiff/respondent's suit.

5. The learned counsel representing the private respondent supported the impugned judgments and submitted that the husband can pronounce divorce, but if denied, the wife needs two witnesses. He referred to Section 7 of the Muslim Family Laws Ordinance, 1961, which mandates notice to the wife and Union Council, with a 90-day reconciliation period. He argued that the petitioner never explicitly stated he divorced the respondent. His denials were vague, focusing on denying the Nikah, not the paternity of the minor children. He emphasized that the petitioner did not follow Section 7 procedures and succeeded in obtaining a certificate in 2025 after the culmination of the family proceedings which is an afterthought. He next argued that the alleged "Affidavit of Admission" of divorce lacks proper signatures and witnesses, rendering it invalid. He argued that the petitioner failed to challenge the respondent's consistent

claim of marriage and their children's paternity. His denial of purchasing stamp paper for a divorce document supports the respondent's claim. He submitted that she consistently claimed marriage and children, including those born after the 2012 petition before this court. Her testimony, corroborated by her sister, indicated reconciliation after the petitioner initially refused the divorce due to her pregnancy. The respondent's sister's testimony supports the reconciliation claim. He referred to Article 128 of the Qanoon-e-Shahadat, where children born within a marriage are presumed legitimate. The petitioner's evasive denials of paternity, without tangible grounds or timely challenge, imply acceptance of the children. The counsel argued that the petitioner admitted in paragraph 6 of the momo of Family appeal that the respondent/plaintiff was disobedient. However, the family court disregarded this evidence and ruled in favor of the respondent/plaintiff. Paragraph 6 prima facie shows "***the plaintiff was the disobedient wife of the appellant, such material brought by appellant, but learned Family Court without considering the same decreed the suit in favor of the plaintiff.***" He added that the petitioner's actions and lack of credible denials support the respondent's claims, and prayed that the petition is liable to be dismissed. The learned AAG concurred with his view.

6. I have heard the learned counsel for the parties and perused the record with their assistance.

7. The trial court rejected the petitioner's submissions of a prior divorce, citing the respondent's 2012 petition and an inadmissible Affidavit of Admission. The trial court emphasized that Islamic Law and the Muslim Family Laws Ordinance, 1961, necessitate specific divorce procedures, which the petitioner failed to follow. His denials of the marriage were deemed insufficient, and his silence on the children's paternity was interpreted as an admission. The trial court accepted the respondent's testimony of reconciliation, which the petitioner did not refute. Consequently, the trial court determined the respondent remained the petitioner's wife until the Khulla. Paternity was held to be established under Article 128 of the Qanoon-e-Shahadat. The awarded maintenance was considered reasonable as held by the appellate court.

8. The respondent's deposition establishes a 2007 marriage to the petitioner, with three children. Key events include a failed 2008 family settlement followed by reconciliation, and a 2013 petition (S-848/2012) filed due to abuse. Following another reconciliation and birth, the petitioner now denies the marriage and refuses to obtain birth certificates, without submitting to a DNA test. Evidence confirms the children's schooling. During cross-examination, the respondent, an LHV with a BA, detailed her love marriage, stating a written nikah exists, but she lacks a copy. She testified the nikah, witnessed by her family, occurred at a fish market without a valima, and denied marrying for financial gain. A 2008 private agreement she

presented, alleging divorce, is disputed by the petitioner. Discrepancies exist between school records (Arslan's birth as July 24, 2010; birth certificates issued in 2022) and her 2012 petition (Arslan aged four; divorced five months prior). She claims reconciliation occurred after his promise during pregnancy, without a formal agreement. She also stated the petitioner lives with his first wife, and while she enrolled the children, he provided domiciles. She denies allegations of a fabricated nikah, financial motivation, document forgery, or perjury.

9. Following a review of the testimony, the trial and appellate courts rendered a verdict in favor of the respondent. The petitioner has initiated this petition, of limited scope, to contest the validity of the marriage and the paternity of the children. This challenge is made despite the petitioner's failure to avail himself of a DNA test, an available option, suggesting possible reluctance and timely cancellation of the marriage certificate from the concerned office.

10. Coming to the jurisdiction issue of this court under Article 199 of the Constitution, against the decisions of family courts. Primarily, Article 199 of the Constitution prevents the High Court from acting as an appellate court to resolve factual disputes. The Supreme Court has repeatedly addressed the use of Article 199 jurisdiction against appellate decisions. In such cases, the High Court's role is restricted to determining if the lower courts acted within their legal authority. If a court had the jurisdiction to decide a matter, its decision is valid, even if it is considered incorrect. An incorrect decision alone does not make it unlawful and justify constitutional intervention. In *Mst. Tayyeba Ambareen v. Shafqat Ali Kiyani*, **[2023 SCMR 246]**. The Supreme Court clarified the purpose of Article 199 jurisdiction. It aims to uphold justice and rectify wrongs. While evidence evaluation is primarily the Family Court's role, the High Court can intervene constitutionally when findings are based on: Misreading or ignoring evidence. Arbitrary, perverse, or unlawful orders. Glaring and unacceptable errors. Insufficient evidence. Erroneous assumptions of fact. Patent legal errors. Considering inadmissible evidence. Abuse of jurisdiction. Arbitrary use of power. Unreasonable views on evidence. In *Shajar Islam v. Muhammad Siddique*, **[PLD 2007 SC 45** the Supreme Court stated the High Court should avoid interfering with factual findings, even if incorrect, and should not re-evaluate evidence under Article 199. This was reiterated in *Hamad Hassan v. Mst. Isma Bukhari*, **[2023 SCMR 1434]** where the court emphasized the limited scope of Article 199 against appellate decisions. Following *Muhammad Hussain Munir v. Sikandar*, **[2023 SCMR 1434]** the High Court primarily checks if lower courts acted within their jurisdiction. However, *Utility Stores Corporation v. Punjab Labour Appellate Tribunal* **[PLD 1987 SC 447]** established that legal errors by lower courts can be considered jurisdictional issues, allowing High Court intervention under Article 199, as every individual has the right to be dealt with according to law.

11. In family law, the legislature intentionally excluded a direct appeal to the High Court from appellate court decisions. This reflects a policy to finalize family disputes quickly. By preventing further High Court appeals, the legislature aims to avoid protracted litigation and ensure appellate court rulings are final. In *Arif Fareed v. Bibi Sara*, [**2023 SCMR 413,** the Supreme Court stated the legislature intended appellate court decisions to finalize family litigation. However, High Courts often use Article 199 jurisdiction as a substitute for appeals, undermining the goal of swift resolution. While some interventions are justified, many are not. The Court suggested High Courts prioritize family cases by creating specialized benches. Without an explicit right to appeal, appellate court decisions in family matters are final. As stated in *Hamad Hassan v. Mst. Isma Bukhari (supra)*, the Supreme Court of Pakistan, addressed the scope of constitutional jurisdiction and the limits on interference with findings of fact by lower courts, particularly in matters of family law and held that appeal rights are statutory. If a second appeal was intended, it would be expressly provided. Therefore, the appellate court's factual findings are conclusive. The legislature intends to prevent prolonged family disputes. High Court intervention under Article 199 against appellate orders undermines this intent, opening the door to excessive litigation. Courts should avoid facilitating abuse of process. Once factual findings are made by trial and appellate courts, constitutional courts should not re-evaluate those facts or substitute their opinions. Accepting the finality of appellate findings ensures efficient dispute resolution, prevents unnecessary litigation, and respects the legislature's intended finality.

12. The trial court thoroughly examined the evidence regarding the disputed questions as discussed supra, and the appellate court agreed with certain reasonable findings. The record confirms that all factual disputes were assessed by both lower courts, and this Court upholds their findings. Having reviewed the evidence, I find no misreading or omission.

13. Based on the preceding analysis and the legal precedent established by the Supreme Court of Pakistan in *M. Hamad Hassan v. Mst. Isma Bukhari (supra)*, the current constitutional petition lacks merit and is therefore dismissed. Any pending applications are also dismissed.

JUDGE

17/3/2025