

Judgment Sheet
IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH
JUDICIAL DEPARTMENT

Writ Petition No. 181-A/2023

JUDGMENT

Date of hearing.....10.06.2025.....

Petitioner (Javed Iqbal)
By Syed Asif Shah, Advocate.

Respondents (Mst. Nosheen Rani & others)
Respondent No.1 By Mr. Muhammad Zubair,
Advocate.

AURANGZEB, J.- Through this single judgment, I intend to dispose of the instant writ petition, along with the connected writ petition bearing No.187-A/2023, as both arise from the same judgments and decrees passed by the learned lower courts. Since the factual background and legal issues involved in both petitions are substantially similar, a consolidated decision is appropriate to avoid duplication and ensure consistency in the administration of justice.

2. Brief facts of the cases are that the respondent No.1/plaintiff instituted a family suit against the petitioner/defendant for recovery of dower amount of Rs.5,00,000/-, recovery of maintenance allowance at the rate of Rs.5000/- per month from 29.10.2015 till decision of case and onward till subsistence of the marriage, recovery of dowry articles as

per list annexed with the plaint or in alternate Rs.3,50,000/- as market value and dissolution of marriage on the basis of cruelty. The petitioner/defendant appeared before the learned trial court and contested the suit by filing his written statement. The learned trial court after framing of issues, recording evidence and hearing arguments of learned counsel for parties partially decreed the suit of the respondent No.1/plaintiff. Not contented with the same, the petitioner filed two separate appeals before the learned appellate court, the learned appellate court vide consolidated judgment and decree dated 19.11.2022 partially allowed appeal bearing No.124/FC of 2019 and dismissed the other appeal bearing No.41/FC of 2022, hence, the petitioners filed the instant constitutional petitions.

3. I have heard arguments of learned counsel for parties and perused the record with their valuable assistance.

4. Before going into the merit of the cases, this court deems it necessary to examine the scope of writ jurisdiction under Article 199 of the Constitution, invoked against the appellate decisions specially in family matters. The Hon'ble Apex Court in **Muhammad Hussain Munir Vs Sikandar (PLD 1974 SC 139)**, has held that High Court in such cases is only concerned with whether or not the courts below acted within its jurisdiction or not if such a court has the jurisdiction to decide a matter, it is considered competent to make a decision, regardless of whether the decision is right or wrong

and even if the said decision is considered to be incorrect, it would not automatically render it as being without lawful authority so as to invoke High Court's constitutional jurisdiction. The Hon'ble Apex Court deviated from its view in the case of **Utility Stores Corporation of Pakistan Limited Vs Punjab Labour Appellate Tribunal (PLD 1987 SC 447)** wherein it was held that where the lower fora makes an error of law in deciding a matter, it becomes a jurisdictional issue since the same is only vested with the jurisdiction to decide a particular matter rightly, therefore, such decision can be quashed under constitutional jurisdiction as being in excess of law as in terms of Article 4 of the Constitution, and thus, becomes a case proper for interference by a High Court in exercise of its constitutional jurisdiction. This powers of High Court under Article 199 stating that while, ordinarily, the High Court, does not re-examine evidence or disturb findings of fact, it can interfere if the findings are based on non-reading or misreading of evidence, erroneous assumptions, misapplication of law, excess or abuse of jurisdiction, and arbitrary exercise of powers, especially when the district court is the final appellate court which has reversed the findings of the trial court on unsupported grounds. Subsequently, the apex Court revisited this issue in **Shajar Islam v. Muhammad Siddique (PLD 2007 SC 45)** and clarified that the High Court should not interfere in findings on controversial questions of facts based on evidence, even if

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those findings were erroneous. It was further held that the scope of judicial review under Article 199 of the Constitution in such cases was limited to instances of misreading or non-reading of evidence or when the finding was based on no evidence, leading to miscarriage of justice and that the high court should not disturb findings of fact through a reappraisal of evidence in its constitutional jurisdiction or use this jurisdiction as a substitute for a revision or appeal and that an interference with the lower courts' findings of fact was beyond the scope of the high court's jurisdiction under Article 199 of the Constitution. The apex Court in its recent judgment further elaborated on this view, in **Mst. Tayyeba Ambareen and another Vs Shafqat Ali Kiyani and another (2023 SCMR 246)**, wherein it was held as under:

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“8. The object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") is to foster justice, preserve rights and to right the wrong. The appraisal of evidence is primarily the function of the Trial Court and, in this case, the Family Court which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, mis-reading of CP.1418 of 2023 - 4 - evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken.”

Similarly, in **Arif Fareed Vs Bibi Sara and others**

(2023 SCMR 413) that:

“7. The legislature intended to place a full stop on the family litigation after it was decided by the appellate court. However, we regretfully observe that the High Courts routinely exercise their extraordinary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as a substitute of appeal or revision and more often the purpose of the statute i.e., expeditious disposal of the cases is compromised and defied. No doubt, there may be certain cases where the intervention could be justified but a great number falls outside this exception. Therefore, it would be high time that the High Courts priorities the disposal of family cases by constituting special family benches for this purpose.”

5. Thus, the legal position is that the constitutional jurisdiction cannot be invoked as a substitute for a revision or an appeal and the High Court in constitutional jurisdiction cannot reappraise the evidence and decide the case on its facts. Interference is on limited grounds is an exception and not the rule. In the latest judgment of the Hon'ble Supreme Court of Pakistan in case of **Hammad Hassan Vs Mst. Isma Bukhari and 02 others (2023 SCMR 1434)**, wherein it has been held as under:

“The right to appeal is a statutory creation, either provided or not provided by the legislature; if the law intended to provide for two opportunities of appeal, it would have explicitly done so. In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for High Court to offer another opportunity of hearing, especially in family cases where the legislature's intent to not prolong the dispute is clear. The purpose of this approach is to ensure efficient and expeditious resolution of legal disputes. However, if the High Court continues to entertain constitutional petitions against appellate court orders, under Article 199 of the Constitution, it opens floodgates to appellate litigation. Closure

of litigation is essential for a fair and efficient legal system, and the courts should not unwarrantedly make room for litigants to abuse the process of law. Once a matter has been adjudicated upon on fact by the trial and the appellate courts, constitutional courts should not exceed their powers by reevaluating the facts or substituting the appellate court's opinion with their own - the acceptance of finality of the appellate court's findings is essential for achieving closure in legal proceedings conclusively resolving disputes, preventing unnecessary litigation, and upholding the legislature's intent to provide a definitive resolution through existing appeal mechanisms."

6. Now, coming to the facts of the case, the respondent No.1/plaintiff filed a family suit against the petitioner/defendant for recovery of dower amount of Rs.5,00,000/-, recovery of maintenance allowance at the rate of Rs.5000/- per month from 29.10.2015 till decision of case and onward till subsistence of the marriage, recovery of dowry articles as per list annexed with the plaint or in alternate Rs.3,50,000/- as market value and dissolution of marriage on the basis of cruelty.

7. The available record reveals that respondent No.1/plaintiff, in her suit, prayed for the recovery of dower amounting to Rs.5,00,000/-. Her consistent stance is that the dower amount remains unpaid. Conversely, the petitioner/defendant contends that the dower has already been paid in the form of gold ornaments. According to the Nikahnama (Ex:PW1/1), the marriage (Nikah) between the parties was solemnized on 15.12.2012, and the dower was fixed at Rs.5,00,000/-. It was recorded that half of this amount was to

be paid in the form of gold ornaments, while the remaining half was to be paid promptly in cash.

8. The respondent No.1/plaintiff, while appearing before the learned trial court as PW-1, testified that on 01.11.2014, when she was allegedly ousted from the matrimonial home by the petitioner/defendant and his brother, the said gold ornaments were forcibly taken from her. However, this claim of snatching has been categorically denied by the Petitioner/Defendant.

9. A perusal of the Nikahnama (Ex:PW1/1), particularly columns No.14 and 15, clearly shows that half of the dower was indeed paid in the form of gold ornaments. This fact is also admitted by the respondent No.1/plaintiff. However, she subsequently alleged that the gold ornaments were snatched from her. Once the payment of half of the dower in the form of gold is admitted, and its alleged snatching is claimed by the plaintiff, the burden to prove this claim squarely falls upon her.

10. In an attempt to discharge this burden, the respondent No.1/plaintiff, while appearing during the pre-trial reconciliation proceedings, stated that 2½ tolas of gold ornaments were given to her at the time of marriage, but these were later taken away by her mother-in-law. Contradictorily, during her cross-examination as PW-1, she denied the suggestion that she had retained 2½ tolas of gold, and instead claimed that the defendant had taken them from

her earlier. These inconsistencies cast doubt on her version of events and make it difficult to determine with certainty who allegedly took the gold ornaments. Consequently, no adverse inference can be drawn against the admitted fact of the initial payment of half the dower in the form of gold.

11. Moreover, Muhammad Shafiq (PW-3) testified during his examination-in-chief that the dower amount of Rs.5,00,000/- was fixed at the time of marriage, but he had no personal knowledge of whether the dower was paid or not. Additionally, a prior compromise agreement executed between the parties also indicates that an amount of Rs.2,50,000/- remains outstanding as unpaid dower against the petitioner/defendant.

12. In light of the above discussion, the findings of the learned Appellate Court regarding the dower appear to be well-reasoned, based on the available evidence and the inconsistencies in the Plaintiff's version regarding the alleged snatching of gold ornaments.

13. The respondent No.1/plaintiff has also sought the recovery of her dowry articles, as listed in the annexure attached to the plaint. It is a widely recognized and prevalent tradition in our country that, at the time of marriage, parents give dowry articles to their daughters. These items are considered gifts meant solely for the daughter's use and benefit. In the unfortunate event of a marital dispute or

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dissolution of marriage, the wife remains fully entitled to reclaim and retain possession of these dowry articles.

14. In circumstances where the wife is deprived of these gifts by her husband or his family, she has the legal right to recover them through the appropriate judicial process. There exists a legal presumption based on long-standing societal customs that dowry articles are given by the bride's parents in accordance with their financial capacity. This presumption plays a significant role in family dispute cases.

15. Although it is advisable that a list of dowry articles be prepared and signed by the husband at the time of marriage or delivery of the items, in practice, this is rarely done. Most parents are hesitant to discuss or formalize the matter for fear of offending the groom or his family. Consequently, when disputes arise, the husband and his family often attempt to deny the wife her rightful claim to these articles.

16. In our society, dowry articles are usually expensive and luxurious, given under social compulsion and familial expectations. The absence of such dowry may lead to the bride being mistreated or held in contempt by her in-laws. These articles are often publicly displayed among relatives and friends as a symbol of pride and social status.

17. Moreover, it is impractical to expect a bride to retain receipts for every dowry item, maintain a comprehensive inventory, or obtain the husband's

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acknowledgment through signatures. Culturally, mothers begin collecting and preserving dowry articles for their daughters from an early age. It is also customary to treat the groom and his family with high regard, and requesting them to sign a list of dowry articles is seen as disrespectful.

18. While courts are bound to decide matters strictly in accordance with the law, they cannot overlook the social realities and customs prevalent in family-related disputes. In the present case, the respondent No.1/plaintiff has claimed dowry articles listed in Exhibit PW1/2. The petitioner/defendant has denied her claim, asserting that the list is fabricated and fictitious. However, the petitioner/defendant has failed to produce any alternative list or convincing evidence to support his denial. On the contrary, it is evident from a previously recorded compromise statement that the dowry articles of the respondent No.1/plaintiff are still lying in the possession of the petitioner/defendant at his residence.

19. In light of these facts, the concurrent findings of both the lower courts regarding the dowry articles are based on sound reasoning and merit no interference.

20. The respondent No.1/plaintiff also sought dissolution of marriage on the ground of cruelty. It was her stance that following the *rukhsati* (formal departure to the husband's home), the attitude of the petitioner/defendant became hostile and abusive. She asserted that he regularly

subjected her to physical violence over trivial matters and failed to provide her with any maintenance or financial support.

21. In response, the petitioner/defendant denied all allegations of cruelty, claiming instead that he had never mistreated the respondent No.1/plaintiff and had consistently fulfilled all her needs. He further contended that the respondent No.1/plaintiff had willfully deserted him, yet he was still willing to rehabilitate the relationship and accept her back.

22. To substantiate her claim of cruelty, the respondent No.1/plaintiff presented a police report dated 29.10.2015, in which she had lodged against the petitioner/defendant, detailing his cruel behavior. During the proceedings, the respondent No.1/plaintiff remained consistent in her statement and firmly denied that she had left the matrimonial home voluntarily. There was nothing in her testimony to suggest that she was self-deserted or that she had abandoned her marital responsibilities.

23. Conversely, the petitioner/defendant failed to establish the claim of self-desertion through any cogent, reliable, or confidence-inspiring evidence. Although he alleged that he was on official duty as a member of the Pakistan Army on the day the respondent No.1/plaintiff left the house, he did not produce any documentary evidence or official record to support this claim.

24. Furthermore, a compromise statement recorded on 06.10.2015 reflected that the petitioner/defendant had undertaken several responsibilities towards the respondent No.1/plaintiff. However, in his own statement, he claimed that following their reconciliation, he stayed with her for merely three or four days before leaving again for official duty. He further admitted that for the next eight months, he failed to establish any contact with her. Upon his return, he allegedly discovered that she had left the home.

25. This portion of his statement is unconvincing and does not appeal to the reasoning of a prudent mind. If he had genuinely assumed marital responsibilities, his complete lack of communication for such an extended period raises serious concerns about his sincerity and sense of duty. This conduct, instead, reflects negligence on his part.

26. Additionally, the petitioner/defendant admitted that he possessed no documentary evidence to prove that he had provided any maintenance to the respondent No.1/plaintiff during the relevant period. Hence, findings of both the courts below are well-reasoned and supported by the available evidence on record.

27. The respondent No.1/plaintiff further claimed maintenance allowance at the rate of Rs.5,000/- per month, effective from 29.10.2015. In this regard, both the learned trial court as well as the learned appellate court, after thoroughly analyzing the record and taking into consideration

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the financial status of the petitioner/defendant, deemed it appropriate to fix the maintenance allowance at the rate of Rs.3,000/- per month. This allowance was ordered to be paid from 29.10.2015 until the expiry of the iddat period. The courts, while arriving at this determination, balanced the needs of the plaintiff with the paying capacity of the defendant, ensuring that the amount awarded was reasonable, just, and in accordance with the law.

28. With regard to the counterclaim made by the petitioner/defendant for the recovery of Rs.3,70,000/- in cash and certain gold ornaments from respondent No. 1/plaintiff, both the learned lower courts have correctly held that the Family Court does not have the jurisdiction to entertain such a claim. The Family Court is a specialized forum established under the relevant statute, primarily to adjudicate matters relating to family and matrimonial disputes as specified in the schedule of the Family Courts Act. Claims of a civil or monetary nature, such as recovery of money or movable property unconnected to matrimonial reliefs or domestic obligations, fall outside the purview of the Family Court's jurisdiction and must be pursued in the appropriate civil court.

29. For what has been discussed hereinabove, the instant and connected writ petition bearing No.187-A/2023 being bereft of any merit, are hereby dismissed.

Announced
10.06.2025


JUDGE

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