

JUDGEMENT SHEET
IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

W.P No. 14-D/2025 with
C.M No. 14-D/2025

Samdani
Vs
Ms. Zahida Bibi and another

For petitioner Muhammad Ismail Hani, Advocate
For respondents Mr. Ahmad Ali Khan Baloch, Advocate

Date of hearing 11.6.2025

JUDGMENT

Inam Ullah Khan, J.-

1. This petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 stem from the order issued by the learned Additional District Judge, Paharpur, D.I.Khan, on 09.01.2025, whereby, the appeal filed by the petitioner was dismissed, and the order dated 16.10.2024 of the learned Judge Family Court-I, Paharpur D.I. Khan, was upheld.

2. Brief facts of the case are that the respondent/plaintiff filed a suit against the petitioner/defendant for dissolution of marriage on the basis of khula, details whereof are given in the headnote of the plaint. After being summoned, the petitioner appeared and filed written statement. Learned trial court, upon being failure of pre-trial reconciliation proceedings, dissolved the marriage between the parties on the basis of khula, however, learned trial court held that:

19. In light of the statements recorded by the parties, it is ordered that the marriage between the parties has been dissolved on the basis of khula. It is in the above background that this court decreeing that Mst. Zahida's plea of khula further declares that she is entitled to dissolution of marriage on the basis of khula as she has forgone her claim of dower and other dues as against the defendant. The defendant Mr. Samdani son of Ghulam Rabbani is directed to divorce Mst. Zahida forthwith and at the most within 7 days from the date of this judgment and decree. Decree of khula is hereby passed.

20. The defendant is hereby granted a period of 7 days to pronounce the Talaq through a written deed to the plaintiff. Should the plaintiff be compelled to pursue further litigation, including filing of the execution of the talaq by the defendant, he may incur additional costs and damages. Mr. Samdani is hereby reminded that for each day the plaintiff remains in this forced union, he may be subjected to civil imprisonment and compensation, starting at Rs. 5000/- per day which can be enhanced and may go up to any amount this Court deems appropriate for the redress of the psychological damage caused by the defendant to the plaintiff. Furthermore, if the defendant fails in giving a written talaq within 7 days, then the court will compel and make the defendant pronounce the talaq thereafter the court will hold Mr. Samdani responsible for the maintenance amount during the Iddat period, which shall be fixed by the court as per the circumstances.

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The order and decree, *ibid*, passed by the learned trial court was challenged in appeal before the learned Additional District Judge, Paharpur, D.I.Khan, however, the said appeal was dismissed vide judgement dated 09.01.2025. Being aggrieved, the petitioner has now approached this Court by way of the present petition, assailing the aforementioned judgment.

3. Arguments heard and record gone through carefully.

4. Before proceeding further, it is manifest to note that the appellate court, while entertaining the appeal against the decree of dissolution of marriage on the basis of khula under Section 10(4) of the Family Courts Act, 1964, has wrongly exercised its jurisdiction. In this regard, Section 14(2)(a) of the West Pakistan Family Courts Act, 1964 (WPFCA, 1964), being relevant, is reproduced hereunder: —

Section 14(3) of Act *ibid* is reproduced herein below:

Appeals.— (1) Notwithstanding anything provided in any other law for the time being in force, a decision given or a decree passed by a Family Court shall be appealable—

(a) to the High Court, where the Family Court is presided over by a District Judge, an Additional District Judge or a person notified by Government to be of the rank and status of a District Judge or an Additional District Judge; and

(b) to the District Court, in any other case

(2) **No appeal shall lie from a decree passed by Family**

Court—

(a) **for dissolution of marriage, except in the case of dissolution for reasons specified in clause (a) of item (viii) of section 2 of the Dissolution of Muslim Marriages Act, 1939;**

(b) **for dower [or dowry] not exceeding rupees [one hundred thousand];**

(c) **for maintenance of rupees [five thousand] or less per month.**

- (3) No appeal or revision shall lie against an interim order passed by a Family Court.
- (4) The appellate Court referred to in subsection (1) shall dispose of the appeal within a period of four months.]

In light of Section 14(2)(a) of the Act, no appeal shall lie against a decree passed by the Family Court for dissolution of marriage on the basis of khula under Section 10(4) of the Act. Moreover, section 14 explicitly provides that, notwithstanding anything contained in any other law for the time being in force, every decision or decree of the Family Court shall be appealable, save for a decree of dissolution of marriage under Section 10(4) of the Act. In this backdrop, from an admissibility point of view, the learned appellate court has clearly erred in law and has wrongly assumed jurisdiction to entertain and decide the appeal of the petitioner.

5. Adverting to the merits of the case, in the instant the prime issue that arises for consideration is: *whether, once a decree for dissolution of marriage on the basis of khula has been granted by the Court, is it within the jurisdictional competence of the Family Court to compel the husband to pronounce talaq through a written deed?* In the present case, the respondent No. 1 instituted a suit for dissolution of marriage which culminated in the grant of a decree by the learned Family Court solely on the basis of her statement—a practice well-established in matters of *khula* under section 10(4) of the Family Courts Act, 1964. However, the learned trial court went further and imposed certain conditions on the petitioner, *inter*

alia, directing him to issue a written *talaq* within ten days, failing which he was to be subjected to civil imprisonment, daily monetary penalties of Rs.5,000/-, and a warning regarding further litigation costs and damages. This action of the learned Family Court *prima facie* reflects a jurisdictional overreach.

6. Through this constitutional petition, the petitioner has challenged the impugned order on the following principal grounds:

- I. The trial court failed to apply the correct legal standard by treating *khula* as conditional upon a subsequent *talaq* by the husband.
- II. The punitive measures directed against the petitioner, in the absence of legal justification, are *ultra vires* and arbitrary.

Before addressing the contentions of petitioner, it is advantageous to reproduce the relevant provisions i.e section 10(4) of the West Pakistan Family Courts Act, 1964 which read as under:

10. Pretrial proceedings. – (1) When the written statement is filed, the Court shall fix an early date for a pretrial hearing of the case.

(2) On the date so fixed, the Court shall examine the plaint, the written statement (if any) and the precise of evidence and documents filed by the parties and shall also, if it so deems fit, hear the parties and their counsel.

(3) The Family Court may, at the pretrial stage, ascertain the precise points of controversy between the parties and attempt to effect compromise between the parties.

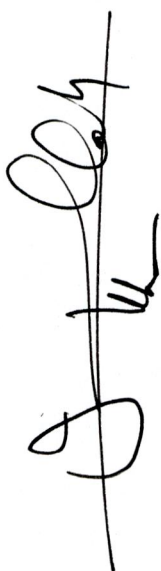
(4) Subject to subsection (5), if compromise is not possible between the parties, the Family Court may, if necessary, frame precise points of controversy and record evidence of the parties.



[Provided that notwithstanding any decision or judgment of any Court or tribunal, the Family Court in a suit for dissolution of marriage, if conciliation fails, shall pass decree for dissolution of marriage forthwith and also restore the husband the Haq Mehr received by the wife in consideration of marriage at the time of marriage].

(5) In a suit for dissolution of marriage, if reconciliation fails, the Family Court shall immediately pass a decree for dissolution of marriage and, in case of dissolution of marriage through khula, may direct the wife to surrender up to fifty percent of her deferred dower or up to twenty-five percent of her admitted prompt dower to the husband.

(6) Subject to subsection (5), in the decree for dissolution of marriage, the Family Court shall direct the husband to pay whole or part of the outstanding deferred dower to the wife.



From the bare reading of the section *ibid*, the following powers of the Family Court under section 10(4) are:

- a. If reconciliation efforts fail and the wife persists in her claim for khula, the court must pass a decree for dissolution — it is not discretionary.
- b. The section does not require the consent or appearance of the husband. The wife's statement of aversion is sufficient once reconciliation fails.
- c. The court is directed to pass the decree "forthwith," emphasizing an expedited process to protect the rights of the woman.
- d. Once the khula is decreed by the court, there is no legal obligation on the husband to pronounce or write a talaq. The judicial decree itself dissolves the marriage.

In short, under Section 10(4) of the Family Courts Act, 1964, the Family Court has clear statutory authority to dissolve

a marriage on the basis of khula when reconciliation fails and the wife persists. The court has no authority to compel the husband to issue a written talaq, nor to impose penalties for not doing so.

7. Perusal of the Dissolution of Muslim Marriages Act, 1939, as well as the West Pakistan Family Courts Act, 1964, reveals that no provision exists under either statute which authorizes or empowers a Family Court to compel a husband to pronounce or record a written talaq once a decree for dissolution of marriage, particularly on the basis of khula, has been passed by the Court. There are two statutes to which the Family Court exhausts its jurisdiction in passing a decree for dissolution of marriage on the basis of Khula, which follows as under:-

Dissolution of Muslim Marriages Act, 1939

This statute provides legal grounds upon which a Muslim woman may seek dissolution of marriage through judicial intervention. However, it is silent on any requirement or procedural mechanism obliging the husband to pronounce or reduce to writing a declaration of talaq following a court-decreed dissolution. The entire focus of the 1939 Act is on empowering the wife to seek relief, without rendering the effectiveness of such relief contingent upon any subsequent act by the husband.

West Pakistan Family Courts Act, 1964

Section 10(4) of the 1964 Act specifically empowers the Family Court to dissolve a marriage by way of khula if the wife satisfies the Court that she is unable to live with the husband within the limits prescribed

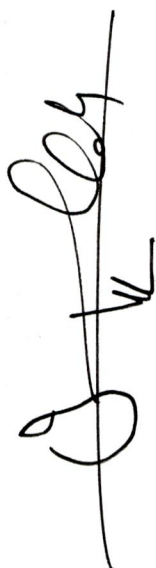


by Allah and reconciliation has failed. Once such a decree is passed, the dissolution takes effect by operation of law, and no further action is required from the husband to validate or complete the dissolution.

8. Notably, the statute does not prescribe or permit any compulsion upon the husband to issue a written talaq post-decree. To read into the statute such a requirement would be to add to the law what the legislature has not provided, which is impermissible under settled principles of statutory interpretation.

9. The judicial rationale behind it that the jurisdiction of Family Courts is statutory and limited to the powers expressly conferred by the Family Courts Act. Any attempt to direct the husband to pronounce or execute a written talaq, once the court has already dissolved the marriage by decree, would amount to an excess of jurisdiction and an unauthorized judicial command unsupported by any legislative backing. In sum, neither the Dissolution of Muslim Marriages Act, 1939 nor the West Pakistan Family Courts Act, 1964 contains any provision which enables a Family Court to compel the husband to pronounce or execute a written talaq following the grant of a decree for dissolution of marriage. The decree itself is legally efficacious, and the Court exhausts its jurisdiction upon passing such order.

10. It is settled law that once a decree for *khula* is passed by the competent court, the marriage stands dissolved and there remains no legal necessity to compel the husband to pronounce talaq, whether orally or in writing. The imposition of penal consequences i.e civil imprisonment and financial penalties are



also beyond the statutory mandate conferred upon Family Courts under the relevant laws, unless explicitly sanctioned by legislative provisions or through binding judicial precedents.

11. Be that as it may, apart from passing a decree for dissolution of marriage on the basis of *khula*, as mentioned earlier, the conditions imposed upon the petitioner by the learned trial court is a judicial overreach which cannot sustain in the eye of law. A judge is duty-bound to decide cases strictly within the ambit of authority conferred by law. Any exercise of power beyond the statutory framework amounts to judicial overreach, which is antithetical to the rule of law and undermines the integrity of the judicial process. When a court steps outside its jurisdiction or renders a decision in contradiction to established legal principles, such a decision is void ab initio—a nullity in the eyes of law. The judicial role is not one of personal discretion or subjective interpretation; rather, it entails interpreting and applying the law objectively, in line with binding precedent and statutory mandates. A judgment must reflect a logical and lawful reasoning process, not personal beliefs or considerations. Findings that fall outside the legal framework not only compromise the validity of the judgment but also erode public confidence in the justice system. The essence of a sound judicial decision lies in its adherence to legal reasoning, statutory interpretation, and fidelity to precedent, not in speculative or unfounded observations.

In this backdrop, it is evident that no powers are vested in the Family Court to impose such unwarranted and extraneous

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conditions upon the petitioner. These conditions are not only beyond the statutory mandate but same are also imposed in an arbitrary manner, hence, devoid of legal backing.

As the impugned order and decree of the trial court is arbitrary, perverse and in violation of law, hence, calls for interference of this Court in exercise of constitutional jurisdiction.

12. This Court, after having considered the record and the reasons advanced, finds merit in the grievance of the petitioner. Accordingly, this petition is partially allowed to the extent of upholding the decree for dissolution of marriage on the basis of *khula*. However, the remaining portion of the impugned order, whereby unwarranted conditions were imposed upon the petitioner by the learned Civil Judge-I, Paharpur, D.I.Khan, including directives for pronouncement of written *talaq*, civil imprisonment, and imposition of daily compensation is hereby declared to be erroneous, illegal, and without any lawful authority or statutory backing, hence, set aside. Consequently, this petition stands partly allowed in the above terms.

Announced
June 11, 2025
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04/07

JUDGE

(S.B)
Hon'ble Ms. Justice Inam Ullah Khan