JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.848/2018
Farooq Babar
Versus
Nousheen Afzal and others

Dates of Hearing:	17.10.2018 & 21.01.2019
Petitioner by:	Raja Ghulam Murtaza, Advocate,
Respondents by:	Mr. Shajjar Abbas Hamdani, Advocate for respondent No.1.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Farooq Babar, impugns the judgment and decree dated 01.02.2018, passed by the Court of Additional District Judge, Islamabad, whereby his appeal against the judgment and decree dated 29.11.2017, passed by the learned Judge Family Court, Islamabad, was dismissed. Vide the said judgment and decree dated 29.11.2017, the learned Judge Family Court decreed respondent No.1's suit to the extent of recovery of maintenance allowance at the rate of Rs.10,000/- per month from January 2015 until the expiry of the *iddat* period on 13.09.2016; and recovery of articles mentioned in para No.14 of the judgment from the petitioner.

2. Learned counsel for the petitioner submitted that the learned Courts below held respondent No.1 entitled for the recovery of past maintenance until the *iddat* period; that the concurrent judgments of the Courts below declaring respondent No.1 entitled for the recovery of past maintenance as well as articles that were mentioned in para 14 of the judgment passed by the learned Judge Family Court are against the law and facts of the case; that respondent No.1 is not entitled to the past maintenance as she on her own free will left the petitioner's house and thereafter, got the decree for dissolution of marriage on the basis of *khula*; that the learned Courts below also erred in holding that respondent No.1 was entitled to the recovery of articles as mentioned in para No.14 of the judgment passed by the learned Judge Family Court; that

the impugned judgments are based on misreading and non-reading of evidence; and that respondent No.1 failed to produce evidence to show that the petitioner was in possession of the articles mentioned in Exh.P.4, i.e. list of articles. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned counsel for respondent No.1 submitted that after respondent No.1 was forced to leave the petitioner's house, the latter did not pay maintenance to her; that at that time, the petitioner was serving as an official in a bank; that the petitioner did not plead that he was unable to pay respondent No.1 the quantum of maintenance fixed by the Courts below; that in the evidence, the petitioner himself admitted that he had not paid maintenance to respondent No.1 after she left her matrimonial abode ; that the learned Judge Family Court had rightly fixed the quantum of maintenance at the rate of Rs.10,000/- from the date when respondent No.1 was ousted from the petitioner's house until *iddat* period; that respondent No.1 was rightly held to have received articles mentioned in para 14 of the judgment by the learned Judge Family Court on the basis of bailiff's report; and that even otherwise, husband was under legal and moral obligation to maintain her wife until *iddat* period. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the parties.

5. The marriage between the parties is an admitted fact. The said marriage subsisted for more than six years. Respondent No.1 filed a suit for dissolution of marriage, maintenance, recovery of dowry articles and personal belongings. On 14.05.2016, respondent No.1 got the decree for dissolution of marriage and then vide judgment and decree dated 29.11.2017, the learned Judge Family Court, decreed the suit filed by respondent No.1 to the extent of recovery of maintenance allowance at the rate of Rs.10,000/- per month from January 2015 until the expiry of the

iddat **period on 13.09.2016. Furthermore, the petitioner was held liable to return the articles which were mentioned in para No.14 of the judgment to respondent No.1. The petitioner challenged the said judgment and decree dated 29.11.2017 in an appeal before the Court of learned Additional District Judge, Islamabad. Vide judgment and decree dated 01.02.2018, the petitioner's appeal was dismissed and as a result the judgment and decree dated 29.11.2017 was upheld.**

6. Admittedly, the marriage between the parties was dissolved on the basis of *khula*. There is nothing on the record to show that prior to the dissolution of marriage on the basis of *khula*, the petitioner/husband had filed a suit for restitution of conjugal rights.

7. The question that needs to be determined in this petition is that if a wife voluntarily abandons the house of the husband without any reason, whether she is entitled for past maintenance or not? It is the obligation of the husband to maintain his wife. Section 277 of Mohammadan Law by Mullah provides that husband is bound to maintain his wife so long as she is faithful to him and obeys his reasonable orders. But he is not bound to maintain a wife who refuses herself to him or otherwise disobeys him.

8. It is the duty of a Muslim wife to perform her part of obligation and then to claim maintenance. Where the husband may refuse to maintain his wife when she refuses to live with him and if a wife refuses to live in the house of her husband and not ready to perform her part of duty and denies to live with him as his wife, she is not entitled for maintenance. But this is not so where cruelty on her is established and the circumstances created by the husband or in the house of husband are such that the wife cannot live there peacefully and she has to abandon his house. When a wife successfully proves that she was forced to abandon the house of her husband then she is entitled to maintenance. The question whether the wife has voluntarily left the house of her husband or she was ousted from the house or she was forced to leave the house due to the cruel attitude of her husband has to be decided

on the basis of evidence. The cruel attitude is not confined only to the extent of physical violence but includes mental torture, hateful attitude of the husband or other inmates in the house and also includes other circumstances due to which the wife is forced to abandon the house of her husband. The word "cruelty" in Black's Law Dictionary (Eighth Edition) is defined as under:-

> ***'Cruelty. The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage.'***
>
> ***'legal cruelty. Cruelty that will justify granting a divorce to the injured party; specific., conduct by one spouse that endangers the life, person, or health of the other spouse, or creates a reasonable apprehension of bodily or mental harm.***
>
> ***mental cruelty. As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse.***
>
> ***Physical cruelty. As a ground for divorce, actual personal violence committed by one spouse against the other.'***

9. The dictionary meaning of word 'cruelty' clearly shows that cruelty may be mental or physical. Cruelty by conduct of a spouse also justifies the grant of divorce. Thus, it is clear that for proof of cruelty, infliction of injury is not required by law. In the case at hand, respondent No.1 had specifically taken the plea in the plaint that the petitioner and his family members used to treat respondent No.1 with cruelty and the Courts below have concurrently held so.

10. As regards the petitioner's contention that respondent No.1 is not entitled to recover the articles mentioned in para No.14 of the judgment, suffice it to say that the learned Judge Family Court had rightly held the petitioner liable to return the dowry articles mentioned in para 14 of the judgment as the attorney of respondent No.1 had been subjected to lengthy cross-examination, but as regards Exh.P.4 (i.e. list of dowry articles), he had not been cross-examined so as to ensure its authenticity or otherwise and as a result same remained unrebutted and unchallenged. Therefore, the petitioner was rightly directed to return the articles, detail whereof is provided in para 14 of the judgment and decree passed by the learned Judge Family Court.

11. Even otherwise, the learned counsel for the petitioner failed to point out any piece of evidence which was misread by the both the Courts below. As mentioned above, the learned Courts below had found that the petitioner/husband neglected to maintain his wife and had thus, violated his duty which a Muslim husband was under obligation to perform. The petitioner/husband having neglected to maintain his wife, she was entitled to past maintenance allowance as per the principle laid down in Muhammad Nawaz's case (PLD 1972 SC 302); and Bibi Mussarat's case (1990 CLC 1908). It is also settled proposition of law that maintenance to wife by husband is not *ex gratia* grant. A husband is obliged to maintain his wife. A wife is entitled to past maintenance even after obtaining decree for dissolution of marriage on the basis of *khula*. Guidance may be solicited in the case of Liaqat Ali Vs. The Additional District Judge and others (2000 YLR 2084, Lahore).

12. For what has been discussed above, the instant writ petition has no merit and same is accordingly dismissed. No order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019.

(JUDGE)

Qamar Khan*

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