JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1554 of 2017
Syed Muhammad Waqas
Versus.
Sania Batool and others

Date of Hearing:	**28.07.2017**
Petitioner by:	**Mr. Fazal ur Rehman Khan Niazi, Advocate.**
Respondents by:	**Malik Muhammad Siddique Awan, Advocate for respondent No.1.**

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Syed Muhammad Waqas, impugns the judgment and decree dated 10.03.2017, passed by the Court of the learned Additional District Judge, Islamabad, whereby the petitioner's appeal against the judgment and decree dated 31.10.2016, passed by the learned Judge Family Court, was dismissed. Vide the said judgment and decree dated 31.10.2016, the learned Judge Family Court, partly decreed the suit for recovery of dower, etc. instituted by respondent No.1.

2. Learned counsel for the petitioner submitted that it was never proved that respondent No.1 was ousted from her matrimonial abode, rather it has been admitted that she was taken to her parents' house by the petitioner; that the learned Courts below erred by granting respondent No.1 relief in excess of the entries made in the *Nikahnama*; and that the learned Courts below did not appreciate that Rs.25,000/- had been paid to respondent No.1 in the form of gold ornaments.

3. Learned counsel for the petitioner further submitted that the concurrent judgments passed by the learned Courts below were illegal, and not sustainable; that most of the documents were not produced by respondent No.1, but by her learned counsel, whose statement was not under oath; that the petitioner had raised objections to the documents brought on record on respondent No.1's behalf; and that the documents which have been "marked" have no evidentiary value in the eye of law. Learned counsel for the petitioner prayed for the

concurrent judgments of the learned Courts below to be set-aside.

4. On the other hand, learned counsel for respondent No.1 submitted that there has been no misreading or non-reading of evidence by the learned Courts below so as to warrant interference in their concurrent judgments; that this Court in exercise of constitutional jurisdiction could not interfere in the findings of the learned Courts below specially where such findings do not suffer from any jurisdictional infirmity; that it is well settled that the solitary statement of a wife was sufficient to prove her claim for recovery of dowry articles; that Section 17(1) of the West Pakistan Family Courts Act, 1964, provides that the provisions of the *Qanoon-e-Shahadat* Order, 1984, and the Code of Civil Procedure, 1908, do not apply to the proceedings before the learned Family Courts; that it has consistently been held that it is not possible for a wife to keep a record of each and every item purchased for her marriage; that this Court in its constitutional jurisdiction could only determine whether the subordinate Courts or tribunal had acted without jurisdiction or in violation of the law; that the mere fact that this Court would take a different view on the evidence would not warrant interference with the concurrent findings of the learned Courts below; and that this Court could not reappraise the evidence like a Court of appeal. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties, and perused the record with their able assistance.

6. The record shows that the petitioner and respondent No.1 got married on 08.08.2014. Subsequently, the relations between the couple turned sour. On 15.08.2015, respondent No.1 in exercise of her right to divorce given to her in column No.18 of the *Nikahnama*, sent a divorce notice to the Chairman of the Arbitration Council, Islamabad. The certificate for the effectiveness of the divorce was issued on 01.12.2015. On 02.09.2015, respondent No.1 instituted the above mentioned suit against the petitioner for the recovery of dower, amounting to

Rs. 25,000/-; gold ornaments weighing 17.9 *tolas*, and valuing Rs.8,75,000/-; dowry articles as per the list submitted by respondent No.1 or their market value of Rs.8,09,574/-; Rs.6,00,000/- allegedly extorted by the petitioner; maintenance at the rate of Rs.30,000/- per month from 08.08.2014 till the expiry of the *iddat* period; and *bari* articles valuing Rs.7,22,000/-. The petitioner contested the said suit by filling a written statement. From the divergent pleadings of the contesting parties, the learned Family Court framed the following issues:-

i *Whether the plaintiff is entitled for the recovery of maintenance from the defendant, if yes, at what rate, and for what period? OPP*
ii *Whether the plaintiff is entitled for the recovery of dower, amounting to Rs.25,000/- PKR? OPP*
iii *Whether the plaintiff is entitled for the recovery of gold ornaments weighing 17.9 Tolas or their prevailing market rate from the defendant? OPP*
iv *Whether the plaintiff is entitled for the recovery of dowry articles as per her list or value thereof @ 8,09,574/- PKR from the defendant? OPP*
v *Whether the plaintiff is entitled for the recovery of barri articles as per list or value thereof @ 7,22,000/- from the defendant? OPP*
vi *Whether the plaintiff is entitled to recover from the defendant, an amount of 6,00,000/- PKR extorted by the defendant from the plaintiff during Abadi period? OPP*
vii *Whether the plaintiff is entitled for a decree for the cancellation of all blank documents, got signed by the defendant? OPP*
viii *Whether the suit of the plaintiff is liable to be dismissed in the light of all the legal and factual objection raised by the defendant in his written statement? OPR*
ix *What the relief should be?*

7. Respondent No.1 entered the witness box as PW-1 and submitted her affidavit-in-evidence as Ex.P1. Hassan Afzaal appeared as PW-2 and also submitted his affidavit-in-evidence. The petitioner appeared as DW-1 and filed his sworn affidavit as Ex.D1. Vide judgment and decree dated 31.10.2016, the learned Family Court partially decreed respondent No.1's suit. Respondent No.1 was held entitled to the recovery of maintenance allowance at the rate of Rs.8,000/- per month only for the *iddat* period. She was held entitled to the recovery of deferred dower in the amount of Rs.25,000/-. Respondent No.1 was held entitled to the recovery of gold ornaments (i.e. items No.1 to 3 in the list (Ex.P19), for which the receipts were

produced). She was also held entitled to the recovery of some of the dowry articles for which she had been able to produce receipts. As regards the gold ornaments listed in Ex.P18, respondent No.1 was held entitled to the gold ornaments at serial Nos.2, 3, 7 to 10 of Ex.P18.

8. The petitioner's appeal against the judgment and decree dated 31.10.2016 was dismissed by the learned appellate Court, vide judgment and decree dated 10.03.2017. The said concurrent findings of the learned Courts below have been impugned by the petitioner in the instant writ petition.

9. The main thrust of the contentions of the learned counsel for the petitioner was that the requirements of the *Qanoon-e-Shahadat* Order 1984, had not been appreciated by the learned Courts below. In making the said submission, learned counsel for the petitioner did not appreciate the input of Section 17 of the West Pakistan Family Courts Act, 1964, which *inter-alia* excluded the operation of the provisions of the *Qanoon-e-Shahadat* Order, 1984, and the Code of Civil Procedure, 1908, from the proceedings before the learned Family Court, except to a limited extent.

10. This Court in its constitutional jurisdiction cannot undertake a reappraisal of the evidence. This is more so given that the findings of the learned trial Court and the learned appellate Court are concurrent in nature. It is well settled that concurrent findings on pure questions of fact, not suffering from any illegality such as misreading, non-reading, or a misconstruction of any material evidence, could not be interfered within the constitutional jurisdiction of this Court. Merely because a conclusion different from that arrived by the two Courts below was possible cannot be made a ground for interference with the concurrent findings on a point of fact. Reference in this regard may be made to the law laid down in the cases of Sheikh Muhammad Sadiq Vs. Elahi Bakhsh (2006 SCMR 12), and Muhammad Sharif Vs. Muhammad Afzal Sohail etc. (PLD 1981 S.C. 246).

11. The learned Family Court took the view that since respondent No.1, in her suit, had not pleaded that she started

living separately from her husband/the petitioner due to cruelty or non-payment of dower, she was not entitled to recover maintenance from the petitioner, because she had not fulfilled her matrimonial obligations. However, for the *iddat* period, she was held entitled to the payment of Rs.8,000/- per month. The reason why the learned Family Court did not grant the quantum of maintenance claimed by respondent No.1 was that the petitioner was not very well educated and dependant on his parents for finances. The findings of the learned Family Court on the issue of respondent No.1's entitlement to the maintenance, were upheld by the learned appellate Court.

12. As per column No.13 of the *Nikahnama,* Rs.50,000/- was fixed as dower. Out of the said amount, Rs.25,000/- was paid in the form of jewelry at the time of the marriage, whereas Rs.25,000/- was deferred. The petitioner could not give any proof of the payment of the deferred dower of Rs.25,000/-. Therefore, the learned Courts below concurrently decided the issue regarding the payment of deferred dower in respondent No.1's favour.

13. Respondent No.1 during the recording of evidence had produced the list of 17.9 *tolas* of gold ornaments, the recovery whereof was sought from the petitioner. The said list was exhibited as Ex.P19, whereas the receipts for the purchase of the gold ornaments were produced as Ex.P16 and P17. These gold ornaments were purchased just before the marriage-in-question. The petitioner, in his written statement, had pleaded that no dowry articles and jewelry was given to respondent No.1 by her parents. The learned Courts below gave credence to the receipts for the gold ornaments produced by respondent No.1 in her evidence as Ex.P16 and P17. The learned Family Court also referred to the wedding pictures of the contesting parties showing respondent No.1 wearing the gold ornaments in the list of the articles produced as Ex.P19.

14. The learned Courts below did not find respondent No.1 entitled to the recovery of Rs.6,00,000/- allegedly extorted from her by the petitioner. As regards the recovery of dowry articles, the learned Courts below held respondent No.1 entitled only to

the recovery of those items for which she could produce receipts.

15. The evidence on the record clearly shows that gold ornaments were pledged by the petitioner with the bank. The petitioner claimed that these were his own gold ornaments. However, the learned Courts below took into account the gold valuation certificate which included one neckless set with ear rings, one ring, one small jhomar, and one tikka. These items are also mentioned in the list of the *bari* articles submitted by respondent No.1. The value of these articles was assessed at Rs.2,15,606/- (at the rate of Rs.40,210/- per 10 grams of gold). The learned Courts below correctly held that *bari* articles were considered to be a wife's personal belonging. The learned Courts below also found the gold set described in the valuation certificate to be the same as the one worn by respondent No.1 in her *walima* pictures. As respondent No.1 had not been able to prove her ownership of the gold ornaments listed at serial Nos.1, 4, 5, and 6 of the list of *bari* articles (Ex.P18), she was held not to be entitled to the recovery of the said articles. On the basis of the gold valuation certificate as well as respondent No.1's pictures taken during her *walima*, she was held entitled to the recovery of the items listed at serial Nos.2, 3, and 7 to 10 or in the alternative half its price claimed by respondent No.1. Learned counsel for the petitioner could not point out any jurisdictional infirmity in the findings of the learned Courts below on this issue.

16. In view of the above, I do not find any jurisdictional infirmity in the concurrent findings of the learned Courts below. Resultantly, this petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Ahtesham*

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