IN THE HIGH COURT OF SINDH, AT KARACHI

Constitutional Petition No. S-1269 of 2024

(Muhammad Bilal Alvi Vs. Mst. Sumaiya and another)

Date of Hearing: 06.08.2025.
Date of Decision: 06.08.2025.

Syed Muhammad Ghufran Basit, Attorney of the Petitioner in person.
None present for the Respondent.

J U D G M E N T

Muhammad Osman Ali Hadi, J.: The Petitioner through the instant Constitutional Petition has impugned the judgment dated 26.07.2024[1] ("**Impugned Judgment"**) vide which the learned IV[th] Additional District Judge, Karachi East dismissed the Petitioner's Appeal[2] upholding the Judgment & Decree[3] dated 08.03.2024 passed by the VII[th] Family Judge & Judicial Magistrate, Karachi East (**"the Order"**) in Family Suit No. 3329 of 2023.

2. The prelude of events is that the Respondent No.1 was married to the Petitioner on 24.02.2020[4], on consideration of dower amount of Rs.80,000/- which she had been paid by the Petitioner. One child, namely Master Abdul Rehman (**"Minor"**) was born from the wedlock, who was approximately 10 months old at the time the Suit was filed. Respondent No.1 filed a Family Suit No.3329/2023 in the Court of VII[th] Family Judge & Judicial Magistrate, Karachi East seeking dissolution of marriage by way of Khula, as well as seeking maintenance and recovery of dowry articles.

3. The matter was contested by the parties, whereby the Petitioner in the said Suit claimed that he had paid Respondent No.1 a dower amount of Rs.35,00,000/- (and not Rs.80,000/- as stated by Respondent No.1).

4. Accordingly, issues were framed and after which the Order was passed which *inter alia* held there was no evidence that the Petitioner had paid Rs.35,00,000/- to Respondent No.1 as part of the dower, particularly

---

[1] Impugned Judgment dated 26.07.2024 at Page 27 of the Court's File.
[2] Appeal No.153/2024
[3] Judgment dated 08.03.2024 passed in Family Suit No.3329/2023 at Page 41 of the Court's File

[4] The date of marriage stated by the Petitioner is said to be 14.02.2020, but since none of the proceedings turn on the date of marriage itself, the same bears no relevance.

considering that the Petitioner himself stated that he earns only Rs.35,000/- per month (and therefore it would appear exaggerated for him to have given a large sum of Rs. 35,00,000/- as dower). This issue was decided in favour of Respondent No.1, whereby it was held that she had been paid the dower amount of Rs.80,000/-, which had already been returned by her through depositing the same before Nazir of the Family Court. Subsequently, a Khula was granted to her.

5. In the same Suit it was held that the Petitioner was directed to return dowry articles belonging to Respondent No.1, which included a Sofa Set, Table, Two fans, Dining table, Stove, Chairs, Curtains, Carpet, Stand fan and some crockery; or alternatively to pay Respondent No. 1 Rs.150,000/- as a lumpsum in lieu thereof.

6. The Petitioner was also directed to pay monthly maintenance for the Minor child (approximately 10 months of age at such time) @Rs.5000/- per month until the date of the Order, and thereafter @Rs.7,500/- per month, with an annual increment of 10%.

7. Against the Order, the Petitioner filed a Family Appeal No.153/2024 before IVth Additional District Judge, Karachi - East who upheld the Order dated 08.03.2024 of the Trial Court, vide the Impugned Judgment dated 26.07.2024, against which the instant Constitutional Petition has been filed.

8. I have heard the arguments submitted by the Petitioner (through his attorney) and have perused the Impugned Judgment(s) as well as the documents available on record.

9. The Family Trial Court's Order dated 08.03.2024 is a speaking order and the learned Judge has discussed each matter individually, on which, she has reached an adjudication.

10. The said Trial Court's Order has clearly shown that the Petitioner failed to produce any evidence at all to substantiate his claim that he paid Respondent No.1 the dower amount of Rs.35,00,000/-. In fact, and to the contrary, the said Order clearly shows that even the witnesses produced at the trial stage did not corroborate fixation of the dower amount at Rs.35,00,000/-; nor did they validate that any such amount was paid by the Petitioner at the time of the Nikkah. Moreover, the Petitioner himself in

his evidence has admittedly not provided any proof of payment of the alleged amount of dower as claimed by him.[5] In the case of *Asif Mushtaq v District Judge Rawalpindi & Ors.*,[6] the Supreme Court held that a husband's simple statement (without providing evidence relating to dower amount/payment) cannot be considered as proof. The relevant portion of the said case is reproduced as under:

> *"Be that as it may, it was a discretionary order passed by Family Court after recording the entire evidence and going through the facts and circumstances emerging from the instant case. As regards amount dower, it is contended by learned counsel for the petitioner that the same had been waived by respondent herself. There is no cogent evidence except the statement of the petitioner, which of course, cannot be equated with the proof of waiver and similar is the case with the return of dowry articles. Resultantly, no case or interference with the order impugned is made out, therefore, this petition is dismissed and leave to appeal refused."* (Emphasis supplied)

11. For reasons aforementioned, I find no requirement for interference with the Impugned Judgement on this ground.

12. The second issue related to Respondent No.1 seeking return of her dowry articles which were given to her at the time of marriage. First and foremost, the Appellant himself has admitted to dowry being given to the Respondent No. 1.[7] Secondly, it transpires that the Bailiff of the Trial Court was appointed as a Commissioner vide consent order dated 24.10.2023 and submitted a Report consequently.[8] The Bailiff went to the house of the Petitioner and confirmed a list of dowry articles vide his Report dated 01.11.2023, whereby it transpired that certain dowry articles belonging to Respondent No.1 such as "Sofa Set, Table, Two fans, Dining tables, Stove, Chairs, Curtains, Carpet, Stand Fan and some Crockery" were still in possession of the Petitioner. The articles were subsequently directed to be returned to Respondent No.1. It is established law that dowry articles once given becomes the property of the wife / woman, and she holds complete legal right to claim the same. Under the *Dowry and Bridal Gifts (Restriction) Act 1976* (**"1976 Act"**) section 2(b) defines 'dowry' as:

[5] Cross-Examination at pg. 129 of the File
[6] 2006 SCMR 701
[7] In his cross-examination, at pg. 129 of the File
[8] At pg. 5 of the Trial Court Order, at pg. 51 of the File

> *"2(b)"dowry" means any property given before, at or after the marriage, either directly or indirectly, to the bride by her parents in connection with marriage but it does not include property which the bride may inherit under the laws of inheritance and succession applicable to her;"*

Section 5 of the 1976 Act reads:

> *"**5. Vesting of dowry etc., in the bride**. All property given as dowry or bridal gifts and all property given to the bride as a present shall vest absolutely in the bride and her interest in property however derived shall hereafter not be restrictive, conditional or limited.*

13. The above definition provides that any property given as dowry remains property of the woman, and in no situation would her husband have any lien over the same. This point was strongly emphasised by the Apex Court in the recent case of *Muhammad Sajid v Mst. Shamsa Asghar*[9] whereby it was held:

> *"5. The legislative intent underpinning Section 5 is to secure the independent proprietary status of the bride and to shield her from dispossession, particularly in the event of marital breakdown. A purposive interpretation of this provision necessarily confines the scope of recoverable property to that which is demonstrably intended for the bride. Accordingly, items gifted to the groom or his relatives, unless clearly shown to be intended for the bride's use or held in trust for her benefit, fall outside the protective ambit of the Act."*

14. Respondent No. 1 claimed specific dowry items belonging to her, which were found by the Bailiff-Commissioner at the Petitioner's premises. Furthermore, the Petitioner has admitted in his cross-examination that Respondent No. 1 came to the marriage with dowry articles. Even otherwise, in family matters, evidentiary requirements in proving existence of dower are less stringent than those required in regular civil litigation.[10] In light of the aforementioned, the dowry articles confirmed by the Bailiff-Commissioner belong to Respondent No. 1, which remain her property. Therefore, I find the judgements below have accurately considered this issue in accordance with law, finding favour for the Respondent No. 1.

[9] PLD 2025 SC 461 (NB: Facts in the cited case were different)
[10] PLD 2025 SC 434 & Section 17 Family Court's Act 1964

15. The next issue deliberated upon pertains to maintenance of the Minor, who is the child of the Petitioner and Respondent No. 1. The maintenance amount for the Minor to be paid by the Petitioner was set at Rs. 5000/- *per mensem* from 28.11.2022 until date of the Suit Decree, and thereafter @ Rs. 7500/- per month. The Petitioner in his cross examination has admitted that since 28.11.2022, he has not been paying any maintenance towards the Minor. Section 17-A of the *Family Court's Act 1964* (**"1964 Act"**) provides in the event the Family Court sets a maintenance amount and the said amount is not paid, the party defaulting on payment of maintenance shall, *inter alia*, be liable to have their defence struck off. In the instant case, as it is an admitted position the Petitioner has not paid any maintenance towards the Minor (despite being ordered to do so), I find that entertaining his continual litigious actions are contrary to the sanctity of the legal process, as well as to directions given by the Family Court, which have been blatantly disregarded by the Petitioner. Entertaining the Petitioner's repeated litigation would be tantamount to condoning the Petitioner's unruly behaviour in not paying Court-ordered maintenance to the Minor. Any appeal or petition which stems from challenging an order of a forum below, may be considered as a continuum of the proceedings below. By such extension, since the forum below (i.e. the Family Court in the instant matter) has passed an order for maintenance, which to-date remains in non-compliance, the Petitioner holds no ground to pursue the instant Petition, without having first fulfilled directions given by the Trial Family Court (to pay maintenance).

16. In the recent case of *Shahzad Amir Farid*,[11] a 3 Member Bench of the Hon'ble Supreme Court held:

> *"3. The learned counsel for the petitioner was unable to point out any substantive illegality, procedural impropriety and decisional irrationality in the order of the Family Court. The Family Court, in accordance with Section 17-A of the Act, had the lawful authority to strike off the defence of the petitioner and decree the suit for maintenance on the basis of averments in the plaint and other supporting documents on record of the case, once the petitioner failed to pay the interim maintenance allowance by fourteenth day of each month during the pendency of proceedings. The petitioner was also put to notice by the Family Court to clear the arrears of interim maintenance allowance otherwise the provisions of Section 17-A of the Act would be invoked, which the petitioner failed to comply with. Moreover, the determination of the amount of maintenance by the Family Court is neither arbitrary nor capricious. Hence, the High Court in the exercise of its constitutional*

[11] 2024 SCMR 1292

> *writ jurisdiction, has rightly declined to interfere with the findings of the Family Court with regard to the quantum of maintenance allowance. Thus, the petition is ill-founded and ill-advised, and is accordingly dismissed."*
>
> *"4. We note with grave concern that the conduct of the petitioner leaves a lot to be desired. It falls significantly short of the expected standards of fairness and amounts to gross abuse of the process of the Court. The persistent dragging of the matter from one court to another constitutes vexatious litigation, and adds to undue delay and overburdening of the Courts. Such frivolous petitions need to be strongly discouraged. Therefore, in view of the callous disregard of the petitioner for the court order to pay interim maintenance and his attempts to delay the payment of decreed maintenance allowance for his minor children, we feel inclined to impose costs on the petitioner in the sum of Rs. 1,00,000/- (Rupees one hundred thousand only) to deter such conduct in the future. The costs shall be recovered by the executing court as part of the decree for maintenance.*
> *MWA/S-16/SC Petition dismissed."*

17. Following the dictum above-referenced, and in consonance with principles of law and justice, I find the Petitioner's *locus standi* to be questionable at this stage. The Petitioner has been dragging the Respondent No. 1 through various stages of litigation. The fact that the Petitioner has done the same without payment of the maintenance amounts, speaks volumes about his ill-intentions. He appears to be deliberately prolonging the matter in an attempt to apply pressure on the Respondent No. 1 to forgo her rights, whilst also attempting to exhaust her resources through his litigious actions.

18. In the Impugned Judgment dated 26.07.2024, the learned Appellate Judge also noted that the Petitioner had filed cases to put undue pressure on Respondent No.1 in an attempt to force her to give up her maintenance amounts. Therefore, even on this issue, I have found no legal ground that warrants interference with the Impugned Judgement(s) below.

19. As per the arguments put forth on behalf of the Petitioner by his attorney, no legal ground to support the same were provided for challenging the concurrent findings below. The attorney for the Petitioner simply stated that the maintenance amount and Order of the Trial Court as well as the Impugned Judgment were incorrect, but was unable to show

any error in law or misreading of any evidence.[12] It is settled law that this Court in its Constitutional Jurisdiction should not interfere and substitute its own findings in family matters, particularly where there are already concurrent findings in place.[13] This Court should only interfere when extraordinary circumstances arise, where a blatant disregard of law and/or process appears. Neither of these scenarios exist in the present circumstances.

20. I find the Petitioner has not shown any cogent reasons for interfering with the Impugned Judgement(s) below regarding maintenance for the Minor, and as such this contention of the Petitioner is also repelled.

21. Therefore, in light of the foregoing, I have found the actions of the Petitioner throughout to be *mala fide* and he does not deserve indulgency of this Court. Furthermore, this kind of behaviour conducted by the Petitioner in violating orders of the court by failing to pay maintenance to his Minor child; as well as attempting to deny the Respondent No. 1 her own dowry property whilst dragging her through needless litigation; ought to be severely reprimanded, for which the Petitioner is hereby admonished. The Petitioner is directed to follow orders passed by the Court's below, as is his legal obligation to do so. Having failed to establish any grounds to support the maintainability of the instant Petition, this instant Petition is dismissed accordingly.

These are the reasons for my short order dated 06.08.2025.

JUDGE

M. Khan

[12] Apart from alleging the date of the marriage between the parties was incorrect, but as already stated the same has no essential bearing on the Impugned Judgement(s). *Ref: footnote 4 ibid.*
[13] Reliance may be placed on 2025 SCMR 1307