

*Order Sheet***IN THE HIGH COURT OF SINDH, KARACHI****C.P. No.S-686 of 2024**

[Muhammad Saqib vs. Mst. Saima Rahim & Others]

Petitioner Through Mr. Bilal Memon, Advocate.
 Respondents M/s. Naveed Ahmed and M. Humul S Zubedi, Advocate
 Date of Hearing: 13.08.2025.
 Date of Order: 13.08.2025.

ARSHAD HUSSAIN KHAN, J. This Constitutional Petition assails the consolidated Judgment and Decree dated **20.04.2024** (*Impugned Judgment*), passed by learned Additional District & Sessions Judge-IV, Karachi (Central) in Family Appeals No. 73 and 84 of 2023. The said appeals were preferred against the Judgment and Decree dated **17.04.2023**, rendered by learned XIIth Family Judge, Karachi (Central) in Family Suit No. 1487 of 2021.

2. Succinctly, the facts of the matter are that the respondents/plaintiffs have filed suit for maintenance & recovery of dowry articles and dower amount against the petitioner Muhammad Saqib before the learned trial court with the following prayers:

- a. To grant maintenance of plaintiff No. 1, at the rate of Rs. 25,000/- per month w.e.f. 24-11-2017, till 26-05-2021, comes to 42 months in the sum of Rs. 10,50,000/= lacs and direct the defendant to deposit the same with the Nazir of this Hon'ble Court.
- b. To grant maintenance of plaintiff No. 2 at the rate of Rs. 25,000/- per month since his birth till filing of suit and also direct the defendant to deposit the same with the Nazir of this Court.
- c. To, direct the defendant to pay dower amount in the sum of Rs.50,000/- to the plaintiff as the same is still unpaid.
- d. To direct the defendant to handover all the dowry articles /gold articles to the plaintiff No.1 according to Annexure B, list of dowry articles failing which in the sum of Rs. 45,00,000/= to the plaintiff No. 1, as the annexure B receiving also available. To direct the defendant to pay all the medical expenses.
- e. Grant future maintenance of the plaintiff No.1, at the same rate till final disposal of suit.
- f. Cost of the suit.
- g. Any other further relief or relief or relieves whatever this Hon'ble Court may deem fit in the circumstances of the case.

3. Before the learned trial court, the petitioner /defendant contested the family suit by filling written statement, denied the claim of the respondent/plaintiff and prayed for dismissal of the family suit. Thereafter, issues were framed; evidences of the parties were recorded; and the suit was decreed as follows :

“The suit of the plaintiff No.1 is decreed and the defendant is directed to pay past maintenance for one month at the rate of Rs.8000/- and for iddat period maintenance of three months at the rate of Rs.10,000/- per month. Due to medical condition of plaintiff No.2, the defendant is directed to pay maintenance from May, 2021, at the rate of Rs. 6000/- per month till date of decree and future maintenance at the rate of Rs.8000/- per month till minor attains the age of majority with 15% annual increase. The defendant is further directed to pay dower amount Rs.50,000/- to the plaintiff No.1. No order as to costs.”

4. Against the aforesaid judgment of the family judge, both the parties, i.e. the respondent/plaintiff and the petitioner/defendant filed their appeals viz. Appeal No.73/2023 and Appeal No.84/2023 respectively. The appellate court while disposing of both the above said appeals by one consolidated judgment dated 20.04.2024, impugned herein, dismissed the Appeal No.84/2023, filed by the petitioner-Muhammad Saqib, and allowed the Appeal No.73/2023, filed by respondent-Mst. Saima Rahim by modifying the judgment of the learned family court in the following manner:

- a) The suit of plaintiff/appellant is decreed to recover past maintenance for one month only @ Rs.8000/- and iddat period maintenance for three months @ Rs. 10,000/- per month as observed by the trial court is hereby maintained.
- b) The suit of plaintiff/appellant is decreed to receive dowry articles in the shape of gold ornaments as per list of dowry articles, being declined by the trial court is hereby granted to her as per list of dowry articles in the shape of gold ornaments, in case of loss or destroyed the said items, she is entitled to receive alternate amount of Rs.45,00,000/- is hereby modified.
- c) The suit of plaintiff/appellant is decreed in favor of minor son (plaintiff No. 2) to recover past maintenance from May 2021 @ Rs.6000/- per month till passing of decree and future maintenance @ Rs.3000/- per month till he attains the age of majority with 15% annual increase is hereby reversed and the relief in this regard for the maintenance of minor son (Plaintiff No. 2) is hereby granted to the extent of Rs.15,000/- per month from May 2021 till passing of decree and future maintenance @ Rs.20,000/- per month with 15% annual increase, while looking to the health and other parameters of minor son, who is special child under the facts and circumstances of present case.
- d) The suit of plaintiff/appellant is decreed to receive dower amount of Rs.50,000/- being unpaid by the

defendant/respondent, as observed by the trial court is hereby maintained.

- e) Parties shall bear their own cost.

5. Learned counsel for the Petitioner has argued that the *Impugned Judgments* are the result of misreading, non-reading, and misappreciation of the evidence on record, thereby causing grave miscarriage of justice and rendering the same liable to be set aside. It is contended that the learned appellate court failed to appreciate that the respondent neither produced receipts nor adduced any independent witness to substantiate her claim with respect to the dowry articles and gold ornaments. Nevertheless, the learned appellate court erroneously granted the relief of dowry articles and ornaments merely on the basis of a list, without any cogent or reliable evidence. It is further submitted that the petitioner never possessed any dowry article in the form of gold ornaments, as falsely alleged by the respondent, which aspect was rightly declined by the learned trial court. Learned counsel argued that the appellate court, without properly considering the evidence and without any supporting documentary proof, arbitrarily enhanced the maintenance from Rs. 8,000/- to Rs. 20,000/-, solely on the premise that the minor is a special child. Moreover, learned appellate court failed to appreciate the actual financial condition of the petitioner, who is not in a position to bear such an exorbitant burden of maintenance. It was, therefore, urged that the enhancement of maintenance is wholly unjustified and liable to be reversed. Lastly, it was submitted that the *Impugned Judgment* is unsustainable in law and facts, therefore, liable to be set aside.

6. Learned counsel for the respondents has argued that all the dowry articles, valuable belongings, and gold ornaments—including ten (10) gold sets, each weighing approximately twenty-four (24) grams, totaling two hundred and forty (240) grams, in addition to three and a half (3½) tolas of gold, together with one hundred and two (102) other household articles amounting to Rs. 45,00,000/—are in the exclusive possession of the petitioner/defendant. It has further been contended that the dower amount remains unpaid, and the petitioner has also failed to discharge his legal and moral obligation to maintain the minor, particularly in respect of the medical treatment, the expenses of which were borne entirely by the respondent's family to the tune of Rs.

3,50,000/-. Learned counsel has urged that the *impugned judgment* of the learned appellate court was rightly passed on a proper appreciation of the facts and the evidence led by the respondent before the learned trial court. Lastly, it has been prayed that the present petition, being devoid of merit, may be dismissed in the interest of justice.

7. Heard learned counsel for the petitioner, perused the record and the relevant law.

The record transpires that the trial/family court, granted the maintenance to the plaintiffs, awarded dower amount, however, declined the claim of golden ornaments. The appellate court, however, while exercising appellate jurisdiction, modified the judgment of the trial court to the extent of maintenance and dowry articles/gold ornaments.

8. It may be observed that when the findings of fact by the trial and the appellate courts are contrary to the evidence and material on the record, or are against the law, this Court, in exercise of its writ jurisdiction, has the power to rectify such findings in order to align them with the evidence on the record or to remove any illegality arising from the judgment¹.

9. The record reveals that the learned trial court, after framing proper issues, recorded evidence of both the sides, evaluated the same in accordance with law, and upon such appraisal, granted maintenance to the plaintiffs to the extent duly established, and awarded the dower amount. However, the trial court rightly declined the claim of gold ornaments/dowry articles for want of reliable evidence. Learned appellate court, while exercising appellate jurisdiction, materially deviated from the well-settled principles by modifying the judgment to the extent of maintenance, dowry articles, and gold ornaments, without citing or relying upon any cogent evidence on the record, and thereby substituted its own conjectural findings in place of evidence.

10. Insofar as the claim of dowry articles and golden ornaments is concerned, the record reflects that almost the entire dowry, as per the list, had already been returned to the respondent/plaintiff pursuant to the court's orders. However, since the respondents neither produced

¹ Mst. Tayyeba Ambareen and another v. Shafqat Ali Kiyani and another [2023 SCMR 246],

any independent witness nor furnished any cogent documentary evidence in respect of the alleged gold ornaments, the trial court rightly declined such relief. Mere self-serving statements without corroboration cannot discharge the burden of proof, particularly when such a claim was specifically denied in the written statement. The principle has been consistently upheld by the superior courts that “the party asserting a fact must prove it with independent and reliable evidence, and bald statements are insufficient². Thus, in absence of reliable evidence, the claim for golden ornaments could not be decreed merely on oral assertions. The appellate court, therefore, fell in grave error by granting golden ornaments worth Rs. 45,00,000/- without any lawful basis.

11. Likewise, regarding the enhancement of maintenance of the minor from Rs. 8,000/- as determined by the trial court to Rs. 20,000/- per month, it appears that the appellate court was swayed merely by the plea that the minor is a “special child.” While there is no cavil to the principle that a father is under a statutory and moral duty to maintain his minor child in proportion to his means³ and further the quantum of maintenance must be determined strictly on the basis of credible evidence as to both (i) the needs of the child, and (ii) the financial position of the father. In the present case, except for bare assertions, no medical reports, prescriptions, or reliable documentary proof of special medical needs were brought on record to justify such an exorbitant increase. Similarly, no evidence was produced to establish the petitioner’s actual income, assets, or earning capacity. The trial court, after considering the available material, had fixed a reasonable amount of Rs. 8,000/- per month with an annual increase of 15%, which sufficiently catered for future contingencies. The Appellate Court’s enhancement without any supporting evidence amounts to misreading and non-reading of the record, constituting material illegality.

12. It is a trite principle of law that an appellate court cannot even lightly interfere with findings of fact recorded by a trial court unless such findings are shown to be perverse, arbitrary, or contrary to the

² *Muhammad Subhan and another v. Mst. Bilquis Begum through legal heirs* [PLD 1994 Karachi 106];

³ *Humayun Hassan v. Arsalan Humayun and another* [PLD 2013 SC 557]; *M. Saleem Ahmad Siddiqui v. Sabira Begum and others* [2001 YLR 2329] and *Syed Salim Imtiaz through Syed Imtiaz Hussain v. Muhammad Salim and 2 others* [2004 MLD 1548]

record. Interference with factual conclusions must be rooted in a proper appraisal of the evidence and not upon surmises or conjecture. In the instant case, the learned appellate court's judgment is vitiated by misappreciation of evidence and, therefore, is unsustainable in the eyes of law.

13. In the facts and circumstances of the case, I am of the considered view that the *Impugned Judgment* dated 20.04.2024, passed by the learned IV Additional District & Sessions Judge, Karachi (Central) in Family Appeal No. 73 of 2023 and Family Appeal No. 84 of 2023, to the extent of modification of the trial court's decree, is not sustainable in law. Accordingly, the same is hereby set aside, and the judgment and decree dated 17.04.2023, passed by the learned XII Family Judge, Karachi (Central) in Family Suit No. 1487 of 2021, stands restored. Consequently, the instant constitutional petition is allowed in the above terms. Parties are left to bear their own costs.

JUDGE

*Jamil****