

**IN THE HIGH COURT OF SINDH AT KARACHI**

**C.P.No. S-921 of 2024**

***Idrees Ahmed Khan***  
***Versus***  
***Mst. Salma Bibi and others***

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Date	Order with Signature of Judge
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**Date of Hearing: 16.02.2026.**

**Date of Order: 02.03.2026.**

Mr. Aftab Ahmed, Advocate for the Petitioner.

Mr. Javed Haleem, Advocate for the Respondent No.1.

**ORDER**

**ZULFIQAR ALI SANGI, J:** Through the instant Constitutional Petition instituted under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (***“the Constitution”***), the Petitioner, Idrees Ahmed, has assailed the legality, validity and propriety of: ***(i)*** the judgment dated 16.10.2023 rendered by the learned XIX Family Judge, Karachi South in Family Suit No.18/2018; and ***(ii)*** the order dated 24.05.2023 passed by the learned XII-Additional District Judge, Karachi South in Family Appeal No.88/2024, whereby the appeal preferred by the Petitioner, along with an application under Section 5 of the Limitation Act, 1908 seeking condonation of delay, was dismissed as time-barred.

2. The lis emanates from matrimonial discord between the Petitioner and Respondent No.1, whose marriage was solemnized on 04.10.2015 in accordance with Sunni Muslim Law and duly registered through a Nikahnama. The dower (Haq Mehr) was stipulated therein at Rs.3,000/-. Subsequently, owing to estrangement between the spouses, Respondent No.1 instituted Family Suit No.18/2018 seeking recovery of maintenance, iddat maintenance, dower, dowry articles and gold ornaments. The suit was initially decreed on 07.03.2019 by the learned XIX-Civil Judge/Judicial Magistrate (Family Judge), Karachi South, awarding iddat maintenance in the sum of Rs.30,000/, dowry articles or their value assessed at Rs.200,000/-, and dower amounting to Rs.3,000/-.

3. The said judgment was assailed through Family Appeal No.64/2019, whereupon the learned XII-Additional District Judge remanded the matter to the Trial Court for recording the evidence of the Nikahkawan, Mufti Abdul Manan. Upon remand, the learned Family Judge, vide judgment dated 16.10.2023, again decreed the suit; however, in addition to the earlier relief, it was held that Respondent No.1 was entitled to dower in the form of 7¼ tola gold jewellery or its prevailing market value. Aggrieved thereby, the Petitioner preferred Family Appeal No.88/2024, which was dismissed on 24.05.2023 on the ground of limitation.

4. The Petitioner has, therefore, invoked the extraordinary constitutional jurisdiction of this Court seeking, inter alia, setting aside of the impugned orders, condonation of delay in filing the appeal, and remand of the matter for adjudication on merits. He has further impugned the direction of the learned Trial Court for initiation of proceedings under Section 193, Pakistan Penal Code, 1860, on allegations of perjury relating to the Nikahnama, and has prayed for recall of warrants issued in execution proceedings.

5. Learned counsel for the Petitioner contended that the present petition is maintainable as the impugned orders suffer from jurisdictional infirmities, misreading and non-reading of material evidence, and arbitrary exercise of judicial discretion, thereby occasioning grave miscarriage of justice. It was urged that the learned Appellate Court failed to exercise discretion in consonance with settled principles while dismissing the appeal along with the application under Section 5 of the Limitation Act, 1908. For the delay, it was argued, was neither deliberate nor mala fide; the Petitioner's previous counsel had expired and, being a resident of Khyber Pakhtunkhwa, he remained unaware of the pronouncement of judgment dated 16.10.2023. Such explanation, according to learned counsel, constituted "**sufficient cause**" within the contemplation of Section 5 of the Limitation Act. Reliance was placed on the settled proposition that procedural laws are subservient to the cause of justice and that matters ought to be adjudicated on merits rather than dismissed on technicalities. It was asserted that the learned Appellate Court adopted a rigid and mechanical approach by invoking the maxim *vigilantibus*

non dormientibus jura subveniunt without appreciating the peculiar facts of the case.

6. On merits, learned counsel argued that the learned Trial Court gravely erred in awarding dower in the form of 7¼ tola gold jewelry or its market value despite the Nikahnama, a registered document, explicitly stipulating the dower at Rs.3,000/-. Respondent No.1 admitted her signatures on the Nikahnama, and the Nikahkhan, examined as a Court witness, affirmed its contents. It was contended that there was no specific pleading or categorical assertion claiming 7¼ tola gold as dower; hence, the relief granted was beyond pleadings and contrary to the settled principle that no party may travel beyond its pleadings. It was further submitted that the Respondent failed to adduce cogent and legally admissible evidence to substantiate the list and valuation of dowry articles. The documents marked as Ex.P/2 and Ex.P/3 were neither duly proved in accordance with the Qanun-e-Shahadat Order, 1984 nor supported by independent evidence such as purchase receipts. Despite such evidentiary deficiencies, the Trial Court decreed recovery of dowry articles or their alleged diminished value of Rs.200,000/-, which finding, according to counsel, is perverse and unsupported by the record.

7. The direction for initiation of proceedings under Section 193 PPC was also assailed as having been issued without framing specific issues or recording a definitive finding of intentional fabrication, thereby violating due process safeguards. Learned counsel maintained that although concurrent findings of fact are ordinarily immune from interference in constitutional jurisdiction, this Court may intervene where findings suffer from misreading or non-reading of evidence or jurisdictional defect, which, it was contended, is the case herein. Accordingly, it was prayed that the appellate order dated 24.05.2023 be set aside, delay be condoned, the matter be remanded for decision on merits, and the impugned judgment dated 16.10.2023 be declared illegal to the extent of awarding 7¼ tola gold and directing initiation of proceedings under Section 193 PPC, with consequential stay or setting aside of execution proceedings.

8. Conversely, learned counsel for Respondent No.1 raised a preliminary objection regarding maintainability, contending that the

scope of jurisdiction under Article 199 of the Constitution does not extend to reappraisal of evidence unless the impugned findings are shown to be perverse, coram non iudice, or without lawful authority. It was argued that the appeal was hopelessly barred by limitation and no sufficient cause was demonstrated. Mere averments regarding death of counsel or ignorance of proceedings, it was submitted, do not absolve a litigant of the duty to proceed his case diligently. The maxim *vigilantibus non dormientibus jura subveniunt* was said to squarely apply, and the discretionary order refusing condonation does not warrant interference.

9. On merits, it was contended that the Nikahnama was disputed during trial and serious allegations of fabrication were raised. After remand and recording evidence of the Nikahkawan, the Trial Court returned a finding regarding entitlement to 7¼ tola gold ornaments or its value, which finding is based on appreciation of oral and documentary evidence and is not amenable to re-evaluation in constitutional jurisdiction. It was further argued that dowry articles were entrusted to the Petitioner at the time of marriage and remained in his possession. In family disputes, strict standards of proof applicable to commercial transactions are not invariably required, and Family Courts are empowered to adopt a less technical approach consistent with the West Pakistan Family Courts Act, 1964. The award of Rs.200,000/- as diminished value, it was contended, is founded upon judicial assessment and evidence on record. It was emphasized that Respondent No.1 was awarded only iddat maintenance of Rs.10,000/- per month for three months, totaling Rs.30,000/-, while the remainder of her maintenance claim was declined, demonstrating that the decree is balanced and not arbitrary.

10. With regard to execution proceedings, it was submitted that once the decree attained finality upon dismissal of the appeal as time-barred, the decree-holder is legally entitled to seek execution, and interference at this stage would undermine the sanctity of judicial determinations. Accordingly, dismissal of the petition was prayed for.

11. I have heard learned counsel for the parties at considerable length and have examined the record with their assistance.

12. It is well settled that the jurisdiction of this Court under Article 199 of the Constitution is supervisory and corrective, not appellate. Interference is warranted only where the impugned order suffers from jurisdictional defect, patent illegality, perversity, violation of due process, or results in miscarriage of justice. The principal challenge is directed against the order dated 24.05.2023 whereby the learned Appellate Court dismissed the appeal as barred by limitation and declined condonation of delay. Section 5 of the Limitation Act, 1908 empowers the Court to condone delay upon showing “**sufficient cause.**” While the expression has received liberal interpretation in appropriate cases, it is equally settled that the party seeking indulgence must furnish a plausible and satisfactory explanation accounting for the delay. The Petitioner’s plea regarding death of previous counsel and ignorance of proceedings was not substantiated by documentary proof or specific particulars explaining the period of delay. The explanation tendered before the Appellate Court was general and lacking in material details. The learned Appellate Court exercised its discretion judicially and recorded reasons for declining condonation. In absence of arbitrariness, mala fide, or misapplication of law, such discretionary order does not warrant interference in constitutional jurisdiction.

13. As regards the award of 7¼ tola gold as dower, the Nikahnama records dower at Rs.3,000/-. Documentary evidence ordinarily prevails over oral assertions, and variation of written terms must be specifically pleaded and proved. However, the Petitioner’s appeal having been dismissed on limitation, the findings of fact recorded by the Trial Court have attained finality, and this Court, in exercise of constitutional jurisdiction, cannot undertake reappraisal of evidence unless the findings are shown to be wholly perverse or based on no evidence, which has not been demonstrated. With respect to dowry articles, the Family Court is empowered under the West Pakistan Family Courts Act, 1964 to adopt summary procedure and assess evidence on the touchstone of preponderance of probabilities. No patent illegality or jurisdictional defect has been shown in the assessment of Rs.200,000/- as diminished value.

14. The direction for initiation of proceedings under Section 193 PPC merely sets the criminal law in motion upon prima facie satisfaction

and does not amount to conviction. The Petitioner shall have full opportunity to contest such proceedings before the competent forum.

15. Execution proceedings are consequential to a valid and subsisting decree. In absence of setting aside of the decree, interference in execution would be unwarranted.

16. Upon cumulative consideration, it is evident that: (i) the order dated 24.05.2023 does not suffer from jurisdictional infirmity; (ii) the findings recorded in judgment dated 16.10.2023 are based on appreciation of evidence; and (iii) no patent illegality or perversity has been established warranting interference under Article 199 of the Constitution.

17. Consequently, the Constitutional Petition is devoid of merit and is hereby dismissed along with all pending applications, if any.

JUDGE