

IN THE HIGH COURT OF SINDH KARACHI

Const. Petition No. S-419 of 2023
Mst. Fazila – v. Shoaib Khan & Ors.

Date	Order with signature(s) of Judge(s)
Hg: / Priority.	

- 1. For orders on office objections.
- 2. For orders on Misc. No.3296/23
- 3. For hearing of main case.

01.12.2025.
Mr. Saba Khan, Advocate for the Petitioner.
Mr. Ali Zardari, Assistant Advocate General Sindh.

ORDER

Nisar Ahmed Bhanbhro, J. Through the instant petition, the petitioner has challenged the concurrent findings of the courts below, whereby the learned Xth Family Judge (West), Karachi, through judgment and decree dated 27.07.2022 in Family Suit No. 249 of 2021 (Mst. Fazila d/o Abdul Qayyum v. Shoaib Khan), dissolved the marriage of the petitioner by way of *khula* and dismissed the suit to the extent of recovery of dowry articles. The appellate Court, in Family Appeal No. 97 of 2022 (Mst. Fazila v. Shoaib Khan & others), vide its judgment and decree dated 01.04.2023, dismissed the appeal.

2. Learned counsel for the petitioner contends that at the time of marriage, 04 tola gold was fixed as dower (Haq Mehar), out of which, as per Entry No. 15 of the Nikahnama, 02 tola gold was paid, whereas 02 tola was deferred. He further contends that in case of dissolution of marriage by way of *khula*, only the amount of Haq Mehar actually paid has to be returned by the wife; therefore, when only 02 tola gold was paid to the petitioner, the direction of the Court below for payment of 04 tola of gold was without justification. He prayed to allow this petition.

3. Despite notices none has turned up on behalf of the respondent which reflects that the respondent Shoaib Khan has lost interest in pursuing this petition, however, this petition has been filed in the year 2022 therefore it cannot be kept for long and is decided with the assistance of learned counsel for the petitioner and learned Assistant Advocate General Sindh, who supports the judgments of two courts below.

4. Heard arguments perused the material available on record.

5. The petitioner had filed a suit for dissolution of marriage, recovery of dowry articles, and maintenance. Her marriage was dissolved, and she was

directed to return the dower amount to the respondent. Vide judgment dated 27.07.2022, the learned trial Court framed Issue No. 2 regarding payment of the dower amount, wherein it was resolved that in Entry No. 15 of the Nikahnama it is written that 04 tola gold had been paid. It is an admitted position that the petitioner had not produced a copy of the Nikahnama during the proceedings. The respondent, however, produced a copy of the Nikahnama at the time of evidence, wherein in Entry No. 15 it is clearly recorded that 02 tola gold was promptly paid, whereas 02 tola was deferred, though it is simultaneously shown that 04 tola was paid. The information provided in Entry No. 15 of the Nikahnama is self-contradictory. If the Haq Mehar had been fully paid to the petitioner, there was no justification for recording in the Nikahnama that half of the dower was promptly paid and half was deferred. Reliance placed by the learned trial Court and the appellate Court on contradictory documents rendered findings without any justification.

6. Counsel for the petitioner has also attached another copy of the Nikahnama (Page-197 of Petition) containing the same entry and the same signatures, wherein at Column No.15 it is mentioned that only 02 tola gold was paid as dower to the petitioner whereas 02 tola was deferred. Though this document was not produced in evidence before the trial Court wherein this copy of Nikahnama and evidence of Nikah Khwan and the respondent's witnesses, namely Zakir and Matwali Khan are kept in juxtaposition the same supported the version of petitioner, as the witnesses deposed that the Haq Mehar was not paid in their presence; this material piece of evidence was also not considered by the courts below.

7. In view of what has been discussed above, I am of the view that the findings of the courts below suffered from misreading and non-reading of evidence and call for interference by this Court. Accordingly, the instant petition is allowed and the impugned judgments and decrees of the courts below dated 27.07.2022 and 01.04.2023 are maintained, however modified to the extent of directing payment of 04 tola gold as Haq Mehar. It is held that the respondent is entitled to payment of dower only to the extent of 02 tola gold, in terms of Section 10 of the Family Courts Act, 1964.

8. Office is directed to send copy of this order to both the learned courts below wherein modified decree shall be prepared for execution.

9. The instant petition stands disposed of the in the above terms.