IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

C.P No. S-29 of 2025
[Ghulam Mustafa v. Mst. Sehjan]

Counsel for Petitioners:	Mr. Wishan Das Kolhi, Advocate.
Counsels/ Representatives for Respondents:	Mr. Dilawar Hussain Panhwar, Advocate
Date of Hearing:	14.01.2026
Date of Judgment:	04.02..2026.

JUDGMENT

***RIAZAT ALI SAHAR, J*: -** Through this Constitutional Petition, the petitioner, being aggrieved by and dissatisfied with the impugned Judgment and Decree dated 29.04.2024 passed by the learned Judge, Family Court-III, Mirpurkhas in Family Suit No.18 of 2023, as well as the Judgment dated 13.012025 and Decree dated 18012025 passed by the learned Additional District Judge-I, Mirpurkhas in Family Appeal No.49 of 2024, whereby the suit for recovery of dowry articles was decreed and the appeal was dismissed, respectively, invokes the extraordinary constitutional jurisdiction of this this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking following reliefs:

> *"a. That this Honorable Court may be pleased to set aside the Judgment and Decree dated 29-04-2024 passed by the learned Civil & Family Judge-III, Mirpurkhas in Family Suit No. 18 of 2023 (Re: Mst. Sehjan Vs. Ghulam Mustafa), whereby the suit of the respondent was decreed and the petitioner was directed to hand over dowry articles as per list annexed with the plaint, except golden ornaments, make-up items/kit and different crockery and other daily use items, or in the alternative to pay an amount of Rs. 300,000/- only,* ***AND*** *the Judgment dated 13-01-2025 and Decree dated 18-01-2025 passed by the learned Additional District Judge-I, Mirpurkhas in Family Appeal No. 49 of 2024 (Re: Ghulam Mustafa Vs. Mst. Sehjan).*
>
> *b. Award the costs of this petition.*

c. Grant any other relief which this Honorable Court may deem fit and proper in the circumstances of the case"

2. Learned counsel for the petitioner contended that the impugned judgments and decrees passed by the learned trial Court as well as the learned appellate Court are patently illegal, arbitrary and unsustainable in law, having been rendered in gross disregard of the pleadings, evidence on record and settled principles governing recovery of dowry articles. He contended that both the Courts below failed to properly appreciate the material contradictions in the respondent's own testimony, particularly her admitted failure to produce any proved or acknowledged list of dowry articles and her omission to disclose such articles in earlier proceedings for dissolution of marriage. Learned counsel further contended that the petitioner's financial incapacity, unemployment and mental condition—duly brought on record through evidence—were completely ignored, resulting in a decree which is neither executable nor equitable. He contended that the findings recorded are based on misreading and non-reading of evidence, suffer from jurisdictional error, and have occasioned a grave miscarriage of justice, thereby warranting interference by this Honourable Court in exercise of its constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

3. Notices were issued, pursuant to which the respondent appeared and through her objections filed in the shape of a counter-affidavit, controverted the contents of the Constitutional Petition. Learned counsel for the respondent contended that the impugned judgment and decree were passed by the learned trial Court after adopting all legal and codal formalities and, therefore, did not call for any interference by this Court. He contended stated that the petitioner's Family Appeal No. 49 of 2024 was also dismissed by the learned Additional District Judge-I, Mirpurkhas in accordance with law. He maintained that the petitioner was provided full opportunity to lead both oral and documentary evidence, that the dowry articles—allegedly worth Rs. 15,00,000/- including gold ornaments—

were given by her parents at the time of marriage and are still lying in the house of the petitioner and that the same constitute her exclusive property. The respondent denied all grounds raised in the petition as false, fabricated and baseless, alleged suppression of material facts on the part of the petitioner and prayed for dismissal of the instant Constitutional Petition with costs.

4. Heard the arguments advanced by the learned counsel for the parties and minutely perused the record available before the Court.

5. At this juncture, it may be observed that the constitutional jurisdiction is neither intended nor designed to function as a parallel or substitute appellate forum. The Honourable Supreme Court has time and again cautioned against interference at interlocutory or intermediate stages, holding that piecemeal adjudication not only delays the final dispensation of justice but also frustrates the legislative scheme. In this regard, reliance may be placed on *Mushtaq Hussain Bokhari v. The State* (1991 SCMR 2136) and *Mohtarma Benazir Bhutto v. The State* (1991 SCMR 1447). It is further well-settled that the extraordinary jurisdiction under Article 199 cannot be invoked to overcome an express or implied statutory bar, nor can it be exercised to compensate for the absence of a further right of appeal, as held in *Syed Saghir Ahmed v. Province of Sindh* (1996 SCMR 1165). More recently, in *Arif Fareed v. Bibi Sara* (2023 SCMR 413), the Honourable Supreme Court categorically held that the Family Courts Act, 1964 deliberately places a legislative finality after the appellate stage and that constitutional jurisdiction cannot be employed as a substitute for a second appeal. This position has been reiterated in *M. Hamad Hassan v. Mst. Isma Bukhari* (2023 SCMR 1434), wherein routine recourse to Article 199 in family disputes was expressly deprecated as being contrary to the object of ensuring expeditious and effective family justice.

6. It is reiterated that this Court, while exercising jurisdiction under Article 199 of the Constitution, does not sit as a

Court of further appeal to re-appraise evidence or to substitute its own conclusions for those concurrently reached by the Courts below. The constitutional jurisdiction is supervisory and corrective in nature, meant to ensure that subordinate Courts act within the bounds of law, jurisdiction and settled legal principles. Ordinarily, concurrent findings of fact recorded by the Family Court and affirmed by the Appellate Court are immune from interference. However, it is equally settled that this self-imposed restraint is not absolute. Where it is demonstrated that the findings recorded by the Courts below are founded upon misreading or non-reading of material evidence, are based on assumptions alien to the record, or result in manifest injustice, this Court is not powerless. Such cases fall within the well-recognised exception to the rule of non-interference, thereby attracting the limited constitutional jurisdiction of this Court. The present petition, therefore, requires examination strictly within this narrow compass.

7. A careful examination of the impugned judgments reveals that both the learned Family Court as well as the learned Appellate Court have concurrently recorded a categorical finding that no documentary evidence whatsoever was produced by the respondent to substantiate the alleged dowry. It stands admitted, even on the respondent's own showing, that no purchase receipts, delivery acknowledgments, or contemporaneous list duly proved through independent witnesses were brought on record. It is further an admitted position that even in the earlier proceedings for dissolution of marriage, the respondent did not disclose or assert any claim relating to dowry articles. Despite this admitted vacuum of proof, the Courts below proceeded to grant partial relief on the reasoning that the items claimed were "ordinary household articles" which, according to common social practice, are usually given to a daughter at the time of marriage. This approach, though well-intentioned, suffers from a fundamental legal infirmity. Judicial notice of social customs cannot be stretched to the extent of

dispensing with proof altogether, particularly when civil consequences involving pecuniary liability are being imposed.

8. It is not in dispute that the marriage between the parties took place in the year 2012 and that the parties admittedly lived together as husband and wife for a considerable period. The items claimed—such as furniture, bedding, utensils, household articles and other day-to-day necessities—are by their very nature consumable, perishable, or depreciable. The Courts below themselves acknowledged that most of these articles would have been used, worn out, consumed, or rendered valueless over the passage of time. Once this factual position was accepted, the logical and legal consequence ought to have followed that no decree for return or monetary substitution could be sustained in the absence of concrete proof as to (i) the existence of such articles at the time of separation, (ii) their continued custody with the petitioner, and (iii) their ascertainable residual value. The presumption that such ordinary items must still be available, or that their depreciated value can be arbitrarily assessed after more than a decade, amounts to conjecture rather than adjudication.

9. The impugned judgments further disclose that the burden of proof was, in effect, shifted onto the petitioner to disprove the alleged dowry, notwithstanding the settled principle that the party asserting a fact must prove it. Once the respondent failed to discharge her initial burden through reliable evidence, the Courts below could not lawfully invoke general customs or societal practices to fill the evidentiary gap. Such an approach results in reversing the settled burden of proof and exposes the petitioner to a liability founded more on presumption than proof.

10. In view of the above, this Court is persuaded to hold that although the Courts below were conscious of the absence of documentary proof, they nevertheless granted relief on considerations not legally sustainable. The concurrent findings, to that limited extent, are based on misapplication of law to admitted

facts and have resulted in manifest injustice. This brings the case squarely within the recognized exception warranting interference under Article 199 of the Constitution.

11. For the foregoing reasons, the Constitutional Petition is **allowed**. The impugned Judgment and Decree dated 29.04.2024 passed by the learned Civil & Family Judge-III, Mirpurkhas in Family Suit No.18 of 2023, as well as the Judgment dated 13.01.2025 and Decree dated 18.01.2025 passed by the learned Additional District Judge-I, Mirpurkhas in Family Appeal No. 49 of 2024, are hereby **set aside**.The suit for recovery of dowry articles filed by the respondent stands **dismissed**.There shall be **no order as to costs**.

JUDGE