

**IN THE HIGH COURT OF SINDH, CIRCUIT
COURT HYDERABAD**

C.P No. S-352 of 2024

[Mst. Nabila v. Muhammad Abbas Jaffari & others]

Petitioner : Mst. Nabila through Mr. Abdul Qadeer,
Advocate.

Respondent No.1 : Muhammad Abbas Jaffari through
Syed Muhammad Waseem Shah,
Advocate.

Respondents No.2&3 : Through Mr. Nazar Muhammad
Memon A.P.G. Sindh on behalf of
Additional Advocate General, Sindh.

Date of Hearing : **20.04.2026**

Date of Judgment : **18.05.2026**

JUDGMENT

RIAZAT ALI SAHAR. J., - This Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, is directed against the Judgment dated 31.07.2024 and Decree dated 07.08.2024 passed by the learned II-Additional District Judge, Hyderabad in Family Appeal No.89 of 2024, whereby the appeal filed by respondent No.1 was partly allowed and the Judgment and Decree dated 27.05.2024 passed by the learned Civil/Family Judge, Hyderabad were modified to the extent of disallowing the claim of dower (Haq Mehr) while maintaining the relief granted regarding maintenance and dowry articles. The petitioner seeks setting aside of the impugned appellate judgment on the grounds of alleged misreading and non-reading of evidence and misapplication of law.

2. Background of the case is that the marriage between the petitioner (wife) and respondent No.1 (husband) was solemnized on 27.02.2018 according to Muhammadan Law, with dower fixed at Rs.200,000/-, which remained unpaid. After Rukhsati, the

petitioner resided with respondent No.1, where disputes arose due to alleged maltreatment. One minor child was born out of the wedlock. The petitioner was allegedly ousted from the matrimonial home on 19.03.2021 and subsequently received a “Talaq Nama” on 19.04.2021. Thereafter, she instituted Family Suit No.804 of 2021 seeking recovery of dower, dowry articles and maintenance. The learned trial Court decreed the suit by granting dower, dowry articles, maintenance for iddat period and maintenance for the minor. On appeal, the learned appellate Court maintained the relief except for dower, holding that the marriage had already been dissolved through Khula in lieu of dower in earlier proceedings, thus disentitling the petitioner from claiming the same. Hence, the present petition.

3. Learned counsel for the petitioner contended that the impugned appellate judgment is illegal and suffers from misreading and non-reading of evidence. He contended that the appellate Court failed to properly consider the validity of Talaq Nama and erroneously relied upon alleged Khula proceedings, which were neither properly proved nor applicable. He further contended that under Islamic law, the petitioner remains entitled to dower as the dissolution occurred through Talaq and not valid Khula. The learned counsel submits that the appellate Court exceeded its jurisdiction and granted unwarranted relief to respondent No.1 without lawful justification.

4. Learned counsel for respondent No.1, Muhammad Abbas Jaffari, supported the impugned judgment and argued that the same is based on proper appreciation of evidence and correct application of law. He contended that the petitioner had already obtained Khula in earlier proceedings in lieu of dower, which fact remained unchallenged and attained finality. Therefore, the claim of dower is legally barred. He further contended that no misreading or non-reading of evidence has occurred and the petition is an attempt to re-agitate settled issues, hence, liable to dismissal.

5. Learned A.P.G. Sindh, Mr. Nazar Muhammad Memon, assisted the Court and submitted that no jurisdictional defect or illegality is apparent in the impugned judgment warranting interference under Article 199 of the Constitution.

6. I have anxiously considered the submissions advanced by learned counsel for the parties, perused the material available on record and examined the legal position in light of the governing principles laid down by the august Supreme Court of Pakistan, including the guidance flowing from CPLA No. 3767 of 2025.

7. At the outset, it is to be observed that the scope of constitutional jurisdiction under Article 199 of the Constitution is circumscribed and cannot be invoked as a substitute for appellate or revisional jurisdiction. Interference is warranted only where the impugned order suffers from patent illegality, jurisdictional defect, or is the result of gross misreading or non-reading of evidence leading to miscarriage of justice. The superior Courts have consistently held that concurrent or well-reasoned findings of fact, particularly in family matters, are not to be lightly disturbed. In the present case, the principal controversy revolves around entitlement of the petitioner to the dower amount and the legal effect of the alleged modes of dissolution of marriage. The record reveals that respondent No.1 himself admitted the factum of issuance of divorce deed/Talaq Nama dated 15.04.2021, as is evident from paragraph-6 of the judgment dated 27.05.2024 passed by the learned Family Court in Family Suit No.804 of 2021. This admission is a material piece of evidence and cannot be brushed aside lightly. The subsequent conduct of respondent No.1, whereby he instituted Family Suit No.1956 of 2021 for restitution of conjugal rights, further reflects that he himself was conscious of the legal infirmities in the mode of divorce adopted by him, particularly in view of the admitted position that both parties belong to the Shia sect.

8. As far as the stance taken by the respondent No.1 with regard to pronouncement of Talaq is concerned, suffice to say that it is a settled principle of law, recognized in Islamic jurisprudence as well as by superior Courts, that in Shia law the pronouncement of Talaq is subject to strict procedural requirements and cannot be effected in an arbitrary or unilateral manner without fulfillment of prescribed conditions. Any deviation therefrom renders the Talaq ineffective in the eyes of law. Therefore, the mere issuance of a Talaq Nama, without strict compliance of the requirements of the relevant sect, does not *ipso facto* extinguish the rights of the wife,

particularly her vested right to dower. Moreover, the concept of dower (Haq Mehr) in Shia jurisprudence carries distinct characteristics. It is generally treated as prompt (Mu'ajjal), meaning thereby that it becomes payable immediately upon solemnization of marriage unless expressly waived off by the wife. The principle of Indal-Talab (on demand) does not dilute the immediate enforceability of prompt dower; rather, it emphasizes that the wife is entitled to claim it at any time and the husband is under a legal obligation to pay the same forthwith. In the instant case, the non-payment of dower after consummation of marriage is an admitted fact, which creates an enforceable right in favour of the petitioner.

9. The learned appellate Court, while modifying the well-reasoned judgment of the trial Court, primarily relied upon the premise that the marriage had already been dissolved through Khula in lieu of dower in earlier proceedings. However, a careful scrutiny of the record shows that such conclusion is not supported by unimpeachable evidence in the present proceedings, nor has it been established that the petitioner voluntarily and consciously relinquished her right of dower as a condition of Khula. It is a settled proposition that relinquishment of dower must be explicit, voluntary and free from ambiguity. Any presumption in this regard cannot be drawn against the settled rights of a woman under personal law. The Hon'ble Supreme Court, in its authoritative pronouncements including the principles emerging from CPLA No.3767 of 2025, has reiterated that the rights of a woman arising out of marriage, particularly dower, are substantive rights which cannot be defeated on technicalities or presumptions; findings of Courts must be based on clear, cogent and legally admissible evidence and any inference affecting vested rights must be supported by the record; in family matters, Courts are under a duty to protect the lawful entitlements of parties in accordance with personal law and statutory provisions; constitutional jurisdiction may be invoked where the impugned order reflects misapplication of settled legal principles or results in denial of lawful rights.

10. Applying the above principles to the facts of the present case, it becomes evident that the learned appellate Court fell into error by disallowing the claim of dower without properly

appreciating the admitted facts, the legal status of Talaq under the Shia sect and the absence of a clear and voluntary relinquishment of dower by the petitioner. The finding recorded by the appellate Court, therefore, suffers from misreading and non-reading of material evidence and misapplication of law, thereby attracting interference by this Court in its constitutional jurisdiction. On the contrary, the judgment dated 27.05.2024 passed by the learned 9th Civil/Family Judge, Hyderabad appears to be well-reasoned, based on proper appreciation of evidence and in consonance with the applicable principles of law. The learned trial Court rightly decreed the suit to the extent of dower, dowry articles and maintenance, after evaluating the evidence produced by the parties.

11. For what has been discussed above, the impugned judgment dated 31.07.2024 passed by the learned II-Additional District Judge, Hyderabad cannot be sustained in law. The same is hereby **set aside** and the judgment and decree dated 27.05.2024 passed by the learned 9th Civil/Family Judge, Hyderabad in Family Suit No.804 of 2021 are **restored**. The Constitutional Petition is accordingly **allowed** in the above terms with no order as to costs.

JUDGE