

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

C.P. No.S-317 of 2020

Muhammad Irfan	-----	Petitioner
	Vs.	
Mst. Samina & others	-----	Respondents

Date of hearing & Decision: 21.08.2020

Mr. Mohammad Asif Zai advocate for petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. - Petitioner through this Constitutional Petition has Impugned judgment and decree dated 13.01.2020 passed by learned Family Judge-I, Shahdadpur, in Family Suit No.85/2018 whereby Family Suit of the Respondent No.1 was allowed on the premise that she was entitled for the past maintenance of nine month @ Rs.7000/- per month, total Rs.63000/-; and she was also held entitled for dowry articles as prayed or its alternate amount.

2. Brief facts of case as per pleadings of the parties are that Petitioner contracted marriage with respondent No.1 on 27.02.2017 against dower amount of Rs. 5,000/-, after few days of marriage, the relations between the couple became strained and the marital tie ended. Respondent No.1 filed Family Suit No.85/2018 for Dissolution of Marriage, Maintenance and Jahez articles, which was contested by the petitioner. After framing necessary issues and considering the evidence on record, learned Judge Family Court decreed the suit as discussed supra. Petitioner being aggrieved by and dissatisfied with the impugned Judgment and decree preferred Family Appeal No. 2/ 2020 which was partly allowed to the extent of only past maintenance vide Judgment & Decree dated 17.07.2020 passed by 2nd Additional District Judge (MCAC) Sanghar, compelling the petitioner to file the present petition.

3. We asked learned counsel to satisfy this Court with regard to maintainability of instant petition, he replied that the impugned judgments rendered by the Courts below are against the fundamental rights of the petitioner on the premise that respondent No.1 has refused to join the petitioner without any justifiable cause, therefore, she is not entitled for maintenance allowance as directed by the both the Courts below; that the learned Courts below failed to appreciate that maintenance can only be

claimed if there is overact on the part of the petitioner, but in this case the respondent No.1 has blatantly refused to perform her conjugal rights and refused to obey him; that the evidence produced by respondent No.1 consists of only of her own statement. She did not state that the list of articles appended with the plaint was prepared at the time of Rukhsati; that no evidence was produced to corroborate her statement that she was given dowry articles. Learned counsel for the petitioner argued that respondent No.1 was / is not entitled for any maintenance as she remained disobedient wife by not performing her conjugal rights with defendant. He lastly prayed for setting aside of both the orders passed by the Courts below.

4. I have heard learned counsel for the petitioner on the issue of maintainability of the captioned petition.

5. During the course of arguments, I have noticed that learned Family Court Shahdadpur while trying family case between the parties, framed the issues and appreciated the factual as well as legal aspect of the case by giving cogent reasons on the subject issues.

6. I have also noticed that learned appellate Court while modifying the judgment and decree dated 13.01.2020 passed by learned Family Court to the extent of maintenance amount and concurred the same with justifiable reasons. The finding of learned appellate Court is as under:

“17. In view of above it is crystal clear that, the appellant just want to usurp the dowry articles of the Respondent moreover, there is a settled principle that “list of dowry articles does not need any receipt of purchase and plaintiff no need to prove her list” under article of Qanoon-e-Shahadat Order 1984. The learned trial Court has perused the suit minutely and decided the same in according with law hence liable to be up held, even otherwise it is prevailing in our society that bride are given dowry hence question of not giving dowry does not attract in a prudent mind and such facts are also held by apex court. I fortify upon case law reported 2005 MLD 1069 M Jaffar V/S. Additional District Judge and others, wherein it was held that, when Rukhsati of a bride is taken place and naturally articles of dowry were shifted along with bride, hence question of not bringing dowry articles does not attract in prudent mind, in view of discussed reasons, the prayer for the dowry articles has not sustained hence, turned down.

18. Upshot of above discussion is that, as per discussed reasons and circumstances, Appeal is partially allowed to the extent of only past maintenance, and rest of the prayer for maintenance of iddt period and dowry articles is dismissed, with no order as to cost. Let such decree be prepared.”

7. It is well settled now that solitary statement of wife was sufficient to prove the claim of dowry articles for the simple reason that it was not

possible for any bride / wife in the society to keep the record of purchase receipts, prepare the list of dowry articles and obtain signatures from the husband's side. Furthermore, there are findings of law and fact against the petitioner which are based upon due appraisal of evidence. Under the law, such findings are not to be interfered with until and unless there is some gross illegality, misreading or non-reading of evidence or some jurisdictional defect which could not be pointed out by learned counsel for the petitioner. In the circumstances, no interference of this Court is called for.

8. For the foregoing discussion, this petition fails, same stands dismissed with no order as to costs.

9. These are the reasons of my short order dated 21.08.2020, whereby this petition along with pending applications was dismissed summarily.

JUDGE

Karar_hussain/PS*