

IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

C.P. No.S-229 of 2019

Petitioner : Through Mr. Muhammad Idrees, advocate
Respondent No.1 : Through Ms. Tasleem Pasha, advocate
Respondents 2 & 3: Through Mr. Wali Muhammad Jamari, Asst.
Advocate General and Mr. Nazar
Muhammad, Addl. Prosecutor General

ORDER

ADNAN-UL-KARIM MEMON, J, - Basically the petitioner is asking for setting aside the judgment and decree dated 19.02.2019 passed by the learned Additional District Judge, Tando Allahyar in Family Appeal No.02 of 2019 whereby the learned Judge while dismissing the aforesaid appeal filed by the petitioner maintained the judgment and decree dated 29.11.2018 passed by the learned Family Judge-II, Tando Allahyar in Family Suit No.06 of 2018.

2. Brief facts of the case are that respondent No.1 filed suit for maintenance against the petitioner with the plea that she was married with the petitioner in the year 2015 at Hyderabad under registered Nikahnama. The respondent No.1 was given dowry articles viz. 24060 gram gold bangles, gold set, earring and two rings worth Rs.1,58,000/- and many valuable dowry articles as well as gifts of Rs.2,00,000/- and Haq Mahar was fixed at Rs. 2,17,000/-. The respondent No.1 stated in her plaint that after marriage she remained with the petitioner as his wife in his house for about, where she gave birth to child namely Master Saheel on 09.05.2016; that the attitude of the petitioner and his family members was very cruel and made her life miserable. On, she went to the house of her parents with permission of the petitioner, compelling her to file Family Suit No.06 of 2018 for Past Maintenance, Recovery of Dower Amount, Dowry Articles, Gold Ornaments, Maintenance for Iddat period, feeding, Medical and education Expenses, Maintenance present and future of minor. On 08.11.2017 petitioner / defendant pronounced Talaq to her and ousted her and her son from his house and she came to the house of her parents and started residing there, who are

maintaining them. The learned Family Court after careful examination of the parties decreed the suit of respondent No.1 / plaintiff vide judgment and decree dated 29.11.2018. The petitioner / defendant being aggrieved by and dissatisfied with the said judgment and decree filed statutory appeal which too was dismissed vide judgment and decree dated 19.02.2019. The petitioner has now approached this Court by filing the instant petition before this Court on 18.03.2019.

3. During the course of arguments I asked learned counsel for the petitioner to satisfy this court regarding maintainability of the instant petition on the premise that there are concurrent findings against the petitioner and there is no inherent flaw in the impugned judgments and decrees of courts below warranting interference of this court in writ jurisdiction. In reply learned counsel for the petitioner argued that the order of lower Court whereby the petitioner was directed to pay dower to respondent No.1 was against the injunctions of Islam and was unlawful as well as contrary to law declared by the Honourable Supreme Court in the case of Mst. Khurshid Bibi Vs Babu Muhammad Amin (PLD 1967 SC 47). Learned counsel further, submitted that respondent No.1 had left the house of petitioner and was not entitled to any maintenance allowance. It was contended that all the orders/ judgments passed by the courts below are illegal and unsustainable; that the judgments of both the courts below are contrary to law and facts; that the petitioner was not in a position to provide huge maintenance to the minor and dowry were given to respondent No.1 by her parents at the time of her marriage were returned to her and nothing is left on his part; that no divorce has taken place yet; that his salary is meagre one thus cannot afford the amount imposed by learned family court on the aforesaid account; that after recording evidence, the Judge of Family Court, partially decreed the suit vide impugned judgment and decree dated 29.11.2018; that appellate court concurred with the view of learned family court vide judgment and decree dated 19.02.2019. Learned counsel for the petitioner submits that the respondent No.1 could not establish her claim regarding remaining dowry articles. He maintains that the entire case of the respondent No.1 was based upon oral evidence which was not supported by any cogent, confidence inspiring or independent evidence. He further submits that receipt dated 28.9.2015 for purchase of dowry articles were manipulated and

placed on record as its author was not examined before the trial Court. As such, the impugned judgments and decrees of both the courts below are unsustainable; that the judgments of both the Courts below are based upon misreading / non-reading of evidence, as such, instant petition may be allowed and judgments of both the Courts below are liable to be set-aside.

4. Conversely, Ms. Tasleem Pasha, learned counsel for respondent No.1 while supporting the impugned judgments and decrees contended that the petitioner has failed to maintain the respondent No.1 and had pronounced divorce, as such; both the learned courts below have rightly decided the matter. She lastly prays for dismissing the instant petition.

5. I have heard the parties at considerable length and also reviewed the record available before me.

6. In the present case, it has come on record that the marriage between the parties was dissolved on 8.11.2017; the said factum has been discussed by the learned family court, while deciding the issue Nos. 4 and 5. The findings of learned Family Court were assailed before the learned appellate court but failed.

7. In view of the above circumstances, it is observed that the impugned judgments and decrees passed by learned trial Court as well as appellate Court having not suffering from any legal error, would not be open to interference by this Court in exercise of its constitutional jurisdiction. Besides, this Court in exercise of its constitutional jurisdiction could not undertake a detailed factual inquiry, therefore, in view of what has been observed above, I am of the opinion that this petition has no merits, which is hereby dismissed along with listed applications with no order as to costs.

JUDGE

Fahad Memon