

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD

CP No. S- 49 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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Petitioner : Manzoor Ahmed through
Mr. Fayazul Karim Memon, Advocate

Respondent: Mst. Gunj Bibil through
Syed Shahzad Ali Shah, Advocate

Mr. Allah Bachayo Soomro, Addl.A.G.

Date of hearing & decision: 19.11.2021

O R D E R

ADNAN-UL-KARIM MEMON, J:- The petitioner through the instant petition has prayed as under:-

- i. That, this Honourable Court may be pleased to call for the record and proceedings of the appeal No. 14 of 2020 Ref: (Manzoor Ahmed V/s Mst: Gunj Bibi) passed by the District and Sessions Judge Sanghar (respondent No.3) and after its examination and scrutiny as to its legality, validity, propriety and correctness, and hearing the parties at appropriate relief(s) as deem fit, just and proper in the circumstances of the case.
- ii. That, this Honourable Court may be pleased to call for the record and proceedings of the order dated 28.10.2020 passed by the learned Civil & Family Judge No.I, Shahdadpur in Family Suit No. 19 of 2020 Ref: (Mst. Gunj Bibi V/s Manzoor Ahmed) filed by the plaintiff / respondent No.I was allowed against the above named petitioner / appellant without on merits, null, void, ab-inito, unjustified and without any lawful circumstances.
- iii. That, Respondent No.1 remained as disobedient wife by not performing conjugal rights with the appellant / petitioner as the settled principle of law that the husband is not bound to pay maintenance if the wife is justified to live apart from her husband and not enjoyed the conjugal rights.

2. Brief facts of the case are that respondent No.1 filed suit for maintenance and return of dowry articles against the petitioner stating therein that respondent No.1 married with petitioner about two years back against the dower of one cow, same not given by the

defendant to plaintiff till today, the Nikah was oral and unregistered. The parents of respondent No.1 gave dowry article valuing Rs.500,000/- two buffaloes and three tola gold, same was taken by respondent No.1 to petitioner's house at the time of Rukhsati. Respondent No.1 remained happy for some time, then petitioner and his family members started maltreating, insulting, degrading, and humiliating her and ousted her about 1 ½ years back in three clothes, since then she is residing at her parents' house, and during which time the petitioner never visited her nor provided maintenance as well as necessities of life; therefore, respondent No.1 is entitled to past maintenance @ Rs.10,000/- per month for 1 ½ year and future maintenance @ Rs.10,000/- till she returns the petitioner's house.

3. After filing suit petitioner filed written statement denying that Haq Mahar was Cow but contended that Haq Mahar was fixed Rs.2000/- which was paid. The petitioner admitted that respondent No.1 brought dowry articles but the same were used by her, he further denied that he ousted her from his house. He lastly stated that respondent No.1 is not entitled to maintenance being disobedient wife and her suit be dismissed with cost.

4. After filing written statement, pre-trial proceeding taken place but declared fail. However, respondent No.1 was ready to Abad with petitioner, but the petitioner flatly refused to Abad her in his house and he said that he will contract a second marriage.

5. From the divergent pleading of the parties following issues were framed:-

- i. Whether the Plaintiff is entitled to her past/future maintenance? If yes from when & up to what extent?
- ii. Whether the plaintiff is entitled to recover her dowry articles of Rs.500,000/- and two buffaloes and one cow or its alternate amount? If yes up to what extent?
- iii. Whether the defendant paid/given dower in the shape of Cow to the plaintiff?
- iv. What should the decree be?

6. Learned trial court after recording evidence and hearing the parties decreed the suit. The petitioner being aggrieved by and dissatisfied with the above decision preferred Family Appeal No. 14 of

2020 which was also dismissed; hence he has filed the instant petition.

7. Learned counsel for the petitioner has argued that the judgments and decrees of both the courts below are opposed to law, facts, equity and principles of natural justice as such liable to be set-aside; that both the courts below have not assigned any cogent and plausible reasons while passing the impugned judgments and decrees; that the dowry articles were used by respondent No.1 herself and there is nothing left at the house of petitioner which could be returned; that after leaving the house of petitioner by respondent No.1, initially the petitioner made several attempts to reconcile and visited the house of her parents but she did not come; that respondent No.1 remained disobedient wife by not performing her conjugal rights and it is settled principle of law that the husband is not bound to pay maintenance if the wife is unjustified to live apart from her husband and not enjoyed the conjugal rights and both the courts below have failed to appreciate the above legal position of the case. He lastly prayed for allowing the instant petition.

8. Under Section 14 (2)(a) of West Pakistan Family Court Act, 1964, decree of dissolution of marriage, though could not be challenged in appeal except in cases covered by Section 2 (viii)(d) of Dissolution of Muslim Marriages Act, 1939. The object behind non-provision of appeal in case of dissolution of marriage was to protect women, an underprivileged and generally oppressed section of the society, from prolonged and costly litigation, as suit it aimed to put a clog on the right of husband.

9. In the light of the above facts and circumstances of the case no case for interference is made out. The instant Constitutional petition is dismissed.

JUDGE