IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Constitutional Petition No. S-839 of 2018

Abbas Ali Bhand

Versus

Mst. Nazia

Mr. Amir Ali Abbasi, advocate for petitioner.
Mr. Amanuhhal Luhur, state counsel.

Date of hearing: 03.12.2018.
Date of decision: 03.12.2018.

O R D E R

KHADIM HUSSAIN TUNIO, J.- Through present constitutional petition, the petitioner has prayed as follows :-

a) That this Hon'ble Court may kindly be pleased to call for record and proceedings from the court of learned Family Judge Larkana and after perusing its legality, validity and propriety be further pleased to set aside the impugned order and decree dated 10.09.2018 and direct the respondent to return back the Haq Mahar or its equivalent amount viz: 57,000/- to the petitioner.

b) Cost of the petitioner be awarded to the petitioner.

c) Any other equitable relief under the circumstances stands be given to the petitioner.

2. Briefly, facts of the present constitutional petition are that the marriage of the petitioner and respondent was solemnized on

03.03.2018. After some time, while the respondent was residing with the plaintiff, she *allegedly* found him to be of bad character and when she objected to his habits and behaviour, she was allegedly maltreated and tortured, causing her miscarriage as well. Ultimately, she was ousted from the house by the petitioner and snatched away all her dowry articles and gold ornaments, therefore she developed hatred against the petitioner. Thereafter, plaintiff/respondent filed Family Suit No. 219 of 2018 on the ground of *Khula* against the petitioner/defendant. The suit of the plaintiff/respondent was decreed with no order as to costs.

3. Learned counsel for the petitioner argued that the learned Family Judge failed to apply his judicial mind while passing the impugned judgment; that the trial court did not give the petitioner/defendant any opportunity to cross examine; that the learned Family Judge has not gone through the evidence and has not given it any worth; that even though it was contended by the advocate for the petitioner/defendant that the respondent/plaintiff left the house at her own will after taking the valuables from the petitioner's house; that the parents of the plaintiff/respondent intend to contract her second marriage therefore they have managed the false story against the petitioner; that the impugned order and decree is against the legal principles, therefore it is liable to be set aside.

4. Learned state counsel half-heartedly supported the impugned judgment.

5. I have heard both the learned state counsel and the counsel for the petitioner and have perused the material available before me.

6. Without entering into the merits of the case, I would like to mention here that the Family Court's order included discussion in regards of *Khulla*. The petitioner has questioned the legality of the said order regarding *Khulla* and here I would add that there is no provision of appeal, if any, against grant of decree on the point of *Khulla*. In the present case, no evidence was record. The wife of the petitioner refused to reside with the petitioner any more due to his cruelty. The *hatred* has been allegedly admitted by the defendant herself and as such, mere ground that the wife had developed hatred for her husband and did not wish to live with him was enough for the Family Court to dissolve the marriage of either of the parties. In this respect, reliance may respectfully be placed upon case law titled as ***Sadiq Rasool Khan v. The Additional District Judge, Lakki Marwat (1991 MLD 1732)*** wherein it was held that:-

> *"Undoubtedly a wife is entitled to 'Khula' if she satisfies conscience of the Court that it will otherwise mean* ***forcing her into hateful union****. Nonetheless a wife demanding separation on the basis of Khula, will return to the husband any tangible returnable benefits conferred on her by the husband".*
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> (***emphasis supplied***)

In the present case, the court below had arrived to the conclusion that without any fault of either party, is not ready to reside with him therefore the marriage was dissolved.

7. As for the prayer of the petitioner in terms of recovery of *haq mehar*, the same has not been established even at trial nor was the same objection raised with the family court. No evidence was recorded to establish any of the claims as the family court dissolved the marriage on the basis of the wife refusing to reside with the husband, therefore question of *haq mehar* is baseless.

8. For whatever has been discussed above, present constitutional petition being meritless was dismissed vide short order dated 03.12.2018.

These are the reasons for the same.

J U D G E