ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

CP.S-258 of 2014

Date Order with signature of Judge

---

1. For hearing of CMA No. 196 of 2014.
2. For hearing of main case.

08.02. 2016

Mr. Latif-ur-Rehman, Advocate for petitioner.
Qazi Ayazuddin Qureshi, Advocate for respondent No.1.

>>><<<

Through instant petition, petitioner has invoked constitutional jurisdiction of this Court and seeks modification in impugned judgment dated 21.11.2013. It appears that plaintiff filed suit for dissolution of marriage and recovery of dowry articles before the II Family and Civil Judge (Central) and such suit was decreed; against which an appeal was preferred by respondent (husband) wherein appellate court recorded *impugned judgment* modifying the judgment of the trial Court to the extent of dower amount as not payable and some of the dowry articles as per list.

2. Briefly, the facts are that petitioner (wife) filed a suit for *Dissolution of marriage, Recovery of dower and dowry articles;* which was contested by respondent no.1 (husband) and after *trial* the suit of the petitioner (wife) was decreed. The respondent no.1(husband) challenged the same in *appeal* and in consequence of hearing the *appellate court* partly allowed the appeal whereby modifying the judgment of trial court as:-

> "I am of the view the all above mentioned circumstances constrained me to hold that the impugned Judgment dated 30.04.2012 and Decree dated 05.05.2012 require interference to the extent of allowing of dower amount in view of my observations mentioned above *she is not entitled to get recovery dower amount from the appellant*, however, she is entitled for maintenance of Iddat period at the rate of Rs.5,000/- which should be paid to her in lump sum Rs.15,000/- *she is also entitled to get recovery her dowry articles i.e. Furniture, double bed, with side tables, Fridge, TV and TV Trally, Micro Wave Oven, sewing machine, washing machine, the appellant is directed to return*

> *her dowry articles mentioned above coupled with the articles which he admitted in his evidence in case of non availability of above mentioned articles,* the appellant shall pay the value of above mentioned articles as per prevailing market rates.'

The above judgment of the appellate Court has resulted into filing of instant petition by the petitioner (wife).

3. Learned counsel for the petitioner has reiterated the grounds taken in petition and added that learned appellate court seriously erred while not believing the *unchallenged* evidence of the petitioner (wife) hence modification in the judgment of trial court is not sustainable. He has relied upon case laws reported as 1999 MLD 1026, 2006 SCMR 100, 2006 SCMR 104, 2006 MLD 853, 2014, MLD 1400, PLD 1986 Lahore 52, 1998 CLC 1546, 2006, CLC 1393, 1995 SCMR 885, 1986 CLC 2265, 1988 CLC 1888, 2013 CLC 1780, PLD 2006 Karachi 272 and PLJ 2013 Islamabad 105.

4. Learned counsel for the respondent no.1 (husband) supported the judgment of the appellant court while insisting that same is full of reasons hence needs no interference in constitutional jurisdiction. He has relied upon case of Rao Muhammad Ashiq Razzak v. Mst. Abida Shamshad, etc. (KLR 2009 Civil Cases 138).

5. I have heard the arguments of respective parties and have also carefully examined the available record.

6. To know the respective stands and evidence led in support thereof, a reference to judgment of trial court, being relevant is made hereunder:-

> "It admits of no doubt that dower was fixed @ Rs.100,000/- Plaintiff alleges that said dower has not been paid to her. She took same stand in witness box and denied the suggestion of learned counsel for defendant that dower was paid to her on the first night of her marriage *shabe aroosi.* In support of such version, she produced two witnesses namely Abdul Rehman and Anwar Ali as Exh.P/1 and P/2 respectively. On that day i.e. 13.12.2011 and next following three dates of hearing, defendant was given due opportunities to cross examine plaintiff's said witnesses but defendant or his advocate did not come forward, therefore, vide order sheet dated 19.01.2012 defendant's side for cross examination of plaintiff's said

witnesses was closed. *Meaning thereby, the evidence of plaintiff's witnesses went unchallenged and un-rebutted.*

On the other hand, defendant stated in his pleadings and reiterated same fact in his affidavit in evidence Ex-D that he paid dower amount to plaintiff on first night of marriage *Shabe Aroosi*. In support of such contention he intended to presence one witness Qazi Ayazuddin Qureshi. Record revealed that said witness had been previous counsel for defendant in instant case and his Vakalatnama was on record. Therefore vide order sheet dated 20.4.2012 defendant was forbidden to lead the evidence of said witness. Defendant failed to produce any other witness except said discarded witness to prove his version of payment of dower amount to plaintiff on the first night of marriage *Shabe Aroosi*. ..... Apart from that, defendant has admitted in his cross examination that he had not mentioned the fact of payment of dower amount to plaintiff in his legal notice which he had sent to plaintiff before institution of instant suit. Said notice is on record as annexure to plaint and reveals that defendant had not mentioned the fact of payment of dower amount to plaintiff. Therefore, I am not inclined to believe that defendant had paid dower amount to plaintiff on first night of marriage *Shabe Aroosi*. ..

"Admittedly, marriage of parties was an arranged marriage. *On one hand defendant denies that plaintiff was not given dowry articles but on the other hand alleges that* **plaintiff at the time of leaving his house, took all valuable articles, jewelry and clothes with her to her parental house.** *Meaning thereby, de (he) admits that at the time of marriage, plaintiff had brought valuable articles, jewelry and clothes with her to his house.* In …
order to corroborate his version that at the time of leaving his house, plaintiff took said articles with her to her parental house, defendant intended to produce one witness Qazi Ayazuddin Qureshi………….. defendant has failed to corroborate his version through any confidence inspiring piece of evidence. On the other hand, in support of her version, plaintiff produced two witnesses namely Abdul Rahman and Anwar Ali as Ex-P/1 and P/2 respectively. On that day i.e. 13-12-2011 and next following three dates of hearing, defendant… but defendant or his advocate did not come forward, therefore, vide order sheet dated 19-01-2012 defendant's side for cross examination of plaintiff's said witnesses was closed. *Meaning thereby, the evidence of plaintiff's witnesses went unchallenged and un-rebutted.*

(Underlining is provided for emphasis).

From the above portion, is sufficient to indicate that the petitioner (wife) *in proof of her claims* examined herself also witnesses whose evidence (assertions) went *unchallenged* . It is also a matter of record that the respondent (*husband)* though came with specific claims/pleas but produced nothing in support thereof. The house inmates of the respondent (*husband)* or least the

neighbours would have been the most *natural witnesses* to shoulder that dower was paid to petitioner (*wife)* and that she (petitioner) had taken the articles while leaving the house but none from *house inmates* or *neighbours* produced hence failure of the respondent (*husband)* was rightly considered while believing the *unchallenged* assertions of the petitioner (wife) by learned trial Court. Let me add that the dower was *amounting* to Rs.100,000/- which, if paid on *Shab-i-Uroosi* should not have remained to *coffin* but would have been an *open secret* but respondent *(husband)* failed to produce any witness in support of his specific claim and even not mentioned in *legal notice* , got issued by himself (*respondent/husband)* hence conclusion drawn by trial court was rather proper and reasonable.

7. In view of the above discussion, I am not inclined to agree with appellate court whereby the petitioner *(wife)* was denied the dower amount.

8. As regard the modification towards *dowry articles*, the status of led evidence by parties is same, as unclothed above. The learned appellate Court judge put much emphasis to list, to be submitted to *Registrar* within meaning of Dowry and Bridal Gifts (Restriction) so is evident from operative part of the impugned judgment which reads as:-

> "So considering the testimony of respondent's it would be just and proper to have glance on the testimony produced by her during course of her evidence, the first testament produced by her as Exh:P/A it is list of dowry articles it is admitted fact that the said list neither bear the name of bride nor the groom and the same also does not bear the date of marriage beside that the same does not indicate the signature of any receiver or a person who has delivered the said articles to appellant or his inmates. It is also necessary to mention here that the said list bear the prices of said items but the purchasing receipts of those articles as per price mentioned by the respondent have not been produced by the respondents so for Exh:PB-1, PB-2, PB/3 are concerned these are purchase receipts of gold, the same do not bear the name of purchase and *it is admitted position that the respondent has not examined the said jewelers in support of her version and the witnesses who have been explained by her have not uttered that the said gold was purchased by the respondent in their presence.* So for another testament available on record it is a purchase receipt of furniture dated 28.6.2010 on the name of respondent,. Another testament available on record is a purchase receipt of home appliances; the same bears the name of purchaser to be Samar Jehan. Record further indicates that one receipt of purchase of sewing machine, cutlery set, dinner set on the name of respondent."
>
> ------------------------

> "No doubt in Pakistani society most of the parents of bride do not prepare the list of dowry articles and they do not preserve the purchase receipt of dowry articles. I feel necessary to mention here that the purpose of law and rules is to facilitate the citizens and it is the intention of law that every thing should have to be done as design by the law, *as in the instant case the list of dowry articles has not been deposited by the parents of the respondent to the Registrar of the Area,* as required by dowry and bridal gift Rules 1976. *Beside that the said list which produced I the testimony neither bear the name of bride and groom, date of marriage, signature of receiver or giver nor the signature of the witnesses on whose presence the said articles had been delivered and such facts are admitted by the respondent in her testimony, so considering the testimony and testaments of receptive side."*

9. I do not find myself to agree with reasoning of the appellate Court because in *family* matters the Qanun-e-Shahadat Order is not applicable as in other matters hence failure of non-examination *jeweler* should not have been taken to disbelieve *giving of gold ornaments* to petitioner (wife) because per our custom and culture there is no concept of dowry without *gold ornaments* which may vary from person to person as per *status*. Not only this, but the trial court rightly believed such *unchallenged* claim of the petitioner (wife) particularly when respondent (husband) had claimed specifically that she (petitioner) had taken valuable articles, including gold ornaments with her. Such claim of the respondent (husband) was nothing but an admission to effect that she (petitioner) was given gold ornaments hence failure of the respondent (husband) to prove his second stand i.e *she took away same with her* was rightly and properly considered by trial court. Regarding status of the receipt of *dowry* the case of Mst. Shakeela Bibi was rightly followed by trial court wherein it is held that:-

> "*Solitary statement of wife was sufficient to prove the claim of dowry articles--- Contention of husband that wife, while making claim of dowry articles, was required to prove the case in terms of requirements of Qanoon-e-Shahdat Order, 1984 was not only misconceived but was also besides the mandate of law as envisaged in S.17 (1) of the West Pakistan Family Courts Act, 1964---Section 17 of the West Pakistan Family Courts Act, 1964 was a special law and provisions of Qanun-e-Shahadat Order 1984 were excluded through said section---- 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--- Mothers start collecting purchasing articles for their daughters from when they start growing up and there was a tradition that the in-laws of any wife were extended esteem and*

> *respect and it was considered an insult to prepare the dowry list for the purpose of obtaining signatures from them----"*

Thus, the learned appellate court was not legally justified to modify a reasoned conclusion. It would suffice with regard to the Dowry & Bridal Gifts (Restrictions) that once the parents give the dowry exceeding Rs.5000/- (*as limited by Section 3 of the Act)* and is taken by the bridegroom the application of the said Act becomes *redundant* because our culture and even *Sharia'h* does not put an embargo to give dowry which *in fact* is a name of *gift* to a *daughter* by her parents. Even otherwise, the respondent (husband) at no material times complained regarding violation of said Act nor the *Authority* , mentioned in the Act, took any cognizance on the matter. At this juncture, a reference to a part of the case, reported as 2015 CLC 463, shall make things rather brighter to understand.

> *'12. Section 5 of the act f 1976 clearly states that what articles given as dowry and bridal gifts to the bride shall remain the property of the bride. The Honourable Supreme Court has held in* Muhammad Tazeel v. Mst. Kair un Nisa (1995 SCMR 885) *that the provisions of the Act 1976 can be enforced only by the authority mentioned in the said Act of 1976.'*

Thus, I also do not find any substance or legal justification, attempted by appellate Court with reference to said Act, in justifying his conclusion particularly when the appellate Court himself held petitioner (wife) entitled for number of dowry articles though the same were also having the application of *incorrect* reasoning by which the petitioner (wife) was denied other dowry articles.

10. In result of what has been discussed above, I am of the clear view that the judgment of the appellate court is not sustainable and is set-aside as such and that of trial Court is restored in its entirety. The petition is allowed, accordingly.

JUDGE

SAJID