

ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.

C.P No.S-488 of 2021

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of MA-1846/21 (stay)
2. For hearing of main case.

**29.04.2022**

Mr. Farhan Ahmed Bozdar advocate for Petitioner.

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**Zulfiqar Ahmad Khan, J:** This Constitutional Petition challenges the consolidated Judgment and Decree dated 25.08.2021, passed by learned IInd. Additional District Judge / MCAC, Mirpurkhas in Family Appeals No.09 and 10 of 2021, whereby the judgment and decree dated 07.01.2021, passed by learned Family Judge, Mirpurkhas in Family Suit No.111 of 2019, filed by the respondent No.1 was maintained.

2. Concisely, facts of the case are that the respondent No.1 / plaintiff had filed a Suit being Family Suit No.111 of 2019 for Recovery of Dower, Dowry Articles and Maintenance against the petitioner / defendant and made the following prayers:-

- a) Direct the defendant to pay Rs.25000/- as dower to the plaintiff.
- b) Direct the defendant to return back all the dowry articles to the plaintiff according to list attached with the plaint in lieu thereof pay Rs.500,000/- as valuation of dowry articles or in case of return of dowry articles if any of the articles found damaged, pay the present valuation of the same also.
- c) Direct the defendant to pay Rs.51000/- which was given by the parents of the plaintiff as Salami to the defendant.
- d) Direct the defendant to pay Rs.40,000/- as past four months maintenance to the plaintiff and continue to pay the same at the rate of Rs.10,000/- per month in future from the institution of the Suit with 20% enhancement.
- e) Any other relief deemed fit and proper under the circumstances of the suit.

3. In response to that suit, Written Statement was filed wherein the petitioner / defendant denied all the allegations leveled against him and submitted that he has already paid dower to plaintiff on third day of marriage

in shape of cash and she spent that amount on shopping. Dowry articles were given to plaintiff but not of worth Rs.500,000/- and the same are available in his house and he is ready to return them except the gold ornaments because she had sold out gold ornaments even those given by him / defendant to her at the time of marriage. Gold ornaments given by parents of plaintiff were less than one tola. Prior to marriage, plaintiff had relation with one Ali and after 2½ months of marriage she continued relations with him, despite he / defendant learnt about it. Said Ali even sent text messages to him that he had videos of plaintiff which he would transmit. He kept plaintiff with love and affection and never maltreated her. He maintained her properly but plaintiff resides separately from him due to her relation with said Ali. Plaintiff left his house on her own but he never ousted her from home. Plaintiff is not entitled for her maintenance. No cause of action accrued to plaintiff for filing the Suit, nor she is entitled to relief claimed.

4. Thereafter, the trial Court after framing of issues and hearing both the respective parties, decreed the suit of the plaintiff / respondent No.1 vide judgment dated 07.01.2021, and being aggrieved by the said judgment, an appeal was preferred by the defendant / petitioner before the learned Jnd. Addl. District Judge, Mirpurkhas in Family Appeal No.10 of 2021 and respondent No.1 also filed Family Appeal No.09 of 2021, where, after considering both the matters at length and perusing the record, the learned Appellate Court disposed of both the appeals vide consolidated judgment dated 25.08.2021 with a modification in maintenance from Rs.5,000/- to Rs.3,000/- per month with 10% annual increment till her legal entitlement; and against the said judgment, instant petition has been filed.

5. Learned counsel for the petitioner states that the impugned judgments are outcome of misreading, non-reading and miss-appreciation of the evidence leading the miscarriage of justice, as such, liable to be set aside and allow the petition and dismiss the suit of the respondent No.1; that courts below have failed to consider that petitioner has successfully proved /

established his case that petitioner paid the dowry amount to the respondent No.1 on the third day of marriage and she has spent the amount of dower amount; that Courts below have also failed to consider that dowry articles were not of Rs.500,000/- and the respondent No.1 failed to prove her version in respect of dowry articles that the same were of Rs.500,000/-.

6. I have heard the arguments of learned counsel for the petitioner and perused the record. Admittedly, this petition has been filed against concurrent findings of the Courts below in family matter, where disputed questions of facts based on evidence have been assailed in a Constitutional Petition. Furthermore, both the courts below have given due attention to the pleadings of the parties, evidence adduced by them before the Family Court and after proper appreciation of the evidence awarded the decree for maintenance etc. in favour of respondent No.1. Learned counsel for the petitioner has failed to satisfy this court about the illegality or irregularity in the impugned judgments.

7. In these circumstances, where learned courts below while delivering the impugned judgments have given cogent and sound reasons and there appears no error, illegality or irregularity on the surface to call for any interference and no misreading and non-reading of evidence is apparent, I see no merits in the instant petition, accordingly, relying on the dictum laid down by the Apex Court in the case of Abdul Razzak v. Shabnam Noonari and others (2012 SCMR 976), this petition is **dismissed** alongwith pending application.

**JUDGE**

**gulzar.**