

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

C.P. No.S — 1961 of 2018.

DATE	ORDER WITH SIGNATURE OF JUDGE
Date of hearing:	09.05.2022.
Date of order:	13.05.2022.
Petitioner:	Fahmeed Akhtar through Mr. Muhammad Yaseen Khaskheli Advocate for petitioner.
Respondent:	Mst. Zainab Firdous through Mr. Nusrat Mehmood Gill Advocate for respondent No.3.

MUHAMMAD SHAFI SIDDIQUI, J.- A suit for jactitation of marriage was filed by the petitioner Fahmeed Akhtar son of Hussain Bux against Mst. Zainab Firdous daughter of Mushtaque Ahmed on the ground that the alleged Nikahnama relied upon by respondent was/is forged and fabricated and it was manipulated and procured only to blackmail and extort money from petitioner. It is pleaded in the suit by petitioner that through one Sarwar Jatt the real son-in-law of Mst. Zainab Firdous / respondent she managed to prepare fictitious and bogus Nikahnama and presented herself as wife of the petitioner. Petitioner learnt about this Nikahnama when the respondent filed Family Suit No.01 of 2013 before Family Judge Tando Adam. The petitioner on receipt of notices/summons, apart from filing written statement in the suit for maintenance of the respondent, also filed a suit for jactitation of marriage before the same court i.e. suit No.04 of 2013. Both the plaints were returned on account of lack of territorial jurisdiction on 30.05.2013. Petitioner then filed present suit in the court having jurisdiction. The record and proceedings of the trial court shows that this is not the same plaint as returned for its presentation to the court having jurisdiction but a fresh suit. Be that as it may such objections were not taken by the respondent perhaps no issue of limitation conceived by respondent. Respondent filed written statement to the subsequent suit and issues were framed on 22.1.2014.

1. Whether the Nikahnama dated 20.09.2007 prepared by the defendant is false, fake, fictitious document prepared with the bogus signature of the plaintiff and has no value in the eyes of law and has been prepared by

the defendant with bad intention and ugly design to blackmail the plaintiff and same is not binding upon the plaintiff?

2. Whether the defendant is entitled for her maintenance, dower amount and gold ornaments weighing about 10 tolas?
3. What should the decree be?

2. Fahmeed Akhtar the petitioner recorded evidence and he was subjected to cross examination. He examined one Muhammad Iqbal son of Muhammad Mithal who was the Secretary Union Council Gujri Taluka Sanghar. He was also cross examined by respondent's counsel. The next witness of the plaintiff was Rana Muhammad Ali son of Feroze Khan who belonged to Rajput family of Taluka Jam Nawaz Ali. From the defendant's / respondent's side Mst. Zainab Firdous examined herself and she was subjected to cross examination. She produced the Nikahnama along with certain photographs and other exhibits. The suit for jactitation of marriage was decreed on 11.3.2015 whereas the maintenance to the respondent was declined though no independent suit was filed. Aggrieved of the judgment and decree dated 11.03.2015 the Family Appeal No.02 of 2015 was filed before District Judge Sanghar by respondent, which appeal was allowed and the judgment and decree was set-aside. The respondent, however, was directed to approach the Civil Court for the recovery of maintenance which they failed till date as no independent suit is filed.

3. Against the conflicting findings of two courts below this petition has been filed and it is claimed that the appellate court's judgment is absolutely silent as far as the reasoning is concerned as against the judgment and decree of the trial court which had specifically dealt with the main issues and passed a reasoned judgment after taking into consideration all evidence on record which has seriously disputed the authenticity of the Nikahnama.

4. I have heard the learned counsel and perused the material available on record.

5. In a suit for jactitation of marriage as the one in hand filed by Fahmeed Akhtar against Mst. Zainab Firdous undoubtedly the burden was upon him (plaintiff) to show that it was a forged and fabricated document. Petitioner

attempted to assist this court by citing a number of documents and referring to number of exhibits to dispute and establish doubtfulness of Nikahnama as well as the depositions of the witnesses which were not even looked into by the appellate court. Pleadings of some other litigation were also exhibited which shows the marital ties of respondent with one namely Muhammad Razzak Khatak, which documents were ignored by appellate court, without any reasoning. Admittedly the judgment of the appellate court is not speaking one however, on such score alone I would not like to rest my decision unless I myself go through the documents available on record as exhibited before trial court.

6. The Nikahnama available as Ex.24/C disclosed that it was allegedly signed by the petitioner and also by the respondent and her Advocate Abdullah. It also shows that it was signed by the witnesses who saw the occasion of the appointment of the Advocate of the bride. This was also signed by Nikah Khowan (Reciter) / Nikah Registrar. None of them were examined by respondent. Preponderance of available evidence in the shape of depositions i.e. petitioner's examination-in-chief disclosed that the respondent was habitual of filing false, frivolous litigations. Petitioner claimed that she / respondent did it to extort money. She claimed to have lodged an FIR No.130 of 2010 under section 452, 506, 504, 34 PPC of Police Station Mangli against accused Muhammad Saleem and others wherein all persons were acquitted. The Judgment was cited as Ex.24/F. Petitioner further deposed in the examination-in-chief that respondent Mst. Zainab Firdous lodged FIR No.140 of 2010, under section 337-H(ii), 147, 148, 149, 504 PPC at Police Station Mangli against same accused Muhammad Saleem and others who were also acquitted and the Judgment is produced as Ex.24/G. She then claimed to have filed suit for compensation under Defamation Act 2002 against the same accused wherein the plaint was rejected and the judgment is produced as Ex.24/H. In these cases the significant part was that she disclosed herself as widow of one Muhammad Razzak Khatak and not wife of petitioner and alleged Nikahnama is of prior date. In the subject suit No.03 of 2013 a copy of plaint was produced as

Ex.24/I. Respondent then claimed to have filed a Criminal Miscellaneous Application No.535 of 2011 before Honourable High Court against SSP and others and in support of the said application she has filed an affidavit in which she disclosed herself as widow of Muhammad Razzak r/o Chak No.2 Punjabi which were produced as Exs.24/J and 24/K. This is perhaps a case of alleged abduction of "Gulshan Noreen" who was a daughter of Mst. Zainab Firdous with Muhammad Razzak. Gulshan Noreen deposed that her mother Mst. Zainab Firdous has ruined her life. The criminal miscellaneous application was dismissed with observation that the application of respondent was false and frivolous and applicant was directed to avoid from making such application, else action shall be taken against her according to law. The criminal miscellaneous was exhibited as 24/L. Dates of these exhibits is crucial as being subsequent to date in disputed Nikahnama. The petitioner deposed that in fact he purchased an agricultural land of 4-00 acres from Muhammad Sarwar who is son-in-law of Mst. Zainab Firdous but he retracted after accepting entire sale consideration but did not execute the sale deed and demanded an exorbitant amount. On such refusal, as stated in the examination-in-chief this plan of fabricated Nikahnama was hatched. Photographs as exhibited by respondent claimed to have been taken by some family member secretly but are being misused. The contents of the written statement against the suit for jactitation of marriage were denied.

7. Learned counsel for the petitioner has also contended that there is some overwriting as far as name of the petitioner in the Nikahnama is concerned as not only on the Nikahnama the corrections in the name were made but it was also made on the title page of Family Suit No.01 of 2013 which was for the recovery of dower amount where the name of Faheem instead of Fahmeed was written. Respondent claimed it to be a co-incident that the name of Faheem instead of Fahmeed appeared both on the Nikahnama as well as on the plaint of Suit No.01 of 2013.

8. Prima facie there was sufficient evidence to doubt about the authenticity of the Nikahnama in view of the above depositions which in fact relied upon by

trial court but totally ignored by appellate court. The deposition on oath by the petitioner has not been substantially refuted. This material should be enough to make respondent realize that she has to discharge some burden prima facie by examining some material witnesses shown in the alleged Nikahnama. As a matter of fact, the defendant/respondent could have diluted the evidence that the petitioner deposed and presented in court in a number of ways. The evidence such as alleged signatures of the petitioner on Nikahnama as well as thumb impressions of the witnesses of the marriage could have been sent or asked to be sent for verification. The witness whose thumb impression is available along with CNIC is disclosed as one Farooq whereas the name of the witness who saw the appointment of Advocate for the bride is not disclosed but the thumb impression could have been sent to NADRA for verification to obtain data as to whose thumb impression it was. The original Nikahnama could have been conveniently sent by the Appellate Court for verification of petitioner's signature which he didn't and in fact did not assigned any reason for setting the judgment and decree of the trial court, aside.

9. The Appellate Court is burdened with more responsibility if a judgment is being set-aside then in case where the judgment is being upheld by him, as he could agree with the reasons assigned by the trial court. But when the judgment and decree is being set-aside then the strong reasons are required to be provided by the Appellate Court. A generalized statement was given by the Appellate Court that the trial court has given much weight to the evidence adduced by the petitioner being more reliable and relevant in comparison to the evidence led by the respondent. He relied upon section 17 of the Family Court Act that Qanun-e-Shahadat Order is not applicable, however, he has not stated that if principles of Qanun-e-Shahadat could be invoked in the trial of a family suit. Although nothing was stated as to why the judgment is being set-aside, the only factor that prevailed was that some photographs which were filed and exhibited shows that the petitioner and respondent were sitting together. In my tentative view, that alone does not disclose or establishes that there could only be a relation of husband and wife between them. Hence on the strength of a

photograph alone without any corroborating evidence the judgment and findings were reversed. The appellate court could have asked for additional evidence under order XLI rule 27 CPC but he didn't. There was no enough material in terms of evidence to upset the finding of trial court. After careful examination of pleading and record of both the sides, I am of the view that material evidence is still missing and the appellate court should have asked for it and should have referred the signatures of petitioner on Nikahnama for the forensic analysis which may corroborate with evidence already available on record, before delivering a final verdict. I therefore, set-aside the judgment of appellate court and remand the case to appellate court for recording additional evidence and for referring Nikahnama for a forensic analysis and then to pass judgment and decree, in accordance with law.

The petition is disposed of accordingly.

JUDGE

A.