

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**CP No. 3- 795 of 2021**

Petitioner : Muhammad Shafique through  
Mr. Agha Kousar Hussain, Advocate

Respondent : Mst. Aisha and others  
Nemo.

Date of hearing  
and Order : 29.08.2022

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** Through the instant constitutional petition, the petitioner has called in question the judgment dated 7.10.2021 passed by learned 4<sup>th</sup> Additional District Judge / MCAC, Shaheed Benazirabad in Family Appeal No. 15 of 2021, whereby the learned Judge partly allowed the appeal with some modifications in the Judgment dated 13.3.2021 passed by learned Civil Judge & Judicial Magistrate-I, Daur in Family Suit No. 11 of 2020, inter-alia on the ground that respondent- Mst. Aisha filed Suit for Dissolution of Marriage, Recovery of Jahez Articles, which was decreed vide Judgment dated 13.3.2021, appeal preferred was also dismissed with certain modification, hence the instant petition.

2. Mr. Agha Kousar Hussain learned counsel for the petitioner has argued that trial court failed to provide hearing to the petitioner; that both the courts below failed to appreciate that respondent clearly stated in her pleadings that her father had been running fruit cart in the local area; that the trial court erroneously directed the petitioner to return the Jahez articles lying in his possession to the respondent/ plaintiff or in alternative pay some Rs. 1,00,000/- to the respondent/ plaintiff; that the appellate court has not considered that the trial court has not given any chance to the petitioner for filing written; that both the courts below failed to appreciate that in the exparty evidence she clearly stated that her father is running fruit cart in the local area; therefore, arranging such huge amount of jahez articles and gold ornaments does not arise; that both the courts below have failed to consider that there was contradictory statements of plaintiff / respondent as she filed two suits before the trial court one for dissolution of marriage by way khula, restoration of jahez articles and the other suit for Maintenance and Delivery Expenses; in one suit she claimed Jahez Articles of Rs.5,00,000/= while in the other suit she claimed jahez articles of Rs.6, 50,000/=; that both the courts below failed to appreciate that the petitioner is rikshaw driver; that both the courts below failed to appreciate that respondent had taken away each and every thing brought by her at the house of petitioner which she admitted before the trial court and promised that she will withdraw from the claim of gold, dower and jahez articles; that the petitioner who is rikshaw driver is also supporting his family which consists of his

father, mother, two sisters and four brothers. He lastly prayed for allowing the instant petition setting aside the decisions of the two forums below.

3. I have heard the learned counsel for the petitioner on the maintainability of the instant petition and perused the record with his assistance.

4. As per pleadings of the parties the couples married on 8.12.2017. From the wedlock baby, Hurain was born. However, due to strained relations parties took resort to family litigation, wherein the respondent succeeded in getting a Decree by way of Khula, including recovery of dowry articles in her favor, with the following result:

“6. The first prayer of the plaintiff is related to the dissolution of marriage. From the very conduct of parties, it has appeared that there is no flexibility in the approach of parties to continue with this relationship. Per se plaintiff, the defendant and his family members made her life miserable. It is very hard to continue with this relationship. The plaintiff has expressed hate against the defendant and is not willing to live with the defendant at any cost hence she cannot be compelled to live in a hateful union. Therefore, the plaintiff is entitled for dissolution of her marriage by way of Khulla. The marriage of plaintiff **Mst. Aisha d/o Mohammad Tahir Khanzada** is hereby dissolved with the defendant **Mohammad Shafique s/o Abdul Hafeez Khanzada** by way of khulla in lieu of dower amount.

7. Her second prayer deals with the recovery of dowry articles. To prove her claim she has provided a photocopy of jahez list (dated:5/12/2017) and receipts annexed with the plaint. Original of them she has provided at the time of arguments. She and her witnesses ventured in the witness box and lead their evidence. They also submitted their affidavits in this regard. At the time of arguments, such list was provided to the defendant and he admitted the articles which are lying at his home. For the rest, he completely denied of availability. Per se plaintiff, the delivery of these Jahez Articles was made in presence of Mohammad Saleem s/o Manzoor Ahmed Khanzada, Arsalan s/o Yunus Khanzada and Irfan s/o Master Bashir Ahmed bearing their signatures on such list all residents of Kotri, Hyderabad. It is available on record that none of them has appeared before this court to testify the veracity of this Jahez Articles List. It is written that Jahez was delivered in presence of these persons. But is not mentioned who delivered to whom these Jahez Articles. For example, it is customary that women keep their gold ornaments with themselves. In her gold ornaments, she has claimed a necklace, a ring ( for men) and one nose ring. Besides, there is also a silver anklet. So in absence of these persons in this court it is questionable that these ornaments were with the plaintiff herself or were given with the other articles of Jahez. Similar is the case with bridal dresses. Also most of the shopkeepers from whom the dowry articles are purchased belong to Daur City and none of them has appeared as a witness in the matter. Moving on further, it is available on record that prior to filing of this suit she has also filed a suit for Maintenance and Delivery Expenses bearing No:25 of 2019. In such suit she has mentioned that she has come at house of the defendant with Jahez Articles worth of **Rs.5,00,000/=**. But in present suit she has mentioned their worth as **Rs.6,50,000/=**. This can be called self-contradictory assertions as parties are bound by their pleadings. She and her witnesses even ventured in the witness box could not recall a single item of these Jahez Articles. What they tell is only the value i.e Rs.6, 50,000/= of these items. The defendant at the time of arguments admitted that her furniture is lying at his home and other few articles. During pendency of suits and when she left the house of defendant prior to filing of these suits she left the home of the defendan with her father. So in the wake of it, it is quite possible that she has taken her valuables with herself. Her father is a fruit and vegetable seller. The

Honourable Apex Courts have held in various cases that financial capacity of parents is the determining factor for deciding the issue of dowry articles. So for a fruit and vegetable seller it is hard to arrange such huge articles of Dowry. Therefore, in the light of it, her prayer for jahez articles is partially allowed. Even though this is an ex-prate judgment but courts of law are bound to ascertain the matter from all corners. She has failed to establish her claim as claimed in the light of material available on record. Resultantly, her prayer for gold ornaments, bridal dresses and items of perishable nature including of wear and tear like bed sheets, e.t.c is declined herewith. It is allowed to the extent of furniture, electronics equipments and crockery items mentioned in the list of Dowry Articles. The defendant is directed to handover these jahez articles to the plaintiff or pay 50% value thereof as an alternative. The remaining prayers are declined herewith.

8. The suit stands partly allowed and partly declined herewith.”

5. Petitioner challenged the above judgment and decree in Family Appeal No. 15 of 2021 which vide judgment dated 7.10.2021 was partly allowed with some modification in the Judgment of trial court. An excerpt of the same is reproduced below:-

“I hereby allow the family appeal and modified the impugned Judgment and Decree of learned trial court and directed the appellant / defendant to return the Jahez articles lying in his possession to the respondent / plaintiff or in alternative pay an amount of Rs. 1,00,000/- to the respondent / plaintiff. Thus, the impugned Judgment and Decree are hereby modified to the above extent. Consequently, what has been discussed hereinabove, this point is answered accordingly.

Point No.2

In view of above, this Family Appeal is hereby partly allowed / modified with the above observations. There are, however, no orders as to costs.”

6. So far as the stance of the petitioner is concerned, it is established practice that the exercise of right of Khula by the wife is subject to the satisfaction of the judicial conscious of the Courts. The purpose of the West Pakistan Family Courts Act, 1964, is to expedite family matters to save families from permanent and lengthy litigation in the Courts. Under Section 10(4) of the West Pakistan Family Courts Act, 1964, the marriage can be dissolved based on Khula in summary proceedings and the requirement in such proceedings is to provide an opportunity for reconciliation and as a consequence of failure thereof decree for dissolution of marriage can be passed and in this event, the wife has to forego her claim of dower. The Court on its own cannot deprive the lady of the dower and cannot order her to relinquish the dower because the dower is the right of the lady given by the Shariah. This right cannot be discretionarily or arbitrarily exercised by the Court. Besides if there are children from the wedlock, certain responsibilities are imposed on the husband to fulfill, therefore, he is bound to pay maintenance to the minor till he attains the age of majority.

7. For the reasons discussed above, findings of the learned appellate court are based on proper appreciation of evidence and under law need not be interfered with, therefore, the petition being bereft of merits is hereby dismissed with no order as to costs.

**JUDGE**

*\*Karar\_Hussain /PS\**