

# IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-21 of 2023

[Muhammad Shakir .....v..... Mst. Maria & others]

Date of Hearing : 23.01.2023  
Petitioner through : Khawaja Rauf Ahmed, Advocate.  
Respondents through : *Nemo*

## ORDER

**Zulfiqar Ahmad Khan, J:-** This petition assails the concurrent findings of the learned trial Court dated 27.04.2022 as well as first Appellate Court dated 12.12.2022.

2. The petitioner's entire case was premised on the argument that he had already returned the dowry articles as the acquaintances of the respondent No.1 arrived at the house of the petitioner and they themselves opened the locks of the cupboard and such admission is on record but the learned trial Court as well as Appellate Court failed to consider this aspect and passed the impugned concurrent findings in haphazard manner.

3. Since these are the fresh petitions and fixed before the Court in a category of "Fresh Case". I have heard learned counsel for the petitioners at length and have also scanned the available record. It is considered pertinent to initiate this deliberation by referring to the settled law that learned trial Court i.e. Family Court is the fact finding authority and the purpose of appellate jurisdiction is to reappraise and reevaluate the judgments and orders passed by the lower forum in order to examine whether any error has been committed by the lower court on the facts and/or law, and it also requires the appreciation of evidence led by the parties for applying

its weightage in the final verdict. It is the province of the Appellate Court to re-weigh the evidence or make an attempt to judge the credibility of witnesses, but it is the Trial Court which is in a special position to judge the trustworthiness and credibility of witnesses, and normally the Appellate Court gives due deference to the findings based on evidence and does not overturn such findings unless it is on the face of it erroneous or imprecise. The learned Appellate Court having examined the entire record and proceedings made so available as well as having gone through the verdict of learned trial Court i.e. learned Family Court went on to hold as under:-

“7..... The appellant failed to produce any oral or documentary evidence in support of his contention. The burden to prove the payment of dower lay upon the appellant, but the appellant has failed to discharge the burden. The appellant failed to disclose the specific date; time; place or occasion when the dower was allegedly paid by him. The appellant also failed to disclose the name of witnesses in whose presence he had paid the dower. Hence; the learned trial Court rightly granted the dower of 04 tola and Rs.100,000/- to the respondent.

8.The appellant has also challenged the quantum of maintenance as granted by the learned trial Court to the minors @ Rs.5500/- per month each. From perusal of record, it appears that the appellant is real father of minors namely Baby Hiba Noor and Bany Ammara, who are about 02 years and 09 months of age. Being a father; it is the duty of the appellant/defendant to maintain his children which include food, shelter, clothing education and other things which are necessary for their life. It is the case of the appellant/ defendant that the learned trial Court has fixed an exorbitant amount of maintenance for the minors. This contention merits no consideration for the reason that the quantum of maintenance is to be fixed after considering the financial status and source of father to pay such maintenance. In the present case, according to the appellant he is working in ASF as a Corporal and earning Rs.32530/-. The appellant in support of his contention annexed the photocopy of salary receipt which reveals that the appellant is earning Rs.32530/- per month. In the prevailing situation of inflation when the prices of everything are going high and cost of living has become expensive; the quantum of maintenance i.e. Rs.5500/- per month each for minors fixed by the

**learned trial Court is reasonable and needs no interference**

[Emphasis supplied]

4. It is gleaned from appraisal of the foregoing that the petitioner failed to produce any concrete evidence before the learned trial Court that he had paid the dower amount to the respondent No.1. It is well settled that learned trial Court is the fact finding authority where the learned trial Court having examined the entire record made available before it reached to the conclusion that the petitioner never paid off the dower amount mutually fixed at the time of marriage.

5. It is common knowledge that the object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") is to foster justice, preserve rights and to right the wrong where appraisal of evidence is primarily left as the function of the trial court and, in this case, the learned Family Judge which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has

been taken. No such avenues are open in this case as both the judgments are well jacketed in law. It has been held time and again by the Apex Court that findings concurrently recorded by the courts below cannot be disturbed until and unless a case of non-reading or misreading of evidence is made out or gross illegality is shown to have been committed.<sup>1</sup>

9. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith the applications fixed for order today.

Karachi  
Dated: 23.01.2023.

JUDGE

Aadil Arab.

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<sup>1</sup> Farhan Farooq v. Salma Mahmood (2022 YLR 638), Muhammad Lehrasab Khan v. Mst. Aqeel un Nisa (2001 SCMR 338), Mrs. Samina Zaheer Abbas v. Hassan S. Akhtar (2014 YLR 2331), Syed Shariq Zafar v. Federation of Pakistan & others (2016 PLC (C.S) 1069).