

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitutional Petition No. S-226 of 2021

Petitioners: Mst. Gohar Khatoon and another through
Mr. Gul Mir Jatoy, Advocate.

Respondents: Nemo

Date of hearing: 18.11.2022

Date of decision: 18.11.2022

Date of reasons: 21.11.2022

ORDER

KHADIM HUSSAIN TUNIO, J.- Through captioned petition, the petitioners have challenged the judgment dated 20.08.2021 passed by the learned Additional District Judge, Pano Aqil in Family Appeal No.16/2020 (*Re-Abdul Rasheed v. Mst. Gohar Khatoon and another*) whereby judgment and decree passed by the Family Judge-II Pano Aqil in Family Suit No.86 of 2019 dated 03.09.2020 was modified and appeal of the respondent No.1 Abdul Rasheed was partly allowed.

2. Precisely, facts of the instant revision application are that the respondent No.1 Abdul Rasheed and petitioner Mst. Gohar Khatoon contracted marriage 20 years back and out of the said wedlock they had three sons namely Imran aged 24, Sher Khan aged 22 and Kamran aged 15 and a daughter namely Gul Khatoon aged 17 at the time of institution of the suit. Prior to filing of the suit, the respondent had allegedly started maltreating the petitioner and then drove her out of his house which led her to reside with her parents. Then, the respondent refused to provide maintenance to her whereafter she filed the suit and from the pleadings of the parties, the learned trial Court framed the following issues:-

- i. Whether the plaintiffs are entitled for recovery of their maintenance? If yes, at what rate and for what period.
- ii. What should the decree be?

3. After hearing the parties and recording evidence, learned trial Court decreed the suit of the petitioners while awarding Rs.7,000/- from the date of institution of the suit to her legal entitlement while holding the divorce to be void. On appeal from the respondent No.1, the divorce was held to be legal and the maintenance amount was only awarded for the period of iddat.

4. Learned counsel for the petitioners argued that the petitioners had no knowledge of the respondent No.1 divorcing the petitioner Mst. Gohar Khatoon; that the respondent had refused to pay maintenance to her despite their marriage and had ousted her from the house; that the judgment and decree passed by the learned trial Court was legal and based on merit and did not require any interference, but was illegally modified by the learned Appellate Court, as such the counsel for the petitioners prayed that the impugned judgment be set aside and the judgment and decree passed by the learned trial Court be restored.

5. Learned counsel for the respondent, while supporting the impugned judgment and decree, contended that the petitioner had full knowledge of the divorce which was given to her in the presence of two witnesses; that the order of the learned Appellate Court is legal and does not require any interference.

6. I have learned counsel for the parties and perused the record.

7. The moot point of the matter seems to be divorce between the petitioner Mst. Gohar Khatoon and respondent

Abdul Rasheed. The husband, respondent Abdul Rasheed, had given divorce in writing to the petitioner and had even made publications in the newspaper regarding the respondent disowning his children due to the influence of their mother (petitioner). In Islamic law, divorce can be as simple as saying three "Tuhrs" which makes divorce irrevocable or even a single one which leaves behind chances of reconciliation or through a single "Tuhr" which is revocable and leaves a chance for reconciliation. The respondent No.1 had divorced his wife in the presence of two witnesses. The divorce deed was sent to the petitioner on 01.07.2019 which the petitioner claims to have no knowledge of, however her counsel had received the same along with the written statement of the respondent No.1 on 02.10.2019 which was prior to the learned trial Court passing its judgment and decree. This aspect of the case proves that the divorce was in the knowledge of the petitioner and after a lapse of three months, the same was in full effect. The learned trial Court was incorrect in holding the divorce to be invalid especially when the husband/respondent had produced not only the divorce deed, but also the newspaper clipping which further established his claim. The respondent No. 1 himself has deposed that he had divorced his wife/petitioner and as such, nothing has been brought on record by the petitioner to controvert such claims. The learned Appellate Court was correct in holding the divorce to be valid and modifying the maintenance to only run for the period of Iddat. The maintenance of the petitioner Mst. Gohar Khatoon was kept the same, however the duration was changed in view of the validity of the divorce, as such the amount has been properly calculated while keeping in view the earning conditions of the respondent No.1. As for the maintenance of petitioner No.2 Kamran, the respondent No.1 also brought on record the birth certificate/B-form of Kamran which shows that he has attained

the age of majority and is no longer entitled to any maintenance.

8. For the foregoing reasons, this Court being of the considered view that the judgment passed by the learned Appellate Court being legal did not call for any interference and as such dismissed the instant constitutional petition vide short order dated 18.11.2022.

These are the reasons for the same.

J U D G E