

IN THE HIGH COURT OF SINDH, SUKKUR BENCH AT SUKKUR

C.P No.S-268 of 2023

Petitioner : Mst. Sabeen D/o Liaquat Ali
Through Mr. Sikandar Ali Junejo,
Advocate

Respondent : Pervaiz Ahmed Kalwar through
Syed Naimat Ali Shah, Advocate

Province of Sindh : Mr. Ahmed Ali Shahani, AAG

ORDER

Date of hearing : 07th May 2024
Decision of decision : 07th May 2024

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ARBAB ALI HAKRO, J: Through this writ petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has approached this Court to set aside the impugned judgment and decree dated 19.10.2023 and 25.10.2023, respectively passed by the Additional District Judge-II/MCAC Sukkur (hereinafter referred to as "**the appellate Court**") in Family Appeal No.26/2023 (re: Sabeen vs. Pervaiz Ahmed). The appeal preferred by the petitioner was dismissed, thereby maintaining the judgment and decree dated 15.05.2023, passed by the Family Judge, Sukkur (hereinafter referred to as "**the trial Court**") in Family Suit No.338/2021, whereby suit filed by the respondent regarding dowry articles/amount was decreed by the trial Court.

2. The salient facts leading to the filing of the present petition are that the petitioner was married to the respondent on 11.12.2020, after which she resided in the respondent's house. No children were born from this union. Over time, the respondent's attitude towards his wife (the petitioner) deteriorated, and he began to mistreat her, making her life unbearable. Eventually, he expelled her, seizing all the

property she had received from her parents through dowry articles, including gold ornaments. The respondent obtained a khulla (divorce) through a competent court of law. However, the learned trial Court observed that the petitioner (plaintiff) was entitled to receive dowry articles, excluding the articles mentioned in the list at Sr.No.01, 02, 09, 10, 12, 16 & 27, or an alternate amount of Rs.150,000/-. Consequently, the petitioner preferred a Family Appeal against the judgment and decree passed by the trial Court but was unsuccessful, hence this petition.

3. At the outset, the learned counsel for the petitioner contends that both lower Courts committed gross negligence by hastily passing the impugned judgments and decrees without applying a judicious mind. The counsel argues that both the Courts failed to appreciate the valuable rights of the petitioner by observing that the petitioner is entitled to dowry articles, excluding those mentioned at Sr.01,02,09,10,12,16 & 27, or an alternate amount of Rs.150,000/-. However, the respondent admitted in his cross-examination that she has never returned since she left his house. Counsel believes there are reasonable grounds to suspect a significant miscarriage of justice. Therefore, the counsel prays that the impugned judgments and decrees be set aside and that the petition be allowed.

4. Conversely, the learned counsel representing the respondent contended that both lower courts have correctly passed the impugned judgments and decrees, adhering to the guidelines issued by the Apex Courts. Furthermore, the learned lower Courts did not commit any illegality, gross irregularity, or infirmity while passing the impugned judgments and decrees that appear comprehensive and well-reasoned.

5. While adopting the arguments advanced by the learned counsel for the respondent, the learned AAG supports the impugned judgments and decrees passed by the lower courts.

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

7. Upon meticulous examination of the case records, it is clear that the Respondent and the Petitioner were previously in a marital relationship, which did not result in any offspring. This marital bond was subsequently dissolved. The petitioner had filed a suit for the dissolution of marriage, which was granted by the Court. In relation to the return of dowry articles, the learned trial Court observed that the petitioner is entitled to the dowry articles, except for the articles listed at Sr. 01,02,09,10,12,16 & 27. Alternatively, the petitioner could receive an amount of Rs.150,000/-. Dissatisfied with this decision, the petitioner appealed, but the appeal was dismissed. The petitioner has now filed the present petition, arguing that the trial Court and the Appellate Court failed to consider crucial evidence. This evidence pertains to the dowry articles left by the petitioner at the respondent's residence when she was ousted. The petitioner contends that this factual aspect was overlooked by both the lower Courts.

8. Article 199 of the Constitution is designed to uphold justice, protect rights, and rectify any injustices that may have occurred. It empowers the High Court to rectify any wrongful or excessive exercise of jurisdiction by lower Courts and to address any procedural illegality or irregularity that may have adversely affected a case. However, it is important to note that under Article 199, the Court does not have the jurisdiction to re-examine or reconsider the facts of a case that has already been decided based on evidence by lower Courts. It cannot re-examine the evidence or disturb the findings of facts. It can only review a case if it believes there has been a misreading or non-reading of evidence, a misapplication of law, or an excess or abuse of jurisdiction. The scope of judicial review under Article 199 of the Constitution is limited to instances of misreading or non-reading of evidence or when the finding is based on no evidence, resulting in a

miscarriage of justice. Furthermore, findings of facts cannot be disturbed through a reappraisal of evidence in constitutional jurisdiction, nor can this jurisdiction be used as a substitute for a revision or appeal. This principle is exemplified in the case law reported as Shajar Islam vs Muhammad Siddique (PLD 2007 Supreme Court 45).

9. The case records indicate that the respondent denied the dowry articles as listed, and the learned trial Court did not entitle the petitioner to the dowry articles mentioned in Serial No. 01, 02, 09, 10, 12, 16 & 27 of the list. The petitioner, however, is aggrieved by the alternate amount of Rs.150,000/- fixed by the learned trial Court. The crux of the arguments put forth by the learned counsel for the petitioner is that the amount fixed by the learned trial Court is meager and does not consider the value of each item mentioned in the list of dowry articles. In a constitutional petition, the scope is narrow, and the concurrent findings based on facts cannot be reversed in constitutional jurisdiction unless the findings are illegal and erroneous. The record reflects that the petitioner has not substantiated the amount of dowry articles granted in the impugned judgment and decree through documentary evidence. The respondent's defence is that the list of dowry articles was managed and fabricated, as the petitioner failed to present any evidence to support her claim. The learned counsel has not been able to identify any irregularity, misreading, or non-reading of evidence in the impugned judgments and decrees passed by the lower courts.

10. It is imperative to underscore that the evidence under scrutiny must possess a degree of substantiality and significance that justifies the intervention of this Court. The Court's interference is predicated on the premise that the evidence presented is robust enough to challenge the decisions made by the lower courts. However, a meticulous examination of the case at hand reveals no material illegality, infirmity, or irregularity that could potentially undermine the

integrity of the proceedings. The absence of such critical issues, which would otherwise necessitate the Court's intervention, led me to uphold the decision rendered by the lower courts. This Court, therefore, finds no compelling reason to interfere with the judgments passed by the lower courts, given that they have been arrived at after due consideration and are devoid of any legal or procedural anomalies.

11. Consequently, this petition, which lacks merit, is hereby **dismissed**.

Faisal Mumtaz/PS

JUDGE