

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA
Const. Petition No. S-128 of 2023
(Mst.Khadijat-ul-Kubra & Ors v. Abdullah & Ors)

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| DATE | ORDER WITH SIGNATURE OF JUDGE |
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Date of hearing and Order: 17.03.2025

Mr. Abdul Rehman Bhutto, advocate for the petitioners.
M/S. Ameer Ali Sanjrani & Ali Bux Mashori, advocate for respondent No.1
Mr. Abdul Waris K. Bhutto, Assistant A.G for the State.

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ORDER

Adnan-ul-Karim Memon, J; Petitioners seek the following relief;

- a). *That, the learned trial Court passed judgment and decree against law and facts liable to be set aside.*
- b). *That the judgment and decree passed by the Appellate Court are not according to law, in the view of Section 206 of Sindh Civil Court Rules, liable to be set aside.*
- c). *That this Honorable Court may be pleased to decree the suit of petitioners as prayed before the learned Family Court according to law.*

2. The petitioner filed Family Suit No.25/2021 seeking recovery of dower, dowry articles, delivery expenses, Iddat maintenance, and child support, and the family court denied the petitioner/plaintiff's claim for 10 Tola gold due to inconsistent evidence and the presumption that women typically retain their gold. The court found the plaintiff left voluntarily. However, the petitioner/plaintiff was awarded Rs. 35,000 for Iddat maintenance (Rs. 5,000/month for 7 months) and Rs. 52,996 for delivery expenses based on her medical bill. The respondent No.1/defendant was directed to pay these in seven installments. Besides child maintenance was granted for all three children at Rs. 6,000 per child per month (total Rs. 18,000), with a 10% annual increase, until they reach legal entitlement. However, it was ordered that interim maintenance payments would be deducted. The suit was decreed accordingly.

3. Petitioner being aggrieved by and dissatisfied with the aforesaid judgment and decree filed Family Appeal 2 of 2023, which was disposed of with the observation that the trial court awarded the petitioner/appellant dower, specific dowry items, Iddat maintenance, delivery expenses, and child support. The appellant appealed, seeking recovery of 10 Tola gold and increased child maintenance. The appellate court found the petitioner/appellant failed to provide sufficient evidence for the 10 Tola gold claim or to demonstrate the respondent's extra income

to justify increased child support. Therefore, the appellate court upheld the trial court's judgment and dismissed the family appeal.

4. The petitioner's counsel states that the petitioner's marriage (Nikkah) to the respondent/defendant occurred on September 15, 2016, with a dower of 4 Tola gold or Rs. 250,000, which remains unpaid. They have two children, Muhammad Umar, and Rubab Fatima. At the time of marriage, the petitioner received a dowry worth Rs. 1,000,000 and 10 Tola of gold jewelry (5 Tola from relatives, 5 Tola purchased by her), all of which were held illegally by respondent No.1. Throughout the marriage, he and his family mistreated and abused her, which she endured for her children's sake. The respondent failed to provide maintenance and neglected the family's welfare. In June 2021, the respondent forcibly evicted her and their children, despite her being four months pregnant, leaving her with only the clothes she was wearing. However, she sought refuge with her parents, who have been supporting her and her children. Following the eviction, the respondent sent a divorce deed but did not pay the dower or provide maintenance, nor did he acknowledge her pregnancy. The respondent, a male nurse with a substantial income, has failed to fulfill his financial obligations to the petitioner. As the father of the two children and the unborn child at the relevant time, he is legally responsible for their maintenance, including the delivery expenses of the child, with a 20% annual increase. As such she was compelled to file Family Suit No.25/2021 which was decreed however appellate court maintained the decree. Counsel asserted that the lower courts' rulings were based on misinterpretations of law and fact. He pointed to evidentiary oversights, an improper dismissal of an application, and procedural irregularities. He therefore requested that the court set aside both decisions and uphold the petitioner/plaintiff's initial demands as made in the memo of the Family Suit. He further argued that when an appellate court's judgment omits proper points of determination and reasoning, it is deficient under Section 206 of Sindh Civil Court Rules and Order 43 Rule 31 CPC. In such cases, a remand is usually required to safeguard the aggrieved party's right to appeal. He added that the aforesaid provision emphasizes the necessity for appellate courts to clearly define the points of determination in their judgments. This means the court must explicitly state the issues it considered and decided upon. He prayed for allowing the petition.

5. The learned counsel representing the private respondent supported the impugned judgments and prayed for the dismissal of the petition. Learned AAG is of the same view.

6. I have heard the learned counsel for the parties and perused the record with their assistance.

7. In her testimony, the petitioner denied receiving 4 tola of gold. She acknowledged that PW Saqlain and Nasrullah were not witnesses to the Nikah, that she provided gold receipts for

5 tola dated August 13, 2020, and that her dowry list included only gold ornaments without other items or prices. She also confirmed the gold receipt bore her brother's name and lacked a shop stamp. The petitioner's claims for gold and increased child support were denied by the trial court due to insufficient evidence. In such circumstances, this court cannot re-evaluate evidence, and it appears the petitioner failed to prove those claims. Additionally, the petitioner's factual submissions were already reviewed by the trial and appellate courts, which are the primary fact-finding bodies. This court cannot act as an appellate court for Family Court cases unless a lack of jurisdiction or an injustice is demonstrated.

8. Article 199 of the 1973 Constitution prevents the High Court from acting as an appellate court to resolve factual disputes. The Supreme Court has repeatedly addressed the use of Article 199 jurisdiction against appellate decisions. In such cases, the High Court's role is restricted to determining if the lower courts acted within their legal authority. If a court had the jurisdiction to decide a matter, its decision is valid, even if it is considered incorrect. An incorrect decision alone does not make it unlawful and justify constitutional intervention. In Mst. Tayyeba Ambareen v. Shafqat Ali Kiyani, [2023 SCMR 246]. The Supreme Court clarified the purpose of Article 199 jurisdiction. It aims to uphold justice and rectify wrongs. While evidence evaluation is primarily the Family Court's role, the High Court can intervene constitutionally when findings are based on: Misreading or ignoring evidence. Arbitrary, perverse, or unlawful orders. Glaring and unacceptable errors. Insufficient evidence. Erroneous assumptions of fact. Patent legal errors. Considering inadmissible evidence. Abuse of jurisdiction. Arbitrary use of power. Unreasonable views on evidence. In Shajar Islam v. Muhammad Siddique, [PLD 2007 SC 45] the Supreme Court stated the High Court should avoid interfering with factual findings, even if incorrect, and should not re-evaluate evidence under Article 199. This was reiterated in Hamad Hassan v. Mst. Isma Bukhari, where the court emphasized the limited scope of Article 199 against appellate decisions. Following Muhammad Hussain Munir v. Sikandar, [2023 SCMR 1434] the High Court primarily checks if lower courts acted within their jurisdiction. However, Utility Stores Corporation v. Punjab Labour Appellate Tribunal [PLD 1987 SC 447] established that legal errors by lower courts can be considered jurisdictional issues, allowing High Court intervention under Article 199, as every individual has the right to be dealt with according to law.

9. In family law, the legislature intentionally excluded a direct appeal to the High Court from appellate court decisions. This reflects a policy to finalize family disputes quickly. By preventing further High Court appeals, the legislature aims to avoid protracted litigation and ensure appellate court rulings are final. In Arif Fareed v. Bibi Sara, [2023 SCMR 413, the Supreme Court stated the legislature intended appellate court decisions to finalize family litigation. However, High Courts often use Article 199 jurisdiction as a substitute for appeals, undermining the goal of swift resolution. While some interventions are justified, many are not.

The Court suggested High Courts prioritize family cases by creating specialized benches. Without an explicit right to appeal, appellate court decisions in family matters are final. As stated in Hamad Hassan v. Mst. Isma Bukhari, 2023 SCMR 1434, the Supreme Court of Pakistan, addressed the scope of constitutional jurisdiction and the limits on interference with findings of fact by lower courts, particularly in matters of family law and held that appeal rights are statutory. If a second appeal was intended, it would be expressly provided. Therefore, the appellate court's factual findings are conclusive. The legislature intends to prevent prolonged family disputes. High Court intervention under Article 199 against appellate orders undermines this intent, opening the door to excessive litigation. Courts should avoid facilitating abuse of process. Once factual findings are made by trial and appellate courts, constitutional courts should not re-evaluate those facts or substitute their opinions. Accepting the finality of appellate findings ensures efficient dispute resolution, prevents unnecessary litigation, and respects the legislature's intended finality.

10. The trial court thoroughly examined the evidence regarding the disputed gold ornaments as discussed supra, and the appellate court agreed with certain reasonable findings. The record confirms that all factual disputes were assessed by both lower courts, and this Court upholds their findings. Having reviewed the evidence, I find no misreading or omission.

11. Based on the preceding analysis and the legal precedent established by the Supreme Court of Pakistan in *M. Hamad Hassan v. Mst. Isma Bukhari*, supra the current constitutional petition lacks merit and is therefore dismissed. Any pending applications are also dismissed.

JUDGE
17/5/2023