

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitutional Petition No. S -107 of 2023

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| DATE OF HEARING | ORDER WITH SIGNATURE OF JUDGE |
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Date of hearing: 24.03.2024

Date of Order : 28.03.2024

Petitioner: Through M/s Syed Zaffar Ali Shah,
Athar Hussain Abro, Advocates

Respondent No 1: Mr. Achar Khan Gabol, Advocate

Respondents No 2 & 3: Mr. Agha Athar Hussain Pathan, AAG.

ORDER

NISAR AHMED BHANBHRO, J. Through instant petition the petitioner has challenged the Judgment and Decree dated 03.04.2023 (the impugned Judgment and Decree) passed by the Court of Learned Additional District Judge-IV (Hudood), Sukkur (**the Appellate Court**) in Family Appeal No.08/2003 whereby Judgment and Decree dated 13.12.2022 passed by the Court of Learned Family Judge, (**the Trial Court**) Sukkur in Family suit No.277/2020 was reversed and was modified to the extent that the petitioner was held disentitled to receive maintenance for herself and for recovery of Gold.

2. The facts of the case giving rise to this petition are that the petitioner filed suit No. 277/2020 before the Trial Court, praying inter alia therein as under :-

i) To direct the defendant to pay past maintenance at the rate of Rs. 15000/- per month since last four months and same may be continued for future maintenance by increasing 10% per annum.

ii) To direct the defendant to return back the dowry articles as per list of the articles.

3. The respondent No.1 filed written statement and on divergent pleadings of the parties, the Trial Court framed five issues. The parties led evidence in support of their respective claim. The Plaintiff examined herself, One Aijaz Ali, the Defendant examined himself, Abdul Ghani and Loung.

4. The Learned Trial Court after hearing the parties decreed the suit of the petitioner vide Judgment and Decree dated 13.12.2022 set forth in para No.13 of the Judgment in the following terms:

13) In view of my findings on Issues No. 1 to 4, suit of the plaintiff is partly decreed. The plaintiff is entitled for the past maintenance including her medical expenses for last four months till filing of this suit at the rate of Rs.10,000/- per month and Rs. 5000/- per month since filing of this suit till today and Rs. 6000/- per month as future maintenance with 10% annual increment till their marriage tie remains intact. Plaintiff is also entitled for the maintenance of minor at the rate of Rs. 4000/- per month since filing of this suit and at the same rate as future maintenance with 10% annual increment. Plaintiff is also entitled for the dowry articles of Rs. 220,000/- in case of damage or nonexistence of the articles. She is also entitled for the gold ornaments as per list of their alternate amount as per market value.

5. The Respondent No 1 preferred appeal against the Judgment and Decree dated 13.12.2022 passed by the Trial Court before the Court of Learned District Judge Sukkur which was assigned to the Appellate

Court for disposal in accordance with law. The Appellate Court after hearing the parties modified the judgment and decree of the Trial Court vide the impugned judgment, Para 12 being relevant reads as under:

“12. Crux of discussion in Point 1, I am of firm opinion that the impugned judgment coupled with decree require modification in term of judgment whereby respondent/ plaintiff is neither entitled for recovery of gold, nor maintenance for herself. Appeal is partly allowed with no order as to Costs. Decree to follow.”

The Petitioner filed this constitution Petition against the impugned judgment praying for maintaining the judgment and decree passed by the Trial Court.

6. Mr. Zaffar Ali Shah assisted by Mr. Athar Hussain Abro Learned Counsel for the Petitioner contended that the petitioner successfully proved its case for recovery of dowry articles and maintenance before the Trial Court, through Oral and Documentary Evidence. The Trial Court passed a well reasoned judgment and decree by making proper appraisal of the evidence on record. The Appellate Court disturbed the well reasoned findings of the Trial Court without any justification. He prayed to set aside the impugned Judgment and Decree by maintaining the judgment and Decree of the Trial Court.

7. Mr. Achar Khan Gabol Learned counsel for Respondent No.1 contended that the petitioner failed to prove her case regarding maintenance and recovery of dowry articles, through solid proof. The evidence has been properly appreciated. Therefore, the impugned Judgment and Decree passed by the Appellate Court were in accordance with law and did not require interference by this Court.

8. Learned Assistant Advocate General Sindh has also supported the impugned Judgment and Decree.

9. I have heard learned counsel for the parties and perused the material available on record.

10. The case of the petitioner is that at the time of marriage, she was given dowry articles by her parents, which she left in the house of defendant (Respondent No.1). In her evidence recorded before the Trial Court she produced receipts of the purchase of the jewelry and other articles but dates on the receipts pertained to years of 2011 and 2019 whereas marriage was solemnized in the year 2020. Not a single witness was examined by the Petitioner to establish that the purchase receipts produced by the Petitioner related to articles given to her at the time marriage. Contrary, on notice of this Court, owner of jewelry shop appeared on 16.04.2024 and stated that the payment of jewelry articles was made by the Respondent No.1/husband of the petitioner. It infers that the jewelry was a bridal gift given by Respondent No 1 to Petitioner at the time of marriage. The Petitioner and her witnesses failed to produce on record oral or documentary proof to say that the gold articles shown in receipt were purchased by her parents and were lying in the house of Respondent No 1. The onus to prove the case was upon the Petitioner, which she failed, therefore, the findings of the Appellate Court regarding modification of the Judgment and Decree to the extent of recovery of Gold do not suffer from misreading or non-reading of evidence or material illegality thus require no interference.

11. So far as, the maintenance of the petitioner is concerned, the reason which attracted the Appellate Court to declare her disentitlement was that she remained in the house of Respondent No 1 for a period of

Twenty days only. On that reason alone she was dubbed a disobedient wife. This finding of the Appellate Court does not appeal to the mind and is untenable.

The marital relationship between a man and woman is pious in nature as the family heredity depends on it. The marital relationship can only nurture and flourish when respect, regards, affection and love between the pair is up to the mark and within the acceptable degree of social norms. The cruel mentality of the male dominated culture when inflicted upon a woman, she undergoes mental pain, agony and distress and this behavioral pattern leaves the bond filled with hatred and ultimately broken. The Petitioner was pregnant when she filed family suit for recovery of dowry articles, dower amount and maintenance. The case remained pending before the Trial Court for about an year and no efforts seems to have been taken by the Respondent No 1 to settle the dispute amicably. This reflected the absconding attitude of the Respondent No 1 to Petitioner and more particular towards expected baby.

12. The Respondent No 1 was under an obligation to maintain the Petitioner as she was carrying his baby in womb and needed tender care during those days. During the pendency of the Suit she gave birth to a baby girl, in proof, she produced medical receipts and prescriptions during evidence. The Respondent No 1 was burdened to provide maternity expenses to the Petitioner but he failed. This reflected his cruel behavior, which in fact could have been the reason for early separation of and breaking of the ties. The Appellate Court absolved Respondent No 1 from paying the maintenance and maternity charges to the Petitioner for no sound reasons, it was the duty of husband/ Respondent No 1 to maintain his wife/ Petitioner, until the relation was intact. Thus findings of the Appellate Court for refusing to grant maintenance allowance to the Petitioner would not sustain.

This view finds support from the Dicta laid down by the Honorable Supreme Court in the case of **Khalid Parvaiz Versus Samina** reported in **2024 SCMR 142**, wherein the Petition filed by the Husband challenging the grant of Mehr and maintenance was dismissed with costs.

13. The West Pakistan Family Courts Act 1964 (**the said Act**) was enacted by the Parliament to provide a forum for quick disposal of the family related matters, the preamble of the said Act reads as under:

***Preamble.** Whereas it is expedient to make provision for the establishment of Family Courts for the expeditious settlement and disposal of the disputes relating to marriage and family affairs and for the matters connected herewith:*

Family Court has been vested with a jurisdiction under section 5 (2) of the said Act to entertain and decide the family matters contained in Part II of the schedule, which beside other matters also confers the jurisdiction of entertaining the claims of maintenance. Section 17 A of the said Act empowers the Family Court to grant interim maintenance at any stage of the proceedings, failure thereof to pay interim maintenance followed the penal consequences of striking off defense. Petitioner at the time of filing of the suit was pregnant and she specifically averred this fact in the pleadings. The Trial Court was under an obligation to grant interim maintenance to the Petitioner but lost sight of this important aspect of the case and dealt with the case in a very casual manner. For grant of interim maintenance in such a situation, the Court should have acted at its own without waiting for a formal application which even was not required to be filed. The Family Courts dealing with such cases are expected to be careful when dealing with cases for grant of maintenance and keeping in view the facts and circumstances of the case may exercise the powers vested in them under section 17A without hesitation.

Otherwise the fruits of the enactment of the West Pakistan Family Courts Act 1964 would not yield.

14. Learned counsel for Respondent No.1 has produced copy of Talaqnama according to which the Respondent No 1 divorced the Petitioner on 03.07.2023, meaning thereby that she was his legally wedded until the above period, for which she was entitled to receive maintenance.

15. For what has been discussed herein above, the findings of the Appellate Court regarding grant of the maintenance and maternity charges to the Petitioner are not sustainable under the law and the impugned judgment and decree to that extent stands set aside. The Petitioner is held entitled to receive Dower Amount of Rs 5000, maternity charges of Rs 20,000 and to receive monthly maintenance throughout the period viz. from date of marriage till the time she remained the wedded wife of the Respondent No 1 until the expiry of Iddat Period. Since no proof as to the business or other source of the earning or the financial status of the Respondent No 1 has been furnished, therefore the petitioner is held entitled to get monthly maintenance of Rs. 3000/- for the period mentioned above. The Respondent No 1 may apply for payment of the amount in installments before the Executing Court, his request shall be considered in accordance with law.

The petition stands disposed of in the above terms.

JUDGE