

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No.S-60 of 2024

Petitioner : **Riaz Ali Jatoi**
Through Mr. Abdul Mujeeb Shaikh,
Advocate

Respondents: : **1. Mst Nadra.**
2. Family Judge and another through
Mr. Ahmed Ali Shahani, Assistant
Advocate General.

Date of hearing : **23.02.2026**

Date of decision : **23.02.2026**

ORDER

Ali Haider "Ada" J. Respondent No. 1, Mst. Nadra, instituted a Family Suit against the petitioner seeking dissolution of marriage on the basis of Khula, along with recovery of maintenance and dowry articles. After full-fledged proceedings, the learned Family Judge, Sukkur, vide judgment dated 06.12.2023, dissolved the marriage by way of Khula. However, the petitioner's claim regarding return of the dower amount, allegedly fixed as five (05) tolas of gold in the Nikahnama, was declined. Being aggrieved, the Petitioner preferred an appeal before the appellate Court. The learned District Judge-IV (Hudood), Sukkur, through judgment dated 29.02.2024, dismissed the appeal and maintained the findings of the trial Court. The petitioner has assailed both the judgments primarily on the ground that the dower was stipulated in the Nikahnama as five (05) tolas of gold ornaments, where the wife seeks dissolution of marriage through Khula, she is required to return the dower to the husband.

2. Learned counsel for the petitioner contends that the judgments and decrees passed by the Courts below are contrary to the evidence available on record. He submits that it has been acknowledged that Respondent No. 1 received five (05) tolas of gold as Haq Mehr; however, this material aspect was not properly appreciated. Therefore, the issue of

return of dower still survives, and Respondent No. 1 is liable to be directed to return the same.

3. Conversely, the learned Assistant Advocate General has supported the impugned judgments. He submits that paragraph No. 9 of the trial Court's judgment clearly reflects that the petitioner failed to establish that the Haq Mehr was ever paid to his wife, as the same was payable on demand. In the absence of proof of payment, the question of its return does not arise.

4. Arguments heard. Record perused.

5. The plea raised by the petitioner concerns the recovery of dower on the basis that where a wife has received the dower amount and subsequently seeks dissolution of marriage on the basis of Khula, she is under an obligation to return the same. In this context, it would be appropriate to first advert to the concept of Khula as envisaged under Islamic injunctions. The doctrine of Khula finds its foundation in **verses 228 and 229 of Surah Al-Baqarah of the Qur'an**. The relevant verse (2:229) provides as under:

"Divorce may be retracted twice, then the husband must retain 'his wife' with honour or separate 'from her' with grace. It is not lawful for husbands to take back anything of the dowry given to their wives, unless the couple fears not being able to keep within the limits of Allah. So if you fear they will not be able to keep within the limits of Allah, there is no blame if the wife compensates the husband to obtain divorce. These are the limits set by Allah, so do not transgress them. And whoever transgresses the limits of Allah, they are the 'true' wrongdoers."

6. Furthermore, the Federal Shariat Court, in the case of **Haji Saif-ur-Rahman Shaheen v. Islamic Republic of Pakistan**, reported as **PLD 2024 Federal Shariat Court 9**, held that:

"- - - if a wife claims that she is forced to seek a decree of khula because of her husband's ill-treatment or mistreatment, etc., the Court may reduce the amount of compensation if it finds the husband at fault after recording of evidence so much so that in severe cases, the Court may grant divorce in case of khula to a wife without paying back any amount of Mahar at all." **Underline emphasized**

7. Now, the question arises as to what is the legally recognized mode of payment of dower and how the same is to be treated under the law. In this regard, it is appropriate to examine **Section 10 of the Muslim Family Laws Ordinance, 1961**, which specifically deals with the mode of

payment of dower. For ready reference, the relevant provision is reproduced below:

10. Dower.— Where no details about the mode of payment of dower are specified in the nikah nama, or the marriage contract, the entire amount of the dower shall be presumed to be payable on demand.

8. A plain reading of the above provision makes it clear that where the Nikahnama does not expressly specify whether the dower is prompt or deferred, the law creates a presumption that the whole of the dower is payable on demand. In other words, unless the mode of payment is clearly defined in the marriage contract, the dower becomes immediately claimable at the instance of the wife. Thus, the statutory scheme leaves no ambiguity, the burden lies upon the husband to establish not only the agreed mode of payment but also the actual payment thereof. In the absence of such proof, mere narration in the Nikahnama regarding the quantum of dower does not ipso facto establish that the amount was in fact paid.

9. In view of the above statutory mandate, in the present case, the Nikahnama available on record reflects that the dower was fixed at five (05) tolas of gold. However, a perusal of columns No. 14 and 15 of the Nikahnama reveals that neither the mode of payment nor the status of payment, whether paid, unpaid, prompt, or deferred, has been specified.

10. In these circumstances, this Court finds no illegality, misreading, or non-reading of evidence in the impugned judgments passed by the learned Courts below to warrant interference in Constitutional jurisdiction. Consequently, the instant petition is hereby dismissed.

JUDGE