HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Constitutional Petition No.S-202 of 2025

Present: Justice Jawad Akbar Sarwana

Petitioner	:	Hamza Noor s/o Muhammad Rafique Through Mr.Shahzad Ahmed Narejo, Advocate
Respondent No.1	:	Mst.Iqra Channa d/o Moosa Channa Through Mr. Shoaib Ali Narejo, Advocate
Respondent No.2	:	District Judge, Jamshoro at Kotri. Nemo
Date of hearing	:	**27.10.2025**
Date of decision	:	**11.11.2025**
Date of Reasons	:	**10.11.2026**

O R D E R

JAWAD AKBAR SARWANA, J: Counsel for the petitioner / defendant / judgment-debtor, Hamza Noor, contends that pursuant to the judgment and decree dated 18.03.2025 passed by the District Judge, Jamshoro, in Family Appeal No.34/2024,[1] the Appellate Court modified the judgment and decree dated 17.10.2024,[2] passed by the Family Judge, Jamshoro, in Family Suit No.210/2023 to the extent of allowing the respondent/plaintiff's claim for gold dowry items and directing the petitioner/defendant to return the gold ornaments listed in serial nos. 1 and 20 of the dowry list or in the alternative to pay their market value to the respondent/plaintiff, which the Family Judge had earlier declined in the said Family Suit. He is aggrieved only that the Appellate Court's judgment, with respect to allowing the respondent/plaintiff's claim for gold dowry items and directing the petitioner/defendant to return the gold ornaments listed in serial nos. 1 and 20 of the dowry list, or in the alternative to pay their market value to the respondent/plaintiff, is "without lawful authority" and "of no legal effect". It may be noted that the petitioner/defendant raised no challenge to the judgment and decree dated 17.10.2024, passed by the Family Judge in Family Suit No. 210/2023, on matters other than the respondent/plaintiff's claim for gold dowry items and directing the petitioner/defendant to return the gold ornaments listed in serial nos. 1

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[1] Available from pages 13 to 27 of the petition.
[2] Available from pages 57 to 81 of the petition.

and 20 of the dowry list, or in the alternative to pay their market value. The petitioner/defendant preferred neither an appeal against the 17.02.2024 judgment and decree nor a cross-appeal against it in the respondent/plaintiff's appeal before the District Judge. Therefore, this challenge brought under the writ jurisdiction of the 1973 Constitution before the Regular Bench of the High Court is restricted to the Appellate Court's reappraisal of the evidence in terms of Article 199(1)(a)(ii) of the 1973 Constitution concerning gold ornaments only.

2. Heard Counsel and perused the record available in the petition. A summary of the judgment and decree passed by the two lower forums, juxtaposed with the petitioner/defendant's claim in this writ petition concerning the respondent/plaintiff's claim for gold dowry items and directing the petitioner/defendant to return the gold ornaments listed in serial nos. 1 and 20 of the dowry list, or in the alternative to pay their market value, is reproduced below.

Reliefs **(A)**	**Family Judge Jamshoro** **Mst. Iqra Channa** **Family Suit No.210/2023** **Judgment & Decree dated 17.10.2024** **(B)**	**District Judge, Jamshoro** **Ms. Iqra Channa** **Family Appeal No.34/2024** **Judgment & Decree dated 18.03.2025** **(C)**	**High Court of Sindh Circuit Court, Hyderabad** **Hamza Noor** **CP No.S-202/2025** **Impugned Order dated 18.03.2025** **(D)**
Respondent/ Plaintiff entitled to recovery	Dowry Articles (Ex:13) 02 to 09 11, 15, 19, 21, 24 to 26 or their market value **Denied (1) and (20) of the dowry list**	Dowry Articles (Ex:13) 02 to 09 11, 15, 19, 21, 24 to 26 or their market value **Allowed recovery of gold dowry items**, with a direction to return the **gold ornaments listed at serial nos. (1) and (20)** of the dowry list, or, in the alternative, pay their market value.	Petitioner/defendant seeks setting aside of the Appellate Court's modification of the Family Judge's judgment and decree dated 17.10.2024 to the extent of allowing recovery of gold dowry items, with a direction to return the gold ornaments listed at serial nos. (1) and (20) of the dowry list, or, in the alternative, pay their market value.

Respondent/ Plaintiff **Not** entitled to recovery	01 10 12 to 14 16 to 18 20 22 and 23	As above.	

3. At the outset, the petitioner has invoked writ jurisdiction, and the challenge under the Constitution differs from a challenge in appeal. Usually, in family matters, by the time an aggrieved petitioner reaches the proverbial constitutional court, the remedy of appeal has already been exhausted, and the petitioner has availed the opportunity of appeal. In family cases, the right of appeal is a statutory creation, and the legislature has not provided for a second appeal. Thus, the appellate court's findings of fact in a family matter ordinarily attain finality at the appellate stage, and the High Court's scrutiny of the appellate judgment in writ jurisdiction is much narrower compared to the appellate Court's examination of the judgment in appeal. Reliance is placed on *M. Hammad Hassan v. Mst. Isma Bukhari and 2 Others*, 2023 SCMR 1434, and *Arif Fareed v. Bibi Sara and Others*, 2023 SCMR 413.

4. In the facts and circumstances of the case in hand, while on the one hand, this Regular Bench of the High Court's scrutiny of the appellate judgment dated 18.03.2025, under the 26th Amendment, is limited to whether it "is without lawful authority" or "is of no legal effect"; yet, on the other hand, this is the petitioner/defendant's first challenge in the family law hierarchy. The Family (trial) Court's judgment dated 17.10.2024 was in favour of the petitioner/defendant. Therefore, the petitioner/defendant had no need to either challenge or contest the judgment and decree dated 17.10.2024 passed by the Family Judge, Jamshoro, in Family Suit No.210/2023 (*Mst. Iqra Channa v. Hamza Noor*), whereby the suit was partly decreed, such that the petitioner/defendant did not have to face any claim concerning to allowing the respondent/plaintiff's claim for gold dowry items and directing the petitioner/defendant to return the gold ornaments listed in serial nos. 1 and 20 of the dowry list, or in the alternative to pay their market value to the respondent/plaintiff. However, now, with the impugned judgment and decree dated 18.03.2025, the Appellate Court has modified the Family Judge's judgment and decree dated

17.10.2024 to the extent of allowing the respondent/plaintiff's claim for gold dowry items and directing the petitioner/defendant to return the gold ornaments listed in serial nos. 1 and 20 of the dowry list, or in the alternative to pay their market value to the respondent/plaintiff, the petitioner/defendant has raised this first time challenge in the family laws hierarchy.

5. Given the above facts, the non-concurrent findings by the two forums below and the legal propositions discussed hereinabove, I now turn to deciding which one of the two findings, viz, either the Family Judge or the Appellate Court's, is/was "without lawful authority" or "of no legal effect", limited to the issue of respondent/plaintiff's being allowed her claim for gold dowry items and awarded with directions to the petitioner/defendant to return the gold ornaments listed in serial nos. 1 and 20 of the dowry list, or in the alternative to pay their market value to the respondent/plaintiff. To determine this issue, the evidence on record in this matter is reproduced below.

6. The respondent/plaintiff in paragraphs 4 and 14 of the plaint filed in Family Suit No.210/2023 stated as follows:

> "04. That at the time of marriage parents of [respondent] plaintiff has given dowry articles to the [respondent] plaintiff such as, 1. Gold ornaments. . . ."
>
> "14. That the all the dowry articles, as List above and list attached herewith along with Gold Ornaments clothes are laying at the house of the [petitioner] defendant under the possession of [petitioner] defendant."

7. In response, the petitioner/defendant replied as follows in paragraphs 5 and 11 of his Written Statement concerning the respondent/plaintiff's paras 4 and 14:

> "05. That the contents of para No.4 of the plaint are vehemently denied, as the same are false, concocted, fabricated, frivolous misconceived and vexatious, as such vehemently denied. [Respondent] Plaintiff need to give strict proof in support of her contention. It is respectfully submitted receipt produced by the plaintiff are fabricated and managed one, although the [respondent] plaintiff at the time of marriage brought some dowry articles as per list annexed

> herewith, which are lying safe at [Petitioner] Defendant house, and he is voluntarily and honestly ready to give back the same to the [Respondent] Plaintiff."
>
> "11. That the contents of para No. 14 of the plaint are admitted to the extent of list of dowry articles given by the [petitioner] defendant, It is respectfully submitted that the [petitioner] defendant is only in possession of articles as per list given by him which he is ready return back the same."

8. The respondent/plaintiff (PW-1), her brother, Kaleemullah s/o Muhammad Moosa (PW-2), and her maternal uncle/mammo, Imdad Hussain Channa (PW-3), deposed the following evidence concerning the gold dowry items:

> Iqra Channa – respondent/plaintiff
> Examination in Chief (PW-1)
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> "…at the time of marriage 1.5 tola gold was fixed as haqmahar but the same was not paid to me...."
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> "About 05/ to 06 days before my marriage my parents had given and shifted dowry articles at the house of defendant, and the same are still lying at the house of defendant. The dowry articles which includes gold in shape of jewelry, . . .jewelry with boxes. . .I also produce list of dowry articles at Ex.13...."
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> Iqra Channa – respondent/plaintiff
> Cross-Examination (PW-1)
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> "It is incorrect to suggest that defendant had given me gold set being haqmahar and I along with personal gold and other valuable articles taken away the same from the house of defendant...."
>
> "It is incorrect to suggest that in absence of defendant, his father and brother my parents and relative took some dowry articles frm the house of defendant as much as possible...."
>
> Kaleemullah (respondent/plaintiff's brother/witness)
> Examination in Chief (PW-2)
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> "I along with my parents reached at the house of plaintiff. . .Thereafter defendant and his parents did not allow plaintiff to take anything else except her wearing cloths and then we brought back plaintiff at our home…."
>
> Kaleemullah (respondent/plaintiff's brother/witness)

Cross-Examination (PW-2)

"It is correct to suggest that in my examination-in-chief I have not deposed that who was taken away dowry articles at the house of defendant and to whom those articles were handed over. Vol. says my younger brother Ahsanullah had taken away dowry articles and handed over the same to the family members of defendants...."

"I see Ex.14 pertaining to gold and a does not show carat of gold...."

Imdad H. Channa (respondent/plaintiff's mammo witness)
Cross-Examination (PW-3)

"It is incorrect to suggest that 10/15 unknown persons were not found gathered at the house of defendant and the plaintiff came to us by crying...."

9. The petitoner/defendant (DW-1), and his father, Muhammad Rafique (DW-2) deposed the following evidence concerning the gold dowry items:

Hamza Noor s/o Mohd. Rafique (petitioner/defendant)
Examination in Chief (DW-1)

"My marriage was solemnized with plaintiff through wife of elder brother of plaintiff, who was my maternal cousin. . .On 27.4.2023 my nikah was recited with plaintiff and at the same night of marriage I had given dower in shape of gold weighing one and half tola. At the same time plaintiff was also given gold in shape of gift weighing five tola…."

"On 04.6.2023 parents of plaintiff came to our house and they informed us that they are going to attend a marriage ceremony of their relative, as such, they are taking away plaintiff. My father had given consent to the plaintiff and permitted her to go with her parents for attending marriage ceremony. Thereafter plaintiff filled to suit cases and took jewelry, make up kits, cloths and I restrained her from taking said items but she told me that she was taking away less quantity items as she was going to attend marriage ceremony. Plaintiff while leaving my house taken away dower in shape of gold and other gold items which were given to her as gift…."

Hamza Noor (petitioner/defendant)
Cross-Examination (DW-1)

"After going through contents of plaint I have submitted my written statement. It is correct to

suggest that to some extent I have not mentioned facts in my written statement as deposed by me in my examination-in-chief. It is correct to suggest that I have not annexed copy of receipt of gold weighing one and half tola which was given to the plaintiff as Haqmahar and even I have not produced the same before this court in my evidence. Vol. says my advocate had shown such receipts but the same could not exhibited. Further my advocate will submit the same. It is correct to suggest that I have not disclosed the date of purchase of gold and even I have not deposed that from where such gold was purchased by me. It is correct to suggest that I have not mentioned in my written statement that I had purchased gold weighing five tola which was given to the plaintiff as gift by me. It is correct to suggest that I have not made prayer in my additional plea taken by me in my written statement that plaintiff be directed to return Haqmahar weighing one and half tola gold and other five tola gold which was given to her by me as gift. It is incorrect to suggest that parents of plaintiff never came at my house on 04.6.2023. It is correct to suggest that story narrated by me in my examination-in-chief relating to date 04.6.2023 is not mentioned in my written statement. It is correct to suggest that it is not mentioned in my written statement that plaintiff at the time of leaving my house filled two suit cases and she took gold ornaments, cloths or anything else…."

"It is correct to suggest that it is not mentioned in my written statement that brother of plaintiff will bring back dowry articles which were taken away by the plaintiff from my house at the time of filling two suit cases…."

Mohd. Rafique (petitioner/defendant's father/witness)
Examination in Chief (DW-2)

"It is correct to suggest that fact with regard to payment of dower i.e. 1.5 Tola in shape of Chain is not mentioned in nikahnama. It is correct to suggest that in nikahnama 1.5 Tola Chain as dower has not been mentioned. It is correct to suggest that serial number is not mentioned over receipt (Ex.47). It is correct to suggest that in the bottom of said receipt customer signature is not available. It is correct to suggest that amount of particular item of gold is not mentioned in the receipt and only total amount has been mentioned…. "

"I have not mentioned specific particulars of gold which where taken away by the plaintiff at the time of leaving house. Vol. says she on the pretext to

> attend marriage ceremony took away gold ornaments…."
>
> "It is correct to suggest that I have not mentioned in my affidavit in evidence that on the day when plaintiff left the house along with her parents and taken away dowry articles on that day my another son was present or not…."
>
> "It is a fact that plaintiff was given dowry articles by her parents at the time of marriage…."

10. An analysis of the aforesaid evidence concerning the gold dowry items suggests that, based on the preponderance of evidence, the respondent/plaintiff, at least until she left the petitioner/respondent, departed without taking her dowry items in terms of the gold ornaments listed at serial nos.1 and 20 of the dowry list. Further, under Section 10(4) of the Family Courts Act, 1964, the burden of proof to disprove retention of the gold shifted to the petitioner/respondent, which he failed to discharge convincingly by producing cogent evidence. Furthermore, the defence raised by the petitioner/defendant was reduced to almost a cipher as the petitioner/defendant and his father, when they stepped into the witness box, in their cross-examination, deposed contrary to the affidavit in evidence and/or added details and/or created a first-time defence which had been mentioned neither in the petitioner/defendant's Written Statement nor in their affidavit in evidence and at times even inconsistent with their own examination-in-chief. Thus, the respondent/petitioner's defence story does not inspire confidence, and the conclusion reached by the Appellate Court in its judgment and decree dated 18.03.2025, based on the reappraisal of the evidence brought on record during the trial of the Family Suit, is hereby sustained/upheld in writ jurisdiction.

11. In view of the above, the Appellate Court's conclusion is neither perverse nor arbitrary and did not call for any reason to interfere and/or to set aside the impugned judgment of the Appellate Court. For the foregoing reasons, the impugned judgment/decree dated 18.03.2025 passed in Family Appeal No.34/2025 does not call for interference. Consequently, I dismissed the aforesaid petition by my Short Order dated 11.11.2025, and the above are the reasons for dismissal.

J U D G E

AHSAN K. ABRO