HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-664 of 2025

[Mst. Madiha Aijaz Versus Zubairuddin & another]

Petitioner:	Through M/s. Muhammad Faisal Bawany and Naeemuddin Sahito, advocates.
Respondent No.1:	Through Mr. Rashid Raees, advocate.
Respondent No.1:	Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.
Date of hearing	29.10.2026
Date of Decision	29.10.2026

O R D E R

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ADNAN-UL-KARIM MEMON, J, - Petitioner, Mst. Madiha Aijaz, has filed this constitutional petition under Article 199 of the Constitution, calling in question the judgment and decree dated 14.10.2025 passed by the District Judge, Hyderabad, in Family Appeal No. 80 of 2025, whereby the appellate Court partly allowed the appeal and set aside the judgment and decree passed by the trial Court to the extent of two tolas of gold ornaments, while maintaining the same about the recovery of the remaining dowry articles.

2. The petitioner / plaintiff filed a suit for dissolution of marriage on the grounds of non-maintenance, cruelty and maltreatment, or alternatively, by way of Khula, along with recovery of dowry articles and two tolas of gold ornaments. She alleged that her marriage with the respondent/defendant was solemnized on 16.02.2022 against dower of Rs.50,000/, which remained unpaid. She further alleged that the respondent subjected her to mental torture and maltreatment, failed to maintain and ultimately ousted her from his home on 25.03.2024. She claimed that her dowry articles and gold ornaments were retained by the respondent.

3. The respondent contested the suit by filing written statement and denied the allegations. After recording evidence of the parties, learned Trial Court decreed the suit in favour of the petitioner/plaintiff, directing the respondent to return the dowry articles, excluding certain items mentioned at specified serial numbers, or alternatively pay Rs.350,000/- as their depreciated value, besides returning two tolas of gold ornaments or paying their prevailing market value. Aggrieved by the judgment and decree, the respondent preferred the family appeal which was partly allowed to the extent of two Tolas of Gold.

4. Learned counsel for the petitioner submits that the impugned judgment and decree passed by the appellate Court are contrary to law and facts and have been rendered without proper appreciation of the evidence available on record. He contends that the petitioner duly proved the purchase of the gold ornaments, which were gifted to her by her father, and that the relevant receipt was exhibited in evidence. He further submits that the receipt was subjected to cross-examination by the counsel for respondent No.1, who failed to elicit anything contrary to the petitioner's claim. He argues that the trial Court misconceived the case and erroneously discarded the evidence recorded in respect of gold ornaments. He further submits that respondent No.1 admitted during his cross-examination that the petitioner's father was a government employee at Government Polytechnic College and that her mother was receiving a substantial amount as family pension. Therefore, the petitioner and her family members were financially capable of bearing the expenses incurred on dowry articles, besides his two sisters are serving as teachers. Learned counsel has, therefore, supported the judgment and decree dated 14.07.2025 passed by the trial Court and contends that learned appellate Court failed to consider the aforesaid factual aspects of the case.

5. Conversely, learned counsel for the respondents has supported the impugned judgment and decree dated 14.10.2025 passed by the appellate Court insofar as the recovery of dowry articles is concerned. Learned counsel submits that the petitioner failed to establish her claim through reliable evidence, as the list of dowry articles is fabricated, bears no signature of respondent No.1 and was never supplied to or acknowledged by him. He further submits that respondent No.1 neither admitted the alleged dowry articles nor the claim regarding two tolas of gold ornaments, which, according to him, were already in the petitioner's possession. He also disputes the genuineness of the gold purchase receipt dated 13.08.2021, pointing out that the purchaser named therein was the petitioner's father, who had already died on 22.09.2020. However, he expresses willingness to return such dowry articles as are actually available in his possession. About the gold ornaments, he submits that the petitioner failed to prove her claim before the trial Court; therefore, she is not entitled to their recovery. He contends that the judgment and decree passed by the trial Court to the extent of gold ornaments were rightly set aside by the appellate Court and that no interference is warranted under Article 199 of the Constitution. He, therefore, prays for dismissal of the petition and maintenance of the impugned appellate order.

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

7. Learned Family Court, after examining the evidence and documents produced by the parties, held that the petitioner/plaintiff had successfully established her claim for recovery of dowry articles and gold ornaments. It observed that the petitioner/plaintiff produced a list of dowry articles along with six original purchase receipts, whereas the

defendant failed to substantiate his denial through convincing evidence. The Court further noted that the defendant had admitted that certain furniture belonging to the petitioner/ plaintiff was lying at his house and that the plaintiff's evidence regarding dowry articles, except gold ornaments, remained unchallenged during cross-examination. Regarding gold ornaments, learned Family Court relied upon the original purchase receipt dated 13.08.2021 and observed that the respondent/defendant failed to produce any documentary or independent evidence to establish that the gold was gifted by his family or that the alleged five-tola gold set belonging to his cousin was in the plaintiff's possession. It further held that even if the gold ornaments had been gifted by the defendant's family, they constituted the petitioner/plaintiff's personal property under Section 5 of the Dowry and Bridal Gifts (Restriction) Act, 1976, and Section 7 of the Family Courts Act, 1964. Accordingly, the suit was decreed, directing the respondent/defendant to return the dowry articles, excluding items mentioned at serial Nos.31 to 38, 40 and 41 of the list, or pay Rs.350,000/- as their depreciated value, besides returning two tolas of gold ornaments or paying their prevailing market value.

8. Learned Appellate Court observed that the respondent/defendant had admitted in his written statement and testimony that dowry articles were given to the petitioner/plaintiff and certain articles were still lying at his house. Accordingly, it upheld the findings of the Trial Court regarding recovery of dowry articles or their alternative depreciated value of Rs.350,000/-. However, regarding two tolas of gold ornaments, it held that the petitioner had failed to establish through independent and cogent evidence that the gold ornaments had been snatched by the respondent or remained in his possession. It observed that ordinarily gold ornaments remain in the custody of the wife and the petitioner had neither examined any supporting witness nor produced evidence to rebut such presumption. Relying upon the case of Muhammad Saeed v. Additional District Judge (2019 CLC 1008), the Appellate Court partly allowed the appeal and set aside the Trial Court's decree to the extent of two tolas of gold ornaments, while maintaining the decree regarding the remaining dowry articles, with no order as to costs.

9. During cross-examination, the plaintiff admitted that her parents had gifted her two tolas of gold ornaments at the time of marriage, which were purchased by her father. She conceded that she neither remembered the date of purchase nor examined the jeweller as a witness, and further admitted that no photograph of the claimed gold ornaments was produced. She also admitted that the defendant went to perform Umrah in March 2024 and that she used to exchange household articles with Lubna, wife of Imran Khan, but denied exchanging gold ornaments with her. She maintained that the gold ornaments were provided by her parents, that the defendant never allowed her to wear them after marriage, and that she was ousted from the matrimonial home on 25.03.2024. She further affirmed that the list of dowry articles contained items given to her by her parents.

10. During cross-examination, the respondent admitted that some of the petitioner's dowry articles, including furniture, were still in his possession; that the petitioner and his cousin Imran Khan's family resided in the same rented premises; and that he had not provided her a separate residence despite her demand. He also admitted that he had produced no documentary or independent evidence to establish that the petitioner borrowed gold ornaments from his cousin's wife, Mst. Lubna, or that he had made repeated efforts for reconciliation. He further conceded that neither Imran Khan nor Mst. Lubna had been examined as a witness, although his cousin was shown as a witness in the Nikahnama and the undertaking relied upon by him.

11. For the foregoing, I am of the considered view that the Appellate Court fell into error in setting aside the decree of the Family Court to the extent of two tolas of gold ornaments, as the evidence available on record, when examined cumulatively, sufficiently supports the petitioner's claim. The petitioner categorically maintained that the gold ornaments were gifted to her by her parents at the time of marriage and produced the original purchase receipt dated 13.08.2021 in support thereof. Her inability to remember the exact date of purchase or failure to examine the jeweller, by itself, could not be made a decisive ground to discard her otherwise consistent testimony, particularly when the respondent failed to produce any documentary or independent evidence to substantiate his plea that the gold ornaments were gifted by his family or that the petitioner had borrowed a five-tola gold set from his cousin's wife. Significantly, despite specifically setting up such a defence, the respondent did not examine either Imran Khan or his wife, Mst. Lubna, to establish the alleged transaction or the petitioner's possession of the said gold set. His own admissions during cross-examination that he had no documentary evidence in support of this assertion further weaken his defence.

12. It is equally significant that the respondent admitted the financial standing of the petitioner's family, including the employment of his father and the receipt of family pension by her mother, thereby undermining his objection regarding their alleged inability to provide gold ornaments. Even otherwise, the question of petitioner's entitlement to the gold ornaments cannot be determined merely on the presumption that such ornaments ordinarily remain in the custody of wife. Such a presumption is rebuttable and cannot prevail over the facts and circumstances of an individual case, particularly where the petitioner consistently asserted that the respondent had deprived her of their use and possession. Learned Appellate Court, while relying upon the general presumption discussed in Muhammad Saeed v. Additional District Judge (2019 CLC 1008), failed to adequately examine the respondent's own admissions, the documentary evidence produced by the petitioner and the absence of independent evidence supporting the respondent's alternative version.

13. Moreover, even assuming that the gold ornaments had been gifted by the respondent or his family, such property would nevertheless vest absolutely in the petitioner under Section 5 of the Dowry and Bridal Gifts (Restriction) Act, 1976, and would constitute her personal property and belongings within the meaning of Section 7 of the Family Courts Act, 1964. The respondent, therefore, cannot claim ownership or defeat the petitioner's entitlement merely by asserting that the ornaments originated from his family. The learned Family Court had considered the relevant evidence, the respective admissions of the parties and the applicable legal provisions, and its findings were supported by material available on record. The learned Appellate Court, on the other hand, adopted a general presumption without properly appreciating the cumulative effect of the evidence and the material admissions made by the respondent.

14. It is settled that the jurisdiction of this Court under Article 199 of the Constitution is not intended to substitute for ordinary appellate jurisdiction or to undertake a fresh assessment of evidence merely because another view is possible. However, interference is warranted where the impugned decision reflects misreading or non-reading of material evidence, ignores material admissions or results in an arbitrary determination of the rights of the parties. The present case falls within such parameters, as the Appellate Court failed to give due effect to the material evidence directly bearing upon the petitioner's entitlement to the gold ornaments.

15. Consequently, the constitutional petition is allowed. The impugned judgment and decree dated 14.10.2025 passed by the District Judge, Hyderabad, in Family Appeal No.80 of 2025, to the extent of setting aside the decree regarding two tolas of gold ornaments, are hereby set aside. The judgment and decree dated 14.07.2025 passed by the Family Court, Hyderabad, are restored to the extent of recovery of two tolas of gold ornaments or their prevailing market value at the time of recovery. The remaining findings of the Appellate Court regarding recovery of dowry articles shall remain intact. There shall be no order as to costs.

J U D G E

Karar_Hussain/PS*