

PLJ 2017 Quetta 50 (DB)*Present:* JAMAL KHAN MANDOKHAIL AND ZAHEER-UD-DIN KAKAR, JJ.

TANIA NASEER--Petitioner

versus

MUHAMMAD ZUBAIR & others--Respondents

C.P. No. 931 of 2013, decided on 21.3.2017.

Dowry and Bridal Gifts (Restriction) Act, 1976--

---S. 2(a)--Constitution of Pakistan, 1973, Art. 199--Claim return of gold ornaments--Entitlement to receive unpaid dower amount--Trial Court dissolved marriage between parties on basis of Khula and held plaintiff/petitioner was not entitled to receive her unpaid dower amount of Rs. 300,000/- -Question of--Whether articles i.e. gold ornaments weighing 135.382 gram, clothes and shoes given by bride to groom at of nikah/marriage would be belonging of wife--Validity--Article of dowry, bridal gift, presents or all other moveable property more belonging of bridge--Respondent in his written statement had claimed that he had given 135-380 grams of gold ornaments, ten pairs of clothes and shoes to petitioner, as such, he by not objecting dissolution of marriage/Nikah of petitioner, claim return of said gold ornaments etc.--Only an amount s of Rs. 3,00,000/- was mentioned in Column No. 13 of Nikah Nama as dower money, however, there is no mention of 135.380 grams gold in it--The consideration for marriage is dower amount which has not been paid to petitioner--Petition accepted. [Pp. 51 & 53] A & B

Mr. Muhammad Aslam Jamali, Advocate for Petitioner.*Mr. Shams-ud-Din Achakzai*, Advocate for Respondent No. 1.

Date of hearing: 15.3.2017.

ORDER

Zaheer-Ud-Din Kakar, J.--By this petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 ("the Constitution"), the petitioner prayed the following relief:

"It is therefore prayed that the record of lower Court may kindly be called for and after examining and perusal of the same judgment/decreed dated 7.11.2013 passed by Additional Sessions Judge-V, Quetta/Respondent No. 3 be set aside by dismissing the appeal filed by the Respondent No. 1 and the judgment/decreed dated 3.11.2012 passed by Additional Family

Judge/Respondent No. 2 be maintained in the interest of justice equity and fair play."

2. Precisely stated, the facts for disposal of the instant petition are that the petitioner filed a suit for dissolution of marriage against Respondent No. 1 before the Court of District Judge, Quetta, which was transferred to the file of Additional Family Court, Quetta in which written statement was filed. The Family Court "trial Court" dissolved the marriage ties between the parties on the basis of Khula due to failure of reconciliation proceedings by means of order dated 7.5.2012 on the following manner:

"Therefore, owing to such position, marriage tie between plaintiff Tania Naseer d/o Naseer Ahmed and defendant Muhammad Zubair son of Muhammad Younas is hereby dissolved on the basis of Khula in consideration of Khula, plaintiff is not entitled to receive her unpaid dower amount Rs. 300,000/-."

3. The Respondent No. 1 in his written statement had claimed that he had given 135-380 grams of gold ornaments, ten pairs of clothes and shoes to the petitioner, as such, he by not objecting the dissolution of marriage/Nikah of the petitioner, claim return of the said gold ornaments etc. The trial Court, out of pleadings of the parties, framed the following issues:

ISSUES.

1. Whether parents of defendant gave gold ornaments weight 135.380 grams, clothes and shoes to the plaintiff at the time of Nikah? If so, whether same can be recovered through this Court?
2. Relief?

4. Thereafter, the parties were directed to adduce evidence in support of their respective claims, whereupon, the plaintiff produced two, PW-1 Yasir Naseer, PW-2 Waqar Hussain and also got recorded her own statement. In rebuttal, respondent/petitioner produced five witnesses, namely DW-1 Muhammad Younas, DW-2 Imran Suhail, DW-3 Suhail Aslam, DW-Hameed Azam, DW-5 Abdullah and lastly the respondent/petitioner got recorded his own statement.

5. The learned trial Court, after hearing the parties and evaluating the evidence, decreed the suit to the extent of dissolution of marriage on the basis of Khula on the following manner:

"As the sequel of above discussion, I came to the conclusion that the defendant has not proved that gold ornaments

according to receipt Ex.D/2-A, Ex.D/3-A, Ex.D/3-B and Ex.D/4-A, cloth and shows were given to the plaintiff, whereby in the view of aforesaid judgments, same cannot be recovered through this Court. Thus, issue under consideration is resolved in negative.

The plaintiff sought a decree of dissolution of marriage, on basis of Khula, as well as the recovery of her original documents, while the Khula has been extended in the favour of the plaintiff to the extent of the documents of the plaintiff, direction have already been passed to the defendant by this Court through order dated 17.05.2011. To the extent of the claim of the defendant, the Issue No. 1 in respect thereof was framed, same has been proved so far, whereby the Issue No. 1 is settled in negative. The decree sheet be withdrawn with no order as to cost."

6. Feeling aggrieved from the judgment and decree dated 3.11.2012, to the extent of not allowing the recovery of gold ornaments etc, the petitioner filed Family Appeal No. 2 of 2013 before the Court of Additional District Judge-V, Quetta, which was accepted *vide* judgment and decree dated 7th November 2013 and the petitioner was directed to return the marriage benefits in the shape of gold ornaments weighing 135.380 grams to the appellant/defendant, hence the instant appeal.

7. Learned counsel for the petitioner contended that the imposition of condition of return of 135.380 grams gold ornaments is against the law and facts; that gold ornaments have been given as bridal gift, which are not part of the dower and at least cannot be based as consideration for Khula.

8. Conversely, learned counsel for the respondent vehemently opposed the petition and defended the judgment and decree, passed by the appellate Court.

9. We have heard learned counsel for the parties and have gone through the record. From perusal of the record it appears that the *Nikah* between the parties was solemnized on 15.4.2011 and before *Rukhsali*, the petitioner filed a suit for dissolution of marriage on the basis of *Khula*, which was accepted and the trial Court dissolved the marriage tie between the parties on the basis of *Khula* and the trial Court held that the plaintiff/petitioner is not entitled to receive her unpaid dower amount of Rs. 300,000/-.

10. As far as, question whether articles i.e. gold ornaments weighing 135.382 grams, clothes and shoes given by the bride to the

groom at the time of Nikah/marriage would be belonging of the wife. Section 2(a) of the Dowry and Bridal Gifts (Restriction) Act, 1976 defines:

- “(a) ‘Bridal gift’ means any property given as a gift before, at or after the marriage, either directly or indirectly, by the bridegroom or his parents to the bride in connection with the marriage but does not include Mehr;
- (b) ‘dowry’ means any property given before, at or after the marriage, either directly or indirectly, to the bride by her parents in connection with the marriage but it does not include property which the bride may inherit under the laws of inheritance and succession applicable to her;
- (c)
- (d)
- (e) ‘present’ means a gift of any property, not being a bridal gift or dowry, given before, at or after the marriage, either directly or indirectly to either party to a marriage in connection with the marriage or to the relatives of the bride or bridegroom but does not include Neundra and Salami.”

11. The above Act clearly shows that the articles of dowry, bridal gifts, presents or all the other movable property are the belongings of bride. Furthermore, in the case of *Ghulam Rasul vs. Judge, Family Court* 1991 CLC, 1696, it is held that bridal gift given by husband is the absolute property of wife and it could not be snatched away from her.

12. Furthermore, under the Islamic Sharia, the marriage between a man and a woman can be dissolved on the basis of Khula, for which some consideration is formed. This is in the form of dower which the wife is entitled to receive at the time of demand. In the instant case, only an amount of Rs. 3,00,000/- was mentioned in Column No. 13 of the Nikah Nama as dower money, however, there is no mention of 135.380 grams gold in it. The consideration for marriage is dower amount which has not been paid to the petitioner. The petitioner has waived her dower amount in consideration of Khula, which in our view, is enough amount. The appellate Court has failed to consider this aspect of the case, which is an illegality. We rely upon the judgment of *Muhammad Bashir Ali Siddiqui vs. Mst. Sarwar Jahan Begum and another* (2008 SCMR 186), wherein it was held by the Hon'ble Supreme Court that the marriage on the basis of Khula can be dissolved on the basis of dower mentioned in Column No. 13.

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PLJ

13. In view of above discussion, the petition is hereby accepted. The judgment and decree dated 7th November, 2013 of the Additional District Judge-V, Quetta are of no legal effect, therefore, are set aside and the judgment and decree dated 3rd November 2012, passed by the trial Court are up-held.

(N.K.)

Petition accepted.
