

SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Shariat Appellate Jurisdiction)

PRESENT

Ch. Muhammad Ibrahim Zia, C.J.
Raja Saeed Akram Khan, J.

Civil Appeal No.200 of 2018
(PLA filed on 11.06.2018)

1. Babar Taj son of Muhammad Taj,
2. Muhammad Taj son of Muhammad Bashir, caste Domal, r/o Taj Manzil, Neelum Road, Tehsil and District, Muzaffarabad.

.... APPELLANTS

VERSUS

1. Tahira Aziz daughter of Muhammad Aziz Awan, w/o Babar Taj,
2. Tariq Aziz,
3. Tahir Aziz, sons of Muhammad Aziz Awan, caste Awan, r/o Ambore, Tehsil and District Muzaffarabad.

..... RESPONDENTS

(On appeal from the judgment and decree of the Shariat Appellate Bench of the High Court dated 12.04.2018 in family appeal Nos. 176, 177, 179, 180, 181 and 182 of 2017)

FOR THE APPELLANTS: Mr.Shahzad Shafi
Awan, Advocate.

FOR THE RESPONDENTS: Mr.Sakhawat Hussain
Awan, Advocate.

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(PLA filed on 11.06.2018)

Tahira Aziz d/o Muhammad Aziz, caste Awan,
r/o Ambore, Tehsil and District Muzaffarabad.

.... APPELLANT

VERSUS

1. Babar Taj son of Muhammad Taj, caste Domal, r/o Taj Manzil, Neelum Road, Tehsil and District Muzaffarabad.
2. Muhammad Taj son of Muhammad Bashir, caste Domal, r/o Taj Manzil, Neelum Road, Tehsil and District, Muzaffarabad.

..... RESPONDENTS

(On appeal from the judgment and decree of the Shariat Appellate Bench of the High Court dated 12.04.2018 in family appeal Nos. 176, 177, 179, 180, 181 and 182 of 2017)

FOR THE APPELLANT: Mr.Sakhawat Hussain
Awan, Advocate.

FOR THE RESPONDENTS: Mr.Shahzad Shafi
Awan, Advocate.

Date of hearing: 11.02.2019

JUDGMENT:

Raja Saeed Akram Khan, J.— The titled appeals by leave of the Court have been preferred against the judgment and decrees passed by the Shariat Appellate Bench of the High Court (High Court) on 12.04.2018, whereby, the appeals filed by the contesting parties have been decided in the following terms:-

- a) Appeal No.177/2017 filed by Tahira Aziz is accepted and suit for dissolution of marriage is decreed on the basis of physical violence. As

- a result, appeal No.181/2017 filed by Babar Taj stands dismissed.
- b) Appeal No.176/2017 filed by Tahira Aziz, is partially accepted and it is held that deferred dower of Rs.1,00,000/- is payable by Babar Taj and Muhammad Taj jointly because Muhammad Taj has stood as surety for payment of amount of dower in deed on Nikkah.
- c) Appeal No.183/2017 is partially accepted and suit for recovery of monthly maintenance charges is modified in the terms that the plaintiff is entitled to monthly maintenance charges @ Rs.6,000/- per month from August, 2012 to the date of decision i.e. 23.08.2017. The amount of maintenance shall include the maintenance for the period of Iddat of Mst. Tahira Aziz, as well, which counts as Rs.18,000/-.
- d) Appeal No.180/2017 is partially accepted and suit for recovery of dowry articles is modified in the

terms that the Mst. Tahira Aziz, the plaintiff is entitled to recovery of amount of Rs.80,000/- in lieu of articles of dowry. As a result, appeal No. 179/2017 filed Tahira Aziz is dismissed.

e) Appeal No.182/2017 filed for decree for restitution of conjugal right dismissed.”

2. The brief facts culminating into filing of the instant appeals are that the appellant, Tahira Aziz, filed four different suits in the Court of Judge Family Court, Muzaffarabad; one for dissolution of marriage on the basis of cruelty as well as non-payment of maintenance allowance; second for recovery of dower amount to the tune of Rs.4,00,000/-; third for recovery of dowry articles and; forth for recovery of maintenance allowance. The appellant, Babar Taj, also filed a cross-suit for restitution of conjugal rights. The trial Court consolidated all the suits and after necessary

proceedings dissolved the marriage on the basis of *khula* and further held the appellant, Tahira Aziz, entitled for recovery of an amount of dowry articles to the tune of Rs.80,000/- and a price of 1/2.5 tola gold as well as the maintenance allowance at the rate of Rs.10,000/month. The trial Court dismissed the suits filed for recovery of dower and restitution of conjugal rights. Feeling aggrieved both the parties filed separate appeals before the High Court. The learned High Court after hearing the arguments decided the appeals in the terms reproduced hereinabove. Now both the parties have filed the instant appeals by leave of the Court against the impugned judgment of the High Court.

3. Mr. Shahzad Shafi Awan, Advocate, the learned counsel for the appellants, Babar Taj and another, argued that the impugned

judgment of the High Court is based on misconception of law and the facts of the case which is not sustainable in the eye of law. He contended that the learned High Court failed to appreciate the evidence brought on record in a legal manner. He added that the respondent-wife failed to prove the element of any sort of cruelty but despite that, the learned High Court dissolved the marriage on the basis of cruelty which is not permissible under law. He contended that all the witnesses produced by the respondent categorically stated in their statements that the respondent-wife told them in respect of the violent behaviour of the appellant, thus, such like evidence comes within the purview of hearsay evidence and on the strength of the same, the decree could not be passed but this very important aspect of the case escaped the notice of the learned High Court. He maintained that the learned

High Court also failed to take into consideration that the respondent-wife left the house of the appellant while accompanying her brother even without intimation and the appellant himself has never deserted her. In such like situation, the respondent-wife was not entitled to get the maintenance allowance as she failed to perform her matrimonial obligations. He further added that the appellant had paid the dower amounting to Rs.3,00,000/- at the time of *nikah*, in the shape of gold-ornaments and later on, also paid the remaining dower to the tune of Rs.1,00,000/- in cash to the respondent-wife. He contended that the trial Court had rightly dissolved the marriage on the basis of *khula*, but the learned High Court wrongly modified the judgment of the trial Court to this extent.

4. On the other hand, Mr.Sakhawat Hussain Awan, Advocate, while appearing on

behalf of the appellant, Tahira Aziz, strongly controverted the arguments advanced by the learned counsel for the opposite side. He supported the impugned judgment of the High Court to the extent of dissolution of marriage on the basis of cruelty and dismissal of the suit filed by the respondent for restitution of conjugal rights, however, he objected to the impugned judgment to the extent of reduction of maintenance allowance and submitted that the learned High Court without assigning any reason decreased the amount of maintenance allowance from Rs.10,000/month to Rs.6,000/month.

5. We have heard the arguments and gone through the record of the case as well as the impugned judgment. The main argument of the learned counsel for the appellants, Babar Taj and another, in support of appeal, is that the respondent failed to prove any sort of

cruelty; therefore, there was no justification for the High Court to decree the suit on the basis of cruelty. To appreciate the argument, we have minutely examined the record. In our estimation, the core evidence in this regard is the statement of the respondent-wife as nobody can know better the internal relations/disputes of the husband and wife as compared to them. It will be useful to reproduce here the relevant portion of the statement of the respondent-wife which reads as under:-

"مدعا علیہ نمبر 1 نے مظہرہ کو کہا کہ اپنے گھر والدین اور بھائیوں کو فون کر کے پیسے مانگو۔ یہ سلسلہ چل پڑا اور بعد ازاں مار پیٹ اور تشدد شروع کر دیا۔ پھر 22.09.2010 بجے کی پیدائش CMH میں ہوئی جس کا نام عبداللہ ہے۔ برتھ سرٹیفکیٹ EXPB بھی پیش کرتی ہوں۔ بجے کی پیدائش بذریعہ آپریشن پیدا ہوا۔ ہسپتال سے فارغ ہونے کے بعد مظہرہ جب گھر گئی تو مدعا علیہ نمبر 1 نے مظہرہ کو کہا کہ اپنے گھر فون کرو کہ وہ بجے کا اور تمہارا خرچہ دیں۔ جب مظہرہ نے انکار کیا تو مدعا علیہ نے شدید تشدد کیا جس سے مظہرہ کے ٹانگے کھل گئے اور مظہرہ کا زخم خراب ہو گیا۔ جب ڈاکٹر کے پاس لے کر گئے تو ڈاکٹر نے پوچھا کہ کیا ہوا ہے تو مظہرہ نے مدعا علیہ کے کہنے پر کہا کہ مظہرہ گری ہے۔ کیونکہ مدعا علیہ نے کہا تھا کہ اگر

سچ بتایا تو مزید تشدد کروں گا۔ پھر ڈاکٹر نے دوا یاں دیں پھر 6 ماہ بعد مظہرہ ٹھیک ہوئی۔ پھر مدعا علیہ کا رویہ پر تشدد رہا۔ ایک دن موقع ملا تو مظہرہ حالات سے تنگ آکر اپنے والدین کے گھر امبور چلی گئی تو مظہرہ کے سسر تاج صاحب نے جن کے ساتھ ایک دو بندے اور تھے انہوں نے مظہرہ سے بچہ چھیننے کی کوشش کی اور تشدد کیا۔ مظہرہ کے شور کرنے پر بہت سے لوگ جمع ہو گئے تو وہ فائرنگ کرتے ہوئے بھاگ آئے۔ اس واقعہ کی نسبت تھانہ میں درخواست مارک C دے جس پر مظہرہ نے دستخط مارک C/1 درست ثبت ہیں۔ پھر مظہرہ کی برادری کے محمود صاحب نے جرگہ کیا کینوکہ محمود صاحب نے مدعا علیہ کو بلایا تھا جرگہ کے بعد انہوں نے مظہرہ کو واپس مدعا علیہ کے گھر بھیج دیا پھر بھی حالات بدستور ویسے ہی رہے اور بابر صاحب کے رویہ میں تبدیلی نہ آئی ان کی ڈیمانڈ برقرار رہی۔ سال 2012 میں انہوں نے کہا کہ والدین سے بھاری ڈیمانڈ کرو۔ مظہرہ کے انکار پر تشدد کیا اور بچہ چھین کر مظہرہ کو والدین کے گھر چھوڑ گئے۔"

After going through the contents of statement reproduced above, it appears that the respondent-wife categorically stated that the appellant used to physically torture her and forced her to leave the house. Although, the trial Court also observed in its judgment that the element of disobedience on the part of the respondent has not been established, however, decided the matter otherwise. The version of the respondent-wife in respect of

the cruelty is further corroborated by the application filed by her at Police Station Civil Secretariat, Muzaffarabad. In such scenario, the stance taken by the appellant's counsel that the learned High Court dissolved the marriage on the basis of cruelty while relying upon the hearsay evidence, is ill-founded. The learned High Court after appreciating the evidence has recorded the well reasoned findings and we affirm the same.

6. So far as, the conclusion drawn by the High Court regarding the recovery of dower amount to the tune of Rs.1,00,000/-, is concerned, the version of the appellant-husband is that out of the total dower amount of Rs.4,00,000/- he paid Rs.3,00,000/- at the time of *nikah* in shape of gold-ornaments and later on, he paid Rs.1,00,000/- to the respondent in cash, however, nothing is available on record which may show that the

appellant had paid Rs.1,00,000/- to the respondent in cash. In such state of affairs, when the appellant failed to bring on record anything in support of his version, mere on the strength of an assertion that he had paid the whole dower amount, the judgment of the High Court cannot be altered. To the extent of recovery of maintenance allowance, the appellant's version is that the respondent left his house at her own free-will, without any valid ground, thus, she was not entitled for the maintenance allowance. As we have held in the preceding paragraph that the respondent has proved the element of cruelty, therefore, this version which is not supported by the record cannot be accepted. The learned High Court while taking the lenient view has reduced the amount of maintenance allowance from Rs.10,000/- to Rs.6,000/month, meaning thereby, adequate relief has already been

granted to the appellant. The findings recorded by the High Court in respect of the dowry articles etc. are also supported by the evidence brought on record and the appellants, Babar Taj & another, failed to point out any misreading or non-reading of the evidence. The objection raised by the counsel for the appellant, Tahira Aziz, regarding the reduction in the maintenance allowance has also no substance. The learned High Court while making reduction in the maintenance allowance has definitely kept in mind the financial capacity of the husband; even otherwise, a reasonable amount has been awarded to the appellant-wife and enhancement in the same is not justified in view of the peculiar facts and circumstances of the instant case. The judgment of the High Court is in accordance with law from all

corners; therefore, interference by this Court is not warranted under law.

In view of the above, finding no force both the appeals are hereby dismissed with no order as to costs.

Muzaffarabad,
___ .02.2019

JUDGE

CHIEF JUSTICE