

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No.390 of 2019
(PLA filed on 12.7.2019)

1. Raja Afaq Ali Khan s/o Raja Farid Khan,
2. Muhammad Farid Khan s/o Hadayat Ullah Khan, r/o village Sarran, Tehsil and District Hattian Bala/Jehlum Valley, Azad Jammu & Kashmir.

.... APPELLANTS

VERSUS

Mst. Qaisra Arshad d/o Muhammad Arshad, w/o Raja Afaq Ali, r/o gotha, Tehsil and District Muzaffarabad.

..... RESPONDENT

(On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 13.5.2019 in Appeals No. 120 of 2017 & 9 of 2019)

FOR THE APPELLANTS: Mr. Shahid Ali
Awan, Advocate.

FOR THE RESPONDENT: Mr. Bashir Ahmed
Mughal, Advocate.

Date of hearing: 09.01.2020

JUDGMENT:

Ghulam Mustafa Mughal, J.— The captioned appeal by leave of the Court has been directed against the judgment dated 13.5.2019 passed by the Shariat Appellate Bench of the Azad Jammu & Kashmir High Court in appeals No. 120 of 2017 and 9 of 2019.

2. The precise facts forming the background of the captioned appeal are that Mst. Qaisra Arshad, plaintiff/respondent, herein, filed three suits; first, for recovery of dower Rs.3,70,000/-; second, for recovery of dowry articles worth Rs.3,50,000/-; and third, for past and future maintenance allowance at the rate of 4000/- per month, before the Judge Family Court, Muzaffarabad on 16.08.2014. The suits were resisted by the defendant/appellant, herein, by filing written statement on 25.11.2014. The learned Judge Family Court Muzaffarabad after necessary proceedings, dismissed the suits filed for

recovery of dower and maintenance allowance, however, a decree for recovery of dowry articles was passed in her favour with the observation that plaintiff-respondent, herein, is entitled to receive dowry articles according to list Exh. "PD" and in alternative the defendant shall pay an amount of Rs.1,22,500/- as per items of Exh. "PD", vide consolidated judgment and decree dated 12.06.2017. Feeling dissatisfied from the judgment and decree recorded by the trial Court, the plaintiff/respondent, herein, filed two appeals Nos. 120 of 2017 and 9 of 2019 before the Shariat Appellate Bench of the Azad Jammu & Kashmir High Court on 14.07.2017. The Shariat Appellate Bench of the learned High Court after hearing the parties has partly accepted appeal No. 120/2017 and passed a decree for recovery of dower and maintenance allowance in favour of the respondent, herein, with the observation that she is entitled to receive dower of Rs.3,70,000/- from the defendant. She was also

declared entitled to receive past maintenance allowance at the rate of Rs.4000/- per month from the date of desertion i.e. 21.4.2014 as well as future maintenance allowance at the same rate. The aforesaid appeal to the extent of dowry articles has been dismissed. Appeal No. 9/2019 has also been dismissed through the impugned consolidated judgment and decree dated 13.05.2019.

3. Mr. Shahid Ali Awan, the learned Advocate appearing for the appellants argued that the suits filed by the respondent, herein, for recovery of dower and maintenance allowance were dismissed by the learned Family Judge Muzaffarabad after properly appreciating the evidence brought on the record vide judgment and decree dated 12.06.2017, which was liable to be maintained but the learned Shariat Appellate Bench of the High Court for erroneous reasons while misconstruing and misreading the evidence has vacated the same. The learned Advocate further

argued that the document, exhibit 'PA', which is a *panchayatnama* has not been taken into consideration by the learned Shariat Appellate Bench of the High Court as a whole and the portion of the document relied upon the Court is not sufficient from setting aside the judgment of the Family Court, hence, the conclusion reached at in the impugned judgment is against the record, illegal and perverse. The learned Advocate further argued that law is well settled that a wife who leave the home of her husband without any reason/justification, cannot claim maintenance. In support of his submissions, the learned Advocate has placed reliance on the case reported as *Azhar Bashir vs. Sadia Shafique* [2015 SCR 521] and *Nusrat Bibi vs. Pervaiz Iqbal & others* [2016 SCR 68]. The learned Advocate further submitted that a woman who herself leaves the home of the husband and refuse to perform matrimonial obligations is not entitled to any maintenance allowance. The learned

Advocate submitted for claiming the maintenance allowance, a wife has to prove that she has been willfully deserted by the husband but in the case in hand no such evidence has been brought on the record and the learned Shariat Appellate Bench of the High Court has set aside the judgment of the learned Family Judge without any reason.

4. Conversely, Mr. Bashir Ahmed Mughal, the learned Advocate appearing for the respondent argued that the learned Family Judge Muzaffarabad has not properly appreciated the *panchayatnama* and other evidence brought on the record. The learned Advocate further argued that it was amply proved from the evidence of the respondent, herein, that the ornaments given in lieu of dower were snatched by the appellant, herein, and this fact was also admitted in *Jirga* by the father of the appellant, herein, and other witnesses. The learned Advocate submitted that the assertion of the respondent, herein, was supported by Sadheer Khan and Raja Ajmal Khan,

witnesses, in their statements. He further submitted that the impugned judgment of the learned Shariat Appellate Bench of the High Court is well reasoned and is based on proper appreciation of oral as well as documentary evidence.

5. We have heard the learned counsel for the parties and have gone through the record of the case. A perusal of the record reveals that the respondent, herein, has produced Muhammad Fareed, Sajjad Hussain, Mukhtar Abbasi, Sajjad Hussain s/o Abdul Qayyum and also appeared herself as witness in support of her case. From bare reading of the statements of the above mentioned witnesses, it is not proved that the ornaments which were given to the plaintiff/respondent, herein, were snatched by the appellant, herein. The learned Shariat Appellate Bench of the High Court has relied upon the statement of the father of the appellant, herein, but the same has not been considered in toto. It is stated in the *panchayatnama* that the respondent, herein,

shall keep the ornaments in the bank locker for such period, till the confidence among the parties is restored. From this statement, it appears that the ornaments were in possession of the respondent, herein. The other evidence also suggests that snatching of the ornaments is not proved, therefore, we are of the view that there was no justification for reversal of the judgment and decree of the learned Family Judge which was passed after proper assessment and appreciation of the evidence led by the parties. We have also perused the impugned judgment of the learned Shariat Appellate Bench of the High Court and are of the opinion that the statement of Muhammad Fareed Khan as well as the *panchayatnama*, exhibit 'PA', has not been properly appreciated while handing down the impugned judgment. A perusal of the statement of Muhammad Fareed and the *panchayatnama* as a whole does not suggest in any manner that the ornaments given in lieu of dower were in the custody of the appellant,

herein, or his father. The judgment and decree dated 12.06.2017, recorded by the learned Family Judge Muzaffarabad, was apt and in accordance with law which has erroneously been interfered with by the learned Shariat Appellate Bench of the High Court.

In view of the above, this appeal is accepted and the impugned judgment of the learned Shariat Appellate Bench of the High Court is hereby set aside. Resultantly, the judgment and decree passed by the learned Family Judge Muzaffarabad, dated 12.06.2017 stands restored.

JUDGE
Muzaffarabad
13.01.2020

CHIEF JUSTICE