

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
(SHARIAT APPELLATE JURISDICTION)

**PRESENT:**

*Raja Saeed Akram Khan, J.*  
*Ghulam Mustafa Mughal, J.*

Civil appeal No.129 of 2019  
(PLA filed on 11.05.2019)

Mushtaq Ahmed son of Rahm Ali alias Atta Muhammad, r/o Bagali Kasguamma, Tehsil and District Bhimber.

....APPELLANT

**VERSUS**

Nasreen Akhtar daughter of Muhammad Suleman, r/o Mozia Moah-dhook Dhaira, p/o Islamgrah, Tehsil and District Mirpur.

....RESPONDENT

(On appeal from the judgment and decree of the Shariat Appellate Bench of the High Court dated 15.03.2019 in family appeal No.115 of 2017)

FOR THE APPELLANT: Syed Nishat Kazmi,  
Advocate.  
FOR THE RESPONDENT: Mr. Abdul Wahid Aamir,  
Advocate.

Date of hearing: 19.02.2020

**JUDGMENT:**

**Raja Saeed Akram Khan, J.**— The titled appeal by leave of the Court has been filed against the judgment of the Shariat Appellate Bench of the High Court (High Court) dated 15.03.2019, whereby the appeal filed by the respondent, herein, has partly been accepted in the following terms:-

“Thus, in view of overall circumstances of the case, I partly accept this appeal and modify the judgment and decree to the extent that the appellant is entitled to get the dowry article mentioned in the list of the defendant, market value which shall be determined at the time of execution of the decree.”

2. The facts forming the background of the instant appeal are that the plaintiff-responder, herein, filed a suit for recovery of dowry articles in the Court of Judge Family

Court Mirpur on 12.02.2011. She sought decree for recovery of dowry articles, mentioned in the list attached with the plaint, or its value amounting to Rs.1,61,950/-. The trial Court after necessary proceedings partly decreed the suit in the term that the plaintiff is entitled to get the dowry articles admitted by the defendant-appellant, herein, in the written statement. The respondent, herein, feeling dissatisfied filed an appeal before the High Court. The learned High Court through the impugned judgment deiced the appeal in the terms indicated in the preceding paragraph, hence, this appeal by leave of the Court.

3. Syed Nishat Kazmi, Advocate, the learned counsel for the appellant argued that the impugned judgment is against law and the facts of the case which is liable to be vacated. He contended that the dowry articles are lying in the house of the appellant and he is ready

to hand over the same to the respondent; therefore, there was no occasion to pass an order for payment of amount of dowry articles according to the market value. The learned counsel while referring to the prayer clause of the memo of appeal filed before the High Court submitted that no such prayer was ever made in the appeal for payment of the amount of dowry articles in terms of market value. He lastly submitted that the modification made by the learned High Court is unjustified; hence, the same may kindly be quashed.

4. On the other hand, Mr. Abdul Wahid Aamir, Advocate, the learned counsel for the respondent strongly controverted the arguments advanced by the learned counsel for the appellant. He submitted that the impugned judgment is in accordance with law, no illegality has been committed by the learned High Court while modifying the

judgment of the trial Court, therefore, interference by this Court is not required under law. He submitted that the dowry articles have been damaged, therefore, the respondent is entitled to get the payment of the amount of the dowry articles according to value, prevailing in the market.

5. We have heard the arguments and gone through the record made available along with the impugned judgment. From the perusal of the record it transpires that the plaintiff-respondent by filing appeal before the High Court sought recovery of dowry articles, mentioned in the list attached with the plaint, and the impugned judgment also shows that during the course of arguments the relief prayed in appeal was sought. The learned High Court while deciding the appeal although did not accept the claim of the respondent but made a modification in the decree passed by

the trial Court that the respondent is entitled to get the amount of the dowry articles according to the market value. During the course of arguments the learned counsel for the respondent submitted that the dowry articles have been damaged, therefore, the learned High Court rightly passed such order, however, when a query was made that how the plaintiff-respondent have got information that the dowry articles have been damaged; he failed to offer any answer, thus, it appears that the plea taken is based mere on apprehension. The learned counsel for the appellant submitted that the appellant is ready to handover the dowry articles in compliance of the decree passed by the trial Court; even otherwise, the decree is yet to be executed by the trial Court and if such situation arises during execution then the respondent may bring the same to the notice of the Court. As

the executing Court has to execute the decree in letter and spirit; therefore, at this stage there is no need to alter/modify the decree mere on the apprehension of the decree-holder. Thus, in such state of affairs, instead of recovery of dowry articles, the order for making the payment of the dowry articles according to market value passed by the High Court appears to be uncalled for; hence, the same is hereby quashed.

The appeal stands accepted in the above terms with no order as to costs.

Mirpur,  
20.02.2020

**JUDGE**

**JUDGE**

