**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Shariat Appellate Jurisdiction]

**PRESENT:**
**Raja Saeed Akram Khan, C.J.**
**Muhammad Younas Tahir, J.**

Civil Appeal No.178 of 2020
(PLA Filed on 09.09.2020)

Muhammad Sagheer, s/o Muhammad Khan, caste Gujar, r/o House No.60 Sector E/3 Mirpur through power of attorney Muhammad Ramzan, s/o Naik Muhammad, r/o Tehsil & District Mirpur.

……APPELLANT

VERSUS

1. Aneesha Shabir , e/o Ch. Muhammad Shabir.
2. Mariyum Sagheer, e/o Muhammad Sagheer, r/o Ghosia street, Mian Muhammad Town, Mirpur.

…..RESPONDENTS

[On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 12.08.2020 in family appeal No. 180 of 2019]

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FOR THE PETITIONER: Mr. M. Bashir Tabbasum, Advocate.

FOR THE RESPONDENTS: Sh. Masood Iqbal, Advocate.

Date of hearing: 15.11.2021.

**ORDER:**

**Muhammad Younas Tahir, J.**– The captioned appeal by leave of the Court, has been directed against the judgment of the Shariat Appellate Bench of the Azad Jammu & Kashmir High Court, dated 12.08.2020, passed in family appeal No.1180 of 2019, whereby appeal filed by the appellant, herein, has been dismissed.

2. The facts forming the background of the captioned appeal are that the plaintiff-respondent, herein, filed three suits i.e., first, suit for maintenance allowance; second, suit for recovery of dowry articles and third, suit for recovery of dower in the Court of Family Judge Mirpur. It was averred in the suits that the Nikkah between the spouses was solemnized on 26.12.2016, in lieu of deferred dower at the rate of Rs.50,000/- and prompt dower 04 tola of the gold ornaments. It was further averred that the plaintiff remained settled with the defendant and gave birth to a

baby girl. It was averred that the defendant-appellant, herein, had an adverse attitude towards the plaintiff-respondent, herein, during her stay at his house and after passage of some time he kicked her out from his house. The learned trial Court consolidated all the suits and at the conclusion of the proceedings, decreed the suit for recovery of maintenance allowance in the manner that she is entitled for maintenance to the tune of Rs. 4000/- per month for the period of iddat and also awarded monthly allowance to the minor at the rate of Rs.3000/- from the date of institution of the suit i.e. 10.10.2018, to the date of decision and at the rate of Rs.4000/- per month for later period along with 10% annual increase. The other suits i.e., recovery of the dowry articles and the recovery of dower amount of Rs. 50,000/- were also decreed vide judgment and decrees, dated 12.10.2019. Feeling dissatisfied from the said judgment and decrees, the appellant, herein, filed an appeal before the Shariat Appellate Bench of

the High Court. The learned Shariat Appellate Bench of the High Court after necessary proceedings, has dismissed the appeal through the impugned judgment and decree, dated 12.08.2020, hence, this appeal by leave of the Court.

3. Mr. Muhammad Bashir Tabasum, Advocate, the learned counsel for the appellant argued that while awarding decree of dowry articles as well as dower, the learned Family Judge as well as the Shariat Appellate Bench of the High Court has ignored the cogent evidence led by the defendant-appellant, herein, from which it was sufficiently proved that the dower had already been paid to the plaintiff-respondent, herein, and the alleged fact of giving of the dowry articles was not been proved by the plaintiff-respondent, herein. The learned counsel further argued that the award of the maintenance to the minors as well as Iddat period of the Aneesha Shabir-respondent, herein, is also against the record and

without any legal backing. The learned counsel further argued that the appellant is living a miserable life and has no source of income to pay such a huge amount. He submitted that the impugned judgments are against the evidence and law. He lastly requested for acceptance of this appeal.

4. Conversely, Sh. Masood Iqbal, Advocate, the learned counsel for the respondents, argued that there is concurrent findings of the facts by the Court below, which require no interference by this Court. He further argued that the trial Court after recording of evidence, rightly decrees the suits filed by the plaintiff-respondent, herein. He submitted that the plaintiff-respondent, herein, performed matrimonial obligations with utmost care and loyalty to the appellant for two years and during this period gave birth to a girl, respondent No.2, herein. The learned counsel emphasized that the attitude of the appellant towards respondent No.1, remained hostile and harsh

during sustenance of marriage. He further argued that the defendant-appellant, herein, snatched the gold ornaments given to the respondent and kicked her out of the house without any reasons. He submitted that the appellant being father of respondent No.2, is obliged under law to maintain his daughter but he has never paid, except one time, any kind of maintenance allowance to her even after passage of decree of maintenance against him and dismissal of his appeal from the Shariat Appellate Bench of the High Court. The learned counsel emphasized that the fact of non-payment of dower amount is established through the cogent evidence and the appellant failed to rebut the same in his evidence. He further submitted that the respondent established giving of the dowry articles at the time of marriage through confidence aspiring evidence and the trial Court rightly decreed in her favour and the learned Shariat Appellate Bench of High Court maintained the same after examining all

factual and legal aspects of the case. It has been further submitted by the learned counsel that the appellant is financially well-off and in a position to pay the decretal amount and maintain respondent No. 2, of which he is otherwise bound to maintain under dictates of shaira and law, but he is avoiding performance of his legal obligations without any just and legal cause. He submitted that the appellant has failed to point out any misreading or non-reading of evidence or any other legal infirmity in the impugned judgments which could warrant interference by this Court. He lastly requested for dismissal of the appeal.

5. We have heard the learned counsel for the parties and gone through the record made available along with the impugned judgments.

6. First of all, we take up the disputed matter of the dower amount. The plaintiff-respondent has alleged in the plaint that the marriage between the parties was solemnized in lieu of four tola gold

ornaments as prompt dower and Rs.50000/- were fixed as deferred dower. This fact is also supported from the Nikah nama, available with file of the trial Court. However, the defendant-appellant, herein, in para No.1, of his written statement, evasively has denied the fact and alleged that the deferred amount has been paid to the plaintiff-respondent, herein in shape of the ornaments. Though there are concurrent findings of facts by the lower Courts but for reaching the just decision of the case, we have ourselves perused the evidence of the parties minutely. The plaintiff-respondent, herein deposed in cross-examination that

"مظہرہ کی شادی 26-12-16 کو ہوئی تھی۔
بوقت شادی مظہرہ کو زیور ڈالا گیا تھا یہ بات
درست ہے کہ زیور حق مہر میں لکھا ہوا تھا۔"

Muhammad Shabir, plaintiff-respondent's witness deposed in his statement

"بوقت نکاح حق مہر پچاس ہزار روپے طے ہوا
تھا پھر کیا چار تولے زیورات بھی ہے"
"یہ بات درست ہے کہ زیورات حق مہر میں
لکھے تھے"

The stance of the appellant in his written statement that he has paid the deferred dower amount Rs.50,000/- in shape of the ornaments. The appellant has not opted to get his statement recorded to substantiate his pleas in defence taken in his written statements and instead produced his attorney Muhammad Ramzan, to record the statement in the evidence. The statement of the attorney in examination-in-chief is consisting merely on six lines, out of which, two relates to presenting/exhibiting of power of attorney, judgment and decree sheet of the Family Court, etc. He has stated that he is unaware about the quantum of the dower amount. Whatever, it was, the same had been paid. It will be useful to reproduce here the statement of Muhammad Ramzan, recorded in examination-in-chief.

"مظہر کراچی نہ گیا ہے یہاں رہتا ہے اس
لیے کراچی مزدوری کرتے مدعالیہ کو نہ دیکھا
ہے۔ نکاح کا گواہ نہ ہے"
"مظہرکو شہادت دینے کے لیے مدعاعلیہ نے
بتایا تھا۔ مظہر نہ بتا سکتا ہے کہ کب مدعاعلیہ

نے کہا تھا۔ مدعاعلیہ نے کہا تھا کہ شہادت دینی
ہے جو کہا تھا لکھوادیا۔ مظہر کو علم نہ ہے کہ
معدادلیہ کو کراچی گئے ہوئے کتنا عرصہ ہو
چکا ہے"
"مظہر کو علم نہ ہے کہ مدعاعلیہ کے دیگر
رشتہ دار یہاں رہتے ہیں یا نہیں "
" مدعاعلیہ سے دوستی ہے از خود کہا جسکا کام
کرنا پرئے کرنا پڑتا ہے"
"مدعاعلیہ کی رہائش کا سیکٹر نہ بتا سکتا ہوں۔
مکان نمبر بھی نہ بتا سکتا ہوں "
"فریقین کی برداری کا علم نہ ہے"

The perusal of the statement of Muhammad Ramzan, attorney, in his examination-in-chief and cross-examination reveals that he was not fully conversant of the facts of the case and even was not aware of the Sector of the residence of the appellant. The statement of the said witness is not worth confidence-inspiring or supports the case of the appellant.

The statements of other witnesses of the appellant-defendant are also not of any help to substantiate his case. The appellant has failed to point out any misreading or non-reading of the evidence by the Courts below as brought on record by both

contesting parties. The trial Court has reached to the conclusion of the case and passed the decrees after making true appraisal and appreciating the evidence of the parties in legal manner and the learned High Court has committed no error of law while maintaining the findings of the trial Court. The appellant has not been able to point out any legal infirmity in the judgment of the High Court.

7. The appellant has also challenged the impugned judgments and decrees of the Courts below passed in favor of the respondent No.1, regarding recovery of dowry articles. But like the judgment and decree of the award of dower amount, the appellant could not rebut the claim of respondent pertaining to her dowry articles. The plaintiff-respondent, herein, had claimed specific articles as were given to her at the time of marriage according to the list, exhibited as Ex.PC, which contains particulars of each and every item of the dowry articles. The appellant who is

otherwise expected to know better the facts of the case, did not appear before the trial Court to record his statement as witness in support of his stance in the case and instead of himself got the statement recorded of his attorney who was not his family member or friend, or well-acquainted with actual facts of the case, rather as mentioned earlier in preceding paragraph, he seems as stranger to the case even to the parties in true sense. When he appeared as witness, was examined and cross examined on this particular aspect of the case, but he could not rebut the claim of the respondent. In his written statement the appellant outrightly denied giving of any item of dowry, which seems not true in normal course of matters, norms and custom of our country while sending daughters at time of their marriage. His outright denial in his written statement in general terms is regarded as evasive. Even otherwise, there is conflicting version of the appellant in his written statement and statements of his

witnesses and his attorney rather admitted fact of giving of dowry articles. The respondent established on record the dowry articles she took with her to the house of her husband at the time of Rukhsati, and even otherwise, there is no denial to the fact that in ordinary course of life parents do prepare dowry articles for their daughters and such is the case in hand. This is strange to see that the appellant denied of the dowry articles stating therein that she did not bring the same to his house and even her parents did not provide her the same, but in our country it would be a rare occasion if the daughter is sent without giving her dowry articles. Though the learned counsel for the appellant time and again stressed hard that the respondent could not succeed in establishing her case to the extent of dowry articles, but this court does not accede to what the learned counsel submitted, as the learned trial Court dealt with the situation comprehensively, and applied its judicial mind to the

facts and circumstances of the case and reached to a correct conclusion which hardly calls for interference. In respect of the dowry articles the superior courts are consistent in their view and less burden is put on the shoulders of a wife to establish the claim of dowry articles, what to say of producing the receipts so collected and prepared. We are fortified with the judgment of "*Shafique Sultan Vs Mst. Asma Firdous and others"* (2017 SCMR 393), wherein it has been held as under:-

> "We have also gone through the list of dowry articles (Ex.P2) and found that the same consist of articles of daily use which are generally given to brides at the time of their marriages. We have not found any article(s) which may be termed as extravagate or beyond the financial resources of the respondent's family. Giving dowry articles to daughters is in line with custom/tradition and practices which are deeply rooted in our society and are followed by parents of all classes irrespective of their financial status."

8. The appellant in his appeal has also challenged the maintenance allowance awarded by the

trial Court in favour of the minor Maryum Sagheer, respondent No.2. The learned Counsel for the appellant submitted with vehemence that he is not financially sound enough to pay maintenance allowance as fixed by the trial Court, i.e., Rs. 3000/- per month from date of institution of the suit to date of decision of the suit and thereafter, Rs.4000/- per month along with 10% annual increase. There is no cavil with the submission of the learned counsel for the appellant that the financial means of the father has to be taken into account while determining the maintenance. However, it may be observed here that a father is under an obligation to maintain his children till they attain the age of majority in the case of male and the daughters till they are married. There is no escape from this responsibility of the father. It is legal obligation of father not only to contribute financial means in maintaining of his minor children but he is otherwise required to have general approach to take

care of well-being, health, education and welfare of minors in all aspects of life. The strained relations or even in case of divorce, between husband and wife, the personal hostilities and vendettas should not become hurdles in the general well-being and welfare of minors. Both are required to brush aside the personal prejudices against each other for the sake of physical, emotional and general welfare of minor. The husband and wife may part with the ways with one another and start new life with new life-partner but their children are never in a position to change their biological mother and father. Mother and father of a child always remain same, void created in early life of children of broken families due to absence of any one of the parents remains unfulfilled forever. This aspect of the life of children of broken families must be considered by all, i.e., the parents, the Courts, the legislature and other institutions while making decisions with regard to welfare of minors. In the

instant case, we have perused the impugned judgments, the record and the evidence produced by the parties.

We are of unanimous and satisfied that the both the Courts below have not committed any error of law or facts while awarding and determining the quantum of the maintenance allowance in favor of respondent No.2. The record reveals that the appellant have paid only once during trial before the Family Court, Rs. 3000/- amount of maintenance allowance to the minor but after passage of judgment and decree against him he has not paid current maintenance allowance or arrears that of. This fact leads us to take adverse inference against the appellant that the obligation the fulfillment of which, father is otherwise responsible to adhere to even in absence of any kind of judgment, order, decree of the Court or other authority, the appellant has not complied with the judgments and decrees of two Courts and that too required to be

performed for maintenance of his own minor daughter, does not entitle him otherwise to get relief from this Court. This is proved from the evidence of the parties that the appellant was living in Dubai before marriage since many years and also some time after marriage. Further, it is also not clear what sort of labor work as alleged by the appellant, he was doing in Karachi. Whereas, the plaintiff-respondent, herein, established her case through the evidence to substantiate that the appellant is financially in a position to pay maintenance allowance as awarded by the trial Court and maintained by the learned High Court. The learned Counsel for the appellant has not succeeded to convince us to mold our opinion otherwise as reached and concluded by the Courts below in their judgments. Even otherwise, for the sake of justice this Court with valuable assistance of the learned counsel for the parties, scanned the record minutely and also the impugned judgments, but could not come across any

illegality or irregularity, committed by the learned trial Court and thereafter, by the learned High Court, rather both the Courts dealt with the matter comprehensively that too by applying their judicial mind to the facts and circumstances of the case, which calls for no interference. This Court cannot lose sight of the fact that the respondent got favourable findings from both the Courts below which have been questioned by the appellant by requesting its indulgence in the matter, which this Court finds hard to intervene, that too in case of concurrent findings. Our this view is fortified from a recent judgment of this Court, titled, " *Asma Bashir Abbasi vs. Shahzad Ahmed Abbasi*," Civil appeal No.433 & 434 of 2020 decided on 25th August, 2021, wherein it has been held as under:

> "8. Even otherwise, the concurrent findings of facts recorded by the trial Court and upheld by the High Court are not open to challenge until and unless a case of gross misreading or non-reading of evidence or total absence of evidence is made out. In this regard,

> reliance can be placed on the judgment of this Court reported as Muhammad Din vs. Muhammad Ashraf & others [2005 SCR 225], wherein, it was held that:-
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> "... When a question of fact concurrently decided by the Courts below is upheld by the High Court then it is not proper for this Court to substitute its opinion against the opinion of the Courts below...".
>
> In another case titled Kamal Hussain vs. M. Shabir & others [2017 SCR 236], the same view has been observed by this Court:-
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> "The defendant -appellant could not succeed to point out any misreading or non-reading of evidence, therefore the findings of facts concurrently recorded by the Courts below cannot be disturbed or interfered with merely on the strength of the argument which does not find support from the law or record."

9. After examining the case from every angle, and with observations recorded hereinabove, we have unanimously reached to the conclusion that the concurrent findings on facts of the two learned Courts are based upon correct appreciation of evidence, no misreading or non-reading of the evidence is surfaced,

no exceptional circumstance has even been alleged and no error or law or principle of law enunciated by the Apex Courts have been pointed out to interfere in the concurrent findings.

For the above reasons, this appeal is dismissed with no order as to costs.

**JUDGE** **CHIEF JUSTICE**

Mirpur,
19.11.2021.

Sagheer Ahmed vs. Aneesha Shabir & another

**ORDER:**

The judgment has been signed. The same shall be announced by the learned Additional Registrar after notifying the learned counsel for the parties.

**JUDGE** **CHIEF JUSTICE**

Mirpur,
19.11.2021.