,SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:
Raza Ali Khan, J.
Muhammad Younas Tahir, J.

Civil Appeal No.68 of 2020
(PLA Filed on 02.01.2020)

Meharban Hussain, s/o Ghulam Muhammad, caste Jatt resident of Village Bang Chotti, Tehsil & District Mirpur.

……APPELLANT

VERSUS

Zahida Kousar, d/o Muhammad Rafique, s/o Samwal Sharif, Tehsil & District Mirpur.

…..RESPONDENT

[On appeal from the judgment and decree of the Shariat Appellate Bench of the High Court dated 30.10.2019 in family appeal No. 13 of 2017]

FOR THE APPELLANT: Ch. Muhammad Suleman, Advocate.

FOR THE RESPONDENT: Miss. Nosheen Iqbal, Advocate.

Date of hearing: 16.11.2021.

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 High Court, dated 30.10.2019, passed in family appeal No.13 of 2017, whereby the 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 a suit for recovery of the dowry articles worth Rs.116,415/- before the Judge Family Court, Mirpur on 04.04.2013. The suit was resisted by the defendant-appellant, herein. The learned trial Court after recording of the evidence and hearing the parties, decreed the suit for recovery of dowry articles of Rs.89,915/- and dismissed the suit to the extent of remaining articles worth Rs.26,500/- vide judgment and decree, dated 30.06.2014. Feeling dissatisfied, defendant-appellant, herein, challenged the said judgment and decree before the Shariat Appellate Bench of the High

Court. The learned Shariat Appellate Bench of the High Court after necessary proceedings, dismissed the appeal through impugned judgment, dated 30.10.2019, hence, this appeal by leave of the Court.

3. Ch. Muhammad Suleman, Advocate, the learned counsel for the appellant argued that the suit filed for recovery of dowry articles on the basis of list mentioned in the plaint, was not proved at all, but despite that void in the case of the plaintiff-respondent, herein, the learned Family Judge has granted the decree. The learned counsel further argued that the list was doubtful because it was not signed by anybody. He further argued that no evidence has been led for proving the delivery of articles at the time of solemnizing of the marriage. He further argued that the judgment passed by the learned trail Court as well as the learned Shariat Appellate Bench of the High Court badly suffers from misreading and no-reading of the record. He lastly requested for acceptance of appeal.

4. Conversely, Miss Nosheen Iqbal, Advocate, the learned counsel for the respondent, argued that there are concurrent findings of the fact recorded by the Courts below, which require no interference by this Court. She further argued that the plaintiff-respondent, herein, proved her case with cogent evidence. The trial Court after recording of the evidence rightly decree the suit in favour of the plaintiff-respondent, herein. She finally requested for dismissal of the appeal.

5. We have heard the learned counsel for the parties and perused the record made available.

6. Plaintiff-respondent, herein, in support of his claim produced two witnesses namely Maqsood Begum and Umer Nawaz and also got recorded her statement. She also produced documentary evidence as receipt of her dowry articles Ex. PA, whereas in defense, defendant-appellant, herein, produced Qurban Hussain along with his own statement.

7. As the question regarding recovery of dowry articles is concerned, plaintiff-respondent, herein, claimed that dowry articles wroth Rs.116,415/- which according to her were given by her parents at the time of marriages. It is also needful to mention here that plaintiff-respondent, herein, placed the list Ex.PA, on record in support of his statement, she also produced Maqsood Begum, who deposed that at the time of the marriage dowry articles worth Rs.116,000/- were given to plaintiff-respondent, herein. According to the list Ex.PA, some other dowry articles were given to her after marriage, while other witness Umer Nawaz deposed that at the time of marriage dowry articles worth Rs.90,000/- were given to the plaintiff-respondent, herein, whereas remaining articles worth Rs.26,000/- were given to after solemnizing of marriage. Plaintiff-respondent, herein, in her statement deposed that at the time of marriage dowry articles worth Rs.89-90,000/-was given to her. She stated in cross-examination that:-

"جہیز کا سامان مظہرہ اور مظہرہ کی والدہ اور بھائیوں نے خرید کیا تھا۔ سامان جہیز مدعاعلیہ کے گھر ہے۔ سامان دو کمروں میں پڑا ہوا ہے"

The defendant-appellant, herein, himself states that no dowry article were given, but father of plaintiff-respondents, herein, got Rs.65,000/- from him, thus from the perusal of the statement of the plaintiff-respondent, herein, shows that dowry articles Rs.89,915/- were given to her at the time of solemnizing marriage. The trial Court has not awarded the whole prayed relief rather awarded the partial amount of dowry articles which the respondent was able to prove in her evidence.

As for as the contention of the learned counsel for the appellant that list of the dowry articles is fabricated one as being not signed by anyone and not proved at all, is concerned. There is no legal requirement of documenting of the dowry articles in Nikkahnama or in other document or list, like as required for the details of dower amount, prompt and dower. In our society, when the parents are making preparations of the marriages of their daughters, in normal course of life, they do not indulge in making lists or keep record of receipts of the dowry articles to prove the fact of purchasing the same or giving the same to daughters at the

time of marriage, to prove in any Court of law, rather parents pray and are of desirous of sustenance of the marriage the daughters. There would be very few parents who in their otherwise normal routine, do not keep record of their financial accounts and receipt of the same, would document the dowry articles proposed to be given to their daughter. The plaintiff-respondent, herein, was not obliged to prove her case in *stricto sensu* according to principles and provisions of the Qanun-e-Shahadat Order, 1984, as it is required under ordinary civil proceedings in civil Court or criminal proceedings in criminal Courts. The Family Courts Act, 1993 is a special law which has been enacted for adjudication of matrimonial disputes with expeditiously and without falling prey of technicalities. The legislature, being appreciative of this, specifically excluded the operation of the Qanun-e-Shahadat Order, 1984, from the proceedings of the Family Courts. Section 17 of the AJ&K Family Courts Act, 1993, postulates that provisions of Qanun-e-Shahadat, Order, 1984 are not applicable to the proceedings before the Family Court.

Our view is fortified from the judgment of this Court reported as *"Saleem Akbar Kayani v. Dr. Rehana Mansha Kayani & 4 others* [2016 SCR 1], wherein it has been held as under:

> "Section 17 of the Family Courts Act, 1993, provides that the provisions of *Qanoon-e-Shahadat* and code of Civil Procedure shall not apply to the proceedings before any Family Court. The purpose of exclusion of Civil Procedure Code and *Qanoon-e-Shahadat* is that the family matters be disposed of expeditiously and the cases shall not be prolonged unnecessarily."

In context of our observation in preceding paragraph, regarding keeping in record of receipts and preparation of list of the dowry articles, our view finds support from the case reported as "*Muhammad Islam vs. Mst. Rashidah Sultana and 4 others*" [2013 CLC 698] as under:-

> "It is true that the receipts are not produced but the provisions of the Qanun-e-Shahadat Order, 1984, are not applicable on the proceedings before the Family Court in view of section 17 of the Family Courts Act, 1964. The intent of the legislation clearly was to simplify the procedure and the Law Makers were aware of the fact that in such cases the lists are seldom prepared and receipts are very rarely kept intact as every

> one makes the arrangements of the marriage of one's daughter with the hope and prayers that she would lead a happy married life. PWs-1 and 2 have categorically stated that the petitioner was given the articles of dowry as per list. The denial of defendant/petitioner cannot be accepted as correct as I have already held that he is not a truthful person."

Similarly, in the judgment of the Apex Court of Pakistan case reported as *"Muhammad Habib v. Mst. Safia Bibi and others"*[2008 SCMR 1584], the contention of the petitioner, husband was that no such list of dowry articles was prepared at the time of marriage, same was fabricated and in absence of valid receipts of purchase of said articles, suit could not have been decreed and that Appellate Court was not legally justified to modify the decree passed by the Family Court and enhance the amount. It was held that

> "the perusal of A list Exh.P.I, reveals that these are the articles which are ordinarily given to a bride at the time of her marriage. Both the Courts below have given concurrent findings which are based upon substantial evidence and the petitioner has not been able to controvert the same during the trial, as such the petitioner has failed to show any illegality or irregularity committed by the Courts below in the impugned judgments so as to warrant interference by

> this Court in exercise of its constitutional jurisdiction”

Furtherance to our finding that provision of the *Qanun-e-Shahadat* Order, 1984, are not applicable on proceedings before the Family Court, it may be mentioned here that the sole statement of wife is sufficient to prove her claim of dowry articles and she was not required to prove the case in the terms of requirements of *Qanun-e-Shahadat* by producing a certain number of witnesses in support of her claim along with recording of her own statement .Our this view finds support from the case reported as *“Mst. Shakeela Bibi vs. Muhammad Israr and others”*[2012 MLD 756] as under:-

> “7. In my estimation, both the courts below, failed to appreciate the evidence, more particularly statement of petitioner who appeared as P.W.1. In an affidavit tendered in evidence as Exh.P1, Para 4, petitioner stated as under:
>
> "والدین نے شادی کے وقت مجھے سامان جہیز مالیتی 2,15,000/- روپے دیا تھا"
>
> ' In cross-examination, defendant/respondent side himself put few questions which were replied as under:-
>
> "سامان مزکور قابل استعمال ہے۔ دُرست ہے گھریلو استعمال کی اشیا ہیں"
>
> ' I believe that this important piece of evidence escaped notice of both the Courts. It is held in

> the case of Muhammad Jaffar v. ADJ reported as 2005 MLD 1069, that solitary statement of wife is sufficient' A to prove the claim of dowry articles."

It has been further held in para No.10 of the same report, which is reproduced here as under:-

> "10. Even otherwise, in our society, it is not possible for any bride/ wife to keep the record of purchase receipts, prepare the list of dowry articles, and obtain signatures from bridegroom/husband side. In my observation, mothers start collecting, purchase and preserving of articles for her daughter, when she starts growing. It is also a tradition that in-laws, of any bride/wife are extended esteem respect and it is considered an insult to prepare the dowry list for the purposes of obtaining signature from them. I am also fortified, with the ratio and wisdom of the Court of apex provided through cases Muhammad Habib v. Mst.Safia Bibi and others reported as 2008 SCMR 1584 and Mirza Arshad Baig v. ADJ reported as 2005 SCMR 1740."

8. The appellant has not been able to point out any misreading or non-reading of the evidence or the record by the trial Court. The trial Court has rightly passed the judgment and decree after considering the evidence and the learned Shariat Appellant Bench of the High Court has not committed any error of law by maintaining the same.

Upshot of the above discussion is that finding no force in the instant appeal, it is hereby dismissed with no order as to costs.

JUDGE **JUDGE**

(iii) (ii)

Mirpur,
23.11.2021.

Meharban Hussain vs. Zahida Kousar

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 **JUDGE**

(iii) (ii)

Mirpur.
23.11.2021.