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

PRESENT:
Kh. Muhammad Nasim, J.
Raza Ali Khan, J.

Civil PLA No.733 of 2023
(Filed on 03.11.2023)

Muhammad Afzal Khan S/o Muhammad Qasim R/o Doba Tehsil Naseerabad, District Muzaffarabad at present Domel Seydan Muzaffarabad.

…. PETITIONER

VERSUS

Amreen Gul D/o Gull Zaman R/o Baheri, Tehsil Pattika/Naseerabad, District Muzaffarabad.

…. RESPONDENTS

[On appeal from the judgment & decree of the Shariat Appellate Bench of the High Court dated 05.10.2023, in Family Appeal No.62/2021]

FOR THE PETITIONER: Mr. Akhlaq Hussain Mughal, Advocate.

FOR THE RESPONDENT: Mr. Muzaffar Hussain Mughal, Advocate.

Date of hearing: 22.12.2022.

ORDER:-

Kh. Muhammad Nasim, J.— The captioned petition for leave to appeal has been directed against the judgment & decree of the Shariat Appellate Bench of the High

Court *(hereinafter to be referred as High Court),* dated 05.10.2023, passed in Family Appeal No.62/2021.

2. The succinct facts of the case, leading to the filing of the instant petition for leave to appeal are that the plaintiff/respondent, herein, filed a suit for dissolution of marriage against the petitioner, herein, before the Judge Family Court Pattika/Naseerabad, on 27.11.2018. It was alleged in the plaint that the marriage between the spouses was solemnized on 25.11.2009 in lieu of dower Rs.2,50,000/- in shape of gold ornaments worth Rs.157,000/- and the remaining dower was paid in shape of two constructed shops. She contended that initially the behaviour of the petitioner/defendant remained pleasant, however, with the passage of time he became rude and also developed illicit relations with other girls/women. On 30.04.2014, the defendant ousted her and minor child from his house. She is living with her parents in a miserable condition. She has developed a sever hatred against the petitioner/defendant, as such she cannot live with him, within the limits ordained by Allah Almighty. She prayed for dissolution of marriage. The defendant/petitioner, herein, contested the suit by filing the written statement, wherein, the claim of the plaintiff was refuted in toto. After necessary

proceedings, the trial Court decreed the suit and dissolved the marriage on the basis of cruelty, non-payment of dower and non-performance of marital obligations, vide judgment dated 31.03.2021. Feeling dissatisfied from the judgment and decree passed by the trial Court, the petitioner, herein, preferred an appeal before the High Court. Through the impugned judgment, the learned High Court has dismissed the appeal, hence, this petition for leave to appeal.

3. Mr. Akhlaq Hussain Mughal, the learned Advocate, representing the petitioner argued the case at some length and submitted that the trial Court has fell in error of law while decreeing the suit for dissolution of marriage on the basis of cruelty, non-payment of dower and non-performance of marital obligations. He further submitted that the respondent failed to prove from the record that she was deserted by her husband. The factum of cruelty is also not proved from the record. The petitioner has contracted second marriage when the respondent refused to populate with the petitioner and under law, contracting of second marriage by the husband, does not come within the ambit of cruelty. The learned Advocate, contended that the petitioner has also paid the whole dower to the respondent. The respondent herself deposed in her statement

that she is not ready to live with the husband at any cost. In this state of affairs, it was enjoined upon the trial Court to dissolve the marriage on the ground of Khula, instead of cruelty, non-payment of dower and non-performance of marital obligations. The learned High Court has also not considered the record in its true perspective and dismissed the appeal in a slipshod manner, hence, the interference by this Court is warranted under law and grant of leave is justified in the case.

4. On the other hand, Mr. Muzaffar Hussain Mughal, the learned Advocate representing the respondent forcefully opposed the arguments advanced on behalf of the petitioner and submitted that the impugned judgments passed by the Courts below are perfectly legal, calling for no interference by this Court. He further submitted that the respondent has proved her case by producing cogent and convincing evidence, hence, the Courts below have committed no illegality while passing the impugned judgment. The petitioner has failed to point out any substantial question of public importance involved in the matter, which is pre-requisite for grant of leave to appeal, hence, this petition for leave to appeal is liable to be buried at this preliminary stage. He prayed for dismissal of the petition for leave to appeal.

5. We have considered the arguments of the learned Advocates representing the parties and have perused the record made available along with the impugned judgment. A perusal of the record reveals that the plaintiff/respondent, herein, filed a suit for dissolution of marriage against the petitioner, herein, on the grounds that her husband/petitioner, herein, had developed illicit relations with another girl. She alongwith her minor child has been ousted by the petitioner, from the house and the defendant has also failed to pay the maintenance allowance and dower as well as perform marital obligations. After necessary proceedings, the trial Court decreed the suit for dissolution of marriage on the grounds of cruelty, non-payment of dower and non-performance of marital obligation. Through the impugned judgment, the learned High Court has upheld the judgment of the Family Court.

6. The contention of the learned Advocate, representing the petitioner is that the respondent failed to prove the element of cruelty, non-payment of dower and non-performance of marital obligations and the trial Court has illegally dissolved the marriage on the aforesaid grounds. From the record it appears that in the plaint, the respondent has taken the stance that the petitioner had developed illicit relations with

another girl, which resulted into mental torture for her and she has been deserted by the husband. The defendant/petitioner, herein, has also not paid any maintenance allowance to her nor he performed the marital obligations. The respondent while recording her statement also remained consistent on this version and the witnesses produced by the respondent also supported her version and this position is further strengthened from the conduct of the petitioner by contracting second marriage with the girl, with whom, the illicit relations of the petitioner were alleged by the respondent. The non-payment of dower and maintenance allowance as well as non-performance of the marital obligations by the husband is also proved. In this regard we would like to reproduce here the statement of the petitioner, herein. During the course of cross-examination, he deposed that:-

> ”.... یہ غلط ہے کہ مدعیہ جب مظہر کے گھر آباد تھی تو مظہر کے دوسری لڑکی کے ساتھ نا جائز تعلقات تھے۔ یہ درست ہے کہ مظہر نے اسی لڑکی کے ساتھ دوسری شادی کی ہے۔ یہ درست ہے کہ مدعیہ سال **2014** سے غیر آباد تھی۔ یہ درست ہے کہ مظہر کا دعویٰ حقوق زن آشوئی بعدم ثبوت خارج ہو چکا ہے۔ یہ درست ہے کہ سال **2014** سے لے کر آج تک مظہر نے مدعیہ کو کوئی کفاف ماہانہ ادا نہ کیا ہے۔ یہ درست ہے کہ مظہر نے مدعیہ کے خود غیر آباد ہونے کی نسبت کوئی ثبوت پیش نہ کیا ہے۔ یہ بات درست ہے کہ مظہر نے مدعیہ کی غیر آبادی کے دوران دوسری شادی کی ہے۔ یہ درست ہے کہ عرصہ چھ سال سے مظہر نے مدعیہ کے کوئی حقوق شوہریت ادا نہ کیے ہیں۔ “

Thus, it cannot be said that the respondent failed to prove the element of cruelty and other two grounds on the basis of

which the marriage has been dissolved. It is worthwhile to mention here that cruelty doesn't mean only physical torture rather the bad behaviour/mental agony is also treated as cruelty. This Court in a number of cases has held that in order to prove the ground of cruelty, physical assault on the part of the husband or his family members is not necessary, rather if the conduct of the husband is of such nature which creates tense situation and frustrate the feelings of the wife, that can be considered as cruelty. We are fortified in our view from the case reported as *Muhammad Sohrab vs. Sobia Hayat* [2018 SCR 1167], wherein, it was observed by this Court as under:-

> 6. The argument of the learned counsel for the appellant that the respondent failed to prove the element of cruelty and in view of the statement of the respondent lastly, she went to the house of her parents along with her husband in pleasant circumstances, thus, it is clear that she was not deserted by the appellant. From the record it appears that in the suit, the respondent has not taken the stance that the appellant physically tortured her or deserted her rather she categorically mentioned in the plaint that he mentally tortured her and frequently used to ask her that he wants to contract second marriage with the girl to whom he likes. The respondent while recording her statement also remained determined on this version and the witnesses produced by the respondent also supported her version and this position is further strengthened from the conduct of the appellant discussed in the preceding paragraph. Thus, it cannot be said that the respondent failed to prove the element of cruelty. It is worthwhile to mention

> here that cruelty doesn't mean only physical torture rather the bad behaviour/mental agony is also treated as cruelty.

Similarly, in the case reported as *Muhammad Sabil Khan and another v. Saima Inshad* [2014 SCR 718], this Court while dealing with the similar proposition has held as under:-

> "14. It is also celebrated principle of law that for proof of cruelty, it is not necessary that physical assault or injury is required to be proved rather sometimes, the conduct and behaviours without physical assault has also been treated by the Courts as cruelty. Even the mental torture suffered by the wife due to behaviours of her husband can also be treated as cruelty. In the instant case, a specific stand has been taken by the defendant-respondent in his written statement that the plaintiff-appellant during the period of study in the school time used to travel by his taxi for years and when she and her mother failed to pay the fare, the plaintiff-appellant was wedded with him. Thus, the examination of written statement and the stand taken by the defendant-respondent also speaks of his mental approach and such allegation also amounts to mental torture and cruelty."

After examining the record, we have reached the conclusion that the judgment and decree passed by trial Court is based on sound reasons. The learned High Court has committed no illegality while upholding the said judgment and decree.

7. It may also be observed here that under section 14 (5) of the AJ&K Family Courts Act, 1993, an appeal to this Court from the judgment, decree or order of the High Court shall lie only when this Court being satisfied that the case involves a substantial question of law of public importance, grants leave to appeal. In a number of pronouncements, this Court interpreted the question of law of public importance as a question which affects and has its repercussions on the public at large, whereas, in the present case, no such question is involved. Reference may be made to the case reported as *Basharat Aziz vs. Mst. Dil Jan & 10 others* [1998 SCR 129], wherein, this Court has observed as under:-

> " It may be stated that in view of sub-section (5) of section 14 of the Act known as Family Courts Act, 1993, leave to the Supreme Court is only permissible if this Court is satisfied that the case involves a substantial question of law of 'public importance' and not otherwise. In the instant case the Shariat Court has come to the conclusion that the petitioner failed to prove that Mst. Dil Jan was given to him in marriage by her father by performing 'Nikah' according to Muslim Law. Obviously, this is a question of fact and it cannot be said that'a question of law of public importance' is involved in the present case. Even if there is a question of law involved in such a case, leave can only be granted if the question involved is not only a 'question of law' but also a 'question of public importance'. No such eventuality exists in the instant case. Hence the

> petition for leave to appeal is hereby dismissed.

The identical proposition came under consideration of this Court in the case reported as *Muhammad Younus v. Shahnaz Begum and others* [PLD 2004 SC (AJ&K) 17], wherein, it was observed as under:-

> "4. This Court has already observed in the order under review that for the purpose of granting leave in matrimonial matters, there must be a legal question of public importance involved in the matter as postulated under section 14(5) of the AJ&K Family Courts Act, 1994.

Likewise, in the case reported as *Musthtaq Hussain Khan v. Mst. Hafiza Aziz and 3 others* [2002 CLC 730], it has been held by this Court as under:-

> "A matrimonial dispute between the two parties can hardly be called a question of public importance. The question of law of public importance is only that question which affects and has its repercussions on the public at large."

In another case reported as *Mushtaq Hussain Khan v. Mst. Hafeeza Aziz and 3 others* [2001 SCR 331], this Court while dealing with such like proposition has observed as under:-

> "In our view a matrimonial dispute between two parties can hardly be called a question of law of public importance. The question of law of public importance is only that question which affects and has it repercussions on the public at large."

In view of the above, finding no force, this petition for leave to appeal stands dismissed.

JUDGE **JUDGE**
(J-II)

Muzaffarabad.
08.01.2024.