

IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Shariat Appellate Jurisdiction)

PRESENT:

MR. JUSTICE KHAWAJA M. NASIM,
MR. JUSTICE RAZA ALI KHAN

CIVIL APPEALS No. 86,87,88,89,90 & 91 OF 2023

(on appeal from the consolidated judgment of the Shariat Appellate Bench of the High Court dated 09.03.2023)

Ali Murtaza s/o Syed Jamil Hussain Shah r/o Mohra Baikarian Cheechian Tehsil and District Mirpur.
(in appeals No. 86,87,88,89,90)

Aasma Batool d/o Saleem Shah caste Syed resident of Mohallah Mughlan, near Islamia Marriage Hall, Mian Muhammad Town Mirpur.
(in appeal No. 91)

...Appellant(s)

VERSUS

Aasma Batool d/o Saleem Shah caste Syed resident of Mohallah Mughlan, near Islamia Marriage Hall, Mian Muhammad Town Mirpur.
(in appeals No. 86,87,88,89,90)

Ali Murtaza s/o Syed Jamil Hussain Shah r/o Mohra Baikarian Cheechian Tehsil and District Mirpur.
(in appeal No. 91)

...Respondent(s)

Appearances:

For the Appellant:
(Ali Murtaza)

Ch. M. Bashir Tabasum,
Advocate.

For the Respondent:
(Asma Batool)

Miss Ghazala Haider Lodhi,
Advocate.

Date of hearing:

20.02.2024

JUDGMENT:

Raza Ali Khan, J:- The consolidated judgment of the Shariate Appellate Bench of the High Court (*hereinafter to be referred as High Court*), has been called in question through the titled appeals by our leave, which were heard together and are being disposed of through this single judgment.

2. The common facts in all the titled appeals are that Ali Murtaza, appellant, herein, instituted a suit in the Court of Judge Family Court, Mirpur, seeking restitution of conjugal rights. He claimed to have married Aasma Batool in accordance with Sharia on 10.02.2012. He asserted that they had lived harmoniously for a certain period, and he fulfilled all his marital obligations, however, on 05.10.2014, he left Aasma Batool with her parents to attend Eid celebrations, but they (*defendants No. 2 to 5*) prevented her from returning to him. He also claimed that they filed a frivolous application at Police Station Afzalpur, on behalf of Aasma Batool against him. Ali Murtaza sought the suit to be decreed in his favor. The other side contested the suit by submitting a written statement. It was claimed that after a period of six months of marriage, Ali Murtaza's behavior towards Aasma Batool turned abusive, he frequently used to quarrel with her, subjected her to verbal and physical abuse and threatened to divorce and harm her. It was further alleged that on 02.10.2014, he physically assaulted her, causing to lose consciousness and then confined her in a room from

02.10.2014 to 05.10.2014. On 05.10.2014, when her condition became deteriorated, he took her to her parents' house and disappeared. On inquiry by her parents, they also filed an application at the Police Station Afzalpur, on 10.10.2014, against the husband/plaintiff.

3. Aasma Batool also filed five separate suits against Ali Murtaza in the same Court. These suits sought payment of maintenance, dissolution of marriage, recovery of dowry articles, payment of deferred dower, and recovery of prompt dower. According to her claim, she was entered into marriage with the defendant on 10.02.2012, with a dower, weighing 10 tola gold ornaments and Rs.2000/- as prompt dower, and Rs.5,00,000/- as deferred dower. She alleged that the defendant subjected her to cruel behavior, disrespect, abuse, cruelty, taunts and mistreatment. On 02.10.2014, in the presence of his parents, the defendant/husband purportedly assaulted her physically with kicks, fists, and sticks/batons, and also threatened to kill her with a pistol. This resulted to loss of her consciousness, whereafter, the defendant/husband locked her in a room on 05.10.2014. When her condition gone deteriorated, he threw her in her parents' house and fled away. She also claimed that the defendant/husband failed to provide maintenance since September 2012. Additionally, she claimed that at the time of Rukhsati (wedding party), her parents gave her dowry articles worth Rs.4,71,660/-, which remained in the

defendant's possession. She further contended that the defendant did not fulfil his obligation to pay the deferred dower, and as he left her in her parents' house after ill-treatment and in an unconscious condition, the prompt dower paid in the form of gold ornaments remained in the defendant's possession. The defendant-appellant, herein, contested all the suits by filing the written statements and refuted the claims of the plaintiff. The learned Judge Family Court consolidated all the suits, framed issues based on the pleadings of the parties, provided them with an opportunity to present evidence, and ultimately, decreed the suits for the dissolution of marriage on the basis of *Khula*, recovery of deferred dower, and recovery of dowry articles, however, the suits for payment of maintenance allowance, restitution of conjugal rights, and payment of prompt dower were dismissed for want of proof, as per judgment dated 27.09.2019. Both the parties lodged separate appeals against this judgment and decrees before the High Court. Following the due proceedings, the High Court rendered its judgment summarizing as follows: -

“The sum and substance of the above discussion is;

1. Appeal No. 163/2019 is hereby accepted and suit filed for dissolution of marriage is decreed on the basis of cruelty and maltreatment.
2. Appeal No. 162/2019 is hereby accepted and suit filed for payment of maintenance is decreed in the terms that plaintiff is entitled to get maintenance of Rs. 10,000/- per month from 05.0.2014 to till the instant decision and for further three months of idat period.

3. Appeal No. 176/2019 filed against judgment and decree recorded in a suit filed for returning dowry article is hereby dismissed for having no essence.
4. Appeal No. 179/2019 the suit filed for restitution of conjugal rights is hereby dismissed for having no legal essence.
5. Appeal No. 178/2019 is hereby accepted and suit filed for recovery of deferred dower is hereby dismissed.
6. Appeal No. 161/2019, is hereby accepted and the suit filed for recovery of prompt dower is decreed and plaintiff is declared as being entitled to receive 10 tola gold ornaments from defendant or its market price.”

4. Ch. Muhammad Bashir Tabbasum, the learned counsel representing Ali Murtaza, appellant, herein, argued that the plaintiff-respondent failed to substantiate allegations of cruelty by her husband and voluntarily left her husband's house as indicated by her departure without coercion. He asserted that the trial Court rightly dismissed the maintenance suit and appropriately decreed the suit for dissolution of marriage on the basis of *Khula*, which the High Court erroneously overturned. He also contended that the plaintiff failed to demonstrate that the prompt dower in shape of gold ornaments, was in the defendant's possession, as she took the gold ornaments along-with her while leaving her husband's house. He further argued that since there was no fixed deferred dower, the plaintiff failed to prove her claim with documentary evidence. The learned Advocate stressed that the High Court's judgment was flawed due to the misinterpretation of evidence, advocated for the restoration of trial Court's decision, stressing thereby that the plaintiff had voluntarily left her husband's residence without

justification, thus forfeiting any right to past or future maintenance, as per Muhammadan law, which obliges husband to maintain faithful, obedient wives. He further argued that both the Courts below inadequately assessed the evidence in the dowry article recovery suit, highlighting the submission of a fraudulent list of articles by the plaintiff. This issue was also overlooked by the High Court, according to him warrants the reversal of both the judgments of the Courts below. He cited the cases reported as *[2014 SCR 504]* and *[2013 SCR 108]* in support of his arguments.

5. Conversely, Miss. Ghazala Haider Lodhi, representing Aasma Batool, respondent, herein, strongly contended that Ali Murtaza's statements regarding the prompt dower is inconsistent. She highlighted that while recording statement, Ali Murtaza claimed contradictly as on one hand, he alleged that Aasma Batool took the gold ornaments along-with her on 15.10.2014 while on the other hand, he stated that, she had kept the gold ornaments at her parents' house since the solemnization of their marriage. This implied that the prompt dower in shape of gold ornaments was in Ali Murtaza's possession. Additionally, she argued that the physical and mental abuse by Ali Murtaza was evident from Aasma Batool's statement and was supported by the statement of plaintiff's witnesses. She alleged that the suit for restitution of conjugal rights was maliciously filed to evade an FIR lodged against Ali Murtaza for committing

physical abuse, thus, this a crucial aspect of the case has been overlooked by the Courts below. She further contended that the High Court's impugned decision on the subject of deferred dower is contrary to law, facts, and the case record. The learned Advocate added that since the High Court decreed the dissolution of marriage based on cruelty, it was obligated to decree the suit for recovery of the deferred dower filed by the plaintiff, however, the High Court failed to do so which is contrary to law. She concluded by requesting that the impugned judgment of the High Court be modified to this extent in favor of Aasma Batool.

6. After hearing the arguments from both sides and reviewing the case file, it is apparent that Aasma Batool, the respondent/wife, initiated five separate suits against Ali Murtaza in the Court of Judge Family Court, Mirpur. These suits encompassed various issues including maintenance payment, dissolution of marriage, recovery of dowry articles, deferred dower, and recovery of prompt dower. In response, Ali Murtaza filed written statements contesting all claims and also instituted a cross-suit for restitution of conjugal rights. The learned Judge Family Court consolidated all the suits and after following the due proceedings under law, passed the judgment in the following manner: -

"تنقیحات بالا میں صادر شدہ قرار داد باء کی روشنی میں یہ قرار دیا جاتا ہے:

(i) دعویٰ مدعیہ دلا پانے خرچہ نان و نفقہ بعدم ثبوت خارج کیا جاتا ہے -

- (ii) ڈگری تنسیخ نکاح بر بنائے خلع یا ادائیگی حق مہر معجل طلائی زیورات وزنی دس تولہ اور مبلغ -/2000 روپے بحق مدعیہ بخلاف مدعا علیہ صادر کی جاتی ہے اور نکاح فریقین فسخ کیا جا تا ہے مدعیہ بعد از گزرنے معیاد عدت عقد ثانی کرنے کی مجاز ہو گی۔
- (iii) ڈگری دلا پانے حق مہر غیر معجل بحق مدعیہ بخلاف مدعا علیہ بدیں صراحت صادر کی جاتی ہے کہ مدعیہ حق مہر غیر معجل مبلغ -/500,000 روپے ازاں مدعا علیہ حاصل کرنے کی حقدار ہے۔
- (iv) ڈگری دلا پانے سامان جہیز بحق مدعیہ بخلاف مدعا علیہ بدیں صراحت صادر کی جاتی ہے کہ ہ مدعیہ سامان جہیز بمطابق ضمن نمبر 6 عرضی دعویٰ مالیاتی -/471,660 روپے ازاں مدعا علیہ حاصل کرنے کی حقدار ہے۔
- (v) دعویٰ مدعی بالمقابل اعادہ حقوق زن آشویی غیر مؤثر قرار دیا جا کر خارج کیا جاتا ہے۔
- (vi) دعویٰ مدعیہ دلا پانے حق مہر معجل بعدم ثبوت خارج کیا جا تا ہے "

7. The primary issue in the matter in hand revolves around whether the plaintiff-respondent was justified in seeking dissolution of the marriage based on 'cruelty'. Initially the Judge Family Court granted decree for dissolution of marriage on the basis of *khula*, while the High Court ruled in favor of dissolution based on 'cruelty' and maltreatment by husband Ali Murtaza. The plaintiff (wife), in her statement before the Court asserted that she did not leave the appellant's house voluntarily, but was compelled to do so due to maltreatment, cruelty, and physical /mental abuse. This assertion was clearly outlined in her suit and reiterated during her statement before the Court:

"شادی کے 6 ماہ تک مدعی کا رویہ ہمراہ مظہر ٹھیک رہا ۔ اس کے بعد مدعی نے اپنی فیملی کے ساتھ مل کر مظہرہ کو بے عزت کرنا اور گالم گلوچ کرنا شروع کر دیا۔ مدعی نے تین چار دفعہ مظہرہ کو مارا پیٹا مگر مظہرہ نے والدین کو نہ بتایا۔ مظہرہ کو طلاق اور جان سے مارنے کی دھمکیاں دیتا۔ ۔ مدعی دوسری شادی کرنا چاہتا تھا جو مدعی مظہرہ سے تحریری طور پر لکھوانا چاہتا تھا جس پر مظہرہ نہ مان رہی تھی۔ جس پر 2005ء پھر کہا 02.10.2014 کو مدعی نے مظہرہ پر تشدد کیا۔ مظہرہ کا گلہ دبایا اور مظہرہ کے والدین کے گھر کے باہر چھوڑ کر بھاگ گیا۔ مظہرہ تین دن گھر میں رہی۔ مظہرہ شدید بیمار ہوئی پھر مظہرہ کو والدین کے گھر کے باہر چھوڑ کر بھاگ گیا۔ مظہرہ کی حالت دیکھ کر مظہرہ کے گھر والوں نے مظہرہ سے دریافت کیا جس پر مظہرہ نے اپنے گھر والوں

confined only to the extent of physical violence, it includes mental torture, hateful attitude of husband or other inmates of the house and also includes the circumstances in presence of which the wife is forced to abandon the house of her husband.”

The reference may also be made to the case reported as Muhammad Zaheer-ud-Din Babar vs. Mst. Shazia Kousar and another², wherein, it has been held as under: -

“The cruelty is not confined only to physical torture. Even the cruel attitude is not confined only to the extent of physical violence, it includes the mental torture, hateful attitude of the husband or other inmates of the house and also includes other circumstances, in the presence of which the wife is forced to abandon the house of her husband.”

9. Matrimonial matters entail delicate emotional bond, requiring trust, respect and reasonable adjustment with the matrimonial partner in accordance with social norms and religious values varying degrees of inconvenience for others. Cruelty in matrimonial life encompasses a wide spectrum, ranging from violent acts to non-violent gestures or even silence. Section 2 of Dissolution of Muslim Marriage Act, 1939, delineates the various kinds and nature of cruelty within the context of matrimonial relationships. Thus, the term ‘cruelty’ is not only limited to physical assault or infliction of physical injuries rather it, being a comprehensive term as elaborated in the statutory provision which includes all forms of cruelty which may be classified as legal, mental

² [2015 SCR 621]

and physical. The word 'cruelty' in Black's Law Dictionary (Eighth Edition) is defined as under:-

“Cruelty. *The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage.*

‘legal cruelty’, cruelty that will justify granting a divorce to the injured party; specif., conduct by one spouse that endangers the life, person, or health of the other spouse, or creates a reasonable apprehension of bodily or mental harm.

‘mental cruelty’. As a ground for divorce, one spouse’ course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse.

‘physical cruelty’. As a ground for divorce, actual personal violence committed by one spouse against the other

10. The dictionary meaning of term ‘cruelty’ explicitly indicates that it can encompass both mental and physical form. It is well established legal principle that the proof of cruelty does not hinge solely on demonstrating physical assault or injury, rather the conduct and behavior amounting to mental assault have also been recognized by Courts as constituting cruelty. In cases where dissolution of marriage is sought on ground of mental cruelty, the impact of such cruelty must render it impossible to continue the matrimonial relationship. In essence, the aggrieved party cannot reasonably be expected to overlook such conduct and maintain matrimonial bond. The level of tolerance towards such behavior varies among couples and Court takes into account the factors such as the parties’ background, education level and social status to determine whether the

alleged cruelty justifies the dissolution of marriage or not. This stance finds support from a precedent set forth by this Court in a case reported as Mehvish Kazmi vs. Parvaiz Hussain and another³, wherein, it has been observed as under: -

“The dictionary meaning of word ‘cruelty’ clearly shows that cruelty may be mental or physical. It is a celebrated principle of law that to prove cruelty, it is not necessary to manifest physical assault or injury, rather sometimes, the conduct and behavior amounting to mental assault, has also been treated by the Courts as cruelty. For considering dissolution of marriage at the instance of a spouse who alleges mental cruelty, the result of such mental cruelty must be such that it becomes impossible to continue with the matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live together. The degree of tolerance will vary from one couple to another and the Court while considering the background, level of education and the status of parties in order to justify whether cruelty alleged is sufficient to dissolve the marriage or not.”

11. Following the preceding discussion (supra) and legal precedent, it is evident that the Courts consistently acknowledged mental cruelty and torture as a valid ground for dissolution of marriage. Further when evidence demonstrates instances of physical cruelty, such as strangulation and physical mishandling, the severity of the situation is heightened, justifying dissolution of marriage on the basis of cruelty rather than khula, as decided by the trial Court. Therefore, the High Court's decision to dissolve the

³ [2021 SCR 609]

marriage on the ground of cruelty in the impugned judgment is justified.

12. The trial Court has also dismissed the plaintiff's suit for recovery of maintenance allowance on the ground of insufficient evidence to prove her husband's cruelty. However, as we have established that the husband's cruelty is evident from the parties' evidence, she is rightfully entitled to get maintenance allowance. In her suit, she explicitly stated that the defendant did not provide maintenance allowance since September 2012. Even after their separation on 05.10.2014, the defendant did not specifically dispute her claim of not paying maintenance allowance. The defendant's testimony during cross-examination further supports this conclusion, as he admitted to provide maintenance while they lived together but not after their separation. This admission indicates that the defendant did not consistently fulfil his obligation to pay the maintenance allowance, therefore, the High Court's decision to grant the plaintiff the maintenance allowance is appropriate.

13. The defendant-appellant has claimed that the prompt dower, specifically, the gold ornaments, were taken by the plaintiff along her upon her departure from the matrimonial home. However, this assertion contradicts the defendant's earlier statement recorded in the Court, wherein he admitted that the ornaments, constituting the prompt dower, had been in the possession of the plaintiff's parents

since the solemnization of marriage ceremony. Therefore, the defendant's assertion lacks credibility. Moreover, it is improbable that a wife who experienced torture, beatings, and in a dire circumstances would take the gold ornaments with her upon leaving the husband's house. This supports the argument that the gold ornaments weighing 10 tola given in lieu of dower, remained in the possession of defendant and should be returned to the plaintiff.

As for the dowry articles, the defendant did not seriously contest the fact that the plaintiff was given these articles, hence, the plaintiff is entitled to get them as well.

14. Another important point for consideration in this case is the payment of the deferred dower. The Judge Family Court awarded a sum of Rs. 500,000 in terms of deferred dower, while the High Court, in its impugned judgment, dismissed the suit for recovery of deferred dower. The plaintiff-respondent argued that marriage agreement stipulated the dower consisting of gold ornaments weighing 10 tola and Rs. 2000 as prompt dower and Rs. 500,000 as deferred dower. However, upon examining the Nikah-nama, it is noted that the total dower to be paid was fixed as Rs. 5,02,000. The dower amounting to Rs. 2000 was paid in cash as prompt dower and the deferred dower was subsequently paid in shape of gold ornaments, as confirmed by the plaintiff-respondent herself, therefore, the plaintiff-respondent is entitled to receive only the gold ornaments

weighing 10 tola. Consequently, the High Court's decision to dismiss the suit, considering the misinterpretation underlying the Family Court's judgment was appropriate.

15. The plaintiff-appellant's (husband) suit for restitution of conjugal rights has also rightly been dismissed by the learned High Court. In the situations where a woman faces cruelty and physical assault, it is understandable that she may harbor resentment and animosity towards her husband. Such emotionally fraught environment expecting her to continue living with husband and fulfilling marital obligations becomes impractical and unjust. The High Court's decision acknowledges the underlying issues in the relationship and prioritizes the well being and safety of individuals over outdated concepts of conjugal rights. Marriage should be viewed as partnership based on mutual love, respect and support rather than a means to coerce individual into enduring abusive or harmful relationship in cases characterized by cruelty and hostility, justice and equity dictate that suit for resistance of conjugal rights be dismissed.

16. In view of the above, we are of the view that the learned High Court's judgment does not warrant any interference by this Court, therefore, the same is upheld and all the titled appeals are hereby dismissed. No order as to costs.

JUDGE

JUDGE

Muzaffarabad,
04.03.2024