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

PRESENT:

MR. JUSTICE KH. MUHAMMAD NASIM
MR. JUSTICE RAZA ALI KHAN

CIVIL APPEAL No. 372 OF 2024
(On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 03.05.2024, passed in family appeal No. 94 of 2021).

Pir Hussain Shah s/o Noor Haider Shah r/o Chelihana Riyali Tehsil Authmuqam District Neelum.

… Appellant(s)

VERSUS

Robina Yousaf d/o Muhammad Yousaf Shah and another.

…Respondent(s)

Appearances:

For the Appellant: Sardar M. R. Khan, Advocate.

For the respondents: Mr. Saqib Ahmed Abbasi, Advocate.

Date of hearing: 03.02.2025

JUDGMENT:

***Raza Ali Khan, J*:-** This appeal, preferred with leave of the Court, arises from the judgment rendered by the Shariat Appellate Bench of the High Court (hereinafter referred to as the "High Court") dated 03.05.2024, whereby the family appeal instituted by the appellant herein was dismissed.

2. The succinct facts of the case reveal that Mst. Robina Yousuf, the respondent, instituted a suit for recovery of dower against the appellant before the learned Additional District Judge/Family Court, Dadyal, asserting that she was lawfully wedded to the appellant on 18.11.2012, with the stipulated dower comprising a house constructed from galvanized iron sheets, consisting of five rooms, a kitchen, and a bathroom, along with a parcel of land situated in Riyali, bearing Khewat No. 63/645. The respondent averred that the marital relationship initially remained harmonious, with the appellant fulfilling his maintenance obligation for two years; however, she later discovered that the appellant had previously contracted and dissolved four marriages, making her his fifth wife. When she raised her concerns, the appellant allegedly placated her with reassurances of goodwill and sincerity. The respondent further contended that merely three weeks into the marriage, while visiting her parental home, the appellant took possession of her gold ornaments under the pretext of replacing them with new ones; subsequently, the appellant departed for Saudi Arabia and he ceased all communication. Upon his return, while cohabitation resumed, the respondent’s demand for

maintenance were allegedly met with hostility, culminating in physical assault, that resulted in a fractured arm. It was categorically pleaded that the entire dower remained unpaid. Upon being served, the appellant contested the claim through a written statement. The learned Family Judge, after framing the requisite issues in light of the pleadings, adjudicated the matter and decreed the suit in favour of the respondent vide judgment dated 04.06.2021. Aggrieved by such determination, the appellant preferred an appeal before the learned High Court, which, upon due appraisal of the record and after affording both parties an opportunity of hearing, dismissed the appeal through the impugned judgment dated 03.05.2024, thereby affirming the findings of the learned Family Judge.

3. Sardar M.R. Khan, the learned counsel for the appellant, vehemently contended that the impugned judgment of the High Court is contrary to the factual and legal record. He argued that at the time of Nikah, the appellant was in Saudi Arabia, and the agreed dower was Rs. 200,000, of which Rs. 160,000 was paid in gold at Nikah, as admitted by the respondent and her father, while the remaining Rs. 40,000 was later paid, fully discharging the obligation. He maintained that the entries in the Nikahnama regarding a house, land, and other assets were fraudulent and made without the appellant’s knowledge or consent, solely to usurp his property. However, both the Family Court and the High Court failed to scrutinize this fraud. He further argued that since the Nikah took place on 18.11.2012, and the appellant returned to Pakistan on 12.07.2013, any signature attributed to him on the Nikahnama must

necessarily forged. He emphasized that all witnesses, except Ghulam Fareed, were the respondent's close relatives, casting serious doubt on the authenticity of the entries, which he claimed were inserted with mala fide intent. Challenging the role of proforma respondent, he asserted that the appellant never appointed him as *Wali*, nor did he authorize his presence at the *Nikah*. He highlighted that the appellant is Syed by caste, whereas the proforma respondent is Mughal, with their only connection being residing in same village. He further alleged that the respondent and her family falsely claimed to be Syeds, a misrepresentation recently retracted through a public apology. Additionally, he contended that the respondent was not the same woman whose photograph had been shown to him prior to marriage, further reinforcing the fraudulent nature of the transaction. In light of these arguments, he prayed for the appeal's acceptance, asserting that the judgments of the Family Court and the High Court suffer from legal and factual misapprehensions.

4. Mr. Saqib Ahmed Abbasi, learned counsel for the respondent, submitted that the impugned judgment of the High Court is well-founded in both law and facts. He contended that the appellant, while acknowledging Respondent No. 1 as his wife and cohabiting with her for more than two years, simultaneously disputes the contents of *Nikahnama* that formalized their marriage. He argued that the appellant cannot approbate and reprobate by accepting the *Nikah* for marital purposes while denying its contents and signatures for financial obligations, as such contradictory stances are impermissible under law. He further asserted

that all witnesses of the *Nikahnama*, including the *Nikah Khawan*, corroborated the respondent's claim, whereas the appellant's own witnesses have failed to support his version. During cross-examination, even the appellant's witnesses conceded that if the signatures on the *Nikahnama* were genuine, then its contents must be accurate. He emphasized that the *Nikahnama*, being a registered document, enjoys a presumption of truth, and since the appellant never challenged its authenticity before any legal forum, its validity remains conclusive. Additionally, he argued that the appellant's attorney, during cross-examination, repeatedly pleaded ignorance rather than directly denying or confirming the contents of the *Nikahnama*, which effectively amounts to an admission. Since the attorney was representing the appellant, his admissions are binding upon him, further affirming the legitimacy of the *Nikahnama*. He contended that an appellate court is not a forum for reappreciating evidence unless there is a manifest error of law or miscarriage of justice, neither of which exists in this case, therefore, he prayed for the dismissal of the appeal with costs, asserting that the appellant has failed to establish any legal grounds warranting interference with the concurrent findings of the both courts.

5. We have carefully examined the arguments advanced by the learned counsel for both parties and meticulously scrutinized the record available on file. Ordinarily, this Court does not interfere with concurrent findings of the courts below; however, given the points raised by the learned counsel for the appellant, it is imperative to address them in the interest of justice and for the satisfaction

of the appellant. The appellant's primary contention is that at the time of Nikah, he was in Saudi Arabia, and the agreed dower was Rs. 200,000, of which Rs. 160,000 was paid in gold at the time of *Nikah*, as allegedly admitted by the respondent and her father, while the remaining Rs. 40,000 was subsequently paid. While it may be inferred from the record that certain gold ornaments were indeed given to the respondent, the crucial question remains whether these ornaments were intended as a part of the dower. The burden of proving this fact rested upon the appellant, a burden he has failed to discharge. Although reliance has been placed on witness statements, the appellant has not been able to substantiate that the gold valued at Rs. 160,000 constituted dower, particularly in the light of the *NikahNama* on record which contains no such entry. In the absence of any documentary evidence supporting this claim, the argument lacks merit.

6. The second argument advanced by the learned counsel for the appellant is that since the *Nikah* was solemnized on 18.11.2012, and the appellant returned to Pakistan on 12.07.2013, approximately nine months later, thus, any signature attributed to him on the *Nikah Nama* is forged. This contention is devoid of merit. It is an undisputed fact that the *Nikah* was duly solemnized, and upon his return from Saudi Arabia, the appellant cohabited with the respondent as husband and wife for nearly three years. If the signatures on the Nikah Nama were indeed forged, the appellant ought to have challenged its authenticity before the appropriate forum at the earliest opportunity. However, rather than doing so, he continued to acknowledge the

marital bond and only raised the plea of forgery after a dispute arose. This belated claim not only undermines his stance but also suggests an attempt to evade obligations arising from the marriage contract. Moreover, it is well-established that a *Nikah Nama* being a registered document enjoys a presumption of truth under law. The appellant's contradictory conduct, accepting the marriage while simultaneously denying the validity of the *Nikah Nama*, renders his argument untenable. Consequently, this contention stands rejected.

7. Another argument presented by the learned counsel for the appellant is that the appellant belongs to the *Syed* caste, whereas the proforma respondent is a *Mughal*, and their only connection is their residence in the same village. He further alleged that the respondent and her family falsely claimed Syed lineage and later retracted this claim through a public apology. This argument, however, holds no legal significance in the present case. This Court is neither vested with the authority to determine the caste of the parties in such like matter, nor is such a determination relevant to the adjudication of the matter at hand. As for the alleged retraction through a public apology, this Court refrains from commenting on the matter, as it is not an issue before us. The only matter requiring determination pertains to the decree for the recovery of dower granted by the learned Family Court, which has already been thoroughly addressed in the preceding paragraphs.

8. An additional more argument raised by the learned counsel for the appellant is that, as per the entries in the *Nikahnama*, the father of the respondent was shown

as her *Wali*, while witness No. 1 was her paternal uncle, witness No. 2 was her real brother, and the attesting witness was also her paternal uncle. Except for one witness, Ghulam Fareed, all others were close relatives of the respondent. This argument is unfounded, as it is both customary and natural for a bride's close relatives to serve as witnesses at the time of Nikah. Moreover, the father of the respondent, being her natural *Wali*, was correctly mentioned in the *Nikahnama*. Therefore, no irregularity or illegality can be attributed to the execution of the *Nikahnama* on this ground.

9. In light of the above discussion, we firmly conclude that the Nikah was solemnized in consideration of the dower, as recorded in the *Nikahnama*, which remains unpaid. The Family Judge and the learned High Court have not committed any illegality or material irregularity in rendering their judgments. Accordingly, this appeal is devoid of merit and stands dismissed.

JUDGE JUDGE

Muzaffarabad,
03.02.2025