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

PRESENT:-
Raza Ali Khan, J.
Khalid Yousaf Chaudhary, J.

1. Civil Appeal No.217 of 2025
(PLA filed on 17.06.2025)

Abdul Rauf Abbasi

…. APPELLANT

VERSUS

Kalsoom Bibi & another

…. RESPONDENTS

[On appeal from the judgment & decree of the Shariat Appellate Bench of the High Court dated 18.04.2025, in Family Appeals No.81 and 84 of 2023]

FOR THE APPELLANT: Mr. Muhammad Yaqoob Khan Mughal, Advocate.

FOR THE RESPONDENTS: Ch. Amjad Ali, Advocate.

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2. Civil Appeal No.218 of 2025
(PLA filed on 17.06.2025)

Abdul Rauf Abbasi

…. APPELLANT

VERSUS

Kalsoom Bibi & another

…. RESPONDENTS

[On appeal from the judgment & decree of the Shariat Appellate Bench of the High Court dated 18.04.2025, in Family Appeal No.134 of 2023]

FOR THE APPELLANT: Mr. Muhammad Yaqoob Khan Mughal, Advocate.

FOR THE RESPONDENTS: Ch. Amjad Ali, Advocate.

Date of hearing: 11.02.2026.

JUDGMENT:-

Khalid Yousaf Chaudhary, J.- The captioned appeals, preferred by leave of the Court, are directed against the separate judgments and decrees dated 18.04.2025 passed by the Shariat Appellate Bench of the High Court *(hereinafter referred to as "High Court")* in Family Appeals No. 81, 84, and 134 of 2023, respectively. Although the propositions involved in both the appeals are distinct in nature, arisen out of the separate judgments of the learned High Court, however, the parties in both the appeals are same, therefore, the disposal of the same through this single judgment is felt advised.

2. The brief facts leading to Appeal No. 217 of 2025 are that the plaintiff/respondent No.1, instituted three separate suits before the Judge, Family Court, Dhirkot, seeking: (i) dissolution of marriage, (ii) recovery of dower, and (iii) recovery of maintenance. The defendant/appellant, in turn, filed a suit for restitution of conjugal rights. Upon conclusion of the trial, the learned Judge, Family Court, through judgment dated 22.02.2023, dismissed the suit for dissolution of marriage, yet decreed the suits for recovery of dower and maintenance allowance *(at the rate of Rs.8,000/- per month for respondent No.1 from May 2016, and Rs. 6,000/- per month for minor*

respondent No.2). The appellant's suit for restitution of conjugal rights was likewise decreed. Aggrieved by the said judgment and decrees, both the parties preferred separate appeals before the High Court. Through the impugned judgment, the learned High Court allowed the appeal filed by respondent No.1 and granted a decree for dissolution of marriage on the ground of cruelty, while dismissing the appeal filed by the appellant, thereby upholding the Family Court's findings with respect to the decrees for recovery of dower and maintenance allowance.

3. The brief facts pertaining to Appeal No.218 of 2025 are that the appellant and respondent No.1, herein, filed separate applications before the Guardian Judge, Dhirkot, seeking guardianship of the minor namely Maria. Upon hearing the parties, the learned Guardian Judge, through judgment and decree dated 03.04.2023, dismissed the application filed by the appellant and allowed the application submitted by respondent No.1. Aggrieved by the said judgment and decree, the appellant preferred an appeal before the High Court. The learned High Court, through the impugned judgment has dismissed the appeal, which is the subject matter of the captioned appeal by leave of the Court.

4. Mr. Muhammad Yaqoob Khan Mughal, the learned Advocate representing the appellant, submitted that the impugned judgment passed by the learned High Court is against law and the record of the case, which is not sustainable in the eye of law. He

further submitted that it is proved from the record that the dower, in shape of gold ornaments, was paid to the plaintiff at the time of marriage. This fact, stands conceded by the plaintiff in her own statement recorded before the Court. He added that the plea raised by the plaintiff that the said ornaments were later on handed over to the appellant for safekeeping, is, entirely unsubstantiated and unsupported by any oral or documentary evidence. In absence of any credible evidence, the learned Judge, Family Court, was not justified in decreeing the suit for recovery of dower. He further added that the record unmistakably reflects that the plaintiff had voluntarily left the matrimonial home without any lawful justification. In such circumstances, the plaintiff was not entitled to the grant of maintenance allowance. The learned Judge Family Court failed to correctly appreciate the evidence and, by misreading and non-reading of the material brought on record, erroneously held the plaintiff entitled to dower and maintenance allowance. The learned High Court, while delivering the impugned judgment, also failed to exercise its appellate jurisdiction judiciously and upheld the findings of the trial Court without proper reappraisal of the evidence.

So far as the question of dissolution of marriage on the ground of cruelty is concerned, the learned Advocate, contended that the learned Judge Family Court, upon a meticulous appraisal of the pleadings and evidence on record, rightly dismissed the suit for dissolution of marriage and, conversely, decreed the appellant’s suit

for restitution of conjugal rights. However, the learned High Court, while rendering the impugned judgment, fell into serious error by overturning the well-reasoned findings of the Judge Family Court and by granting a decree for dissolution of marriage on the ground of alleged cruelty. The learned counsel emphatically argued that the plaintiff/respondent No.1 utterly failed to discharge the burden of proving cruelty. No reliable, independent, or cogent evidence was brought on record that could substantiate the allegations levelled by the plaintiff. In such circumstances, the learned High Court was not justified to interfere with and reverse the judgment and decree of the trial Court with respect to the dismissal of the suit for dissolution of marriage. Lastly, the learned counsel prayed for acceptance of appeal.

5. Conversely, Ch. Amjad Ali, the learned Advocate appearing on behalf of the respondents, supported the impugned judgment with full force. He contended that the impugned judgment rendered by the learned High Court is lawful, well-reasoned, and free from any legal infirmity, and thus calls for no interference by this Court. He submitted that the learned Judge, Family Court, while adjudicating upon the issue of dissolution of marriage, failed to properly consider the pleas set forth in the plaint as well as the evidence adduced by the plaintiff, and thereby unlawfully declined to grant a decree of dissolution of marriage on the ground of cruelty. The learned High Court, however, through the impugned judgment, rectified the error committed by the learned Judge Family Court and rightly decreed the suit for dissolution of marriage on the ground of

cruelty, after due appraisal of the record. The learned counsel further argued that the decrees of the Family Court relating to recovery of dower and maintenance are supported by sound reasoning and are firmly rooted in the evidentiary record. The learned High Court, while handing down the impugned judgment has upheld the findings recorded by the learned Judge Family Court to the extent of granting the decrees for recovery of dower and maintenance allowance, hence, there are concurrent findings of facts, recorded by the Courts below, which are immune from interference by this Court. He prayed for dismissal of the appeal.

6. We have heard the learned Advocates representing the parties and meticulously examined the record placed before us, along with the impugned judgment. A perusal of the record reflects that plaintiff/respondent No.1 instituted three separate suits before the Judge, Family Court, Dhirkot, namely: (i) for dissolution of marriage, (ii) for recovery of dower, and (iii) for recovery of maintenance allowance. The appellant, in turn, filed a cross-suit seeking restitution of conjugal rights. Upon completion of proceedings, the learned Judge, Family Court, decreed the suits relating to recovery of dower and maintenance allowance, dismissed the suit for dissolution of marriage, and decreed the appellant's suit for restitution of conjugal rights. Through the impugned judgment, the learned High Court, while allowing the appeal preferred by respondent No.1, set aside the findings of the Family Court insofar as they related to the dismissal of the suit for dissolution of marriage, and proceeded to grant a decree

dissolving the marriage on the ground of cruelty. Conversely, the appeal filed by the appellant herein was dismissed, and the decrees of the Family Court regarding recovery of dower and maintenance allowance were affirmed.

7. Having regard to the proposition involved and the nature of the decision proposed, we consider it appropriate to first address the issues pertaining to the recovery of dower and the grant of maintenance allowance. The record demonstrates that in her plaint for recovery of dower, the plaintiff asserted that the defendant had paid dower in the form of gold ornaments at the time of Nikah/*Rukhsati*. She further alleged that after the marriage, when the defendant took her to Karachi, he obtained possession of the said ornaments on the pretext of keeping them in safe custody. The plaintiff also asserted that despite repeated demands, the defendant refused to return the gold ornaments. In support of her claims, the plaintiff produced four witnesses and also got her statement recorded. All the witnesses duly supported her assertion that the defendant had taken back the gold ornaments on the pretext of safekeeping. The plaintiff herself remained unwavering in her stance throughout her statement, consistently reiterating that the dower/ ornaments were retrieved by the defendant after marriage. In rebuttal, the defendant failed to produce any credible evidence to negate the plaintiff's version. The record also reflects that although an offer of oath was made on behalf of the defendant through his attorney but he did not appear before the trial Court in person to fulfill that offer, thereby weakening his

defence. Upon careful appraisal of the evidence, available on record, it becomes evident that the defendant/appellant did not succeed in discharging the burden of proof that the dower ornaments were ever returned to the plaintiff. Consequently, the learned Judge, Family Court, rightly decreed the suit for recovery of dower, and the learned High Court correctly upheld the findings recorded by the trial Court, which suffers from no legal infirmity.

8. With regard to the contention advanced by the learned counsel for the appellant that the plaintiff had herself deserted the matrimonial home and was, therefore, not entitled to the maintenance allowance, we find no merit in the argument. The record unequivocally demonstrates that the defendant had persistently prevented the plaintiff from travelling to her native town to attend her seriously ill mother, who was suffering from cancer and had undergone amputation of her leg as part of her treatment. The plaintiff was even unable to participate in her mother's funeral due to the defendant's conduct. Such behaviour on the part of the defendant, depriving the plaintiff of the opportunity to visit and care for her gravely ill mother, constituted sufficient cause compelling her to leave the matrimonial home. It also stands admitted on record that the defendant failed to provide maintenance to the plaintiff and the minor child from May 2016 onwards. In this connection, the relevant portion of the statement of the defendant's attorney, who appeared as a witness, is reproduced as under:-

"یہ درست ہے کہ مئی **2016** سے مدعیہ نابالغہ کو مدعاعلیہ نے کوئی خرچہ نان ونفقہ ادانہ کیاہے۔ از خود کہاکہ کس لیے کرے وہ از خود غیر آباہے۔ "

In view of the foregoing circumstances of the case, and in light of the facts which remain admitted on record, we are of the considered opinion that the judgment and decrees rendered by the learned Judge, Family Court, insofar as they relate to the recovery of dower and the grant of maintenance allowance, are founded upon sound reasoning and a proper appreciation of the evidence. The plaintiff adduced credible evidence establishing her entitlement to the dower, while the conduct of the defendant, including his failure to provide maintenance to the plaintiff and the minor from May 2016, reinforces the plaintiff's claim. The learned High Court, in the impugned judgment, having carefully examined the record and the findings of the trial Court, rightly affirmed the decrees of the Family Court. No legal infirmity or misappreciation of evidence is apparent in the impugned judgment. There are concurrent findings of facts recorded by the Courts below and this Court is always reluctant to substitute the findings which have been concurrently recorded by the Courts below, except if there appears any misreading or non-reading of the evidence. Reliance may be placed on a case reported as *Abdul Ghafoor vs. Kiran Mukhtar Awan & others* [2014 SCR 1494], wherein, it was observed as under:-

> "……According to the statutory provisions as well as the principle of administration of justice, the concurrent findings recorded by the Courts below cannot be disturbed by this Court, unless there is violation of statutory provisions of law or gross misreading and non-reading of the evidence……"

Similarly, in the case reported as *Saqib Munir & another vs. Uzma Waheed* [2017 SCR 972], this Court has observed as under:-

> "… There are concurrent findings recorded by the Courts below and it is settled principle of law that the findings of facts concurrently recorded by the Courts below cannot be disturbed until and unless a case of non-reading or misreading of evidence is made out or gross illegality is shown to have been committed while appreciating evidence, whereas, no such eventuality is available in the case in hand."

9. Now we advert to the question regarding the dissolution of marriage. It may be observed 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."

In light of the aforementioned case law, we have examined the averments contained in the plaint relating to the dissolution of marriage. The plaintiff has categorically asserted that, subsequent to the marriage, she cohabited with the defendant at Karachi, where she was subjected to continuous mental and physical cruelty at his hands. It has further been pleaded that the plaintiff's mother was suffering from cancer and had undergone an operation resulting in the amputation of her leg; however, the defendant refused to permit the

plaintiff to travel to her native town to attend her ailing mother. The plaintiff has also alleged that she was unlawfully confined by the defendant in a room, which caused her severe mental distress and deterioration of health. The relevant portion of the plaint is reproduced as follows:

> "بعد از رخصتی مدعیہ ہمراہ مدعاعلیہ کراچی چلی گئی جہاں مدعیہ کو ہر عاعلیہ نے شدید ذہنی ٹارچر کیا اور جسمانی تشدد کا نشانہ بنایا بدعیہ کی والدہ کو کینسر ہوا تو مدعاعلیہ نے مدعیہ کو واپس نہ آنے دیا مدعیہ کی والدہ کی ٹانگ کا آپریشن ہوا اور ٹانگ کٹ گئی لیکن مدعاعلیہ نے مدعیہ کو کراچی زبردستی تشدد کا نشانہ بنا کر روکے رکھا۔ مدعیہ ذہنی اذیت اور جسمانی تشدد کے باعث اور کمرے میں قید رہنے کے باعث شدید ذہنی اذیت کا شکار ہوئی اور شدید بیمار ہوگئی۔۔۔"

The aforesaid assertions of the plaintiff stand duly corroborated by the statements of the witnesses produced in her support. It is also an admitted fact on record that the plaintiff was not allowed by the defendant to visit her terminally ill mother during her lifetime, despite the seriousness of her medical condition, including the amputation of her leg owing to cancer. More so, the plaintiff could not even attend the funeral of her mother. In our considered view, such conduct on the part of the defendant constitutes a grave form of cruelty. Depriving a daughter of the opportunity to visit her critically ill mother in her last breathings, and subsequently preventing her from attending the funeral, strikes at the very core of human dignity, emotional well-being, and familial obligation. This deliberate and unjustifiable restraint amounts not merely to indifference but to a conscious infliction of emotional suffering. The act of confining a spouse, restricting her liberty of movement, and isolating her from her family

at a time of extreme emotional need clearly constitutes mental and physical cruelty. It reflects a calculated intention to dominate, humiliate, and cause psychological trauma to the plaintiff. When the cumulative effect of the defendant's conduct is assessed, the persistent mental and physical abuse, the denial of access to her ailing mother, the deprivation of participation in her mother's funeral, and the wrongful confinement, the resulting treatment is undeniably harsh, oppressive, and cruel. Such behavior destroys the foundation of mutual trust, compassion, and respect that forms the essence of marital life. We are, therefore, of the view that the conduct of the defendant, as established through the pleadings and evidence on record, amounts to cruelty of a severe nature, fully justifying the plaintiff's claim for dissolution of marriage.

10. It may also be observed here that the Dissolution of Muslim Marriages Act, 1939, consolidates the provisions of Muslim Law relating to suits for dissolution of marriage by a women married under Muslim Law. According to section 2 of this Act, a woman married under Muslim Law is entitled to obtain a decree for the dissolution of her marriage on any one or more of the grounds mentioned in this section. For ready reference section 2 of the Dissolution of Muslim Marriages Act, 1939, is reproduced hereunder:-

> "2. **Grounds for decree for dissolution of marriage**. A woman married under Muslim Law shall be entitled to

obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:-

(i) That the whereabouts of the husband have not been known for a period of four years;

(ii) That the husband has neglected or has failed to provide for her maintenance for a period of two years;

(iii) That the husband has been sentenced to imprisonment for a period of seven years or upwards;

(iv) That the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;

(v) That the husband was impotent at the time of the marriage and continues to be so;

(vi) That the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;

(vii) That she having been given in marriage by her father or other guardian before she attained the age of [sixteen] years; repudiated the marriage before attaining the age of eighteen years;

Provided that the marriage has not been consummated;

(viii) That the husband treats her with cruelty, that is to say,-

(a) Habitually assaults or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or

(b) Associates with women of evil repute or leads an infamous life, or

(c) Attempts to force her to lead an immoral life, or

(d) Disposes of her property or prevents her exercising her legal rights over it, or

(e) Obstructs her in the observance of her religious profession or practice, or

(f) If he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran;

(ix) On any other ground which is recognized as valid for the dissolution of marriages under Muslim Law."

From the perusal of the above provisions, it appears that non-providing of maintenance allowance, and non-performance of marital obligations, are separate grounds, on which the decree for dissolution of marriage can be passed. It is a settled principle of law that non-providing of maintenance is itself a form of cruelty. Once it is found that wife is entitled to get the decree on the ground of non-payment of maintenance allowance, the marriage can be dissolved on that ground. We are fortified in our view from the case reported as *Mehvish Kazmi vs. Parvaiz Hussain and other* [2021 SCR 609], wherein, it was observed by this Court as under:-

> "After going through the above stated provisions, it is clear that non-providing of maintenance is itself a form of cruelty which serves as one of the grounds on which the decree for dissolution of marriage can be passed. As it is proved from the evidence that she has not been paid maintenance from the last two years, therefore, in our estimation, the learned Family Judge has not committed any illegality while handing the judgment and decrees. Moreover, the element of cruelty cannot be ruled out, if any of the grounds mentioned in section 2 of the Dissolution of Muslim Marriage Act, 1939, is proved, the decree for dissolution of marriage can be passed. Once it is found that wife is entitled to get the decree on the ground of non-maintenance, the marriage can be dissolved on that ground."

In the present case, as concluded in the preceding paragraph, that the defendant/appellant failed to provide maintenance to the

plaintiff as well as to the minor. Coupled with the established fact that the plaintiff was subjected to mental cruelty, she is entitled to a decree for dissolution of marriage on the ground of non-payment of maintenance. In these circumstances, the learned High Court has committed no illegality or irregularity while reversing the judgment and decree of the trial Court and decreeing the suit for dissolution of marriage on the ground of cruelty.

11. So far as Appeal No. 218 of 2025, which pertains to the guardianship of the minor, is concerned, the learned counsel for the appellant has argued that the appellant does not dispute the custody of the minor being retained by the mother, however, he contended that legal guardianship cannot be conferred upon the mother during the lifetime of the father. It is pertinent to observe that under the relevant law, both the father and the mother are recognized as natural guardians of a minor, each possessing certain rights and responsibilities toward the welfare of the child. The record demonstrates that the learned Guardian Judge has granted relief to the mother solely to the extent of the custody of the minor, and has not displaced or curtailed the legal status of the father as a natural guardian. The order in question pertains exclusively to physical custody, which is distinct from legal guardianship. In light of the unequivocal statement made on behalf of the appellant that he raises no objection to the minor remaining in the custody of the mother until the child attains the age of puberty, the controversy stands

substantially narrowed. Since the appellant himself has consented to the continuance of custody with the respondent-mother, no further adjudication on the issue is warranted. The welfare of the minor being the paramount consideration also aligns with the existing arrangement.

12. Accordingly, in view of the submission made by the learned counsel for appellant and the limited scope of the impugned order, no further proceedings are required in this appeal.

13. In view of the foregoing discussion, Appeal No. 217 of 2025 is dismissed for being devoid of merit, whereas Appeal No. 218 of 2025 is disposed of in accordance with the terms set forth in the preceding paragraph. There shall be no order as to costs.

Before parting with this judgment, it is considered appropriate to note that in Appeal No. 217 of 2025, leave to appeal was granted subject to depositing a sum of Rs. 200,000/- towards maintenance allowance within one month. The said amount has been duly deposited with the Registrar of this Court which shall be released in favour of plaintiff/respondent No.1 to be adjusted against the decretal amount at the time of execution of the decree.

JUDGE **JUDGE**

Muzaffarabad.
12.02.2026.

Approved for reporting.