

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 5143 of 2025

Aamir Mumtaz
Vs.
Mst. Hina Hassan and 2 others

Petitioner by : Mr. Shafqat Ghafar Advocate.

Respondents by : Raja M. Ajmal Satti Advocate.

Date of Hearing : 10-9-2026.

SHAHRIKH ARJUMAND, J.-

1. The Petitioner [Aamir Mumtaz] has assailed (i) Judgment and decree dated 10.6.2024 (**"Impugned Judgment-I"**) passed by the learned Judge Family Court, East-Islamabad (**"Family Court"**) whereby *inter alia*, Respondent No. 1 [Mst. Hina Hassan] was directed to return back the dower amount of Rs.250,150/-; (ii) Judgment and decree dated 18.9.2025 (**"Impugned Judgment-II"**) passed by the learned Additional District Judge, East, Islamabad. (**"Appellate Court"**) whereby appeal filed by Petitioner against Impugned Judgment-I was dismissed.

2. Brief facts, as per memorandum of petition, are that Respondent No.1 [Mst. Hina Hassan] instituted a Family Suit on 20.4.2019 before the Family Court seeking dissolution of marriage on the basis of *Khula*, maintenance for the minor children, recovery of dowry articles, dower and past amount recovery alleging therein that the marriage between the parties was solemnized on 23.10.2010 against dower comprising gold ornaments weighing seven *tolas*, valued at Rs.250,150/-. The dispute

regarding dower was subsequently framed through, *inter alia*, issue No.3, namely whether the plaintiff was entitled to recover dowry articles and dower in the form of seven *tolas*, three *tolas* or ten *tolas* of gold ornaments or their alternate price, and issue No.9, as to whether the dower had been paid at the time of Nikah and remained in the possession of Plaintiff No.1, and was, therefore, liable to be returned as *Zar-e-Khula*. The Family Court, after recording the evidence and hearing the parties, passed Impugned Judgment-I dated 10.6.2024 while allowing the claim relating to return of *Zar-e-Khula*, and did not direct return of seven *tolas* of gold ornaments or their prevailing market value. Instead, the decree was made to the extent of amount of Rs.250,150/-, being the value mentioned in the *Nikahnama*. Aggrieved by Impugned Judgment-I, Petitioner preferred an appeal before the Appellate Court. The Appellate Court vide Impugned Judgment-II dated 18.9.2025, dismissed the appeal and maintained the decision of the Family Court. Hence, this Petition.

3. Learned counsel for Petitioner submitted that during trial, Respondent No.1 appeared as PW-1, while her father appeared as PW-2. Their respective affidavits in evidence were tendered as Ex.P-1 and Ex.P-2. According to the learned counsel, both witnesses maintained that the dower had been paid in the form of gold ornaments weighing seven *tolas*. Petitioner further relies upon the cross-examination of PW-1 recorded on 26.10.2023, wherein she acknowledged that gold ornaments constituting the dower had been received by her at the time of marriage. The learned counsel therefore, asserts that the factum of payment of dower in the form of gold ornaments was not in dispute between the parties. Petitioner, while appearing in defence, also deposed that he had paid seven *tolas* of gold ornaments to Respondent No.1 as dower at the time of marriage and that the said ornaments remained in her possession. He accordingly took the position that, upon dissolution of marriage on the basis of *Khula*, the gold ornaments were liable to be returned in terms of Section 10(4) of the Family Courts Act, 1964. Learned counsel for Petitioner contends that both Courts below failed to properly appreciate the evidence on the

question of the nature and quantity of dower. It is further contended that the amount of Rs.250,150/- mentioned in the *Nikahnama* represented the value of the gold ornaments at the time of marriage and, therefore, Petitioner was entitled to return of the gold ornaments themselves or, in the alternative, their prevailing market value, rather than merely their historical value.

4. Learned counsel for Respondent No. 1, on the other hand, controverted the arguments advanced by learned counsel for Petitioner and submitted that the Impugned Judgments are well reasoned and in accordance with law which do not call for interference by this Court in constitutional jurisdiction.

5. I have heard the arguments advanced by learned counsel for the parties and have also perused the record.

6. The controversy, therefore, essentially revolves around the nature of the dower admittedly paid at the time of marriage, the legal effect of the amount of Rs.250,150/- recorded in the *Nikahnama*, and whether, upon dissolution of marriage on the basis of *Khula*, Respondent No.1 was liable to return seven *tolas* of gold ornaments themselves or their prevailing value, or whether the courts below were justified in restricting the relief to the historical amount of Rs.250,150/-?

7. I have gone through the record. From perusal of *Nikahnama*, it reveals that column 13 thereof, shows that dower amount was fixed as Rs.250,150/- whereas, column 14 indicates that the dower was fixed as *Mu'ajjal* in the form of gold ornaments and column 15 further clarifies that dower has been paid in the shape of gold ornaments. Record shows that weight of the gold ornaments to be paid as dower was not recorded anywhere in *Nikahnama*.

8. The findings recorded by the learned Appellate Court, upon reappraisal of the evidence available on record, are well-reasoned and duly supported by the material brought in evidence. The learned Appellate Court has correctly noticed that although the Respondent No. 1, during cross-

examination, admitted receipt of gold ornaments at the time of marriage, neither the quantity nor weight thereof was specified in her evidence. More importantly, the *Nikahnama* (Ex.P3), which constitutes the primary document, evidencing the terms of dower, does not contain any reference to seven *tolas* of gold. Rather, column No.13 specifies the amount of dower as Rs.2,50,150/-, column No.14 records the same as prompt dower in the shape of gold ornaments, while column No.15 records that the gold ornaments had been handed over to the Respondent No. 1. In these circumstances, the learned Appellate Court was justified in concluding that the established value of the gold ornaments forming part of the dower was Rs.2,50,150/-, and that Petitioner, in consequence of dissolution of marriage on the basis of *khula*, could claim *zar-e-khula* to the extent of the said amount or the gold equivalent thereto. The plea regarding seven *tolas* of gold, having neither been reflected in the *Nikahnama* nor established through cogent and specific evidence, could not be accepted merely on the basis of a general admission regarding receipt of gold ornaments. The findings thus represent a plausible and legally sustainable appreciation of evidence. No misreading or non-reading of any material piece of evidence has been pointed out warranting interference by this Court in its constitutional jurisdiction.

9. It is a settled principle that the terms and conditions of dower are primarily to be determined from *Nikahnama*, which is the contemporaneous document executed at the time of marriage. Where the *Nikahnama* specifically records the amount and nature of dower, a subsequent assertion seeking to substitute or enlarge the agreed dower carries a corresponding burden of proof. In the present case, the Petitioner has not been able to demonstrate from the contents of *Nikahnama* (Ex.P3) that seven *tolas* of gold were ever agreed to constitute the dower. On the contrary, the relevant columns of the *Nikahnama* consistently refer to the dower in monetary terms, namely Rs.250,150/-, with its mode of payment described as gold ornaments. The mere description of the mode or form of

payment cannot, in the absence of any specified weight or quantity, be construed as an undertaking to pay a particular quantity of gold.

10. Equally significant is the fact that the assertion regarding seven *tolas* of gold is unsupported by any independent or specific evidence. The admission of Respondent No.1 that she had received gold ornaments at the time of marriage, by itself, does not establish either their weight or that the ornaments so received represented seven *tolas* of gold as dower. An admission has to be read in its proper context and cannot be extended beyond what has actually been admitted. Had seven *tolas* been the agreed quantity of dower, it would reasonably have found mention either in the *Nikahnama* or in some other coexistent document or been specifically established through oral or documentary evidence. The omission assumes significance because Petitioner seeks a relief substantially different from the monetary figure expressly recorded in the *Nikahnama*.

11. The distinction between the *form* in which dower was paid and the *quantum* of dower agreed between the parties is material. The fact that the dower was paid in the form of gold ornaments does not, without more evidence, establish that the parties had agreed upon a fixed weight of gold independent of the monetary amount mentioned in the *Nikahnama*. Since the document itself specifies Rs.250,150/- and merely describes gold ornaments as the mode of payment, the learned Appellate Court was justified in treating the said amount as the ascertainable and proved extent of the dower. The subsequent claim of seven *tolas*, lacking documentary foundation and specific evidentiary support, could not lawfully be made the basis for enhancing the relief.

12. It is also pertinent that the jurisdiction of this Court under Article 199 of the Constitution is not intended to provide a further forum for reappraisal of evidence merely because another view may conceivably be taken. Where the courts below has considered the relevant documentary and oral evidence, assigned reasons for accepting one version over the other, and its conclusion is based upon evidence available on record,

interference is warranted only where such finding is shown to be perverse, arbitrary, based on no evidence, or the result of misreading or non-reading of material evidence. No such jurisdictional defect has been demonstrated in the present case. Reliance is placed upon *Fozia Mazhar v Additional District Judge, Jhang and another*, PL D 2024 SC 771. Furthermore, the scope of Constitutional Petition is different from an appeal and both remedies cannot be used interchangeably. August Supreme Court has held in *Syed Raheel Ahmed vs. Mst. Syeda Zona Naqvi and others*, PLD 2024 SC 902 that the Legislature in the realm of family laws has intentionally refrained from granting the right of appeal to the High Court from decisions rendered by appellate courts and that this deliberate omission indicates a purposeful legislative strategy to bring family litigation to a definitive conclusion and that it is a trite law that when a statute does not grant the right to appeal against certain orders, those orders cannot be contested by invoking the constitutional jurisdiction of the High Court.

13. Consequently, the challenge to the Impugned Judgments essentially seeks a fresh appreciation of the evidence, without identifying any perversity, jurisdictional defect, or material misreading/non-reading of evidence. The findings of the courts below are supported by the *Nikahnama* and evidence on record which cannot be characterized as suffering from any illegality or infirmity warranting interference in constitutional jurisdiction.

14. In view of above, instant petition is without merits and as such hereby **dismissed.**

(SHAHRUKH ARJUMAND)
JUDGE