JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.
(*Judicial Department*)

W.P No.164-B/2017.

Mst. Rabiyaz Bibi..... ..... ***Petitioner.***

Versus.

Matiur Rehman and 04 others..... ***respondents.***

For petitioners: - Mr. Muhammad Nishan, Khattak, Advocate

For respondents: - Mr. Samiullah Khattak, Advocate.

Date of hearing: **20.05.2021.**

JUDGMENT

MUHAMMAD NAEEM ANWAR. J. Through instant writ petition, the petitioner has challenged vires of judgment and decree of learned District Judge, Karak in family appeals No. FA 28/2015 and FA 29/2015 dated 17.01.2017, whereby through consolidated judgment in referred two above appeals, the petitioner's appeal was dismissed, resultantly, the judgment and decree of the learned trial court dated 16.09.2015 was maintained.

2. Briefly stated, the facts as per record are that, the petitioner filed a suit for 08 tolas gold ornaments as dower, dowry articles and maintenance allowance on the ground that her marriage was solemnized with respondent No.1 in lieu of 08 tolas gold ornaments as dower which is still outstanding against him. She was divorced by respondent No.1 on 07.01.2013 and thereafter his whereabouts are not known, respondent No.2 who

happened to be her father-in-law has kept her in illegal detention and thereafter sold her to respondent No.3, with whom her Nikah was performed on 14.01.2013, when she was observing *Iddat* period after being divorced by respondent No.1. It was averred that she was ousted even by respondent No.3 on 01.05.2013 and since then she is residing with her parents. At the time of Rukhsati to the house of respondent No. 1 her parents have given her dowry articles which are still lying in his house. She prayed that dower amount, maintenance allowance for *Iddat* period and dowry articles may be granted to her. Respondents No.1 and 2 through written statement have contested the suit by controverting the allegations of plaint contended that through false, incorrect, untrue, fallacious, fraudulent, erroneous, fabricated and unfounded allegations their unrivalled reputation, respect, fame was badly affected as such they are entitled for recovery of Rs.5,00,00/- for defamation against the petitioner. Further contended that Nikah was performed by one Maulana Abdul Rahim son of Yousaf Khan in lieu of Rs.500/- as dower which has already been paid to her with an addition that 2 ½ tolas gold ornaments given to the petitioner is still in her possession for which they are entitled for recovery of the same. Both the parties have recorded their statements and produced their desired evidence, on the completion of which learned trial court partially decreed the suit of petitioner to the extent of Rs.10,000/- as maintenance allowance for *Iddat* period, whereas rest of the reliefs as prayed

for were turned down. Both the parties have preferred their appeals, however, their appeals met with the same fate, hence, the instant petition.

3. Learned counsel for petitioner while referring to **Ex.PW1/1** contended that list of dowry articles was properly tendered in evidence, exhibited without objection, therefore, the dowry articles, description/ details whereof is given in Ex.PW1/1 being not objected by respondents were required to be decreed in petitioner's favour. He vociferated that dower was fixed as 08 tolas gold ornaments but that too was not denied by respondent No.1 and apart from above, statement of petitioner and her father, have not properly been evaluated by the learned courts below. In order to fortify his submissions, he placed reliance on 2005 SCMR 152.

4. Conversely, learned counsel for respondents contended that petitioner has completely failed to place on file sufficient evidence, without which no relief could be granted to her, therefore, rightly non-suited. He supported the judgments and decrees of both the courts below.

5. Arguments heard; record perused.

6. On scanning the record, it reveals that in order to prove the factum of dower as 08 tolas gold ornaments, dowry articles and for maintenance allowance, petitioner produced her father as PW-2 and herself appeared as PW-1. Admittedly, there is no Nikah Nama pertaining to the Nikah between the parties, however, petitioner in her statement deposed that her Nikah was

performed by Abdul Karim, Abdul-ur-Rehman or Abdul-ur-Rahim who was paternal uncle of respondent No.1 but now dead. During cross-examination she stated that in accordance with custom of the locality, Nikah of *Mangni* and that of *Rukhsati* was performed by the paternal uncle of respondent No.1 and the dower fixed in nikah of *Rukhsati* has been relinquished by her. She also deposed that as she is an illiterate, therefore, did not know the exact price/market value of the dowry articles. Payo Khan, PW-2 in his cross-examination deposed that Nikah Khawan was not known to him because respondents have brought him along with them. Record further promulgates that Ex.PW1/1 is purportedly the list of dowry articles seems to have been prepared at the time of Rukhsati, however, admittedly, it is undated. Furthermore, in accordance with law the petitioner was required to prove fixation of the dower as alleged by her on the basis of maxim *Secundum allegata et probata* i.e. the burden of proof would lie upon the person who had asserted or alleged a fact. Mere mentioning of particular fact in the pleading is not enough to grant a relief unless and until it is proved through cogent, reliable, sufficient and direct evidence as pleading is not the evidence. There is no cavil with the proposition that the fact not asserted in the pleadings cannot be proved by producing evidence and even if an iota of evidence is led, that has to be ignored. Reliance in this respect is placed on the judgments reported as Inayat Ali Shah v. Anwar Hussain (***1995 MLD 1714***), Pir Wali Khan v. Niaz

Badshah (***2013 MLD 1106***), Mir Laiq Khan v. Sarfraz Jehan (***2013 MLD 1449***), Mst. Ghazala Yasmeen v. Sarfraz Khan Durrani (***2013 CLC 1406***) and Messrs Choudhary Brothers Ltd., Sialkot v. Jaranwala Central Co-operative Bank Ltd., Jaranwala (***1968 SCMR 804***), wherein, it has been held that no person could be allowed to prove his case beyond the scope of his pleadings.

7. Furthermore, when petitioner alleged that her both the Nikah i.e. nikah of *Mangni* and of *Rukhsati* were performed by the paternal uncle of respondent No.1 though she could not properly named him, however, the ceremony of Nikah must have been attended by family members or villagers of petitioner, however, none of them was produced except the statement of PW-2 who is her father and even he himself was not certain pertaining to the fixation of quantum of dower i.e. 08 tolas gold ornaments. There is not even a single iota of evidence to corroborate the version of petitioner and so far as the contention of learned counsel for petitioner that the statement of petitioner and of PW-2 pertaining to fixation of dower and that of Ex.PW1/1 was not negated or witnesses were not cross-examined, therefore, this portion of the statement to the extent of 08 tolas gold ornaments and the articles mentioned in the Ex.PW1/1 could not have been discarded rather were required to have been accepted in accordance with the principle laid down in ***Anwar Ahmad's case (2005 SCMR 152.*** Suffice is to say that suffice it to observe that exhibition of a document is one thing

and its proof, as prescribed by law, is another thing. Moreover, exhibition of a document does not mean that it stands proved, rather the party relying upon such document, is supposed to prove the same in accordance with law and procedure provided in Qanun-e-Shahadat Order, 1984.The philosophy of exhibition and admission of document which are not one and the same, as in the former a document is tendered in evidence whereas in the latter it requires to be proved in accordance with the principle of Qanoon-e-Shahadat or rule of evidence. Exhibition is something else being a process led to the proof of a document. Mere exhibition of a document was not tantamount to an admission of a document or proof thereof irrespective of the fact that a document was exhibited and that too without objection, the same is required to be proved.

8. In addition to above, any document filed by either party passes through three stages before it is held proved or disproved. First stage: when the document is filed by either party in the Court; this document though on file, do not become part of the judicial record; Second stage: when the document is tendered or produced in evidence by a party and the Court admits the documents in evidence. A document admitted in evidence becomes a part of the judicial record of the case and constitutes evidence. Third stage: the documents which are held 'proved, not proved or disproved' when the Court is called upon to apply its judicial mind by reference to Qanun-e-Shahadat Order 1984. Therefore, without proof of Ex Pw1/1 no reliance can be placed

on it. Reference may be made to ***1998 MLD 1592*** & ***PLD 1993 SC 160***.

9. Thus, mere tendering Ex.PW1/1 in the evidence and even exhibiting the same would not absolve the petitioner from her duty to prove it in order to substantiate her claim that the articles mentioned therein were given to her as dowry articles at the time of Rukhsati. Though it is custom of our locality that brides are given dowry articles but whenever it is disputed then the same must have been proved though cogent and reliable evidence. Even otherwise, the list (Ex.PW1/1) is undated, unsigned and prepared at the time of institution of the suit could not be relied upon.

10. Last limb of the arguments of learned counsel for petitioner was that Rs. 10,000/- as maintenance allowance for the period of Iddat period was not enough. Be that as it may, when it was alleged that on 07.01.2013 she was divorced and suit was instituted on 03.9.2013, keeping in view the circumstances of the case, the maintenance allowance for the period of Iddat was rightly fixed by the learned trial court as Rs. 10,000/-. Even otherwise, the philosophy of maintenance allowance is based upon the principle that wife must be maintained properly whereas in the instant matter on 07.01.2013 allegedly petitioner was divorced whereas on 14.01.2013, within a period of 08 days she entered into a Nikah with respondent No.3 and thereafter remained with him. Though it was alleged in the plaint that on 01.05.2013 she was ousted but during the

course of arguments learned counsel for petitioner as well as respondent present in court admitted that petitioner and respondent No.3 are living together as such just after divorce, she was given in Nikah of respondent No.3 with whom she is residing and also have been blessed with a son, the fixation of maintenance allowance was proper which requires no interference.

11. Learned counsel for petitioner has not been able to point out any illegality, irregularity and jurisdictional defect in the findings of the fora below, hence, the instant petition stands dismissed, leaving the parties to bear their own cost.

Announced.
20.05.2021
Ihsan

JUDGE

27/5/2021

(S.B) Hon'ble Mr. Justice Muhammad Naeem Anwar.