

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD, JUDICIAL DEPARTMENT

W.P. No. 365 - 2023

Mst. Amara Waqas
Vs.
Muhammad Waqas Rasheed and others.

Petitioner: In person.

Respondents by: Mr. Naveed Malik, Advocate for respondent No.1.

Assisted by: Dr. Zeeshan Ashraf, Advocate, Head of Department, IVY School of Law, IVY College of Management Sciences, Lahore.
Ms. Amber Qayyum, Law Clerk.
Research Coordinated by Musawi NGO (Bench Book).

Date of Hearing: 02.03.2026.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner Mst. Amara Waqas has assailed the judgment dated 29.06.2022, passed by learned Judge Family Court-East, Islamabad, as well as consolidated judgment and decree dated 29.10.2022 passed in appeal by learned District Judge-East, Islamabad, whereby the trial Court has fixed maintenance and allowed recovery of the alternate value of dowry articles to the extent of 30%. However, in appeal, the said relief regarding recovery of 30% of the total value of dowry articles, as claimed by the petitioner, has been set aside.

2. Brief facts of the case are that the petitioner and respondent No.1 were married on 02.05.2015 according to Muslim rites and customs against a dower amount of Rs. 12,000/-, which was paid at the time of Nikah. After the solemnization of marriage, disputes arose between the parties, and their matrimonial relationship gradually deteriorated. The petitioner alleges that she was subjected to ill-treatment and neglected by the respondent, as a result whereof she was eventually turned out of the matrimonial home in January 2021. Consequently, she initiated proceedings before the learned Family Court seeking maintenance for herself and the minor children, dissolution of marriage on the basis of Khula, and recovery of dowry articles along with their alternate value. The suit has been contested by the respondent No.1, whereby, the learned Family Court partially decreed the suit vide judgment and decree dated 29.06.2022 by fixing maintenance for the minors and the petitioner was allowed recovery of 30% of the alternate value of dowry articles, while dismissing the remaining claims. The petitioner preferred an appeal under Section 14 of the Family Courts Act, 1964, however, the learned appellate Court vide judgment and decree dated 29.10.2022 maintained the findings of the trial Court to the extent of maintenance and declined recovery of 30% of the alternate value of dowry articles. Thereafter, petitioner being not satisfied, has assailed the aforesaid judgments through instant writ petition.

3. The petitioner in person contends that the learned Family Court as well as the appellate Court have failed to properly

appreciate the evidence on record, particularly regarding the recovery of dowry articles and personal belongings. She submits that a detailed list of dowry articles amounting to Rs.16,91,000/- was produced before the trial Court, and the same remained in the possession of the respondent No.1 after separation. Despite the material available on record, the learned trial Court granted only 30% of the alternate value without assigning adequate reasons for limiting the relief to that extent, which is arbitrary and contrary to settled principles of law. She further contends that dowry articles and personal belongings of a wife are her exclusive property, and in case the same are not returned in specie, she is entitled to the full alternate value thereof. It is argued that once entrustment and retention were established, the respondent No.1 was legally bound either to return the articles or compensate her to the extent of their full value. The partial decree, therefore, amounts to denial of lawful entitlement. The petitioner in person also submits that her claims regarding personal belongings and other specified amounts, including *salami*, *committee* savings, down payment of vehicle, and TA/DA, were duly pleaded and supported by documentary evidence, yet the same were dismissed without proper evaluation, and as such, the findings suffer from non-reading and misreading of evidence and lack adequate reasoning. She, therefore, prays that the impugned judgments be set aside to the said extent and that full recovery of the alternate value of dowry articles along with her personal belongings be granted in accordance with law.

4. On the other hand, learned counsel for respondent No.1 contends that the impugned judgments do not warrant interference in constitutional jurisdiction, as the learned appellate Court has rightly appreciated the evidence on record and corrected the error committed by the trial Court in granting 30% of the alternate value of dowry articles. It is submitted that the petitioner failed to produce cogent and reliable evidence to substantiate the alleged list and valuation of dowry articles amounting to Rs. 16,91,000/-. During cross-examination, she could not satisfactorily establish entrustment or retention of the articles by the respondent. It is further contended that the trial Court had granted partial relief without proper proof and on presumptions, which was rightly set aside by the learned appellate Court. Learned counsel argues that the findings of the appellate Court are based on proper appraisal of oral as well as documentary evidence and do not suffer from misreading or non-reading of material available on record, therefore, instant writ petition is liable to be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reflects that the primary controversy revolves around the entitlement of the petitioner to the alternate value of dowry articles and her personal belongings. It is an established principle that dowry articles and personal belongings of a wife remain her exclusive property, and in case the same are not returned in specie, she may seek recovery of their alternate value. However, such entitlement is necessarily subject to proof of

entrustment, existence, and retention of the articles by the husband or his family.

7. The learned trial Court granted 30% of the alternate value of dowry articles, whereas the learned appellate Court set aside the said relief on the ground that the petitioner had failed to substantiate her claim through reliable and independent evidence. A perusal of the record reflects that the appellate Court examined the evidentiary basis of the claim and concluded that the valuation and entrustment were not satisfactorily proved to the extent claimed in the following manner:

“10. So far as concerned the finding on issue No.3 regarding the recovery of 30% of total amount of dowry articles mentioned in list of dowry articles Ex.P9/1 to Ex.P9/3, it is submitted that the appellant Mst. Amara Waqas herself admitted in her evidence that she has not been given any dowry articles by her parents at the time of marriage. She alleged that she bought the articles mentioned in the list during period of subsistence of the marriage and certain articles were gifted by her parents. Entire evidence is silent to prove that she had bought the articles mentioned in the list Ex.P9/1 to Ex. P9/3 during subsistence of marriage with her own source of income, even she did not produce any receipt or mention the name of the shopkeeper to strengthen her claim. Particularly, when she was not given any dowry articles at the time of her marriage then she was under more obligations to produce more strong and tangible evidence to prove her version that the said dowry articles were purchased by herself from her own income or given by her parents

and these were her personal belonging. She did not produce her parents in witness box in support of her claim. The appellant had to prove her case on the strength of her own evidence and the learned trial court has not properly considered this fact and passed the finding mere on the presumption that the prudent mind does not attract that the respondent purchased the precious articles from his own source.

Similarly, mere bank statement of the appellant does not suggest that the respondent has used the amount lying in the account of appellant for purchasing the articles mentioned in the list Ex.P9/1 to Ex.P9/3. The appellant has not bifurcated the detail with prices of the dowry articles in her affidavit Ex.P1 as well as in the list Ex.P9/1 to Ex. P9/3. She had already filed suit for dowry articles valuing Rs.4,46,500/-, personal belonging Rs.5,80,000/-, dower amount Rs.12,000/-, Salami amount Rs.78,000/-, committee amount Rs.50,000/- down payment of vehicle Rs.5,00,000/- and TA/DA amount Rs.1,90,000/- and the said suit was withdrawn by the appellant. Now the appellant by enhancing the amount of dowry articles to Rs. 16,91,000/- filed the second suit. For the sake of arguments, if she had contributed the respondent and purchased some articles then question arises that whether the appellant would have not use the said articles in her routine life during subsistence of marriage. There is no cogent and strong evidence to prove that the appellant purchased the articles and other claims mentioned in the list Ex P9/1 to Ex P9/3 from her own sources during subsistence of marriage. The learned trial court passed the finding on issue No.3 in favour of appellant mere on the basis of surmises and conjectures by awarding 30% amount of

dowry articles as alternate. The findings on issue No.3 are not supported by the evidence, therefore, are hereby set-aside and the issue No.3 is decided in negative and against the appellant."

8. While considering the above-referred grounds referred in para 10 of the appellate court judgment, wherein the appellate court has drawn the conclusion that the petitioner has failed to prove the case, especially on the primary ground that she has not produced her parents in the witness box to support her case. In this regard, the appellate court failed to properly appreciate the specific circumstances of the petitioner, who is a working woman and had served as an officer in the Pakistan Air Force prior to her marriage. It is a matter of common practice that couples employed in government service, particularly in institutions such as the Pakistan Air Force, are frequently transferred from one station to another. In such circumstances, instead of providing bulky dowry articles, parents often give cash to their daughter to enable her to purchase necessary household items according to the requirements of her place of residence. The petitioner has consistently maintained that her parents did not provide traditional dowry articles; rather, she was given monetary assistance to procure household articles after marriage. This aspect, being directly relevant to the controversy, was not adequately considered by the appellate court while evaluating her claim.

9. On the other hand, the respondent, being defendant in his written statement, especially in paragraphs No. 4, 5, 6 and 7, in categorical terms, took the stance that "*however, the defendant only has*

those materials which he himself purchased to run the daily affairs of the home". But surprisingly, the petitioner, being plaintiff, has specifically referred 4 air conditioners, 2 LEDs, washing machine, Dawlance refrigerator, and curtains in paragraph No.7 of the plaint. But the answer in the written statement is evasive, which is otherwise not acceptable, and even the special plea taken by the respondent in paragraph No. 7 of the written statement is required to be demonstrated through evidence. However no such affirmative evidence has been brought on record. Even the testimony of respondent No.1 / Mr. Waqas Rasheed, Exhibit D.2, confirmed the claim of the petitioner that *"no dowry articles were given to plaintiff No. 1 from her parents at the time of marriage"*. However, in this affidavit of evidence, Mr. Waqas Rasheed has not brought the details of the household articles which were purchased by him. Even no explanation has been rendered with regard to the contribution given by the petitioner during the married life. Similarly, in paragraph No. 3 of Exhibit D.2, the respondent claims that he, *"being a loving husband, has fulfilled all the dreams of plaintiff and purchased her every luxury of life, including but not limited to air conditioner, refrigerator, television, vehicle / car, washing machine and household items"*.

10. If the above aspects are considered as an admission, then the appellate court has gone wrong and has not appreciated this aspect where the respondent himself acknowledges the luxury of life provided by him to the petitioner. When the original financial aspect was not brought on record, then it can easily be concluded that all

these articles were purchased jointly, though the claim of petitioner is to the extent of exclusive rights of air conditioner, refrigerator, television, washing machine, car, etc. The vehicle bearing Registration No.AAK-478, Suzuki Cultus, Model 2015, which is another important item, is required to be divided on an equitable basis. The account statement of the wife/petitioner, referred to as Exh.P12, suggests that her salary was withdrawn in installments on a monthly basis and was consumed in the joint family expenses; otherwise, the salary would have remained intact. Hence, the presumption stands in favour of the wife/petitioner.

11. Now, considering the above referred evidence and the arguments rendered by the respondent side, it is important to settle as to what is dowry? Dowry, also known as Jahaiz, is a customary practice and explained under the Dowry and Bridal Gifts (Restriction) Act, 1976, where dowry refers to property given to the bride by her parents in connection with marriage. Under section 2 of the Act, *“any property given before, or after marriage, either directly or indirectly, to the bride by her parents in connection with marriage is treated as dowry, but it does not include the property which the bride may inherit under the laws of inheritance and succession applicable to her”*. Similarly, this Act also separately defines presents and bridal gifts for better understanding. Likewise, section 5 of the Act mandates that the wife has an absolute right to her dowry and any bridal gifts she received. Considering these definitions in the law, it is a settled proposition that any property rights available to a woman cannot be restricted, controlled

or limited, as held in 1991 CLC 1696 (Ghulam Rasool Vs. Family Court), and that every gift becomes her property, as held in 2018 CLC 1337 (Syeda Mehwish Vs. Additional District Judge, Islamabad (West)).

12. Now, the question arises as to what is the yardstick to evaluate the dowry articles after they are used for some years? Can a Judge, Family Court, use only a rule of thumb for determining the value of any household article claimed by the wife in terms of dowry articles? Similarly, such evaluation, measurement and weightage to the valuation is a primary key question as and when the dispute arises before the Family Court. Therefore, considering the approach rendered by the Supreme Court of Pakistan in 2013 SCMR 1049 (Mst. Ayesha Shaheen Vs. Khalid Mehmood), it has been held that the valuation has to be made on a case-to-case basis, concerning the valuation and including the applicable market rates. There are a large number of cases where gold ornaments have become the primary issue between the spouses before the Family Court. Therefore, the husband has an option to either hand over the ornaments to the wife, or, in case he is not able to do so, to compensate the wife with money equal to the amount needed to purchase the gold ornaments according to the market value, as held in 2014 CLC 895 (Muhammad Zahid Vs. Mst. Ghazala Mazhar).

13. Now, the question arises as to what kind of statement or evidence is required to prove the existence of any article or dowry. In this regard, the wife's solitary statement is sufficient to prove the

existence of items in dowry, especially in the recovery suit, as held in 2020 CLC 380 (Aziz-Ur-Rehman Vs. Mst. Bibi Jameela), and the Supreme Court of Pakistan in 2017 SCMR 393 (Shafique Sultan Vs. Mst. Asma Firdous) held that oral testimony is sufficient to substantiate a dowry recovery claim, as the Qanun-e-Shahadat Order, 1984 is not applicable in its strict sense. As such, there is no specific formula for determining the price, state of item, or precise state of item, and the determination may include, inter alia, the nature and quality of items, their particular use and the period during which they remained under use of a woman, as held in PLD 2015 [Lahore] 504 (Mst. Samreen Bibi Vs. Judge Family Court). Even the jurisprudence settled by the Supreme Court of Pakistan authorizes the executing Court, which may depart from the original decree in determining the market value of unpaid dowry items, as held in 2017 SCMR 321 (Haji Muhammad Nawaz Vs. Samina Kanwal).

14. In view of the above legal discussion, this Court comes to another question as to what are the alternate factors for a Judge, Family Court, while assessing the value of used household articles/dowry articles claimed by a woman. In this regard, this Court has laid down the following factors:

- i. Recent market value versus old market value considering the date of marriage or purchase price.
- ii. The number of years during which those articles have been used at home.
- iii. The average life of any household article.
- iv. The sentimental value of any household article/dowry article attached to it and claimed by the wife, as often due to personal memories or association. Unlike monetary value, it is about the feelings or nostalgia tied to

something, such as a family heirloom or a gift from loved ones, coming in generation or given by parents from their hard-earned labour in a number of years, or based upon the tradition of the family worth.

- v. In case of giving any price factor after depreciation by the Judge, Family Court, where the articles remained with the husband, then the wife has to purchase them at a new market price, for which extra amount must be added, whereas the husband or his family are utilizing the articles without any disruption or disturbance.
- vi. The Judge, Family Court may consider the price factor of any household article from websites or online market applications, for which it is not necessary to call any expert or witness.
- vii. The used-item sale price of any household article may also be taken from any auction house, application or website to be used as part of evidence being an independent source for valuation, e.g., OLX, Zameen.com, Facebook, Market place etc.
- viii. A used item may be considered for half price for grant of price to the wife, but not below that level, unless the separation or divorce started within the first or second year of marriage for calculation of the price factor of any article. In that case, the price factor may be considered at 80% of the value, considering the factor of inflation, budget, and tax imposed by the Government on the articles.
- ix. The Judge, Family Court is empowered to use modern-day scientific approaches, data or applications for calculation, such as an inflation calculator based on historical Consumer Price Index (CPI), data price calculator, market index calculator, and may also direct the parties to submit the average market price of each household article, present and past prices, for determination of the correct value factor, which shall form the final judgment.
- x. When considering personal property or joint property purchased, earned or made during the subsistence of marriage by both husband and wife, where each party has contributed equally to the family, then, in principle, it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money earner and against the home maker and the child carer.

Concept of Matrimonial Property (AAK-478) SUZUKI CULTUS, MODEL 2015:

15. The petitioner, before the Family Court, as well as before the Appellate Court and this Court, has consistently claimed that the household articles listed before the Family Court were part of her dowry, even though she purchased them after the marriage. I have

observed that there is no legal bar on a woman purchasing dowry articles herself after the marriage, as such items fall within the definition provided under the Dowry and Bridal Gifts (Restriction) Act, 1976.

16. However, an important aspect, entirely distinct from dowry, relates to the vehicle bearing registration No.AAK-478, Suzuki Cultus, which is in the name of the respondent and was purchased/leased on installments. The said vehicle has been claimed by the petitioner-wife, who has consistently asserted that it was acquired through her hard-earned money and that she contributed the initial amount (seed money) at the time the lease was obtained by the respondent. Therefore, the said vehicle is to be considered as matrimonial property. In order to resolve this issue, the concept of matrimonial property rights must be examined and appreciated within the prevailing legal regime.

17. The concept of matrimonial property rights in the legal regime, then the division of assets between spouses during marriage and upon its dissolution by divorce or death is to be required in context of Islamic and Western jurisprudence. Broadly, jurisdictions adopted one of the three models:

- i. Separate property regime, where each spouse retains independent ownership of the property;*
- ii. Community property regime, where assets acquired during marriage are jointly owned;*

iii. An equitable distribution system where courts divide property fairly upon divorce, though not necessarily equal.

18. This Court also noticed that the treatment of non-financial contributions such as homemaking and childcare is often a central issue in determining how properties are distributed after marital breakdown. In Pakistan, upon divorce, a wife does not have automatic legal entitlement to share in her husband's assets merely by virtue of marital relationship. Her financial rights are generally limited to enforcement of dower (*mehar*), maintenance during marriage and the *iddat* period, recovery of unpaid past maintenance, and reclamation of dowry or bridal gifts under applicable legislation. Any claim to proprietary interest in property titled in the husband's name must be established through evidence of gift, contribution, partnership, or trust. In determining rights over matrimonial property, courts traditionally prioritize direct financial contribution, such as income, savings, and funds used to acquire fixed assets including real estate. Only those assets were settled in which title or proof of monetary contribution has been demonstrated.

19. In addition, it has also been noticed that in Pakistan non-financial contributions refer to the efforts that do not involve direct monetary input but nonetheless facilitate the acquisition, preservation, or enhancement of family wealth. These may include domestic labor, childcare, caregiving for dependent family members,

and personal labor invested in improving or maintaining property.

Such contributions are increasingly understood as economically significant, particularly where they enable one spouse to engage in paid employment or commercial activity, but Pakistani wives were not equally compensated for their hard labor to raise the family. Therefore, when a marriage has been dissolved, the wife who was already economically dependent is exposed to a scenario where she could not have a single penny as a share in the assets accumulated during marital union, thereby increasing her financial vulnerability post-divorce.

ISLAMIC PERSPECTIVE:

20. While going through the Islamic jurisprudence on the principle of marriage, this Court has noticed that husband and wife remain distinct legal persons with separate property rights. The wife retains full control over her property before and during marriage and the husband has no automatic claim over her assets. Similarly, the wife does not acquire ownership rights in her husband's property solely by virtue of marriage. Islamic law provides financial protection to the wife through mandatory dower (*haq mehr*) and maintenance (*nafqa*), which the husband is obligated to provide during marriage regardless of the wife's independent wealth. In the classical model, common divorce does not trigger redistribution of assets beyond enforcement of pre-existing financial obligations. Ownership remains with the legal title holder unless specific contractual or partnership arrangement can be proven. In classical

jurisprudence, the doctrine of partnership (shariqah) allows recognition of shared ownership where parties contribute towards acquisition of property. Some contemporary scholars argue that the wife's domestic and managerial contributions may be interpreted as indirect participation in wealth accumulation, potentially supporting a partnership-based claim.

21. Therefore, considering the above issue with the Islamic lens, this Court has been guided with the analysis of Quranic teachings which show that Islam would not allow men to exploit or gain advantage from the fact that there were no explicit Islamic injunctions on the topic of division of property in case of separation. Islamic law, being silent on the matter of matrimonial property, puts no bar on making legislation to shield the rights of women or marital property (as what is not prohibited is allowed). The relevant verses from the Holy Quran are reproduced hereunder:

Surah Al-Baqrah (2:236)

لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ مَا لَمْ تَمْسُوهُنَّ
أَوْ تَفْرِضُوا لَهُنَّ فَرِيضَةً وَمَتَّعُوهُنَّ عَلَى الْمَوْسِعِ
قَدَرُهُ وَعَلَى الْمُقْتِرِ قَدَرُهُ مَتَاعًا بِالْمَعْرُوفِ حَقًّا
عَلَى الْمُحْسِنِينَ ٢٣٦

*There is no blame upon you if you divorce women you
have not touched nor specified for them an obligation.*

*But give them [a gift of] compensation - the wealthy
according to his capability and the poor according to*

his capability - a provision according to what is acceptable, a duty upon the doers of good.

Surah Al-Baqrah (2:241)

وَالْمُطَلَّاتِ مَتْعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ ٢٤١

And for divorced women is a provision according to what is acceptable - a duty upon the righteous.

Surah Al-Ahzab (33:49)

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا تَكَحْتُمُ الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ أَنْ تَمْسُوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عَدَّةٍ تَعْتَدُونَهَا فَمَتَّعُوهُنَّ وَسَرَخُوهُنَّ سَرَاجًا جَمِيلًا ٤٩

O you who have believed, when you marry believing women and then divorce them before you have touched them [i.e., consummated the marriage], then there is not for you any waiting period to count concerning them. So provide for them and give them a gracious release.

22. Considering the Quranic injunctions referred above, this Court also attended the proposition from the Islamic law which provides flexible tools to protect women in the modern context, which is a under:

“i. Mut'at al-Talaq (Consolatory Gift) Expanded interpretation (Imam al-Tabari) allows cash, house, or lump-sum equivalent to lifelong needs as per her financial contribution in households.

ii. **Maslahah (Public Interest) & Ijtihad**

Contemporary scholars extend protection using the higher objectives of Shari'ah (maqasid) to prevent hardship for the women in any case whatsoever.

iii. **Sadaqah or Ajar (Lifelong Support in Hardship)** the Courts/qadi may impose reasonable lifelong support framed as remuneration when the woman is destitute and she has significantly contributed in finance of the households."

Comparative Jurisprudence:

23. Considering these principles, this Court also finds the comparative jurisprudence in the Muslim countries, which is as under:

- i. **Malaysia:** Females are entitled to a share of matrimonial property (Harta Sepencarian) after divorce, with both Family Law Enactments and the Law Reform Act 1976, empowering courts to order such divisions. Both, direct and indirect contributions are recognized by courts to determine a just and equitable division. Mostly, a one-third share for non-financial efforts is awarded.
- ii. **Indonesia:** Property acquired during the marriage are considered joint property of the husband and wife. Matrimonial assets may be tangible or intangible. Upon divorce, each party has the right to receive half of the matrimonial assets unless they had agreed otherwise in the marriage contract.
- iii. **Iran:** Civil Code + Family Protection Law-Ujrat al-Mithl (wages for housework). A wife can claim compensation for years of domestic labour if divorce is not her fault. Courts also award "divorce due to hardship" with financial settlement.

- iv. **Egypt:** Law No. 1 of 2000 (amended) allows additional "alimony and damages" beyond classical Mut'ah. Courts consider the wife's contribution to family wealth.
- v. **Turkey:** Turkish Civil Code (secular but applied to Muslims) - Participation regime for acquired property. Assets built during marriage are subject to division.
- vi. **Jordan & Syria:** Personal Status Laws allow extended maintenance and compensatory payments in cases of arbitrary divorce (talaq al-ta'assuf), considering the wife's non-financial contributions.
- vii. **Libya:** Family Law permits equitable distribution and lifelong maintenance in cases of long marriage and old age.
- viii. **Brunei Darusslam:** Where the assets were acquired by the joint efforts of the parties, the court must have regard to:
- a. the extent of the contributions made by each party by way of money, property or labour towards acquiring the assets;
 - b. any debts owed by either party that were contracted for their joint benefit; and
 - c. the needs of any minor children of the marriage. Subject to these considerations, the Court will order equal division;

Where the assets were acquired by the sole efforts of one party to the marriage, the court must have regard to:

the extent of the contributions made by the party who did not acquire the assets, to the welfare of the family by looking after the home or family.

24. On the other hand, internationally many jurisdictions have moved towards recognizing marriage as an economic partnership. In United Kingdom, courts apply an equitable distribution model in which homemaking contributions are treated as equal in value to financial contributions, particularly since the landmark decision in *White v. White [2001] 1 A.C. 596 (26 October 2000)*. The United States operates under both community property system, where marital assets are typically divided equally, and equitable distribution system, where courts divide assets fairly based on the following factors:

- i. The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family, and the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future.
- ii. While concluding the matter, the Judge, Family Court, in order to achieve a fair outcome, must recognize that there is no place for discrimination between husband and wife and their respective roles. Typically, husband and wife share activities of earning money, running their home and caring for their children. Traditionally, the husband earned the money and the wife looked after the home and the children; however, this traditional division of labour is no longer the order of the day, and both parents usually work in modern urban cities.
- iii. The Court has to see whether the division of labour chosen by husband and wife was forced upon them by circumstances. Fairness requires that this should not prejudice or advantage either party when considering the division of assets with regard to its valuation or ownership as well as the parties' contributions.

25. Canadian courts similarly recognize constructive trust and unjust enrichment doctrines to protect a non-titled spouse who contributed to asset accumulation. Similarly, it is vital to consider

the contribution of women during the course of marriage (monetary and non-monetary) and relate it to the implicit intention of spouses to mutually benefit from any acquired property. A principle that can be applied in such circumstances is the principle of constructive trust. In the case of *Gissing v Gissing [1971] A.C. 886*, it was held that if there is a mutual intention of the spouses that they will both have beneficial interest in an asset acquired during their marriage, it will be a breach of faith by the spouse in whose name the legal title was vested to refuse to give effect to that intention. This intention can be inferred from the fact that both spouses contributed to acquisition of assets and, according to Lord Denning, the contribution of the wife may be in form of keeping up the house and, if there are children, in looking after them. This is similar to argument of Muslim scholars who believe that monetary value should be attached to the household chores done by Muslim women. Such intention will be particularly clear when the wife sacrifices her career to take care of the household which enabled the husband to work and acquire property. The wife does so because it is common intention of spouses that wife will have a beneficial interest in the property along with the husband. This viewpoint is even accepted by classical Muslim jurists who believe that even though neither spouse will have proprietary interest in the property acquired by the other, the wife will have the right to access and use the husband's property during marriage. So it will be unconscionable to allow the husband to retain the property in its

entirety when it could not have been acquired without the contribution of the wife.

26. Comparative experience from several Islamic and mixed legal jurisdictions also reflects recognition of marital property as a product of joint efforts. Under the Turkish Civil Code, 1926, influenced by the Swiss model, spouses may choose among different matrimonial property regimes through marital agreements, thereby regulating property relations and recognizing joint ownership. Similarly, Kazakhstan's marital property regime presumes that property acquired during marriage is jointly owned irrespective of whose name appears on the title or who paid for it, and it acknowledges both financial and non-financial contributions of spouses. And the Tunisian Personal Status Code, 1956, permit spouses to include clauses in their marital agreements governing the management and division of property. Comparable approaches are also found in Singapore and Malaysia, where courts are empowered to distribute matrimonial assets acquired during marriage while taking into account both economic and non-economic contributions, including homemaking and childcare. These comparative models demonstrate a broader recognition that marriage operates as a cooperative partnership and that domestic contributions play a significant role in the accumulation of matrimonial assets.

27. In Pakistan, we have seen the cultural factor of a family evolution in which the wife's contribution to the family is invisible and unaccounted for simply because she is not under any obligation

to contribute anything materially. Therefore, the moral and emotional support along with the nurturing that the wife provides for the family and the children that she bears are not her duties under the classic understanding of Islamic law which entitles her to be compensated. While analyzing the entire background of Islamic vis-à-vis the Western jurisprudence, as well as the rights given by different Islamic countries to the wife in a joint property vis-à-vis the Western legislation which equally protects the wife in a joint property regime, this Court has also considered the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), in 1996, and under Article 16(h), parties are required to provide the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property, whether free of charge or for valuable consideration. However, CEDAW does not expressly mention division of property during dissolution of marriage, but its General Recommendation No. 21 on Marriage and Family Relations covers this by providing for "*equality in marital property during marriage or a long-term relationship, and when that marriage or relationship ends.*" Accordingly, Pakistan is under an international law obligation to reconsider its provision on matrimonial property and eliminate any chance of discrimination against women resulting from division of property.

28. Furthermore, the idea of community property or called marital property is not mentioned in the Qur'an or Hadith, however,

Indonesia recognizes this. They have incorporated this concept in the 1974, through Indonesian Marriage Law, despite their reservation in CEDAW, the Indonesians have decided that courts will divide the property equally if the marriage is registered as a joint partnership, based upon its consideration that the woman's domestic and childcare contribution. There is another concept to take into consideration that any property which was owned prior to marriage has stood improved during marriage through the joint efforts. Similarly, in English Matrimonial Proceedings and Property Act 1970, a wife's effort in looking after the house, children, and her husband is treated as work. Moreover, both the Malaysian regimes focus on distinction between joint and sole effort, whereby the former is bound to result in equal distribution of property; however, the Court has the discretion to divide the property in proportions it deems reasonable while taking all sorts of considerations into account. The underlying idea is to provide equal distribution of assets between spouses, whereby the economic achievements of husband are largely deemed to be due to the efforts of woman at home. Therefore, even where legislation requires financial contribution for the division of assets, the courts can apply rules of equity to take into account other forms of consideration. Various Islamic states have taken remarkable steps to provide possible framework for community property regime and have formally implemented this regime as a way forward.

Conclusion:

29. In view of the above discussion, this Court comes to a conclusion that the matrimonial property i.e. AAK-478, Suzuki Cultus or a property i.e. household articles which have been acquired after marriage by husband gives right to a wife to share in case of dissolution of marriage or during the subsistence of marriage. In this regard, certain safeguards have to be provided by the legislature and the courts, who may also consider the parameters of calculation / valuation of Assets and the efforts made by the wife during the subsistence of marriage in accumulation of any property which has only been transferred in the name of husband is to be treated as a joint property. Courts may also pass appropriate directions and judgment accordingly to protect the vulnerable segment of the society i.e. the woman.

30. Now, considering all these aspects, this court comes to an irresistible conclusion that the appellate court has gone wrong and denied the rights of petitioner / wife, who is also a working woman in Pakistan Air Force, contributed in the household and making of the family home on equal basis, and is entitled for equal protection, including at least her 50% share in each and every aspect, which is a missing part despite the admission made by the respondent.

31. Now the question arises as to whether this Court, in exercise of its constitutional jurisdiction, can convert or enhance the findings of the trial court whereby 30% of the alternate value of dowry articles was granted by the learned Trial Court. The answer is in the negative. The scope of constitutional jurisdiction does not ordinarily

extend to reappraisal of evidence or enhancement of relief granted by the trial court. As a result whereof, the impugned judgment and decree dated 29.10.2022 passed by the appellate court and judgment and decree dated 29.06.2022 passed by the trial court are hereby **SET-ASIDE**. Hence, instant writ petition is **ALLOWED**. The matter is remanded to Family Court, who shall extend due right of hearing to the parties and shall decide the matter accordingly within period of two (02) months under intimation to this Court.

32. Before parting with this judgment, this Court considers it imperative to observe that the protection and effective enforcement of women's rights require serious legislative attention. Women constitute nearly half of the population of the country, and their constitutional and legal safeguards must be meaningfully advanced through appropriate legislative and policy measures. This Court recommends the following:

- i. *Every wife who has cohabited with her husband during the subsistence of marriage shall be deemed to have contributed, through domestic labour, childcare and household management, to the establishment and maintenance of the matrimonial home and the welfare of the family. Accordingly, all assets acquired during the subsistence of the marriage – whether movable or immovable, and irrespective of the name in which they stand – shall, subject to law, be liable to equitable distribution between the spouses.*
- ii. *The Government of Pakistan is recommended to initiate appropriate legislation recognizing the rights of a homemaker wife to an equitable share, in the assets created, purchased, or otherwise acquired during the subsistence of the marriage. Such legislation should expressly declare and protect these proprietary rights.*

iii. *In the case of a working wife who earns income through employment, profession, or business, the law shall ensure enhanced protection of her financial and proprietary rights in respect of all household assets and matrimonial property, including assets acquired by the husband in his sole name during the subsistence of the marriage.*

33. Consequently, it is appropriate to recommend that the Government of Pakistan shall consider initiating comprehensive legislation and placing the same before Parliament for enactment. Such legislative measures should take into account the interests of women, who constitute nearly half of the country's population and represent a vital segment of the nation's future. The protection and effective enforcement of their rights would significantly contribute to the development of a more just and progressive society.

34. At last, this Court also comes to a conclusion that the marriage form i.e. *Nikah Nama* in terms of Muslim Family Laws Ordinance, 1961, may be amended and a column be created in the *Nikah* form, and the same should be filled by the wife with the condition that any property owned by husband after marriage shall be equally divided with the wife during the subsistence of marriage or post-divorce or in case of death of husband. As such, this condition will protect and materially confirm the property rights of wife in Pakistan as an alternate route without any legislation. In this regard, every girl child at school, college, and university level shall be educated accordingly with their matrimonial rights and they may refer their rights in column No. 18 of the *Nikah Nama* in the present form in a

similar manner, and such terms are enforceable by law in every aspect considering the constitutional mandate and protection provided in CEDAW which has been ratified by Pakistan.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in the open Court on: _____

JUDGE

APPROVED FOR REPORTING.

A.Waheed/-

Islamabad High Court, Islamabad