Form No:HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Writ Petition No.20300 of 2023

Arslan. **Versus** Nisha Shahid etc.

S. No. of order/ proceeding.	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.

01.07.2026. Mr. Muhammad Asif Kainth, Advocate for the petitioner.
Ms. Amber Qayyum, Advocate/Amicus Curiae.
Mr. Muhammad Farooq-e-Azam, Civil Judge/Research Officer, Lahore High Court, Lahore.

Through this writ petition, the petitioner, Arslan, has assailed the order and decree dated 01.09.2022 passed by the learned Senior Civil Judge (Family Division), Toka Tek Singh, whereby the suit filed by respondent No.1, Nisha Shahid, for dissolution of marriage, recovery of maintenance for the *iddat* period and dower, was partially decreed. The appeal filed by the petitioner against the said order and decree was dismissed as not maintainable, vide judgment and decree dated 07.02.2023 passed by the learned District Judge, Toka Tek Singh.

2. Brief facts of the case are that *Nikah* between the parties was solemnized on 18.03.2022 against *Haq Mehr* of Rs.100,000/-, recorded as *Ghair Mu'ajjal* (deferred) in columns No.13 and 14 of the *Nikahnama*. It is not disputed that the deferred dower remains unpaid. Respondent No.1 instituted the suit alleging, in para-4 of the plaint, that shortly after *Nikah*, upon her demanding payment of dower, the petitioner began beating her over trivial matters, remained unemployed, resorted to theft and intoxication, demanded that she should bring money from her parents, and used abusive language when she refused; and that within days of the *Nikah* he beat her and turned her out of the matrimonial home, after which he made no effort for reconciliation, paid no maintenance, and made no enquiry after her. Her pleaded case, in her own words, was as under:-

"یہ کہ شادی کے بعد مدعیہ کے آگے مدعاعلیہ کا اصل چہرہ سامنے آگیا جب مدعیہ نے حق مہر مبلغ ایک لاکھ روپے کا مطالبہ کیا تو مدعاعلیہ نے معمولی معمولی باتوں پر مدعاعلیہ، مدعیہ کو مار پیٹ کرتا۔ کوئی کام کاج بھی نہ کرتا ہے بلکہ چوریاں کرتا ہے۔ نشہ کرتا ہے۔ خرچہ مانگنے پر تشدد کرتا بلکہ مدعیہ کو کہتا ہے کہ اپنے والدین سے رقم لے کر آؤ انکار پر گھٹیا زبان استعمال کرتا۔ مدعاعلیہ نے شادی کے چند دن بعد ہی مدعیہ کو مار پیٹ کر کے اپنے گھر سے نکال دیا اور مدعیہ اپنے والدین کے ہاں آگئی اور اس وقت سے لے کر آج تک نہ تو مدعاعلیہ نے مدعیہ کو آباد کرنے کی کوشش کی ہے اور نہ ہی خرچہ نان ونفقہ ادا کیا ہے اور نہ ہی کوئی خبر گیری کی۔"

The learned trial Court decreed the suit on 01.09.2022 in terms of Section 10(4) of the Family Courts Act, 1964, and awarded 50% of the dower, being the extent to which respondent No.1 had herself confined her claim.

3. Learned counsel for the petitioner contends that sub-sections (5) and (6) of Section 10 of the Family Courts Act, 1964, having been declared repugnant to the Injunctions of Islam vide judgment of the Federal Shariat Court reported as **PLD 2022 Federal Shariat Court 25** (*Imran Anwar Khan and others vs. Government of Punjab and others*), and the matter being *sub judice* before the Hon'ble Supreme Court, the award of any part of the dower was without lawful basis.

4. In view of the above, the following questions arise for determination in this petition:

i) Whether, after the declaration of sub-sections (5) and (6) of Section 10 of the Family Courts Act, 1964 as repugnant to the Injunctions of Islam, the Family Court retains jurisdiction to determine a wife's entitlement to dower on a case-to-case basis?

ii) Whether a decree for dissolution described as *"Khula"* necessarily entails forfeiture or return of dower irrespective of the cause of dissolution, or whether a distinction exists in law between dissolution founded on the wife's mere aversion (Khula simpliciter) and dissolution occasioned by the husband's cruelty or other grounds under law?

iii) Whether physical, psychological, emotional, verbal or economic abuse amounts to cruelty sufficient to disentitle the husband from claiming return of dower, in whole or in part?

iv) What principles ought to govern the exercise of judicial discretion by Family Courts in determining the question of

dower where dissolution is sought on the ground of cruelty or matrimonial misconduct?

v) Whether the learned Family Court erred in awarding fifty percent (50%) of the deferred dower to respondent No.1 on the facts of this case?

Section 10 of the Family Courts Act, 1964 requires the Family Court, after pleadings are filed, to ascertain the real controversy between the parties and attempt reconciliation before proceeding to trial. Where reconciliation fails, sub-section (4) permits the Family Court to frame issues and record evidence. Sub-sections (5) and (6), inserted by the Family Courts (Amendment) Act, 2015 (XI of 2015), provided:

> ***"(5) In a suit for dissolution of marriage, if reconciliation fails, the Family Court shall immediately pass a decree for dissolution of marriage and, in case of dissolution of marriage through khula, may direct the wife to surrender up to fifty percent of her deferred dower or up to twenty-five percent of her admitted prompt dower to the husband.***
> ***(6) Subject to subsection (5), in the decree for dissolution of marriage, the Family Court shall direct the husband to pay whole or part of the outstanding deferred dower to the wife."***

Two things follow from the words actually used. First, sub-section (5) speaks only of dissolution "through Khula"; it said nothing about dissolution granted on the ground of cruelty or any other fault of the husband. Second, the sub-section used the word "may", not "shall". Surrender of dower, even in *Khula*, was left to the Family Court's discretion, subject to an upper ceiling, and was never automatic. Even under the provision that has since been struck down, the Legislature did not intend dower to be surrendered automatically in every decree of dissolution, and certainly not in one granted for cruelty.

5. This distinction between *Khula* and dissolution on other grounds is not new. Part I of the Schedule to the Family Courts Act, 1964 assigns to the Family Court suits for "dissolution of marriage, including Khula" — the word "including" itself signaling that Khula is one species of a wider genus. Khula, as recognized in **PLD 1967 SC 97** *(Khurshid Bibi vs. Muhammad Amin)*, is the wife's own right to seek dissolution of her marriage through the Court, even against her husband's will, where she

satisfies the Court that continuing the marriage within the limits prescribed by Allah has become impossible. In other words, Khula can be granted to a woman without any fault of a husband, as recognized in **PLD 1971 SC 192** *(Muhammad Siddiq vs. Ghufran Bibi)*. The Dissolution of Muslim Marriages Act, 1939, by contrast, entitles a wife to a decree of dissolution upon proof of specific matrimonial wrongs. Section 2(viii) of that Act provides that a wife is entitled to a decree where the husband:

> ***"treats her with cruelty, that is to say —***
>
> ***(a) habitually assaults her 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."***

Clause (ii) of the same section entitles her to dissolution where the husband "has neglected or has failed to provide for her maintenance for a period of two years." Respondent No.1's pleaded case i.e. physical beating, being turned out of the house, no maintenance paid thereafter, falls squarely within these words. More importantly, Section 5 of the same Act provides:

> ***"Rights to dower not to be affected. — Nothing contained in this Act shall affect any right which a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage."***

This could not have been put more plainly. Where a wife obtains dissolution on a ground recognized under Section 2, her right to dower is preserved by the express words of the statute. Sub-sections (5) and (6) of Section 10 of the Family Courts Act, 1964 never purported to touch this provision; they spoke only to Khula, which is a separate and

independent right. The same distinction is rooted in the Quran, and it is this rooting the Federal Shariat Court was applying when it examined sub-sections (5) and (6). The verse governing Khula provides:

وَ لَا يَحِلُّ لَكُمْ اَنْ تَاْخُذُوْا مِمَّآ اٰتَيْتُمُوْهُنَّ شَيْـًٔا اِلَّآ اَنْ يَّخَافَآ اَلَّا يُقِيْمَا حُدُوْدَ اللّٰهِ ؕ فَاِنْ خِفْتُمْ اَلَّا يُقِيْمَا حُدُوْدَ اللّٰهِ ۙ فَلَا جُنَاحَ عَلَيْهِمَا فِيْمَا افْتَدَتْ بِهٖ ؕ تِلْكَ حُدُوْدُ اللّٰهِ فَلَا تَعْتَدُوْهَا ۚ (البقرة: 229)

> ***"And it is not lawful for you to take back anything of what you have given them, unless both fear that they will not be able to observe the limits set by Allah. And if you fear that they cannot observe those limits, there is no blame on either of them in what she gives up to secure her release. These are the limits set by Allah, so do not transgress them."*** **(Al-Baqarah, 2:229)**

اور تمہارے لیے جائز نہیں کہ جو کچھ تم انہیں دے چکے ہو اس میں سے کچھ واپس لو، سوائے اس کے کہ دونوں کو یہ خدشہ ہو کہ وہ اللہ کی مقرر کردہ حدود قائم نہ رکھ سکیں گے۔ اور اگر تمہیں یہ خدشہ ہو تو دونوں پر کوئی گناہ نہیں کہ عورت اپنی رہائی کے لیے کچھ دے دے۔ یہ اللہ کی حدیں ہیں، انہیں نہ توڑو۔

This verse was revealed in the matter of *Habiba bint Sahl* and her husband *Thabit ibn Qais*, and classical commentators explain that the dispensation to receive something back from the wife applies where the discord, the fear of transgressing the limits of Allah, arises from the wife's own conduct. Where the fault lies with the husband, a different verse governs:

وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا آتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ (النساء: 19) ... وَإِنْ أَرَدْتُمُ اسْتِبْدَالَ زَوْجٍ مَكَانَ زَوْجٍ وَآتَيْتُمْ إِحْدَاهُنَّ قِنْطَارًا فَلَا تَأْخُذُوا مِنْهُ شَيْئًا ۚ أَتَأْخُذُونَهُ بُهْتَانًا وَإِثْمًا مُبِينًا (النساء: 20) وَكَيْفَ تَأْخُذُونَهُ وَقَدْ أَفْضَىٰ بَعْضُكُمْ إِلَىٰ بَعْضٍ وَأَخَذْنَ مِنْكُمْ مِيثَاقًا غَلِيظًا (النساء: 21)

> ***"And do not make things difficult for them, so as to take back part of what you have given them, unless they have committed a clear act of indecency... And if you wish to replace one wife with another, and you have given the former a great amount, do not take back any of it. Would you take it through slander and manifest sin? And how could you take it, when you have already been intimate with one another, and they have taken from you a solemn covenant?"*** **(An-Nisa, 4:19–21)**

اور انہیں تنگ نہ کرو تاکہ جو کچھ تم نے انہیں دیا ہے اس میں سے کچھ واپس لے لو، سوائے اس کے کہ وہ کھلی بے حیائی کا ارتکاب کریں... اور اگر تم ایک بیوی کی جگہ دوسری لانا چاہو اور پہلی کو ڈھیروں مال دے چکے ہو، تو اس میں سے کچھ واپس نہ لو۔ کیا تم اسے بہتان اور کھلے گناہ کے ذریعے واپس لو گے؟ اور تم اسے کیسے واپس لے سکتے ہو جبکہ تم ایک دوسرے کے قریب جا چکے ہو اور انہوں نے تم سے پختہ عہد لیا ہے؟

The marriage contract is described here as "میثاقاً غلیظاً", a solemn, weighty covenant, and the husband is permitted to take back any part

of the dower only where the wife herself is guilty of open misconduct ("فاحشة مبينة"). Where the fault is his, the Quran gives him no such licence.

In **PLD 2002 SC 273** *(Mukhtar Ahmad vs. Ansa Naheed)*, the Hon'ble Supreme Court held that the question of return of dower falls to be decided on the facts of each case, separately from the merits of dissolution, and that a wife's legal rights cannot be curtailed by implication merely because she has invoked one ground rather than another. The Supreme Court in ***Ibrahim Khan vs. Mst. Saima Khan*** has since confirmed this reading of *Mukhtar Ahmad*, describing the right under the Dissolution of Muslim Marriages Act, 1939 as an independent right, with each ground under Section 2 being separate and sufficient in itself for dissolution. This Court has consistently applied the same principle: in **2014 CLC 1270** *(Syed Haroon Sultan Bukhari vs. Syeda Mubarak Fatima)*, and by the Peshawar High Court in **2012 MLD 1576** (*Nasir vs. Rubina*), where it was held, in each case, that a wife whose aversion is attributable to her husband's maltreatment or default cannot be deprived of her dower merely because the decree passed is described as one of Khula. The Supreme Court, in **P L D 2024 Supreme Court 645** *(Ibrahim Khan vs. Mst. Saima Khan)*, held that Khula and dissolution under the Dissolution of Muslim Marriages Act, 1939 sit in separate legal domains, with separate consequences. Three differences were noted. A woman seeking Khula need not prove any ground; a woman seeking dissolution under Section 2 of that Act must prove one. Where she proves such a ground, Section 5 protects her dower; where she seeks Khula, she gives it up as the price of her release. And procedurally, once reconciliation fails, a decree of Khula follows immediately, without evidence being recorded, while a decree on a ground such as cruelty can only be passed after evidence is recorded under Section 11 of the Family Courts Act, 1964, though it is not necessary in every case to record evidence if admissible evidence in the shape of any report, document or record is available or admission has been made by the witness. This last point matters. A decree passed at the pre-trial stage, before any evidence is taken, cannot lawfully dispose

of a claim of cruelty. Where a wife has pleaded cruelty and the Family Court proceeds straight to a decree without recording evidence, proper procedure is not followed.

6. It is, therefore, imperative to ascertain what precisely the Federal Shariat Court declared to be repugnant. The Federal Shariat Court did not hold that every wife seeking dissolution through Khula must return her dower. Nor did it hold that every wife shall invariably retain the whole of her dower. Equally, the Federal Shariat Court did not hold that the jurisdiction of the Family Court to determine proprietary rights arising from marriage stands extinguished. Rather, the Federal Shariat Court rejected the application of a predetermined statutory formula that was capable of operating without regard to the factual cause of matrimonial breakdown. The judgment repeatedly emphasizes that the obligation to return dower depends upon the reason for dissolution and, more particularly, upon whether the wife herself is solely responsible for seeking separation or whether the husband's conduct has furnished lawful justification for the dissolution. The following observations made by the Federal Shariat Court leave little room for ambiguity:

"عورت ایک خاص رقم حق مہر کے عوض اپنا نفس حوالہ کرتی ہے اور نکاح کی تنسیخ یا اس بندھن سے علیحدگی بصورت خلع کی علت کا تعین اور تیقن ضروری ہے۔ کیونکہ عورت اگر محض نفرت اور ناپسندیگی کی بنیاد پر خلع کی طالبہ رہتی ہے تو ایسی صورت میں جو حق مہر وہ وصول کر چکی ہے قابل واپسی ہے۔ اس سے زیادہ لینا صحیح نہیں۔ نبی پاک صلی اللہ علیہ وسلم نے زیادہ دینے سے منع فرمایا۔ دوسری صورت مرد کے نشوز کی ہو سکتی ہے۔ ایسی صورت میں نکاح جیسے شرعی معاہدے کے حصار میں آکر عورت عزت نفس، جان، مال، آبرو، مقام اور حیثیت سب کا شرعاً و قانوناً تحفظ اور امان پاتی ہے۔ ان حقوق میں دست اندازی، ان کی خلاف ورزی اور بے احترامی قابل تعزیر جرم ہونے کے ساتھ ساتھ طلب خلع کے لیے معقول جواز فراہم کرتی ہے۔ ایسی صورت حال میں شرعاً، قانوناً، اخلاقاً اور روایتاً حق مہر کی واپسی کا تقاضا یا واپسی کا حکم درست نہیں بلکہ مطلق مہر یا اس کے خاص جزو کی واپسی کا حکم بھی حق خلع پر حملہ متصور ہو گا۔ کیونکہ ان حالات کے تحت عدالت پر لازم ہے کہ وہ تعین کرے کہ کس قدر مال کی واپسی مناسب رہے گی۔ اگر عورت خلع کا حق محض ناپسندیگی کی بنیاد پر اور شوہر کے کسی قصور کے بغیر استعمال کرتی ہے تو پورا حق مہر واپس کرنا ہو گا۔"

Read in this light, learned counsel's argument does not survive. The Federal Shariat Court did not hold that a wife must always return her dower, nor that she must never return it. It held that the answer depends on which of the two Quranic situations the case falls into: the wife's aversion, or the husband's nashuz. It required the Family Court to make

that determination on the facts, rather than apply a fixed formula. That is precisely what sub-sections (5) and (6) of Section 10 of the Family Courts Act, 1964 had failed to do, and precisely why they were struck down. Their removal restores the Family Court to the position the Quran and Section 5 of the Dissolution of Muslim Marriages Act, 1939 had already placed it in: cruelty, once proved, carries no consequence for dower. Unfortunately, much of the subsequent difficulty experienced by the Family Courts appears to have arisen from treating every decree passed after reconciliation fails as if it were an identical category of Khula irrespective of the factual foundation of the claim. Such an approach overlooks the distinction carefully preserved by both Islamic jurisprudence and the Federal Shariat Court itself between a dissolution founded upon unilateral aversion and one occasioned by the husband's own misconduct. Therefore, the Family Court's jurisdiction to determine a wife's entitlement to dower on a case-to-case basis has not been taken away. What is gone is the fixed ceiling that once did some of that work for the Family Court. In its place, the Family Court itself must now do the work of deciding each case on its own facts. Secondly, a decree does not carry the consequences of Khula merely because it calls itself one. The consequence follows only where the wife has, in substance, sought and consciously elected Khula, and not where she has proved a ground under Section 2 of the Dissolution of Muslim Marriages Act, 1939.

7. This brings me to the third question framed above i.e. whether physical, psychological, emotional, verbal or economic abuse amounts to cruelty sufficient to preserve a wife's dower. Cruelty, within the meaning of Section 2(viii) of the Dissolution of Muslim Marriages Act, 1939, is not a term confined just to physical blows. The six illustrations set out in that clause are illustrative, not exhaustive. The Legislature never intended them to mark the outer limit of what a husband's conduct may amount to. A husband's cruelty may lie as much in humiliation, verbal abuse, false imputations upon his wife's character, cold indifference and calculated neglect, as in the raising of a hand. Where the domestic environment itself is made hostile, where a

husband tolerates, or encourages, the ill-treatment of his wife by his own family- that too is cruelty within the clause. The inquiry is not whether the conduct fits a named category; it is whether its cumulative effect upon the particular wife before the Court has made it impossible for her to go on living with dignity and safety in her own home. Physical injury is not a precondition, and criminal-style proof has no place here. A suit under the Dissolution of Muslim Marriages Act, 1939 remains a civil dispute, to be decided, like any other, on the balance of probabilities. A wife is not required to produce a medico-legal certificate for every slap, or a first information report for every episode of abuse, before her word can be acted upon. Her own testimony, tested in cross-examination and weighed against the surrounding circumstances, the conduct of the husband's witnesses or the absence of any, and the pattern and timing of events, is evidence like any other. It is for the Family Court to look at all of this and decide whose account is more probably true. A Family Court that sets aside a wife's sworn testimony for want of documentary corroboration has misapplied the standard of proof. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in **PLD 2026 Supreme Court 91** *(Dr. Seema Hanif Khan vs. Waqas Khan and others)*, authored by Mrs. Justice Ayesha A. Malik, where these principles were authoritatively restated and applied. This also answers, in part, the second question framed above. Where cruelty is established to this standard, the decree of dissolution does not, in law, carry the consequences of Khula. The mere fact that a wife's suit is disposed of once reconciliation fails, or that the word "Khula" finds its way into the plaint or the decree sheet out of habit or convenience, does not convert a suit founded on cruelty into one founded on aversion. The filing of a suit for dissolution is not, without more, a request for Khula, and a Family Court has no authority to treat it as one unless her informed consent to Khula, understood as such, appears on the record. To proceed otherwise is to take from her a statutory right she never gave up. It was stated in **PLD 1971 SC 192** *(Muhammad Siddiq vs. Ghufran Bibi)*, where the Supreme Court held that a Court could not decree a

suit on the footing of Khula where Khula had not been the wife's prayer. It was restated with greater force in **PLD 2024 SC 645** *(Ibrahim Khan vs. Mst. Saima Khan)*, where the Hon'ble Supreme Court held that the right to Khula belongs to the wife alone, that she must place her offer to waive dower before the Court in clear and unambiguous terms, and that a Court cannot grant Khula of its own motion where it has not been sought.

8. The danger of assuming aversion too readily was illustrated in **C.P.L.A. No. 3767 of 2025** (*Mst. Naila Javed vs. Nasir Khan*), where a wife who had pleaded cruelty, non-payment of dower and her husband's second marriage was found below to have shown mere unwillingness to live with him, and was granted Khula on that footing, losing her outstanding dower. The Hon'ble Supreme Court found the cross-examination conducted below improper, testing nothing but her character through irrelevant and prejudicial questions asked to embarrass her, and dissolved the marriage on the ground of cruelty instead, with her dower restored. An appearance of aversion produced by an unfair trial is not evidence that a case is simple Khula; it is evidence that the case was not properly tried. It would be an incomplete account of this question to leave unmentioned a judgment of this Court delivered after ***Imran Anwar Khan's case***, in which a different result was reached. In *Muhammad Mohsin Raza vs. Additional District Judge, Jatoi* **(PLD 2025 Lahore 551)**, a wife who had pleaded habitual beating, expulsion from the house while four months pregnant, drug addiction and non-payment of maintenance, none of it seriously rebutted, was granted dissolution described as Khula and required to surrender twenty-five percent of her dower, on the reasoning that where both spouses are proportionally at fault, a proportionate surrender may be ordered. This Court has the greatest respect for that judgment, but is respectfully unable to follow the result it reached, for two reasons. First, on the facts recorded in that very judgment, what went unrebutted was cruelty within the words of Section 2(viii) of the Dissolution of Muslim Marriages Act, 1939. Such a suit ought to have been decided under Section 2 of that Act, and Section 5 then supplies the answer; no

question of proportion arises. Second, this question has since been placed beyond doubt by the Hon'ble Supreme Court in the case of *Ibrahim Khan* and *Dr. Seema Hanif Khan*, holding that a Family Court cannot substitute Khula for a proved statutory ground, and that dower is not affected once such a ground is established. This Court is bound by that authority under Article 189 of the Constitution, and to the extent *Mohsin Raza's case* holds otherwise, it is respectfully not followed.

9. This answers the fourth question framed above:-

(A) The first question is never whether the decree calls itself Khula. It is whether the wife has pleaded and proved any one or more of the grounds set out in Section 2 of the Dissolution of Muslim Marriages Act, 1939, whatever that ground may be, whether it is cruelty under clause (viii), failure to maintain for two years under clause (ii), a second marriage taken without her consent and without sanction of the Arbitration Council under clause (ii-a), read with Section 6 of the Muslim Family Laws Ordinance, 1961, or any other ground recognized under that section, including the residual ground at clause (ix) covering any cause recognized as valid for dissolution under Muslim Law generally. The Family Court must frame this as a specific issue and decide it before it goes anywhere near the question of dower.

(B) If such a ground is proved, on the balance of probabilities, by the standard already discussed herein, Section 5 of the Dissolution of Muslim Marriages Act, 1939 settles the rest: the dower is not affected. Not reduced, not shared, not affected. The husband is not entitled to a return of any part of it, prompt or deferred, and any part still unpaid must be decreed in full. Section 5 does not say a wife keeps less of her dower where the cruelty was less severe. It says her dower is not affected. A Family Court that apportions dower after finding cruelty proved has misread the statute.

(C) What amounts to cruelty under clause (viii) has already been set out in this judgment. Physical assault, verbal and emotional abuse, humiliation, false accusations, withholding maintenance without cause, demanding money from the wife's parents, addiction, and turning her out of the matrimonial home without lawful reason are all capable of amounting to cruelty, alone or together, and none of them needs a medical report or a police record before the wife's own testimony can be acted upon.

(D) Even where no ground under Section 2 is proved, the Family Court may not, without more, call the case Khula and close the file. Where a ground under Section 2 fails for want of proof, but the marriage has in fact collapsed beyond repair, the Hon'ble Supreme Court has held, in *Selab Akhtar v. Quwat Khan*, that the

wife must be given a clear and informed choice: either to have her suit dismissed for failure of proof, or to accept dissolution by Khula on its lawful terms. This is consistent with what has already been said in this judgment by reference to *Ibrahim Khan v. Mst. Saima Khan*: her consent to Khula must actually appear on the record, in clear and unambiguous terms, and cannot be inferred merely because a ground has failed or because she no longer wishes to continue the marriage. Only once she makes that election, understanding what it costs her, may a decree of Khula, and the dower consequence that follows it, properly be passed.

Even then, Khula does not mean she loses her dower automatically. The Federal Shariat Court's own words in *Imran Anwar Khan*, reproduced above, place a ceiling on what may be ordered: the Court may not direct return of more than what she has already received, and even that only where her aversion is shown to be free of any fault on the husband's part. Dower that was never paid cannot be "returned" in any event. Ghair Mu'ajjal dower still outstanding at the date of dissolution is a debt, not something sitting in the wife's hands capable of being given back, and Khula supplies no basis for erasing a debt that was never paid in the first place.

(E) Where the evidence is genuinely close, and the Family Court cannot say with confidence whether the case falls under any of the grounds under DMMA, it must say so, and resolve that doubt in the wife's favour. This follows from the standard of proof itself: her burden is only to show her case is more probable than not, and a Family Court that treats a close case as a reason to withhold her dower has, without saying so, quietly raised that burden against her.

(F) Whatever the Family Court decides, it must say why. A decree that dissolves the marriage "through Khula" and disposes of dower in the same line, without recording which of the above findings it has made and on what evidence, does not meet the standard laid down in this judgment and is liable to be set aside on that ground alone.

10. For the guidance of all Family Courts within the jurisdiction of this Court, the principles emerging from this judgment are summarized below:-

I. Dower is a proprietary right arising from the contract of marriage. It is not a penalty upon the husband, nor a benefit held at the Family Court’s discretion. It cannot be forfeited, reduced or apportioned without a specific finding that the law permits it.

II. The right to dissolve a marriage and the right to dower are separate rights. A decree of dissolution does not by itself decide

the fate of the dower; that requires its own finding, on its own evidence.

III. Imran Anwar Khan's case (PLD 2022 FSC 25) struck down the fixed formula in sub-sections (5) and (6) of Section 10 of the Family Courts Act, 1964. It did not strike down the distinction the Federal Shariat Court itself drew between a wife's separation founded on mere aversion and one compelled by the husband's own nashuz. That distinction survives. What has changed is that the Family Court must now apply it on the facts of each case, without a fixed formula to fall back on.

IV. A decree is not Khula merely because that word appears in the plaint, the written statement, or the decree sheet. Where the wife has pleaded and pursued a ground recognized under Section 2 of the Dissolution of Muslim Marriages Act, 1939, the suit must be decided on that ground. Khula may not be substituted for it without the wife's informed consent appearing on the record.

V. Cruelty under Section 2(viii) of that Act is not confined to physical violence; it extends to psychological, verbal, emotional and economic abuse, assessed by its effect on the particular wife. It is proved on the balance of probabilities, and a wife's own credible testimony does not need medical or documentary corroboration.

VI. Where a ground under Section 2 is proved, Section 5 of that Act governs: the wife's dower is not affected by the dissolution. This is not a question of degree. The Family Court does not weigh the severity of the cruelty to decide how much dower survives. Once the ground is proved, dower, whether prompt or deferred, paid or unpaid, stands unaffected in full.

VII. Where no such ground is proved and the case is of Khula, forfeiture is still not automatic. The Family Court must independently decide, with reasons, what amount, if any, is to be returned, and may not order the return of dower that was never paid.

VIII. Where the evidence is genuinely close and the Family Court cannot say with confidence which of the above applies, the doubt is to be resolved in favour of the wife's dower, not against it.

IX. Every order concerning dower must record the finding it rests on, whether a ground under Section 2 was proved, and if not, why the case was treated as Khula and on what material. A decree silent on this point does not meet the standard laid down in this judgment.

11. The confusion this judgment has tried to resolve did not arise from the Federal Shariat Court's reasoning in *Imran Anwar Khan's case*, which was sound. It arose because sub-sections (5) and (6) of

Section 10 of the Family Courts Act, 1964 were struck down without anything being put in their place. The underlying law, the Quran, and Section 5 of the Dissolution of Muslim Marriages Act, 1939, never changed; only the formula a trial court could once apply disappeared. Family Courts, left with the bare fact that the provision permitting surrender of dower in Khula is gone, but no revived rule requiring payment in its place, have in practice gone the other way: treating every decree as Khula and denying the wife her dower altogether, whether a ground under Section 2 of that Act stood proved or not, as though the striking down of sub-sections (5) and (6) had taken away her entitlement to dower rather than the husband's claim to its return.

12. In view of the above discussion, no case of interference is made out and the instant writ petition is **dismissed** *in limine*.

13. Before parting with this judgment, it is observed that there is a need for a fresh provision, drafted in the language of Section 5 of the Dissolution of Muslim Marriages Act, 1939, requiring the Family Court to record a finding on the cause of dissolution before deciding the question of dower, and making clear that dower is not affected where a ground under Section 2 of that Act stands proved. The Registrar of this Court shall forward a copy of this judgment to the Secretary, Law and Parliamentary Affairs Department, Government of the Punjab, and to the Law and Justice Commission of Pakistan, for such action as considered appropriate.

(Mohsin Akhtar Kayani)
Judge

Approved for Reporting.

Judge

Faiz