IN THE FEDERAL SHARIAT COURT

(ORIGINAL JURISDICTION)

PRESENT

MR. JUSTICE IQBAL HAMEEDUR RAHMAN, CHIEF JUSTICE MR. JUSTICE KHADIM HUSSAIN M. SHAIKH MR. JUSTICE DR. SYED MUHAMMAD ANWER

SHARIAT PETITION NO. 16/I OF 2022

Haji Saif-ur-Rahman Shaheen son of Haji Fazal Din Ansari, Resident of Mohalla Tahlianwala,18-Aabkari Road, Jhang Saddar.

PETITIONER

VERSUS

- 1. Islamic Republic of Pakistan, Government of Pakistan through Attorney General of Pakistan, Islamabad.
- 2. Province of Punjab / Government of Punjab, Khyber Pakhtunkhwa, Sindh, Balochistan through Attorney General of all provinces.
- 3. Nighat Yasmeen wife of Haji Saif-ur-Rehman Shaheen Ansari
- 4. Muhammad Hammad Choudhary son of Khan Muhammad (brother of Nighat Yasmeen), House No.75/B, Arainwala, Jhang Saddar.
- 5. Chairman / Secretary Reconciliation Council, Jhang.

RESPONDENTS

Counsel for Petitioner:In-person.Date of Institution:08.10.2022Date of Hearing:19.09.2023Date of Judgment:06.10.2023

<u>IUDGMENT</u>

DR. SYED MUHAMMAD ANWER, J: In the instant Shariat Petition, the petitioner appeared in-person and sought two types of reliefs i.e., one is a relief *in-personam*, regarding a judgment and decree of *Khula* (خانے), which was initially granted by the Family Judge, Jhang on 18.05.2022 against the petitioner and in favour of the petitioner's wife after acting upon Section 10(5) of the West Pakistan Family Courts Act, 1964 (Amended 2015). He sought relief against the impugned judgment and decree of the Family Judge,

Jhang, dated 18.05.2022, whereby the suit for dissolution of marriage on the basis of *Khula* was decreed against the petitioner, in the same case the petitioner filed a writ petition in the Lahore High Court, which was dismissed *in limine* by the Lahore High Court on 20.09.2022. Although, this relief cannot be granted by this Court being *in-personam* relief, which is outside the scope of jurisdiction of this Court. However, secondly he highlighted one pertinent point in seeking this personal relief through his petition that the Family Court, Jhang dismissed the petition on 18.05.2022 while acting upon Section 10(5) of the Family Courts (Amendment) Act, 2015. The relevant portion of the impugned order is as under:

- ".....Keeping in view the statement of the plaintiff and above situation, the pre-trial reconciliation proceedings are declared as failed and suit of the plaintiff for dissolution of marriage is hereby decreed on the basis of Khulla u/s 10(5) under the Provisions of Family Courts, Act 1964 (Amended 2015), subject to surrender up 25% of admitted prompt dower to be returned by the plaintiff to the defendant to be deposited within ten days with the Civil Nazir Account, Civil Courts Jhang as trust to be given to the defendant. No order as to cost."
- 2. Whereas, Section 10(5) was declared as against the injunctions of Islam by this Court through its judgment, dated 17.02.2022, in case reported as *PLD 2022 FSC 25 (Imran Anwar Khan v. Government of Punjab, etc.)*, wherein this Court specifically mentioned the date of 01.05.2022 for becoming Section 10(5) of the Family Courts (Amendment) Act, 2015 as null and void under Article 203D(2)(b) of the Constitution of Islamic Republic of Pakistan, 1973 as under:

ا كبر سعيد وغيره بنام فيڈريشن آف پاكستان وغيره اور شريعت عرضيدات نمبر: 3/ آئى آف2020 شيخ محمود اقبال بنام حكومتِ بينجاب منظور كركے فيملى كورٹ ايك، 1964 كى دفعہ 10 ميں متعارف كرائى گئى ذيلى تراميم (5) اور (6) كوغير شرعى قرار ديا جاتا ہے۔ مذكورہ ذيلى تراميم (5) اور (6) كيم مئى 2022 ء سے منسوخ اور غير موثر تصور ہو گئى۔ للبذا سوال نمبر (٣) كاجواب اثبات ميں ہے۔

It is apparent from the above mentioned judgment of this Court, dated 17.02.2022, that the day on which the Family Court, Jhang passed the impugned order i.e. 18.05.2022, the said provision was ineffective as was declared against the injunctions of Islam as laid down in the Holy Quran and Sunnah by this Court. However, this fact skipped the notice of the Lahore High Court while dismissing the writ petition of the petitioner *in limine* on 20.09.2022. The petitioner sought relief from this Court that the judgment of the Lahore High Court as well as the order of the Family Judge, Jhang be declared null and void. This point is clear that this is not the proper forum for grant of this relief as prayed for by the petitioner, however we would like to stress here that according to the Constitution of Islamic Republic of Pakistan, 1973, once any judgment or decision of this Court attains finality, it becomes binding upon a High Court and on all courts subordinate to a High Court under Article 203GG of the Constitution. For ready reference, Article 203GG of the Constitution is reproduced as under:

"203GG. Subject to Articles 203D and 203F, any decision of the Court in the exercise of its jurisdiction under this Chapter shall be binding on a High Court and on all courts subordinate to a High Court."

However, here we think it appropriate to highlight this constitutional aspect of the jurisdiction of the Federal Shariat Court for the High Courts and

all the Courts subordinate to the High Courts to maintain conformity in the dispensation of justice as well as to avoid conflicting judgments.

- 3. The petitioner relied on a number of Ayats and Ahadith related to *Khula* and also misquoted our above referred judgment while arguing that a Family Court cannot grant a decree of *Khula* merely on the recording of plaintiff's statement in a suit for dissolution of marriage on the basis of *Khula* without having and recording the consent of her husband.
- 4. That pursuant to hearing the arguments of the petitioner at length, we had dismissed the petition in hand vide our short order dated 19.09.2023. So far as the relief *in-personam*, which is sought by the petitioner through this petition, is concerned, the petition is not proceedable. However, we have decided to give detailed reasons for dismissal of the petition to elucidate certain fundamental points related to *Khula* in order to eliminate some common misunderstandings prevalent in the society as same were stressed upon by the petitioner i.e. Khula is not an absolute right of a woman, even if she surrenders her Maher and makes a statement that she cannot live with her husband as his wife within the limits prescribed by Allah along with assigning the reason. Such misconceptions are common in our society and due to these misconceptions and misunderstandings, women face difficulties while seeking dissolution of marriage on the basis of *Khula* from the Family Courts so much so that at times they severely feel that their right of *Khula* is being denied, which is clearly and absolutely granted to them by Islam.
- 5. In view of the preliminary arguments advanced by the petitioner in the instant Shariat Petition, we have formulated the following points, which need

our deliberations to further clarify the distinction of this right of women, which is granted by Islam to them.

- I) Whether the right of *Khula* is an absolute right of a woman in Islam and what are the requirements that are necessary to obtain *Khula*?
- II) Whether a Judge can grant *Khula* when so demanded by a wife of a person and the husband is not agreeing to grant it to his wife?
- 6. Fundamentally the Verse-229 of Surah Al-Baqarah provides the basis of dissolution of marriage on the basis of *Khula* in the following manner:

اَلطَّلَاقُ مَرَّتٰنِ ١ فَاِمْسَاكُ بِمَعْرُوْفٍ اَوْ تَسْرِيْخُ بِاِحْسَانٍ ١ وَ لَا يَجِلُّ لَكُمْ اَنْ تَاخُذُوْا مِمَّا التَّيْتُمُوْهُنَّ شَيْئًا لِلَّا اَنْ يَخَافَا اللهِ اَلَّا يُقِيْمَا حُدُوْدَ اللهِ اللهُ اللهِ اللهِ اللهِ اللهِ اللهُ اللهِ اللهُ اللهِ اللهِ اللهُ اللهُ اللهِ اللهُ اللهُ اللهُ اللهِ اللهُ اللهُ اللهِ اللهُ اللهِ اللهُ اللهِ اللهُ اللهِ اللهُ اللهِ اللهُ اللهُ اللهُ اللهِ اللهُ اللهِ اللهُ اللهُ اللهِ اللهُ اللهِ اللهُ اللهَا اللهُ الله

طلاق (صرف) دو بارہے (یعنی جب دو دفعہ طلاق دے دی جائے تو) پھر (عور توں کو) یا تو بطریق شاکستہ (نکاح میں) رہنے دینا ہے یا بھلائی کے ساتھ چھوڑ دینااور یہ جائز نہیں کہ جو مہر تم ان کو دے چکواس میں سے کچھ واپس لے لوہاں اگرزن و شوم کوخوف ہو کہ وہ خدا کی حدوں کو قائم نہیں رکھ سکیں گے تواگر عورت (خاوند کے ہاتھ سے) رہائی پانے کے بدلے میں پچھ دے ڈالے تو دونوں پر پچھ گناہ نہیں یہ خدا کی (مقرر کی ہوئی) حدیں ہیں ان سے باہر نہ نکانااور جو لوگ خدا کی حدو سے باہر نکل جائیں گے وہ گنہگار ہوں گے۔

Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment. And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep [within] the limits of Allah. But if you fear that they will not keep [within] the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of Allah, so do not transgress them. And whoever transgresses the limits of Allah - it is those who are the wrongdoers.

Following Ahadith narrate and explain some practical examples of granting *Khula* to a lady by the Prophet (SAW). In this regard, following is the

most famous Hadith, which explains the issue of *Khula*, and is reported in Sahih Bukhari, Sahih Muslim and several other books of Hadith.

عن ابن عباس،" ان امراة ثابت بن قيس اتت النبي هي فقالت: يا رسول الله، ثابت بن قيس ما اعتب عليه في خلق و لا دين، ولكني اكره الكفر في الإسلام، فقال رسول الله دين الردين عليه حديقته؟ قالت: نعم، قال رسول الله دي اقبل الحديقة، وطلقها تطليقة". (صحيح البخاري: بَابُ الْخُلْع وَكَيْفَ الطَّلاَقُ فِيهِ) / (صحيح البخاري: بَابُ الْخُلْع وَكَيْفَ الطَّلاَقُ فِيهِ)

ہم سے ازمر بن جمیل نے بیان کیا، کہا ہم سے عبدالوہاب ثقفی نے بیان کیا، کہا ہم سے خالد نے بیان کیا، ان سے عکر مہ نے اور ان سے ابن عباس رضی اللہ عنہا نے کہ ثابت بن قیس رضی اللہ عنہ کی بیوی نبی کریم صلی اللہ علیہ وسلم کی خدمت میں حاضر ہوئی اور عرض کیا کہ یارسول اللہ! مجھے ان کے اخلاق اور دین کی وجہ سے ان سے کوئی شکایت نہیں ہے۔ البت میں اسلام میں کفر کو پیند نہیں کرتی۔ (کیونکہ ان کے ساتھ رہ کر ان کے حقوق زوجیت کو نہیں ادا کر سکتی)۔ اس پر نبی کریم صلی اللہ علیہ وسلم نے ان سے فرمایا کہ کیا تم ان کا باغ (جو انہوں نے مہر میں دیا تھا) واپس کر سکتی ہو؟ انہوں نے کہا کہ جی ہاں۔ نبی کریم صلی اللہ علیہ وسلم نے (ثابت رضی اللہ عنہ سے) فرمایا کہ باغ قبول کر لواور انہیں طلاق دے دو۔

Ibn 'Abbas told that the wife of Thabit b. Qais came to the Prophet and said, "Messenger of God, I do not reproach Thabit b. Qais in respect of character or religion, but I do not want to be guilty of infidelity (كفر) regarding Islam." God's Messenger asked her if she would give him back his garden, and when she replied that she would, he told him to accept the garden and make one declaration of divorce.

[emphasis added]

Same tradition is reported by *Ibn-e-Majah* in the following manner regarding the demand of dissolution of marriage on the basis of *Khula*. A wife of *Thabit Bin Qais* (RA) went to the Holy Prophet (SAW) and explained to him her willingness of dissolution of her marriage on the basis of *Khula*.

عن ابن عباس ، ان جميلة بنت سلول اتت النبي ﷺ، فقالت: والله ما اعتب على ثابت في دين، ولا خلق ولكني اكره الكفر في الإسلام لا اطيقه بغضا، فقال لها النبي ﷺ!" اتردين عليه حديقته ?"، قالت: نعم، فامره رسول الله ﷺ ان ياخذ منها حديقته ولا يزداد. (سنن ابن ماجه: بَابُ: الْمُخْتَلِعَةِ تَأْخُذُ مَا أَعْطَاهَا)

عبداللہ بن عباس رضی اللہ عنہما سے روایت ہے کہ جمیلہ بنت سلول رضی اللہ عنہا نے نبی اکرم صلی اللہ علیہ وسلم کے پاس آگر عرض کیا: اللہ کی قتم میں (اپنے شوم) ثابت پر کسی دینی واخلاقی خرابی سے غصہ نہیں کر رہی ہوں، لیکن میں مسلمان ہو کر کفر (شوم کی ناشکری) کو نالیند کرتی ہوں، میں ان کے ساتھ نہیں رہ پاؤں گی کیونکہ شکل وصورت سے وہ مجھے نالیند ہیں، تو نبی اکرم صلی اللہ علیہ وسلم نے ان سے فرمایا: "کیاان کادیا ہوا باغ واپس لوٹا دوگی"؟ انہوں نے کہا: ہاں، آپ صلی اللہ علیہ وسلم نے ثابت کو حکم دیا کہ اپنی ہیوی جمیلہ سے اپنا باغ لے لیس، اور زیادہ نہ لیں۔ Jamilah bint Salul came to the Prophet (ﷺ) and said: "By Allah, I do not find any fault with Thabit regarding his religion nor his behavior, but I hate disbelief after becoming Muslim and I cannot stand him. "The Prophet (ﷺ) said to her: 'Will you give him back his garden?" She said: "Yes." So the Messenger of Allah (ﷺ) told him to take back his garden from her and no more than that.

In following Hadith, an incident of *Habibah bint Sahl* (RA), who was another wife of *Thabit bin Qais* (RA) is narrated, which is also reported in several books of Hadith.

انها اخبرته، عن حبيبة بنت سهل الانصارية، انها كانت تحت ثابت بن قيس بن شماس، وان رسول الله في خرج إلى الصبح فوجد حبيبة بنت سهل عند بابه في الغلس، فقال رسول الله في: " من هذه؟" فقالت: لا انا حبيبة بنت سهل، قال: " ما شانك؟" قالت: لا انا ولا ثابت بن قيس لزوجها، فلما جاء ثابت بن قيس، قال له رسول الله في: " هذه حبيبة بنت سهل، وذكرت ما شاء الله ان تذكر "، وقالت حبيبة: يا رسول الله، كل ما اعطاني عندي، فقال رسول الله في اهلها.

«سنن النسائي/الطلاق 34 (3492)، (تحفة الأشراف: 15792)، وقد أخرجہ: موطا امام مالک/الطلاق 11(31)، مسند احمد (434/6)، سنن الدارمي/الطلاق 7 (2317) (-434/6)»

حبیبہ بنت سہل انصار یہ رضی اللہ عنہا سے روایت ہے کہ وہ ثابت بن قیس بن ثماس رضی اللہ عنہ کے زکاح میں تھیں، ایک بار کیا ہوا کہ رسول اللہ صلی اللہ علیہ وسلم فجر پڑھنے کے لیے نکلے تو آپ نے حبیبہ بنت سہل کو اندھیرے میں اپنے دروازے پر پایا، آپ صلی اللہ علیہ وسلم نے پوچھا: "کون ہے؟" بولیں: میں حبیبہ بنت سہل ہوں، آپ صلی اللہ علیہ وسلم نے فرمایا: "کیا بات ہے؟" وہ اپنے شوم رثابت بن قیس کے متعلق بولیں کہ میراان کے ساتھ گزار انہیں ہو سکتا، پھر جب ثابت بن قیس آئے تورسول اللہ صلی اللہ علیہ وسلم نے ان سے فرمایا: "یہ حبیبہ بنت سہل ہیں انہوں نے مجھ سے پھر جب ثابت بن قیس آئے تورسول اللہ صلی اللہ علیہ وسلم نے ان سے فرمایا: "یہ حبیبہ بنت سہل ہیں انہوں نے مجھ سے بہت سی باتیں جنہیں اللہ نے رسول! انہوں نے جو پچھ مجھے (مہر وغیرہ) دیا تھا وہ سلم نے ثابت بن قیس سے کہا: "اس (مال) میں سے لے لو"، توانہوں نے اس میں سے لے لو"، توانہوں نے اس میں سے لے لیا اور وہ اپنے گھر والوں کے پاس بیٹھی رہیں ۔

She (Habibah) was the wife of Thabit ibn Qays ibn Shimmas. The Messenger of Allah (الله) came out one morning and found Habibah by his door.

The Messenger of Allah (said: Who is this? She replied: I am Habibah, daughter of Sahl. He asked: What is your case? She replied: I and Thabit ibn Qays, referring to her husband, cannot live together.

When Thabit ibn Qays came, the Messenger of Allah () said to him: This is Habibah, daughter of Sahl, and she has mentioned (about you) what Allah wished to mention.

Habibah said: Messenger of Allah, all that he gave me is with me.

The Messenger of Allah (said to Thabit ibn Qays: Take it from her. So he took it from her, and she lived among her people (relatives).

7. These are considered by scholars of Ahadith as the basic Ahadith that explain the legality of *Khula* as a right of women in the Islamic Law because it was granted to them by the Holy Prophet (SAW) when so demanded by the ladies in lieu of *Mahar*. The abovementioned Ayat No.229 of *Surah Al-Baqarah* and Ahadith give us some fundamental points of guidance necessary for a court of law to keep in mind while passing a decree and judgment of dissolution of marriage on the basis of *Khula*. These points are as follows:

Firstly, it is the fundamental right of a woman according to the injunctions of Islam as laid down in the Holy Quran and Sunnah to claim decree for dissolution of marriage from the court of law, which cannot be denied.

Secondly, to seek a decree of dissolution of marriage on the basis of Khula from the court of law, levelling of any allegation of maltreatment or mistreatment and misbehavior is not at all necessary. It is sufficient for her to state that she dislikes her husband to the extent that she cannot live with him as his wife within the limits prescribed by Allah for the court to proceed upon her demand. The wordings of these Ahadith are also very relevant that any kind of subjective feeling regarding disliking of a husband is a valid ground of dissolution of marriage on the basis of Khula, no additional ground or proof is required by the court to prolong the matter.

Thirdly, in addition to that, the statement which is referred to in the preceding paragraph, if woman wants Khula from her husband and she willfully returns the full amount of Mahar to her husband as Badal-e-Khula (برل خلع), then the court should pass a decree of Khula without delay.

8. A decision of Hazrat Umar (R.A) is also relevant in this regard, which guides us that if a wife is discontented with her husband and does not want to continue to live with him as his wife then her marriage can be dissolved on the basis of *Khula*, even at a reduced amount of *Mahar* from the total amount of *Mahar*.

(14852) أَخْبَرَنَا أَبُو بَكْرٍ مُحَمَّدُ بْنُ إِبْرَاهِيمَ الْأَرْدَسْتانِيُّ أَخْبَرَنَا أَبُو نَصُرِ الْعِرَاقِيُّ حَدَّثْنَا سُفْيَانُ الْجَوْهِرِى حدَثْنَا عَلَى بْنُ الْحَسَنِ حَدَّثْنَا عَبْدُاللهِ بْنُ الْوَلِيدِ حَدَّثْنَا سُفْيَانُ عَنْ أَيُّوبَ السَّخْتِيَانِي قَالَ حَدَّثَنِي كَثِيرٌ مَولَى سَمُرَةً : أَنَّ امْرَأَةُ نَشَرَتْ مِنْ زَوْجِهَا فِي إِمَارَةٍ عُمَرَ بْنِ الْخَطَّابِ رَضِي اللَّهُ عَنْهُ فَامَرَ بِهَا إِلَى بَيْتٍ كَثِيرٍ الزَّبْلِ فَمَكَثَتُ فِيهِ ثَلَاثَةَ أَيَّامٍ ثُمَّ أَخْرَجَهَا فَقَالَ لَهَا : كَيْفَ رَأيتِ؟ قَالَتْ عَمْلُ رَضِي اللَّهُ عَنْهُ : اخْلَعُهَا وَلُوْ مِنْ قُرطِهَا [حس] : مَا وَجَدْتُ الرَّاحَةَ إِلَّا فِي هَذِهِ الأَيَّامِ فَقَالَ عُمَلُ رَضِي اللَّهُ عَنْهُ : اخْلَعُهَا وَلُوْ مِنْ قُرطِهَا [حس]

الوب سختیانی فرماتے ہیں کہ سمرہ کے غلام نے مجھے بیان کیا کہ ایک عورت نے حضرت عمرٌ کی خلافت میں اپنے خاوند کی نافرمانی کی تو آپ نے اسے نکالا اور تو آپ نے اسے ایک کو ٹھڑی میں بند کر دیا جس میں کوڑا کر سٹ بھرا ہوا تھا۔ تین دن قید رکھنے کے بعد آپ نے اسے نکالا اور پوچھا کہ تیرا کیا حال رہا۔ اس نے کہا خدا کی قتم مجھ کو انہی راتوں میں راحت نصیب ہوئی ہے۔ حضرت عمرٌ نے فرمایا: تو اس سے خلع کر لے ، اگرچہ ایک بالی کے عوض ہی کیوں نہ ہو۔ (السنن الکبری للبیقی، ص ۲۰۹۹، ج و)

An opinion of Hazrat Ali (RA) states that the amount of *Badl-e-Khula* should not be more than the total amount of Mahar. Majority of Muslim jurists are of the same opinion. Most of them are reported in the same book i.e. *Musannaf Ibn Abi Shaybah* as under:

These aforementioned decisions and opinions of the *Sahabah* (R.A) tell us that the amount of return of *Mahar* should not exceed from the maximum amount of *Mahar*, which is paid, however it can be settled at much lesser amount depending upon the circumstances of a case.

9. We would like to highlight this important point regarding *Khula* that it is not always necessary or binding on the woman to completely forego her dower for seeking dissolution of marriage on the basis of *Khula*. The amount of monetary compensation, which is to be paid by a woman, in a case of *Khula* cannot be greater than the dower amount received by her from her husband. This point is based on the wordings of the following Ahadith:

عن ابن عباس ، ان جميلة بنت سلول اتت النبي ﷺ، فقالت: والله ما اعتب على ثابت في دين، ولا خلق ولكني اكره الكفر في الإسلام لا اطيقه بغضا، فقال لها النبي ﷺ!" اتردين عليه حديقته ?"، قالت: نعم، فامره رسول الله ﷺ ان ياخذ منها حديقته ولا يزداد. (سنن ابن ماجه: بَابُ: الْمُخْتَلِعَةِ تَأْخُذُ مَا أَعْطَاهَا)

عبداللہ بن عباس رضی اللہ عنہما سے روایت ہے کہ جمیلہ بنت سلول رضی اللہ عنہا نے نبی اکرم صلی اللہ علیہ وسلم کے پاس آگر عرض کیا: اللہ کی قتم میں (اپنے شوم ر) ثابت پر کسی دینی واخلاقی خرابی سے غصہ نہیں کر رہی ہوں، لیکن میں مسلمان ہو کر کفر (شوم رکی ناشکری) کو نالپند کرتی ہوں، میں ان کے ساتھ نہیں رہ پاؤں گی کیونکہ شکل وصورت سے وہ مجھے نالپند ہیں، تو نبی اگر م صلی اللہ علیہ وسلم نے ان سے فرمایا: "کیاان کادیا ہوا باغ واپس لوٹا دوگی"؟ انہوں نے کہا: ہاں، آپ صلی اللہ علیہ وسلم نے ثابت کو حکم دیا کہ اپنی ہیوی جمیلہ سے اپنا باغ لے لیں، اور زیادہ نہ لیں۔

I do not find any fault with Thabit regarding his religion nor his behavior, but I hate disbelief after becoming Muslim and I cannot stand him. "The Prophet () said to her: 'Will you give him back his garden?" She said: "Yes." So the Messenger of Allah () told him to take back his garden from her and no more than that.

[emphasis added]

10. However, if a wife claims that she is forced to seek a decree of *Khula* because of her husband's ill-treatment or mistreatment, etc., the Court may reduce the amount of compensation if it finds the husband at fault after recording of evidence so much so that in severe cases, the Court may grant divorce in case of *Khula* to a wife without paying back any amount of *Mahar* (جبر) at all. Many great Muslim jurists are of this opinion, like Imam Muhammad Hassan Al-Shaybani, Imam Abu Hanifa and Imam al-Kasani etc. It

is reported by Imam Muhammad Hassan Al-Shaybani that Imam Abu Hanifa was of the following opinion in this regard:

محد قال: اخبرنا ابو حنيف عن حماد عن ابراهيم قال: اذا كان الظلم من قبل المراة فقد حلت لك الفدية، وان كان يجنى من قبل الرجل فلا تحل لم الفدية، قال محد: وبم ناخذ، لاتحب لم ان يزداد على ما اعطاها شينا وان فعل فهو جائز في القضاء.

ترجمہ! حضرت امام محمدٌ فرماتے ہیں! ہمیں حضرت امام ابو حنیفہؓ نے خبر دی وہ حضرت حمادؓ سے اور وہ حضرت ابراہیمؓ سے روایت کرتے ہیں وہ فرماتے ہیں جب ظلم عورت کی طرف سے ہو تو فدید لینا جائز ہے اور جب مرد کی طرف سے (زیادتی) ہو تواس کے لئے فدید جائز نہیں۔

(Ref: Imam Muhammad Shaybani, Kitab-ul-Asar, Page 258)

The matter is further elaborated by Imam Muhammad Hassan Al-Shaybani in his Muta as follow:

۔۔۔اذا جاء النشوز من قبلہ لم نحب لہ ان یاخذ منها قلیلا و لا کثیر ا۔۔۔
اگرزیادتی اور اختلاف مردکی طرف سے ہوتو ہم پند نہیں کرتے کہ وہ (عورت کا شوہر) اُس سے تھوڑایازیادہ کچھ بھی لے۔
(Ref: Muta Imam Muhammad, Page 288)

According to him, same was the opinion of Imam Abu Hanifa. In addition to that many other jurists are also of the similar opinion, which is quoted by Ibn Qudamah in al-Mughni as under:

(5751) فَصَلُّ: فَأَمَّا إِنْ عَضَلَ زَوْجَنَهُ، وَضَارً هَا بِالْصَرَّرْبِ وَالتَّصْيِيقِ عَلَيْهَا، أَوْ مَنَعَهَا مُقُوقَهَا؛ مِنْ النَّقَقَةِ، وَالْقَسْمِ وَنَحُو ذَلِكَ، لِثَقْتَدِي نَفْسَهَا مِنْهُ، فَفَعَلَتْ، فَالْخُلْعُ بَاطِلٌ، وَالْمَوضُ مُرْدُودٌ. رُويَ ذَلِكَ عَنْ ابْنِ عَبَّسٍ وَعَطَاءٍ وَمُجَاهِدٍ وَالشَّعْبِي وَالنَّخَعِي وَالْقَاسِمِ بْنِ مُحَمَّدٍ وَعُرْوةَ وَعَمْرو بْنِ شُعَيْبٍ وَحُمَيْدٍ بْنِ عَبْدِ الرَّحْمَنِ وَالذَّهُمْ وَلِهِ قَالَ مَالِكُ وَالثَّوْرِيُ وَقَتَادَةُ وَعَرْوةَ وَعَمْرو بْنِ شُعَيْبٍ وَحُمَيْدٍ بْنِ عَبْدِ الرَّحْمَنِ وَالذَّهُ مُن وَالْزُهُمْ وَهُو آثِمٌ عَاصٍ. وَالشَّافِعِيُ وَإِسْمَاقُ وَقَالَ أَبُو حَنِيفَةَ؛ الْعُقْدُ صَحِيحٌ، وَالْعِوْضُ لَازِمٌ، وَهُو آثِمٌ عَصِ. وَالشَّافِعِيُ وَإِسْمَاقُ وَقَالَ أَبُو حَنِيفَةَ؛ الْعُقْدُ صَحِيحٌ، وَالْعَوْضُ لَازِمٌ، وَهُو آثِمٌ عَصِ. وَالشَّافِعِيُ وَإِسْمَاقُ وَقَالَ أَبُو حَنِيفَةَ؛ الْعُقْدُ صَحِيحٌ، وَالْعِوْضُ لَازِمٌ، وَهُو آثِمٌ عَصِ. وَقَالَ أَبُو حَنِيفَةَ؛ الْعُقْدُ صَحِيحٌ، وَالْعِوْضُ لَازِمٌ مِن عَنْ الْعَرَامِ عَلَى اللَّهُ عِلْمَ الْعَرَامِ وَاللَّهُ عُلْمَ وَلَهُ وَاللَّهُ عَلَى عَلَى اللَّهُ وَلَا عَلَى اللَّهُ وَلَيْ عَلَى اللَّهُ وَلَا عَلَى اللَّهُ الْمَالِمُ اللَّهُ عَلَى اللَّهُ عَلَى اللَّهُ وَلَيْ عَلَى اللَّهُ وَلَوْ اللَّهُ عَلَى اللَّهُ اللَّهُ عَلَمُ اللَّهُ وَلَا وَلَا اللَّهُ عَلَى اللَّهُ الْمَالِ وَلَهُ مِن اللَّهُ وَلَا وَمُ اللَّهُ اللَّهُ عَلَى اللَّهُ اللَّهُ اللَّهُ عَلَى اللَّهُ اللَّهُ اللَّهُ مَلَى اللَّهُ اللَّهُ وَلَا اللَّهُ وَلَا اللَّهُ وَلَا اللَّهُ عَلَى اللَّهُ اللَّهُ اللَّهُ اللَّهُ اللَّهُ اللَّهُ اللَّهُ اللَّهُ وَلَا وَلَا اللَّهُ اللَهُ الْمُ اللَّهُ وَلَا اللَّهُ اللَّهُ اللَّهُ اللَّهُ اللَّهُ الْعُولُ اللَّهُ وَاللَّهُ وَلَا اللَّهُ عَلَى اللَّهُ اللَّهُ الْمُ اللَّهُ اللَّهُ اللَّهُ اللَّهُ اللَّهُ اللَّهُ اللَّهُ وَلَاللَهُ عَلَاللَهُ اللَّهُ اللَّهُ اللَّهُ وَلَا اللَّهُ عَلَيْهُ اللَّهُ اللَّهُ

المغني لابن قدامة، المؤلف: أبو مجهد موفق الدين عبد الله بن أحمد بن مجهد بن قدامة المقدسي (المتوفى: 620هـ)، الناشر: مكتبة القاهرة، تاريخ النشر: 1388هـ - 1968م (ج 7/ ص

- 11. This point was also elaborated by this Court in our earlier judgment reported as PLD 2022 FSC 25 (Imran Anwar Khan v. Government of Punjab, etc.). We have already declared in our abovementioned judgment that under the Islamic law, as laid down in the Holy Quran and Sunnah, no Badl-e-Khula (بدل خلع) can be fixed by a statute as a mandatory amount for claiming *Khula* from the husband through a Court. In case a woman voluntarily surrenders the entire amount of dower (مير) she received at the time of her marriage in lieu of claiming Khula or Badl-e-Khula through a Court, then the Court has no option but to grant the decree of dissolution of marriage in her favour, after providing a chance to the spouses for reconciliation before passing of any decree of Khula. However, if a lady claims that she wants to seek Khula from her husband through a Court due to any maltreatment, mistreatment or ill-treatment, then the Court will decide the quantum of amount to be returned by the lady to the husband for seeking Khula based on the evidence and circumstances of the case after determining who is responsible for breakdown of the marriage.
- 12. The right of *Khula* granted to women by the Holy Quran and Sunnah is an absolute and a unique right, whereby a marriage can be dissolved through a Court at her will. A wife can get this right by showing her willingness to return the *Mahar* to her husband and in addition by simply stating in a court of law that she can no longer live with her husband as his wife within the prescribed limits set by the Almighty Allah as a reason for dissolution of marriage. This right of women cannot be denied by the court of law.

13. In view of the above, the instant Shariat Petition being not maintainable was *dismissed* in *limine* vide short order announced in open Court on 19.09.2023 and these are the detailed reasons for the same.

(JUSTICE DR. SYED MUHAMMAD ANWER)
JUDGE

(JUSTICE IQBAL HAMEEDUR RAHMAN) CHIEF JUSTICE

(JUSTICE KHADIM HUSSAIN M. SHAIKH) JUDGE

Khalid/*

APPROVED FOR REPORTING.