101907 - Her husband divorced her and claims that he was drunk

the question

My husband sent me a message on my mobile saying “You are divorced.” Then he said to me that it was a moment of anger. That was the first divorce and he took me back. A week later he sent me a message saying, “You are divorced, you are divorced.” After that he admitted and swore to me that he was drunk in both cases. Does the divorce count as such?.

Detailed answer

Praise be to Allah.

As you are in a land where there are shar’i courts, you must refer the matter to the court to decide about your husband’s words and determine as to whether a divorce issued by one who is drunk counts as such or not, and the number of divorced that have been issued to you.

The husband has to repent to Allaah from drinking intoxicants, and he must tell the judge frankly about what really happened, and not conceal the fact that he was drunk, so that the judge may rule as to whether the marriage is still valid or not. And you should not allow him to be intimate with you until the judge decides about your case.

Shaykh Ibn ‘Uthaymeen (may Allaah have mercy on him) was asked about the wife of a man who was addicted to alcohol, and one day he drank until he was drunk, then he divorced her – does the divorce issued when he was drunk count as such or not?

He replied (may Allaah have mercy on him):

With regard to the wife’s question about her husband divorcing her when he was drunk, there is a difference of opinion among the scholars as to whether or not a divorce issued in a state of intoxication counts as such. The well known view according to the Hanbali madhhab is that it does count as such, as a punishment to him for drinking, because this drinker is disobeying Allaah, may

He be glorified and exalted, so his sin should not be accepted as a reason to be lenient and not let his divorce count as such. One of the scholars said: Rather a divorce issued by one who is drunk does not count as such, and this is what was narrated from the caliph ‘Uthmaan ibn ‘Affaan (may Allaah be pleased with him), and it is more in tune with the analogy of other cases, because the drunkard is not aware of what he is saying and does not realize what he is saying, so how can he be held to something that he was unaware of? Allaah says (interpretation of the meaning): “O you who believe! Approach not As-Salaah (the prayer) when you are in a drunken state until you know (the meaning) of what you utter” [al-Nisa’ 4:43]. This indicates that the drunkard does not know what he is saying, so how can he be held to something he does not know?

As for their saying that it is a punishment, the punishment for the one who drinks alcohol is only for himself; he is to be punished with the flogging that is mentioned in the Sunnah. If we punish him by making his divorce count as such, then in fact this punishment affects his wife too, as separation takes place, and she may have children, so the family is broken up and the harm affects people other than him. So the correct view is that the divorce of a drunkard does not count as such, and what he says should not be taken seriously, but nevertheless this case should referred to the shar’i court so that we may determine whether his wife should stay with him or separate from him, and the shar’i court may put an end to any difference of opinion. And Allaah is the Source of strength.

End quote from Fataawa Noor ‘ala al-Darb.

He was also asked: What is the ruling on a man who divorces his wife when he is drunk, and he says that he was in a state of extreme intoxication, but he understood what he was saying. Does this divorce count as such?

He replied: There is a difference of opinion among the scholars as to whether a divorce issued by a drunk counts as such. Some of them say that it does not count as such, and others say that it does. Such cases are difficult because if the man was drunk and was aware of what he was saying, then the case should be referred to the court so that the judge may rule as he sees fit. But if it was a first or second talaaq, the husband should be told to take her back, just o be on the safe side.

End quote from Liqa’ al-Baab al-Maftooh (10/24).

And Allaah knows best.