102331 - He said to his wife, “If I bring you home then you are divorced”

the question

I used to prepare my luggage to leave after my husband dismisses me due to an argument I have with him. But he used to stop me and say: “you will be divorced if you leave” so I was just staying. This happened three times. The last argument same thing happened, so I carried my luggage and said: “I am leaving” he said: “I will send you to your family but you will be divorced if I take you back” he meant to say that he does not want me to return. That time I left.

My question is: What is the ruling on what he said? He wants me and our children back, but I fear he has to expiate first. Shall I find someone else to return me back to my home, as his intention was to divorce me if he returns me to his home; because he was very angry?.

Detailed answer

Praise be to Allah.

Firstly:

What is prescribed for the Muslim is to avoid using divorce in arguments between him and his wife, because of the grave consequences that result from divorce. Many men take the matter of divorce lightly, so every time there is an argument between a man and his wife he swears that he will divorce her, and every time he disagrees with his friends he swears that he will divorce his wife, and so on. This is a kind of toying with the Book of Allaah. If the Prophet (peace and blessings of Allaah be upon him) regarded the one who divorced his wife three times in one go as toying with the Book of Allaah, then how about the one who takes divorce as a habit, and every time he wants to stop his wife doing something or urge her to do something, he swears that he will divorce her?! Al-Nasaa’i (3401) narrated that Mahmoud ibn Labeed said: The Messenger of Allaah (peace and blessings of Allaah be upon him) was told about a man who had divorced his wife three times in one sitting. He stood up angrily and said, “Is he playing with the Book of Allaah whilst I am still among you?” Then a man stood up and said, “O Messenger of Allaah, shall I not kill him?” Al-Haafiz

said: the men of its isnaad are trustworthy. This was classed as saheeh by al-Albaani in Ghaayat al-Maraam, 261.

Shaykh Ibn ‘Uthaymeen (may Allaah have mercy on him) said:

Those foolish men who utter words of divorce for every matter, minor or major, are going against the teaching of the Prophet (peace and blessings of Allaah be upon him) who said: “Whoever swears (an oath), let him swear by Allaah or else remain silent.” Narrated by al-Bukhaari, 2679. So if a believer wants to swear an oath, let him swear by Allaah.

Moreover we should not make a lot of oaths, because Allaah says (interpretation of the meaning):

“And protect your oaths (i.e. do not swear much)”

[al-Maa'idah 5:89]

The commentaries on this verse may be summed up as saying that what it means is: do not swear a great deal by Allaah.

But swearing to divorce one’s wife, such as saying, “My wife is divorced if she does such and such,” or “My wife is divorced if she does not do such and such,” or “if I do such and such then my wife is divorced,” or “If you do not do such and such then my wife is divorced,” and so on, is contrary to the teachings of the Prophet (peace and blessings of Allaah be upon him).

Fataawa al-Mar’ah al-Muslimah, 2/753.

Secondly:

Your husband’s saying “If you go out you are divorced” or “I will send you to your family and if I take you back you are divorced” are examples of a divorce that is conditional upon something, and reference should be made to the husband’s intention. If his intention was to divorce you, then divorce takes place if you go out, but if he did not intend to divorce you and he intended only to stop you from going out, then it comes under the ruling on oaths, and if you go out or he takes you back, then he has to offer kafaarat yameen (expiation for breaking an oath), and no divorce takes

place as a result.

Shaykh Ibn ‘Uthaymeen said:

The most correct view is that if divorce is used as a vow, in the sense that the intention behind it is to urge someone to do something, or to stop them from doing something, or to prove that someone is telling the truth or lying, or to confirm something, then it comes under the rulings on vows, because Allaah says (interpretation of the meaning):

“O Prophet! Why do you forbid (for yourself) that which Allaah has allowed to you, seeking to please your wives? And Allaah is Oft-Forgiving, Most Merciful.

Allaah has already ordained for you (O men) the absolution from your oaths”
[al-Tahreem 66:1-2]

So Allaah has made forbidding something to oneself a vow or oath.

And the Prophet (peace and blessings of Allaah be upon him) said: “Actions are but by intentions, and every man will have but that which he intended.” Al-Bukhaari, 1.

This man did not intend to divorce, rather he intended to swear an oath, or something of that nature. So if he breaks his vow, then it is sufficient for him to offer kafaarat yameen. This is the more correct view.

Fataawa al-Mar’ah al-Muslimah, 2/754

The Standing Committee was asked about a man who said to his wife, “You will be divorced if you do not come with me,” and she did not go with him. Does this mean that they are divorced?

They replied:

If you did not intend that divorce should take place, rather you meant to urge her to go with you, then divorce has not taken place. But you have to offer kafaarat yameen, according to the more sound of the two scholarly opinions. If you did intend that divorce should take place and she did

not do as you said, then she has been divorced once.

Fataawa al-Lajnah al-Daa'imah, 20/86.

Thirdly:

If your husband's intention was to divorce you, as you say, then you should look at what he meant when he said "If I bring you back." If what he meant was "if I bring you back myself", but there was no reason why someone else should not bring you back or you should not come back by yourself, then in that case you should go back with someone else, and no divorce takes place.

But if what he meant was that divorce would take place in all cases, whether he brought you back or someone else brought you back, then if you go back, a revocable divorce takes place – if this is the first or second talaaq – and he may take you back during the 'iddah.

Fourthly:

If the husband said this in a moment of anger, then you should look at the level of this anger, as is explained in the answer to question no. 45174 and 82400.

And Allaah knows best.