112012 - He divorced a woman by zihaar before the marriage contract was done with her, and he wants to marry her!

the question

There is a young man who is 29 years old. His family sent word to him that they had proposed marriage for him to a girl whom he knows. When the news reached him, he said: She is to me as my mother's back (zihaar), and she is thrice divorced, because he did not want her. When he went to his family, he found that they had not proposed marriage to the girl for him; it was only a suggestion. But in the end, this man was convinced about this girl and wanted to marry her, and he is asking what is the ruling on what he did? Does he have to offer expiation for the zihaar or not? What is the ruling on the threefold divorce that he uttered? Please note that when he said these two things, the marriage contract had not been done with the girl; rather it was only a suggestion from his family.

Detailed answer

Praise be to Allah.

Before answering this question, I should advise this brother about this conduct and foolishness. The fact that he uttered the words of zihaar and divorced her three times, before the marriage contract was done and just because he was told that a proposal had been made to her on his behalf, is to be regarded as a sign of serious haste and foolishness. The wise and resolute person is the one who controls himself and does not do anything except that which leads to good consequences. How many people have been overcome by foolishness and anger and done things which they regret later on.

With regard to what he did of zihaar and divorcing this woman with whom he had not done the marriage contract, it does not amount to anything, because divorce cannot happen except after the marriage contract, because Allah says (interpretation of the meaning): “O you who believe!

When you marry believing women, and then divorce them before you have sexual intercourse with them" [al-Ahzaab 33:49]. And because divorce is for the one who has the right of intimacy with a woman, and he did not have the right to intimacy until then and did not have a marriage contract; and because divorce is undoing the marriage contract, and so long as he has not got married, there is nothing to be undone.

With regard to zihaar, Allah says (interpretation of the meaning): "And those who make unlawful to them (their wives) by Zihaar" [al-Mujaadilah 58:3]. So zihaar is connected to their wives, and so long as the marriage contract has not been done with a woman, she is not one of his wives, so zihaar cannot apply to her. But if this man intended by means of zihaar to refrain from having intercourse with her, then he must offer expiation for breaking an oath (kafaarat yameen) if he had married her and had intercourse with her, so as to be on the safe side and so as to discharge any obligation. As for his zihaar, it is not binding, because she is not one of his wives. Expiation for breaking an oath is freeing a slave, or feeding ten poor persons, or clothing them. If he cannot do that, then he must fast for three consecutive days. End quote.

Shaykh Muhammad ibn 'Uthaymeen (may Allah have mercy on him).