125215 - Does signing a divorce paper count as divorce?

the question

One of my friend's husband got married for third time, my friend is second wife, as my friend came to know about this marriage she asked her husband but he denied of third marriage , so she asked her husband to sign on divorce paper which she has created on behalf of her husband for third wife, he signed those papers into which the word TALLAQ is written for three times just to prove that he did not marry for third time. now he says that those papers were not meant to devorce her amd his third marriage is still valid and he is living with his third wife and is having kid. so cud u pls tell me weather this type of divorce null & void his marraiage or not. please do reply.the exact writing was; " I so and so divorce my wife so and so the daughter of so and so for three times(thrice)." and undersigned the divorce contract/ paper. After some days he denied of it.

Detailed answer

Praise be to Allah.

Firstly:

Just as divorce (talaaq) may be done verbally it may also be done in writing. If a person clearly writes that he is divorcing his wife and intends divorce thereby, then divorce does take place.

That is because expressing it in writing is the same as expressing it verbally; the pen is one of the two tongues.

The condition according to the majority of fuqaha’ is that he should have the intention of divorce when writing, because he may intend by writing it that divorce should take place or he may intend something else, such as upsetting his wife. So divorce does not take place in writing unless there is the intention to that effect.

See: al-Mabsoot, 6/143; Minah al-Jaleel Sharh Mukhtasar Khaleel (4/91); Asna’l-Mataalib, 3/277; al-

Insaaf, 8/473.

Secondly:

If a person does not speak the word of divorce or write it with his own hand, but he is presented with a paper on which the word of divorce to his wife is written and is asked to sign it and does so, then reference should be made to his intention at the time of signing.

If he had decided to divorce and was intending to do so, then it counts as a divorce. If he wrote it but did not intend to divorce, then it does not count as a divorce. That is because signing is not a clear statement of divorce, and that which is not a clear statement could not be ruled to count as a divorce except with the intention of divorce. There are some scholars who think that signing on its own does not count as a divorce in any case.

Shaykh Muhammad ibn Ibraaheem (may Allah have mercy on him) said, answering a similar question: We have studied your question that you addressed to us and we understand from it that something happened between a man and his wife that made him angry with her, and his maternal uncle suggested that he divorce her. The uncle took a piece of paper and wrote with his own hand "So and so is divorced three times", meaning the wife of his nephew. He gave the paper to his nephew to sign it, and he signed it without saying anything. She is asking whether his signature means that divorce has taken place.

The answer was:

There is no doubt that this signature is not regarded as one of the expressions of divorce at all, nor is it a clear statement of divorce, and it is not one of the metaphors for divorce. It does not come under the heading of writing, because the husband did not write that he was divorcing his wife so that it may be regarded as a divorce on the basis of writing. The most that can be said about this matter is that he wrote his name beneath the words written by someone else. If he did not say any of the words that were written on the paper mentioned, and he only wrote his name at the bottom, it does not seem to us that divorce has taken place as a result of his signing this piece of paper. And Allah is the source of strength. End quote.

Fataawa wa Rasaa'il Muhammad ibn Ibraaheem Aal al-Shaykh, 11/44

Shaykh Ibn Jibreen (may Allah have mercy on him) favoured the view that signing for divorce in court counts as a divorce. We have quoted his fatwa in the answer to question number 9593.

As this paper is not an official document that could be accepted in court and he did not intend divorce by signing it, his wife is not divorced.

And Allah knows best.