152242 - Ruling on a divorce that was issued before consummation when the wife was menstruating

the question

What is the ruling on a divorce that was issued after the marriage contract was done and before consummation, when the woman was menstruating? If her husband takes her back after that, is it essential to have a new mahr and marriage contract?.

Detailed answer

Praise be to Allah.

Firstly:

It is permissible for a man to divorce his wife with whom he has not consummated the marriage when she was menstruating, because she will not be harmed by this divorce as she is not obliged to observe the ‘iddah. Allah, may He be exalted, 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, no ‘Iddah [divorce prescribed period] have you to count in respect of them”

[al-Ahzaab 33:49].

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

The innovated divorce (talaaq al-bid‘ah) refers to number and time, i.e., it is innovated either because it happens at a time when issuing a divorce is haraam, or because the number is haraam. So the innovation has to do with time, such as if he divorces a woman who is obliged to observe the ‘iddah by counting menstrual cycles when she was menstruating; or during a period of purity in which he had intercourse with her, and she is a woman who menstruates and she does not appear to be pregnant. But if it becomes clear that she is pregnant, it is permissible for him to

divorce her, even if he had intercourse with her during that period of purity. The same applies if she is not obliged to observe the ‘iddah, such as a wife with whom he has not consummated the marriage; if he divorces her when she is menstruating, the divorce is valid; or if she does not menstruate, such as a minor or an old lady, there is nothing wrong with him divorcing her.

End quote from al-Sharh al-Mumti‘, 13/13

Secondly:

If a man divorces his wife before consummating the marriage with her, he does not have the right to take her back, because taking her back can only be done during the ‘iddah period, and the woman who is divorced before the marriage is consummated does not have to observe the ‘iddah.

Ibn Qudaamah said in al-Mughni (7/397):

The scholars are unanimously agreed that a woman with whom the marriage has not been consummated becomes irrevocably divorced with one talaaq, and the one who divorced her does not have the right to take her back. That is because taking back can only be done during the ‘iddah, and there is no ‘iddah before consummation of the marriage, 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, no ‘Iddah [divorce prescribed period] have you to count in respect of them”

[al-Ahzaab 33:49]. End quote.

Based on this, if a man divorced his wife before consummation of the marriage, then he wants to take her back, he has to do a new marriage contract with her, with a new mahr.

For more information please see the answer to question no. 99597

And Allah knows best.