247268 - Stipulating acceptance of khul‘ in a single meeting

the question

We have been married for 7 years. We have 2 children. We got married for the sake of Allah and we still love each other. To get the islamic knowledge and help each other in religion and the dunya was our common aim.
Unfortunately, for the last few years we are not getting any Islamic knowledge, we have different opinions on many issues and we are not saticfied with each other. Recent years we were having conflicts. During one of these conflicts weve thought that there is no escape and I asked for hkulu. It was done due to emotions, hard feelings and pain. That time it seemed to be the best decision for both of us. So he left the house but as soon as he did this I called him and told him that I dont want khulu and I don't want separation.
By that time my husband already sent me message telling that he is letting me free but the hkulu will come into effect in 6 month and before that time we will live as husband and wife. So 4 months passed, many things changed, we have nice relationships and we don't want to leave each other anymore. My husband happend to be in difficult situation so I don't want to leave him alone. And it will be extreamly difficult for me to stay without him as well.
I know that we can make a nikah after iddat but the problem is that most probably my parents may not let me marry him since they dislike him.
I want to know does the khulu given with 6 month delay have the power?

Detailed answer

Praise be to Allah.

Firstly:

Khul‘ refers to separation of the spouses in return for compensation paid to the husband.

But is it a divorce (talaaq) or annulment (faskh)? There is a difference of opinion among the

fuqaha', but they are agreed that it leads to permanent ending of the marriage, so the husband cannot take back the wife from whom he separated by means of khul', except with a new marriage contract.

It is stipulated that acceptance of the khul' should take place in the same meeting as the proposal thereof is given, and that the one who requested it should not recant before the other accepts, and that the acceptance should be on the same basis as the proposal. If any of these conditions is not met, then no khul' takes place.

Thus you will realise that the khul' you asked about did not count as such, because all three conditions were not met:

Firstly:

The husband's acceptance of the proposal of khul' did not occur in the same meeting; rather it came after he left.

In al-Mawsoo'ah al-Fiqhiyyah it says: The four madhhabs state that if a husband wants to separate from his wife by means of khul', the acceptance thereof can only be valid if it occurs in the same meeting. But what counts according to the Hanafis is the time of the meeting with the wife, if they did not stipulate the condition of choice, and provided that the wife did not initiate the process, and it is not valid for the husband to recant, even before her acceptance (of his proposal of khul'), but it is valid for him to take her back so long as he has not accepted the proposal, if she is the one who initiated it.

What matters according to the rest of the fuqaha' is the time of the meeting of the two parties to the khul'. This is also the view of the Hanafis, if it is the wife who initiated the proposal of khul'. Similarly, if they stipulate that they have the choice (of either going ahead or not), and whether it is to take effect immediately or later, with regard to the proposal and acceptance, that is similar to the issue of buying and selling, in their view. All of this is applicable when no condition is stipulated.

Accepting the proposal in the same meeting is not required if it is made conditional, except according to Ibn ‘Abd as-Salaam among the Maalikis, or if the wife is the initiator of the khul‘, according to the Shaafa‘is and Hanbalis, because she is offering something in return for separation.

Rather when acceptance is made conditional upon something happening, it takes effect when that thing happens. End quote.

The view of the Hanafis is that if the woman is the initiator of the khul‘, then the husband must be present in the meeting, but if he is the initiator, then it is not stipulated that she be present.

It says in Badaa’i‘ as-Sanaa’i‘ (3/145): Khul‘ on the part of the husband is equal to an oath (yameen), and is like making divorce conditional upon her accepting compensation in return for separation. Khul‘ on the part of the wife is like giving money in return for separation, so it is giving something in return, so that if the husband initiates the khul‘, and he says: “I want to separate from you by means of khul‘ in return for one thousand dirhams,” the husband has no right to recant or cancel the khul‘, or to forbid his wife to accept it, and it is not cancelled by him leaving the meeting before she accepts it, and it is not necesary that the woman be present. Rather the issue may go beyond the time of the meeting, even if the woman is absent, then she hears about [the khul‘]; in that case she has the right to accept it, in a meeting at which she is present, because in her case it is the issue of compensation in return for divorce.

If it is initiated by the woman, such as if she says: I want to separate from you by means of khul‘ in return for one thousand dirhams, she has the right to recant before the husband accepts it, and it is invalidated if she leaves the meeting, or if he leaves the meeting too.

What happens after the meeting ends is irrelevant, such as if the husband is absent, even if he hears about the proposal and accepts it; in that case it is not valid. End quote.

It says in Majma‘ al-Anhur (2/108): Khul‘ is like divorce in return for money, compensation that is to be paid by the woman because she is giving money for the purpose of maintaining her well-being.

He further said: It is valid for her to recant her proposal before he – namely the husband – accepts it, after she has made her proposal. So for example, if she says: “I want to separate from you by means of khul‘ in return for such and such,” then she recants before he accepts it, in that case the proposal is no longer valid.

Khul‘ is also rendered invalid by leaving the meeting before it is accepted, as the matter is subject to the same rulings as buying and selling, and it is not valid to connect it to a condition. It is stipulated that the husband should be present; even if he is absent and news reaches him, so he accepts the proposal, it is not valid. End quote.

Secondly:

You recanted the khul‘ before your husband accepted it.

Thirdly:

In the case of khul‘ it is stipulated that the acceptance should be in accordance with the proposal. If the proposal and acceptance differ, then the khul‘ does not count. You asked for khul‘ with immediate effect, whereas your husband accepted it with a delay of six months.

In al-Mawsoo‘ah al-Fiqhiyyah (19/156) it says: The acceptance should be in accordance with the proposal. If the proposal and acceptance differ, such as if he says, “I will divorce you in return for one thousand,” and you say, “I accept in return for two thousand,” or vice versa, such as if he says, “I will divorce you in return for two thousand,” and you say: “I accept in return for one thousand,” or he says, “I will divorce you thrice in return for one thousand,” and you say, “I will accept one divorce in return for one third of one thousand,” then all three cases come under the heading of idle talk, because of the difference between the proposal and acceptance, as is the case with regard to rulings on buying and selling. End quote.

And Allah knows best.