307160 - A divorced woman waived her right to maintenance during the ‘iddah, then changed her mind during that time

the question

A man divorced his wife, then asked her to waive her right to maintenance during the ‘iddah, and she agreed. But after that, during the ‘iddah, she said that she had no right to waive this maintenance. The ‘iddah has now ended; does he have to pay anything now?

Detailed answer

Praise be to Allah.

Firstly:

If the divorce (talaq) is revocable and it is a divorce of one with whom the marriage was consummated, and is not granted in return for some compensation, a first or second talaq, then the woman is entitled to maintenance for the duration of the ‘iddah.

Ibn Hazm (may Allah have mercy on him) said in *Maratib al-Ijma‘* (p. 78): The scholars are unanimously agreed that the woman who is observing ‘iddah following a revocable talaq is entitled to accommodation and maintenance. End quote.

Secondly:

If the divorced woman waives maintenance during the ‘iddah, and she is an adult of sound mind, her waiving of it is valid, and it is a kind of charitable act on her part.

But if she changes her mind and asks for maintenance, she is entitled to maintenance for the remainder of the ‘iddah, because her right to maintenance is renewable, little by little, so she has the right to demand what remains of that maintenance.

Ibn Qudamah (may Allah have mercy on him) said in *al-Mughni* (8/207): If she agrees to stay with him despite his financial hardship, or despite the fact that he has stopped spending on her maintenance, then she decided to seek an annulment, she may do that. Similarly, if she married someone who is not well off, when she was aware of his situation and accepted it and accepted the fact that he would not spend on her, or he stipulated that he would not spend on her, then she decided to annul the marriage, she has the right to do that. This was stated by ash-Shafa'i.

Al-Qadi said: According to the apparent meaning of Ahmad's words, she has no right to annul the marriage and her choice of annulment is invalid in both scenarios. This is also the view of Malik.

In our view, the obligation to spend on her maintenance is renewed every day, and her right to annul the marriage is also renewed, and it is not valid for her to waive her right with regard to what has not become due to her yet, such as waiving her right to pre-emption before deciding to sell. Therefore, if she waives future maintenance, it is not waived. End quote.

It says in *Matalib Uli'n-Nuha* (5/637): The wife of the man who is facing financial hardship has the right to ask for annulment afterwards – meaning after she had accepted to stay with him… Or after she said, "I waive future maintenance," then she decided to annul the marriage. She has the right to do that, because the obligation of maintenance is renewed every day, and thus her right to annul the marriage is renewed every day, and it is not valid to waive her maintenance which has not yet become due to her, like waiving the right to pre-emption before deciding to sell. The same applies if she waived the mahr or maintenance before marriage. End quote.

Based on that, the husband must provide maintenance from the moment the recently-divorced woman changes her mind, until the end of the 'iddah.

As for what had passed before she changed her mind, she has no right to ask for that maintenance, because it was waived and is in the past, and whatever is like that cannot come back.

It says in *Durar al-Hukkam*, discussing this principle: That is, if someone waives a right that it is permissible for him to waive, that right is waived, and after having waived it he cannot go back

and ask for it..

As for a right which cannot be waived, it is not waived even if the one who is entitled to it says that it is waived.

For example, if someone is owed money by another person and he waives it for the borrower, then he had second thought and regretted waiving it for that man, then it is not permissible for him to go back to the borrower and ask him to pay the debt, because he has waived it and the debt is a kind of right that one may waive, and because the borrower is absolved of any obligation when the lender waives his right to the debt."(*Durar al-Hukkam Sharh Majallat al-Ahkam* 1/54).

And Allah knows best.