175314 - He divorced her before consummating the marriage, and he had given her cash, a jewellery set and other gifts, and had written down the deferred portion of the mahr. What is he entitled to take back?

the question

I did the marriage contract with my maternal cousin, but I did not consummate the marriage with her for a number of reasons which led to divorce. I agreed with them that I would give her a mahr of fifty thousand and a jewellery set worth thirty thousand, and the delayed portion of the mahr would be fifty thousand. After that, she said to me: Can you increase the delayed portion to one hundred thousand, to be like the delayed portion of my paternal cousin, which is one hundred thousand. In fact, I agreed that the delayed potion would be thirty thousand, and I signed a cheque for the balance of seventy thousand. What is her right according to Islamic teachings, as I gave her a mahr of fifty thousand and a jewellery set worth thirty thousand, and they are in her possession; I also gave her other gifts, and the delayed potion that we agreed upon is fifty thousand, but after that I increased it to be equal to that of her paternal cousin. I also agreed with her to give her an apartment as a gift; please note that I am still paying instalments on it until now, and I will take possession of the apartment in two years' time. Is she entitled to the apartment if the gift was given on the condition that the marriage takes place? Please note that the apartment is not in my possession or hers, because I will take possession of it in two years' time. May Allah reward you with good.

Detailed answer

Praise be to Allah.

Firstly:

If a man divorces his wife before consummation of the marriage, and he had specified what the mahr would be, she is entitled to half of the mahr, because Allah, may He be exalted, says

(interpretation of the meaning):

{And if you divorce them before you have touched them and you have already specified for them an obligation, then [give] half of what you specified - unless they forego the right or the one in whose hand is the marriage contract foregoes it. And to forego it is nearer to righteousness. And do not forget graciousness between you. Indeed Allah, of whatever you do, is Seeing} [al-Baqarah 2:237].

In *al-Mawsoo'ah al-Fiqhiyyah* (39/177) it says: The fuqaha' are unanimously agreed that if a man divorces his wife before consummating the marriage and he had already specified what the mahr would be, he must give her half of that mahr, because Allah, may He be exalted, says (interpretation of the meaning): {*And if you divorce them before you have touched them and you have already specified for them an obligation, then [give] half of what you specified* }. This is a clear text concerning this matter, so it is obligatory to act in accordance with it. End quote.

The mahr includes everything that you gave of cash, jewellery and the delayed portion of the mahr. Therefore she must return half of the cash and half of the jewellery, and you must give her half of the deferred portion. So she must return to you twenty-five thousand and half of the jewellery set, and you must give her fifty thousand, because after increasing it, the delayed portion was one hundred thousand.

Secondly:

With regard to the gifts other than the mahr, it is permissible for you to ask for them to be returned, if the divorce was requested by the wife, because they are gifts that were given for a purpose, namely marriage, and that purpose is no longer applicable. Therefore it is permissible for you to take them back.

Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) said: What is stated is in accordance with the guidelines of the madhhab, which is in accordance with Islamic principles: if someone is given a gift for some specific purpose, then this gift is to be confirmed if that purpose is still applicable, and the gift may be taken back if that purpose is no longer applicable. The gift is

haraam if the purpose is haraam, and it is halaal if the purpose is halaal. If the gift was given before the marriage contract was done and after they promised him that they would accept his proposal of marriage, then they gave their daughter in marriage to someone else, then he may take back the gifts. The money that was given is to be regarded as part of the mahr, even if it was not recorded as such, if they all realise that it was given as part of the mahr – in other words, if they all acknowledge that it is part of the mahr." (A*l-Fataawa al-Kubra* 5/472).

With regard to the apartment, it is permissible for you to take it back, whether the divorce was instigated by you or was at her request, because it is a gift that has not yet been received, and it is permissible to take back a gift before it is received by the intended recipient.

In *al-Mawsoo'ah al-Fiqhiyyah* (6/146) it says: It is permissible to take back a gift before it is received by the intended recipient according to the majority of scholars. But if the gift has been received, then it cannot be taken back according to the Shaafa'is and Hanbalis, except in the case of a gift from a father to his son. According to the Hanafis it is permissible to take back a gift if it was given to a stranger.

According to the Maalikis, it is not permissible to take back a gift before or after it has been received in most cases, except in the case of a gift from a father to his son. End quote.

If you overlook small gifts that your ex-wife had already received, and insist on keeping your apartment, that is good.

We ask Allah to compensate you with something better, and to make you independent of means from His bounty.

And Allah knows best.