36580 - He pronounced divorce three times but the qaadi wrote it down as one divorce. The ‘iddah has now ended and he wants to take her back

the question

I divorced my wife about eight years ago. When I asked the qaadi to record the divorce I said: “I divorce my wife So and so the daughter of So and so three times.” When I did that I knew what he had written down because I am an educated man, but when the scribe wrote it down in the records, he wrote it as one divorce. This gave my wife the hope that I would take her back and she has not remarried until now… Now I want to take her back, and her family also wants that.
Should I go against my intention and proceed on the basis of what is written in the records or not?.

Detailed answer

Praise be to Allah.

The scholars differed concerning the ruling on one who divorces his wife by saying “I divorce you thrice”. The majority of scholars are of the view that this means that divorce has taken place three times; others are of the view that divorce takes place only once.

Shaykh ‘Abd al-‘Azeez ibn Baaz (may Allaah have mercy on him) was asked:

A man divorced his wife by saying “I divorce you thrice”; what is the ruling on that?

He replied:

If a man divorces his wife three times with one word, such as saying, “You are thrice divorced”, the majority of scholars are of the view that the woman is indeed thrice divorced and becomes forbidden for her husband until she has been married to another man in a serious marriage in which the new husband has intercourse with her and they only separate as a result of death or divorce, not a tahleel marriage (i.e., a marriage of convenience aimed at making it permissible for

her to remarry her former husband).

They quoted as evidence for that the fact that ‘Umar ibn al-Khattaab (may Allaah be pleased with him) counted such a divorce as being three and judged among people accordingly.

Other scholars were of the view that this is to be regarded as a single divorce, and the husband may take her back so long as the ‘iddah has not yet ended. If the ‘iddah has ended then she may marry him with a new marriage contract. They quoted as evidence for that the report narrated in Saheeh Muslim from Ibn ‘Abbaas (may Allaah be pleased with him) who said: “At the time of the Messenger of Allaah (peace and blessings of Allaah be upon him), the time of Abu Bakr (may Allaah be pleased with him) and the first two years of the caliphate of ‘Umar (may Allaah be pleased with him), a threefold divorce was counted as one. ‘Umar said: “People are being hasty with regard to a matter in which they should not rush. Let us count it as three and judge between people accordingly .” According to another report narrated by Muslim: Abu’l-Sahba’ said to Ibn ‘Abbaas (may Allaah be pleased with them): “Was not three counted as one at the time of the Messenger of Allaah (peace and blessings of Allaah be upon him) and the time of Abu Bakr (may Allaah be pleased with him) and the first three years of the time of ‘Umar (may Allaah be pleased with him)?” He said: “Yes,”

They also quote as evidence the report narrated by Imam Ahmad in al-Musnad with a jayyid isnaad from Ibn ‘Abbaas (may Allaah be pleased with him), that Abu Rakaanah divorced his wife by saying “I divorce you thrice”, then he regretted it, so the Prophet (peace and blessings of Allaah be upon him) returned her to him with one word and said, “This is only one (divorce).” This hadeeth and the one before it are to be understood as referring to divorcing by saying “I divorce you thrice”, in order to reconcile these two hadeeths and the verse in which Allaah says (interpretation of the meaning):

“The divorce is twice”

[al-Baqarah 2:229]

“And if he has divorced her (the third time), then she is not lawful unto him thereafter until she

has married another husband. Then, if the other husband divorces her, it is no sin on both of them that they reunite, provided they feel that they can keep the limits ordained by Allaah. These are the limits of Allaah, which He makes plain for the people who have knowledge”

[al-Baqarah 2:230]

This was the view of Ibn ‘Abbaas (may Allaah be pleased with him) according to a saheeh report narrated from him; according to the other report narrated from him he shared the view of the majority. The view that they should be regarded as one divorce was narrated from ‘Ali, ‘Abd al-Rahmaan ibn ‘Awf and al-Zubayr ibn al-‘Awwaam (may Allaah be pleased with them).

This was also the view of a number of the Taabi’een, Muhammad ibn Ishaaq the author of al-Seerah, and a number of the earlier and later scholars. It was also the view favoured by Shaykh al-Islam Ibn Taymiyah and his student Ibn al-Qayyim (may Allaah have mercy on them). This is also my view, because that is following all of the texts, and because it is also more merciful and kind to the Muslims.

Fataawa Islamiyyah, 3/281, 282.

It seems that the qaadi was also of this view, which is that the threefold divorce counts as one divorce. Based on this there is nothing wrong with taking her back.

But after the ‘iddah is over you cannot take her back, rather you have to make a new marriage contract with her.

With regard to taking her back after the ‘iddah is over – i.e., after three menstrual cycles – this is not valid, because once a woman’s ‘iddah is completed she becomes a “stranger” for her husband and she is not permissible for him except with a new marriage contract.

Fataawa Islamiyyah, 3/293

And Allaah knows best.