82199 - She claims that she was divorced by her husband. Is it permissible to arrange her marriage without any proof of that?

the question

A man in his seventies has married a woman who is staying in this country but not under his sponsorship, and she says that she got divorced from her former husband who is in another city, and she has two sons from him. The man's sons advised him to stay away from her or to make sure that she really was divorced, and he does not know how valid his marriage contract is, but he refuses and does not want any interference in his affairs at all. Are his sons guilty of any sin in this case? What should they do with regard to their father? Please note that she goes to that other city every Eid and in the summer because of her children, and she somewhere in the same city every weekend to meet some of her friends, against her husband's wishes.

Detailed answer

Firstly:

If the woman says that she was married then she got divorced and her 'iddah ended, should her word be accepted or is it essential to have proof to confirm that she is divorced? There is a difference of opinion among the scholars concerning that.

Some of them say that her word should be accepted and she should be believed, because she is responsible for herself.

Others say that if it is thought most likely that she is telling the truth, it is permissible to believe her.

Others make a distinction between one who is a stranger and one who is living in her own city. The word of the former should be accepted ,whereas the one who is in her own city should not get married until proof of her divorce is brought.

Some of them make a distinction between her telling of her divorce from a specific husband, such as saying, “So and so married me then he divorced me” and her speaking of marriage to an unspecified person. In the former case it is essential to bring proof that she has been divorced by him.

There follows a brief look at the comments of the fuqaha’:

It says in al-Mabsoot (5/151): If she says: My husband divorced me or died, and my ‘iddah has ended, it is permissible for her fiancé to marry her and believe her, because the issue of halaal and haraam is something that is determined by sharee’ah and every Muslim is responsible for himself and his words may be accepted with regard to issues that are decided by sharee’ah, but his word is not to be accepted with regard to someone else if the other person says that he is lying. Hence it is permissible to accept her word concerning that. And Allaah knows best what is correct. End quote.

It says in al-Habr al-Raa’iq (4/64): He indicated that the word of a divorced woman may be accepted when he said: If a (previously) married woman said to another man: My husband divorced me and my ‘iddah has ended, then it is permissible for him to believe her if he thinks it most likely that she is telling the truth. End quote.

‘Aleesh al-Maaliki (may Allaah have mercy on him) was asked, as it says in Fath al-‘Aliy al-Maalik fi’l-Fatwa ‘ala Madhhab al-Imam Maalik (2/78): What is your opinion about a woman who came from Fayyoom to al-Qalyoobiyyah and says: I was married in al-Fayoom, and my husband divorced me two months ago, and she has a document confirming a divorce, dated and sealed with the seal of the qaadi in the city where she used to be, and she wants to get married after her ‘iddah ends based on the date of the document. May she be allowed to do that? Please answer.

The answer was: Praise be to Allaah and peace and blessings be upon our Master Muhammad, the Messenger of Allaah. Yes, she may be allowed to do that because she is to be believed in her claim to be divorced and her claim that the ‘iddah has ended in the manner described, especially since her claim is supported by the document from the qaadi. This is what is indicated by the texts. But further proof should be established because of what we see nowadays of many

women cheating and having several husbands at once. We ask Allaah to keep us safe and sound. End quote.

Al-Zarkashi said in al-Manthoor fi'l-Qawaa'id (1/171): If she says: My husband So and so divorced me and my 'iddah is over, and she asks the judge to conduct a marriage for her, in Adab al-Qadaa' by al-Dubayli it says: If she is a stranger and her (former) husband is absent, then her word should be accepted with no proof or oath. If the husband is in the same city and she is not a stranger, then the judge should not conduct a new marriage until her claim has been proven.

In Fasl al-Tahleel, al-Raafa'i said that her word should be accepted if it is plausible, and he quoted from Fataawa al-Baghawi: If a man and a woman appear before the qaadi, and she asks him to marry her to this man, and says that she was the wife of So and so but he divorced her or died, the qaadi should not proceed with the marriage until proof of the divorce or death has been established, because she has admitted to being married to So and so. End quote.

Al-Ramli al-Shaafa'i was asked about a woman who said that her husband So and so divorced her or died, and her 'iddah has ended; can the judge conduct her marriage without any proof? He replied that the judge cannot conduct her marriage until proof of what she says has been established, because she admitted to being married and marriage in principle is still valid (unless there is evidence to the contrary). This is unlike the case if she admits having been married without specifying a person. This is what is indicated by what al-Dubayli said in Adab al-Qadaa', [and he quoted the words of al-Zarkashi mentioned above], and what al-Qaadi mentioned in his fatwa that if the woman claims that her husband has died or has divorced her in front of her wali, and the wali denies it, she may swear an oath and the judge may tell him to arrange her marriage, or the judge may arrange her marriage. (3/161).

He also said (3/153): To conclude: if a woman claims that she is divorced from a specific marriage, the judge should not let her remarry until it has been proven. If the marriage is not specified then he may accept her word, and there are other views on this issue. End quote.

It seems that caution is required in this matter, especially at times of corruption and when there have been many incidents in which marriage contracts have turned out to have been done for

women who are already married and are lying. But the judge still has the right to make the decision in such cases. If he thinks that her word is acceptable, he may arrange her marriage, and if he thinks otherwise he should ask her for proof, or he does not think that she is telling the truth, he should not conduct her marriage until the divorce has been proven.

What is done now is that the qaadi or registrar does not conduct the marriage of a woman who is proven to have been married before and claims that she is divorced, until she brings proof of the divorce. We do not know how the marriage contract with the man mentioned was done.

Secondly:

If there is some doubt as to whether the woman is divorced or if she is still married to her first husband, then the sons of the person in question should strive to ask about her and her first husband. If it is proven that she was not divorced from her first husband, then their father must be told about that and the couple must be separated until her ‘iddah from both is over. The matter should be referred to the qaadi to decide on the matter, and it is not permissible for them to be quiet if they know about that, because marriage to a woman who is already married to someone else before she gets divorced and completes her ‘iddah is an invalid marriage, and the one who does that is committing zina if he knew the real situation.

But here we should point out two things:

1 – The children should respect their father and recognize his status and not offend him by speaking of this matter. If we assume that they found out something reprehensible, they should look for a suitable means of advising their father, and if they ask someone else to intervene that is better, so to avoid offending him and to preserve the love that exists between them.

2 – The motive for this doubt and accusing should not be hatred of their father’s wife because she is a foreigner or because their father married her when he was old, or for some other reason that is not hidden from the Knower of the unseen, may He be glorified. Let them speak good words and beware of accusing one who is innocent; they should try to think in positive terms and refrain from saying anything that may hurt them or their father, so long as there is nothing that they cannot keep silent about.

The Prophet (peace and blessings of Allaah be upon him) said: “Whoever intercedes to prevent one of the hadd punishments of Allaah has opposed Allaah in His command; and whoever dies owing a debt, it is not (going to be settled by) dinars and dirhams, but rather by good and bad deeds; and whoever argues about falsehood knowingly will remain subject to the wrath of Allaah until he gives it up; and whoever says something about a believer that is not true, Allaah will cause him to dwell in the mud of the juice of the people of Hell until he recants what he said.” Narrated by Abu Dawood (5129) from the hadeeth of Ibn ‘Umar (may Allaah be pleased with him). Classed as saheeh by al-Albaani in Saheeh Abi Dawood.

May Allaah help us and you to do that which He loves and which pleases Him.

And Allaah knows best.