268972 - He made divorce conditional upon something, then he forgot what it was

the question

My husband issued a conditional divorce four years ago, but I cannot remember exactly what he said. I tried to remember, but to no avail, as he said to me: If you do such and such, then you are divorced. When I asked my husband, he said that he did not remember what he had stipulated either. I am afraid that the condition he stipulated in that conditional divorce may have been fulfilled, but by what I do not remember, and my husband does not remember either. I am very confused about my situation, so I hope you can help me.

Detailed answer

Praise be to Allah.

If someone makes divorce conditional upon something, such as if he says: “If you visit So-and-so, then you are divorced,” then divorce takes place when the condition stipulated is fulfilled, according to the view of the majority of fuqaha’.

Some of the scholars are of the view that if he intended thereby to threaten her, urge her to do something or prevent her from doing something, then it comes under the heading of an oath (yameen), for which expiation (kafaarah) is required. This is the view favoured by Shaykh al-Islam Ibn Taymiyah and a number of other scholars, and it is the basis for fatwas on this website.

Based on that, if your husband said that he did not remember the action stipulated, but he did not intend to issue a divorce – rather he merely intended to prevent you from doing something – then he should offer expiation for his oath, so as to be on the safe side.

If he says that he did intend to issue a divorce, but he forgot what the condition was, then there is no blame on you for doing whatever you want of permissible things, and no divorce will take place, because the basic principle is that the marriage remains valid, and no divorce occurs when there is

doubt.

Al-Majd Ibn Taymiyah (may Allah have mercy on him) said in al-Muharrar (2/60): If there is any doubt concerning divorce or the conditions stipulated for it to occur, then what matters is the certainty that the marriage remains valid. End quote.

al-Baghawi (may Allah have mercy on him) said in at-Tahdheeb (6/104): If a man is uncertain as to whether he has actually divorced his wife, he should assume that it has not happened, because the basic principle is that the marriage remains valid. The same applies if he is uncertain about the number of divorces: he should assume that it is the lower number, because that is what is certain. End quote.

And Allah knows best.