95500 - He took his wife back during her ‘iddah on the basis of a fatwa but she obtained a different fatwa and married someone else

the question

I was married to a woman and had a son from her, then there were some differences between me and her and I divorced her. During the ‘iddah, there was an argument between me and her brother, and I swore an oath and said: “If So and so does not come back to my house before Fajr, then she is thrice-divorced.” But her brother did not let her, so she did not come back. At that time I had not taken her back (formally, as a wife). After a short while I sought a fatwa and was told that it was permissible for me to take her back but I did not ask whether the second talaaq had taken place or not. Two years later there were major problems in which her family played a major role, and I divorced her, but during the ‘iddah I met her and there happened between us that which happens between husband and wife. I asked one of the scholars working in the court in my city and he gave me a fatwa in writing stating that the divorce that I did not ask about did not count as such, because a divorce issued to an already-divorced woman does not count, and my taking her back by means of intercourse was valid, and I also asked two friends to testify that I had taken her back and told my wife about that, but I did not tell her family because of the severity of the discord in the family. My family got angry with me when they found out that I had taken her back. But I asked her to bear that with patience and to let the taking back continue in secret until I was able to become independent of my family. After one year, during which I used to meet with her in secret and we would sometimes do what husbands and wives do, Allaah blessed me with the opportunity to travel abroad to complete my studies. I got in touch with her ten days before I was due to travel and told her that Allaah had given us a solution to our problem. I asked her to wait for one or two months, and I would tell her how Allaah had granted me a way out, then I left and did not tell her. One week after I left, my family suddenly told me that my ex-wife (or so they thought) had got married! I became very distressed and I did not know what to do, as I was abroad and I did not believe it. I tried to contact my wife and she told me that she thought that I was deceiving her all that time and that I had betrayed her, because she knew that the period of travel would not be less than five years, and she claimed that she had consulted a scholar on the radio

as to whether intercourse with the wife without the intention of taking her back was regarded as taking her back or not, and he told her that the intention was essential.
I asked for advice and was told that I had the right to refer the matter to court to seek a separation, or to divorce her, so long as I told her so that she could observe the iddah following divorce. Please note that they married her to someone else without taking the divorce papers from me, and that is what Ii intended to tell them when they asked me about the divorce papers.

Detailed answer

Praise be to Allah.

The most beloved deed of the troops of Iblees to him is causing separation between man and wife. The devils keep competing in that so as to attain the honour of being close to Iblees and gaining high status before him.

It was narrated that Jaabir (may Allaah be pleased with him) said: The Messenger of Allaah (peace and blessings of Allaah be upon him) said: “Iblees places his throne over the water, then he sends out his troops, and the one who is closest in status to him is the one who causes the greatest amount of fitnah (tribulation or temptation). One of them comes and says, I have done such and such, and he says: You have not done anything. Then one of them comes and says: I did not leave him until I separated him and his wife. Then he draws him close to him and says: How good you are.” Narrated by Muslim (2813).

What we see, hear and read of the actions of husbands and wives points to the success of the devils in achieving their aims. The divorce rate in Muslim countries is frightening. And if you look for the reasons you will see that it rarely has to do with religion. Most of it has to do with insignificant worldly matters, so the husband acts in haste, gets angry and divorces his wife, then the family is divided and scattered, and the children are lost.

Perhaps the one who reads this will think carefully before divorcing, and he will strive to do that which will make his family happy and avoid divorce, so that he will not bring misery upon himself

and his family.

Secondly:

In general terms, there are differences of opinion among the scholars concerning many cases of divorce. Whatever the husband knows of the rulings before he utters the words of divorce, he should adhere to what he knows, and whatever he does not know about, if he asks someone whose religious commitment and knowledge he trusts, then he has to follow the fatwa he issues, and it is not permissible for him to move from one scholar to another in order to find another fatwa. He should not have any doubts, for he has done that which Allaah has enjoined of asking the people of knowledge, and it is obligatory for him to follow the ruling, especially if there is a ruling issued by an Islamic judge, because the ruling of the judges is decisive in cases of differences of opinion, and the questioner must accept the answer of a trustworthy scholar.

Thirdly:

What the scholars said about a divorce issued to an already-divorced woman not counting as such is a view that was favoured by a number of scholars, including Shaykh al-Islam Ibn Taymiyah, and by Shaykh Ibn ‘Uthaymeen among contemporary scholars.

Fourthly:

What the scholars said to you that your having intercourse with your wife is regarded as taking her back is the view of the Hanafis and Hanbalis, and there is nothing wrong with you following this opinion, because you did what you were enjoined to do, namely asking the people of knowledge, and asking about a matter that is subject to ijtihaad in which the scholars have differed.

Ibn Qudaamah (may Allaah have mercy on him) said:

The apparent meaning of the words of al-Khuraqi is that taking back is only achieved verbally. This is the view of al-Shaafa’i and is one of the two views narrated from Ahmad.

The second view is that taking back is achieved by means of intercourse, whether or not he

intended to take her back. This view was favoured by Ibn Haamid and al-Qaadi. This is the view of Sa'eed ibn al-Musayyab, al-Hasan, Ibn Sireen, 'Ata', Tawoos, al-Zuhri, al-Thawri, al-Awzaa'i, Ibn Abi Layla and ashaab al-ra'i. End quote.

Al-Mughni (8/482).

We think that your telling your wife of the fatwa and taking her back, and bringing two witnesses to the taking back, may have been another way to confirm that you were taking her back, in addition to having intercourse. Your telling her and the two witnesses is a clear statement that you took her back.

Whatever the case, you asked for advice and were told that she had been taken back, and you told her and bought witnesses to confirm the taking back.

Based on this, the fact that your wife says that she consulted one of the scholars who gave her a fatwa saying that your taking her back did not count as such because you had intercourse without the intention of taking her back is of no significance, because you consulted someone and told her of the fatwa and brought witnesses to that, thus the taking back was done in the proper manner, and there is no way for your wife to disagree with that.

Fifthly:

Telling your family and your wife's family is not a condition of taking her back, and in fact it is not a condition that the wife tell them herself. A husband may take back his revocably-divorced wife (first or second talaaq) even if she is far away from him, and it is not a condition that she be told or even agree to it.

Allaah says (interpretation of the meaning): "And their husbands have the better right to take them back in that period, if they wish for reconciliation" [al-Baqarah 2:228].

Al-Qurtubi (may Allaah have mercy on him) said:

The scholars are unanimously agreed that if a free man divorces his free wife, and he had

consummated the marriage with her, and it is a first or second talaaq, then he has more right to take her back so long as the ‘iddah has not ended, even if the wife disagrees.

Tafseer al-Qurtubi (3/120).

But it would have been better to tell her family that you had taken back your wife back. The fact that you did not tell her may have caused them to do this terrible evil, which is marrying her to someone else, thinking that your divorce and your absence meant that their daughter was divorced fully and was able to remarry.

Allaah has enjoined bringing witnesses to taking back a wife in the verse (interpretation of the meaning): “And take as witness two just persons from among you (Muslims)” [al-Talaaq 65:2], so as to put an end to disputes, inform people and alert the heedless to the number of divorces.

The fuqaha’ indicated that if there are no witnesses to the taking-back, that may result in disputes and arguments as to whether the wife has been taken back or not, and the woman may end up marrying another man, thinking that she has not been taken back (by the first husband).

In al-Mawsoo’ah al-Fiqhiyyah (22/114) it says:

The majority of fuqaha’ are of the view that it is mustahabb to tell the wife that she has been taken back, because that will put an end to the disputes that may arise between man and wife.

Al-‘Ayni said: It is mustahabb to tell her (i.e., to tell the wife that she has been taken back), because otherwise she might get married on the basis of her belief that her husband has not taken her back and her ‘iddah has ended, and she may have intercourse with the new husband, thus she will be sinning for not asking her husband, and he will be sinning for not telling her. But even if he does not tell her, the taking-back is still valid, because it is the continuation of an existing marriage and is not the initiation of a new one and the husband is exercising his rights, and for a man to exercise his right he does not need to inform others. End quote.

Now what you must do is refer the matter to the sharee’ah court, and present the written fatwa from this scholar, and bring the two witnesses, to prove that you had in fact taken your wife back.

If you can inform everyone of the matter without going to the sharee’ah court, that is fine.

We should point out that if you do not want to take her back, it is not permissible for you to keep quiet about the matter. After setting things straight, you can divorce her if you wish, but you should understand that if you keep quiet, her second marriage will remain invalid, and this is a serious evil.

We ask Allaah to help you to do that which pleases Him and to make good easy for you.

And Allaah knows best.