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Facts

The plaintiff who comes before us is an unfortunate woman who seeks to be freed from her status as an aguna ("chained woman"). The couple were married in full accordance with Jewish law on February 22, 2013. The defendant comes from Canada and the plaintiff from New York. After their marriage, the couple lived in Long Island, until their separation. Several months after their wedding, the plaintiff discovered that the defendant uses drugs, and as time passed, it became clear that the drug use was exceedingly massive. The plaintiff understood that the defendant was using hard drugs.

The defendant began to disappear for periods of time, which became longer and longer. When he returned home, his self-control and his control over his reactions both lessened over time. His unrestrained behaviour became so severe that he threatened the plaintiff and raped her, and was unable to hide his condition. Thus, the plaintiff was shocked to discover that the defendant had regular contact with male and female prostitutes and with women who work for an escort service several times a week, and occasionally several times in a single day.

The plaintiff, who had become pregnant, found it necessary to have an abortion, after consulting with a rabbinical authority and being advised to do so, because she discovered that the defendant had infected her with a sexually-transmitted disease. (The relevant documents are in the possession of the Beth Din.)

The defendant photographed the plaintiff in an unclothed state, and these photographs were used by him as a means of threatening her, so that she would not dare to use against him the facts she had discovered as time passed. By this time, the plaintiff understood that many of his friends who had studied with him in yeshiva in Montreal knew about his behaviour. She found out that long before she married him, these matters were known to them, but were not revealed to her. Only then did she understand the reason for the death of his two brothers, who had died not long before. They had died as a result of their addiction to drugs and alcohol. For a long time, she innocently thought that they had died of natural causes. At the same point, she also realized that the divorce from his first wife was due to these reasons.

In 2016, when the plaintiff understood the situation in full, and overcame her fears, she requested a *gett*. Nevertheless, she remains an aguna and no one has rescued her. We should note that the Beth Din has documents, SMS messages, and witness testimony, which prove that the plaintiff speaks accurately. The acceptability and standing of the testimony and other materials have been approved in halakhic terms, and the reasons for these were discussed by Rabbi Warburg in a ruling (*pesaq din*) given by the Beth Din in this file on 24 Cheshvan 5780 (Nov. 11, 2020).

Discussion

From all of the documents, SMS messages, testimony, and materials brought before the Beth Din, it is entirely clear to the Beth Din that before her marriage, the plaintiff knew nothing at all about these parts in her groom's life. She didn't know about his drug addiction, she didn't know about the sexually-licentious behaviour he engaged in with men and women. Her groom was essentially leading a double life, about which she knew nothing. It appears that the matter was carefully hidden. The fact that before her marriage the plaintiff lived in the US and the defendant lived in Canada was an important factor in causing these matters not to reach her ears. Furthermore, the plaintiff and her family belong to the modern orthodox community, while the defendant and his family belong to the *haredi* community. This factor also contributed to the inability of the plaintiff to know about the lifestyle of the defendant.

Kiddushei Ta'ut (a betrothal contracted erroneously)

From what was stated above, it is clear that we have a simple case of a "transaction founded in error" [which is invalid, because the transaction is based on a misrepresentation of one of the parties], discussed in the Shulhan Arukh, Hoshen Mishpat 232 paragraph 11. It is clear that [accepting a husband with such a lifestyle] was not her intent when she consented to the betrothal. Furthermore, no woman in the world would share her bed with prostitutes, or women of dubious character, or other men. This is all the more so when there is a danger of contracting different sexually-transmitted diseases, which can endanger a person's life. Such danger became palpable in this case, when the plaintiff found it necessary to abort her fetus.

A "transaction founded in error" is a halakhic term referring to a transaction in which a defect in the substance of the transaction is not revealed to one of the parties to the transaction. A betrothal would be a "transaction founded in error" when either the bride or the groom has a serious defect which s/he hides from the other party, and misrepresents him/herself as someone without that defect. Is a sexually-licentious lifestyle as described above a defect?

There is no greater defect than this, both in terms of the danger and in terms of the shame and embarrassment that most women feel even in the case of an unfaithful husband, God forbid, or a husband who goes to a prostitute a single time. How much more so when these things were done very frequently, sometimes several times a day.

The Beth Din approached the defendant to convince him to give a *gett*, and also approached his relatives, as well as people who have influence over him, to assist in convincing him to give a *gett*, but these efforts proved fruitless. For whatever reason, the defendant is not willing to give a *gett* despite the many efforts of the Beth Din, and despite the lack of rational logic in his behaviour. It is clear to us, the members of the Beth Din, that one cannot take responsibility to assume that people in impossible situations behave according to the demands of Torah laws regarding sexual propriety [אין אופטרופוס]

[לעריות], and that we cannot leave a Jewish woman abandoned to an impossible fate. The reality here is that the husband expects no one will act to save this unfortunate woman from his hands, relying on his power, which derives from the esteem in which his family is held in the Jewish world, and the influence his family wields in the Jewish world.

R. Isaac Elchanan Spector (19th c., Kovno) wrote in his response Ein Yitzhak, Even Ha-Ezer 24, regarding a man who cannot copulate with his wife in the manner of all the world:

In cases where she did not know at the moment of betrothal (*kiddushin*) and of marriage (*nissuin*) that he had this defect, certainly the betrothal is invalid due to this defect. This is like every other defect in a transaction, as is stated in BT Ketubbot 73b, in a similar manner regarding the case of defects in a woman, where they discuss the tannaitic statement that [such a woman] does not need to be given her *ketubbah*, and conclude that she does not require a *gett* either.”

Rabbi Zvi Pesah Frank (20th c. Jerusalem) in his responsa Har Zvi, Even HaEzer 180 deals with the case of a woman who discovered, immediately after her marriage, that her husband was medically insane, and ruled that [just like the case of the woman discussed in Ketubbot 73b], a major defect in the case of the man makes the betrothal into a betrothal contracted erroneously, and he brought clear proofs that in the case of a betrothal so contracted, she goes out [of the marriage] without any *gett*. He furthermore wrote that we are not concerned in this case with the fear that people will say that women [in general] can end a marriage without a *gett*.

When a defect is found in the woman, there is dispute in Ketubbot 73b as to the reason she needs a *gett*. Rabba and Rav Hisda think that the need for a *gett* derives from a rabbinic enactment, and Rava holds that she only needs a *gett* out of doubt. Rashi there states that the doubt is whether the stated defect [that the woman tends to repeatedly make vows committing herself to eschew certain pleasures of life] is one about which the average man would say “I cannot accept such a woman.” It appears that this doubt is regarding ‘average’ (Heb. “*stam*”) defects about which we can say “perhaps he accepted this defect” since he didn’t make an express condition [conditioning the betrothal on the woman not possessing this defect]. But in the case of a “great defect”, where we have a clear and proved presumption (Heb. *אומדנא דמוכח*) that he certainly did not accept [this defect], there is no doubt that the betrothal is invalid, as is written (in Tosafot Ketubbot 72b) that we must distinguish between the defect inherent in an *eilonit* [a woman lacking reproductive organs] and other types of defects.

Furthermore, we may be able to say that the fact that Rava requires a *gett* out of doubt creates a leniency. Because in such circumstances, where there is no doubt that the betrothal is invalid based on the principle of a transaction founded in error, we should not hold that a *gett* is required by rabbinical enactment. For we have not found that Rava held that there is a rabbinical enactment requiring a *gett*. The fact that she requires a *gett* is only based on a doubt whether she requires a *gett* based on Torah law. Therefore, [where there is no such doubt] she is permitted completely even without a *gett*. This is exactly like the case of an *eilonit*, where the woman is permitted to remarry without a *gett*, in a case where the husband didn’t know [at the time of betrothal that she was an *eilonit*.]

In the continuation of his discussion, he cites a proof from the complete Or Zarua [by R. Isaac b. Moshe of Vienna, 13th c.] (part 1, paragraph 661) who was asked regarding a woman who was betrothed by means of an emissary, and (didn’t know) that the husband was blind in both eyes, whether they should

force the husband to give a *gett*, and he replied:

What I replied about forcing a *gett* is only to make things easier (לרווחא דמילתא בעלמא) because in my humble opinion, she doesn't even need a *gett*, since she didn't know [at the time of betrothal] that the man [i.e. the prospective husband] had this defect [i.e., he was blind in both eyes], this is a betrothal contracted in error [which is invalid], even though the betrothal involved no explicit condition.

Based on the words of the Or Zarua, Rabbi Frank proved that the case of a great defect in the husband [which was unknown to the bride at the time of betrothal] is a case of betrothal in error, and the betrothal is completely invalid and does not require a *gett*.

And a very analogous case was cited by the great Gaon, Rabbi Moses Feinstein (20th c. Russia-USA) in his response Iggerot Moshe, Even HaEzer, part 4, chapter 113, in the case of a man who was discovered after his wedding to be completely immersed in homosexual acts. He writes as follows:

Regarding this matter, since we find that the case of a great defect [unknown to the groom at the moment of the betrothal] is actually a transaction founded in error [and consequently invalid], and this is also the case when the woman [does not know about a great defect in the groom], as I explained in my responsum in Iggerot Moshe, Even Ha-Ezer part 1, chapters 79 and 80, it is logical that the husband in our case, who is completely immersed in male homosexual acts, which are the greatest and most rejected abomination, and is viewed as reflecting negatively on everyone in the family, and even more so reflecting negatively on the wife if her husband chooses to prefer such a rejected type of copulation instead of copulating with his wife, this is certainly a betrothal contracted erroneously, and it is clear to us that there exists no woman who would accept to marry a man who is licentious and rejected and causes embarrassment as this. [This on the understanding that] as soon as she knew about this, she left him. [In this case,] it makes sense that if it be impossible to obtain a *gett* from him, she should be permitted on the grounds of a betrothal founded in error. But if it be possible to obtain a *gett*, one must try in whatever manner is possible to obtain a valid *gett*, because if he is not completely immersed in this [behaviour], but rather happened at some point [to engage in such acts] because of the strength of his inclination, perhaps this would not be considered a betrothal contracted erroneously -- even though he is certainly a complete evildoer on account of this one time -- because there are those who will err and by analogy consider such a case also to be a betrothal contracted erroneously. But if he is completely immersed in this, that he prefers male homosexual acts to copulating with women, this is certainly a case of a betrothal contracted erroneously. All this presumes that she left him immediately. But if she stayed with him even after she knew about this, it's hard to invalidate the betrothal. If this were due to some insanity, since it is not natural it would certainly be a defect, and since there would be evidence of insanity, we should be considered about further types of insanity, but here this is due to an evil and licentious nature, which is also an error, as I wrote above.

Conclusions

Based on the above, it appears to us:

1. The betrothal of the couple was contracted erroneously, because the plaintiff did not know anything about the great defect of the defendant, and even after her marriage, the defect did not become known to her immediately.
2. As soon as the plaintiff understood the extent of the defect in all its details and aspects, she left the defendant.
3. The defendant does not intend to give a *gett* in any circumstance and the plaintiff hasn't been living with him for a very long time, and in such a case of *iggun*, we ought to permit the woman to remarry without a *gett*.
4. Since the plaintiff was a divorcee from a previous marriage, she is permitted to marry any man other than a Kohen.

May the Good Lord enlighten our eyes in His Torah so that we err not in matters of halakha, Amen and so may He will it.

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