

Preparing Jewellery On Order Purchase

Darulifta Ahlesunnat

(Dawateislami)

Question

What do the scholars of Islam say concerning the following matter: When customers approach us to have jewellery made for them, they give us an order: “Make such and such jewellery for us, in such and such a design”, i.e., seeing a sample, a complete description of the style and attributes of the item is made apparent. Some money is paid in advance at the time and some is left as a credit i.e., it is payable when picking up the item. Is this type of deal correct?

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الْجَوَابُ بِعَوْنِ الْمَلِكِ الْوَهَّابِ اللَّهُمَّ هِدَايَةَ الْحَقِّ وَالصَّوَابِ

Producing jewellery on an order purchase basis where some money is given in advance and the remainder is made payable on receipt of the item, is permissible according to Islamic law.

Having jewellery or something else prepared by a craftsman falls within *bay‘ al-istiṣnā‘* (order purchase). The condition of its permissibility is that the genus, type, description, etc., of the item should be explained, so ambiguity concerning it does not remain. There must be *Ta‘amul* (an established practice) of dealing between people in having such things made. Order purchase will not be permissible concerning such an item where this is not the case. Since both these matters are found with respect to gold jewellery, order purchase is permitted in that case.

In *Fatāwā Ālamgīrī*:¹

الاستصناع جائز في كل ما جرى التعامل فيه كالقلنسوة والخف والأواني المتخذة من الصفر والنحاس وما أشبه ذلك استحسانا كذا في المحيط ثم إن جاز الاستصناع فيما للناس فيه تعامل إذا بين وصفه على وجه يحصل التعريف أما فيما لا تعامل فيه كالأستصناع في الثياب بأن يأمر حائكك ليحيك له ثوبا بغزل من عند نفسه لم يجز كذا في الجامع الصغير وصورته أن يقول للخفاف اصنع لي خفان من أديك يوافق رجلي ويريه رجله بكذا أو يقول للصائغ صغ لي خاتما من فضتك

وبين وزنه وصفته بكذا

In relation to order purchase, it is mentioned in *Kifāyah*:²

و صورته ان يجيبى انسان الى اخر فيقول اخر زلى خفا صفته كذا وقد ركنا بكذا درهما او يقول للصائغ اصنع لي خاتما من فضتك وبين وزنه وصفته ويسلم

الشن كله او بعضه او لا يسلم

In these legal cases, the permissibility of order purchase concerning silver has been mentioned. It is not hidden to the people of knowledge that the rulings of gold and silver are alike, so order purchase is also permitted with respect to gold. Apart from this, in the legal case mentioned below in *Al-Mabsūṭ*, order purchase has been declared permissible in relation to gold also.

¹ *Fatāwā Ālamgīrī*, vol. 3, p. 207, Dar al-Fikr, Beirut

² *Kifāyah ma‘a Fath al-Qadīr*, vol. 7, p. 30, Published in Quetta

Imam al-Sarakhsi رَحْمَةُ اللهِ عَلَيْهِ states:³

ولو استأجر صائغاً يصوغ له طوق ذهب بقدر معلوم، وقال: زد في هذا الذهب عشرة مثاقيل، فهو جائز، لأنه استقرض منه تلك الزيادة، وأمره أن يخلطه بذلك فيصير قابضاً كذلك، ثم استأجره في إقامة عمل معلوم في ذهب له، ولأن هذا معتاد فقد يقول الصائغ لمن يستعمله: إن ذهبك لا يكفي لمن تطلبه، فيأمره أن يزيد من عنده، وإذا كان أصل الاستصناع يجوز فيما فيه التعامل فكذلك الزيادة

It is not necessary to pay the full amount at the time of the agreement in an order purchase transaction. There is a choice between paying the full amount in advance, not paying anything in advance, or paying some in advance and the remaining afterwards. These are all allowed, the explanation of which is stated in the legal case *Kifāyah* mentioned above.

In *Majallah* and its commentary *Sharḥ Durar al-Ḥukkām*:⁴

لا يلزم في الاستصناع دفع الثمن حالاً أي وقت العقد. -- فكذا يكون الاستصناع صحيحاً بالتعجيل يكون صحيحاً بتأجيل بعض الثمن، أو كله

Note: According to Imam Abū Ḥanīfah رَضِيَ اللهُ عَنْهُ, agreeing a time greater than a month in an order purchase will render it *bayʿ al-salām* (advance payment and deferred delivery transaction). It will then be necessary for all the conditions of the latter to be present in the transaction. According to the Ṣāḥibayn, it will remain *bayʿ al-istiṣnāʿ* (an order purchase transaction).

Leading scholars of our era have issued a legal edict on the opinion of the Ṣāḥibayn رَضِيَ اللهُ عَنْهُ, just as the Islamic Law Council of India (Bareilly) issued a legal edict according to the opinion of the Ṣāḥibayn, in their 6th annual Juristic Seminar. Similarly, the Islamic Law Council, Jāmiʿah Ashrafiyyah (Mubarakpur), also issued a legal edict according to the opinion of the Ṣāḥibayn on the sale of flats, in light of *Hajat e Sharia* (legal need), and *Taʿamul* (prevalent practice of dealing).

In accordance with the opinion of the Ṣāḥibayn, upon which the legal verdict is issued, even if a time period of one month or more is agreed for the preparation of gold jewellery, it will still remain an order purchase transaction, and such a deal will be permissible.

وَاللّٰهُ اَعْلَمُ عَزَّوَجَلَّ وَرَسُوْلُهُ اَعْلَمُ صَلَّى اللهُ تَعَالَى عَلَيْهِ وَاٰلِهِ وَسَلَّمَ

Answered By: Muhammad Sajid Attari

Verified by: Mufti Fudayl Raza Attari

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³ *Mabsūt*, vol. 14, p. 49, *Dar al-Maʿrifah*, Beirut

⁴ *Durar al-Ḥukkām Sharḥ Majalla al-Ahkam*, vol. 1, p. 424, *Dar al-Jabal*