

Ruling Regarding Buying Back a Sold Car

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What do the Islamic scholars say regarding the following: I sell used cars on installments. When I sell a car with its documents to an acquaintance of mine, he is free to sell it in the market. But what I want to know is if he wants to sell it back to me, will I be allowed to buy it from him or not while a number of installments are still unpaid?

From: Asad Madani (Multan Punjab)

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
الجواب بعون الملك الوهاب اللهم هداية الحق والصواب

First of all, keep in your mind that this transaction of yours is not like other normal transactions because the very car which you have sold on installments, you want to purchase it back while the buyer still owes some installments to you. In this sort of transaction, it is necessary for you not to buy on less than the original selling price because purchasing a sold item before receiving its entire price on less than the price you have sold it on, is an impermissible and sinful action. However, you may purchase it on the selling price or higher without any disliking (بلا كراهية).

The reason for impermissibility of buying back a sold item on less than the selling price is this that the unpaid part of price has not entered into your Dhamaan (ضمان) yet and if you buy a car on lower price before the entire price enters into your Dhaman, it means that same car returns into your ownership which you have sold. Now a part of price will be against a part of price and you will receive the rest of the price without it being against anything and it is impermissible

and sin because it is ربح مالم يضمن i.e. a profit from something which did not enter into your Dhaman.

For instance, you have sold a car for RS. one hundred thousand on credit, it becomes the buyer's responsibility to pay you this amount. And this amount will not enter into your Dhaman unless he pays it to you. Also, the amount of money he pays you in installment, will carry on entering into your Dhaman. Suppose after he has paid you twenty thousand in installments, you have purchased back the car on fifty thousand which is less than the initial price. In this case the same car has returned to your ownership and the twenty thousand which you have received plus thirty thousand is against the fifty thousand of the first buyer and the remaining fifty thousand which you have not received into your possession yet, will be given to you without being against any thing and this is impermissible and sin because it is ربح مالم يضمن. It must be borne in mind that if the car is found to be defective after the first transaction, the second transition would be subject to a different ruling.

It is mentioned in Fathul Qadeer:

”من اشترى جارية بألف درهم حالة أو نسيئة فقبضها ثم باعها من البائع قبل نقد الثمن بمثل أو أكثر جاز، وإن باعها من البائع بأقل لا يجوز عندنا----وقيد بقوله: قبل نقد الثمن؛ لأن ما بعده يجوز بالإجماع بأقل من الثمن“

Translation: if one sells a slave girl against thousand Dirham in cash or credit and takes her in possession and then sells her to the very seller at a price equal to or higher than the initial price, it will be permissible but if the price is less than that, it will not be permissible in our Mazhab (i.e. the Hanafi Mazhab). The author of Hidayah has mentioned the condition “before the payment” because selling after receiving the price is permissible unanimously.

(Fathul Qadeer, Vol 06, Page 68, Quetta)

What the books Durrul Mukhtar and Raddul Mukhtar has mentioned regarding the ruling pertaining to purchasing back an item on a lower price before receiving the entire price and regarding the reason of this ruling is as follows:

”وفسد شراء ما باع بنفسه او بوكيله من الذى اشتراه -- بالاقبل من قدر الثمن الاول قبل نقد كل الثمن الاول - صورته: باع شيئاً بعشرة ولم يقبض الثمن ثم شراه بخمسة لم يجوز وإن رخص السعر للربا -“

Translation: buying back a partially paid item, on less than the initial price from the same buyer is an invalid sale (Fasid) and the ruling will remain same whether he makes the transaction or his agent. For example, one has sold an item for RS 10 and before receiving the price, he purchases the same for RS 5. This transaction is impermissible because of interest even if the price has reduced.

(Durrul Mukhtar Vol 07, Page 268, 269, Quetta)

While explaining the above text the book Raddul Muhtar mentions:

”لرباعلة لقوله لم يجوز: أي لأن الثمن لم يدخل في ضمان البائع قبل قبضه، فإذا عاد إليه عين ماله بالصفة التي خرج عن ملكه وصار بعض الثمن قصاصاً ببعض بقي له عليه فضلاً بلا عوض فكان ذلك ربح مالم يضمن وهو حرام بالنص زيلعي -“

Translation: The phrase “لربا” is the cause of “لم يجوز” which has been mentioned by the commentator (شارح) and it is because the Saman (price) does not enter into the Dhaman (ضمان) of seller until he takes the possession. so, when the asset of the seller (i.e. the car) has returned back to his ownership in the same condition as it was when it had gone out of his ownership and some of the price (due upon purchaser) is considered against the price (due upon initial buyer), then reminder of the price due upon the initial buyer will be without being against anything so this will be the profit from an item which has not entered into the Dhaman of the seller and this profit is Haram

