


MHNG080013522020 	<u>Cri.M.A.No.564/2020</u> <u>Priti Vs. Shailesh & ors.</u>
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ORDER (BELOW EXH.40)
(Passed on 03/12/2025)

The non-applicant has filed present application for disallowing applicant's maintenance on the ground of adultery as per Section 144(4) of Bharatiya Nagrik Suraksha Sanhita (for short "BNSS").

2. It is contended that the applicant and non-applicant are residing separately since 14.08.2019 when the applicant willingly deserted him in context of going to her paternal house for few days and then never returned. The adultery committed by the applicant is clear breach of marital trust and fidelity. He obtained decree of divorce on the ground of adultery and therefore the applicant is not entitled for any maintenance from him. Hence, the application.

3. The applicant filed her reply on the application itself and strongly opposed the application. It is contended that the application is not maintainable as the applicant filed present proceeding under the provisions of Domestic Violence Act and the non-applicant filed present application under Section 144 (4) of BNSS. There is no such provision in the Domestic Violence Act. Hence, prayed to reject the application.

4. Heard both sides.

5. It is the contention of the non-applicant that as he obtained decree of divorce on the ground of adultery against the applicant, she is not entitled for maintenance under Section 144(4) of BNSS. But it is crystal clear that the present proceeding is filed by the applicant under the provisions of Domestic Violence Act and not under the provision of BNSS.

6. Section 144 (4) of BNSS provides that 'no wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent'.

7. Perusal of Section 144(4) of BNSS shows that wife is not entitled for maintenance amount from her husband under this section, if she is living in adultery. But perusal of record shows that the interim maintenance order passed by my learned predecessor is under Section 23 of the Domestic Violence Act and not under Section 144 of BNSS. Therefore, Section 144 (4) of BNSS will not attract in the present proceeding. Thus, there is substance in the submission of learned Advocate for the applicant that the present application is not maintainable. Therefore, the present application is not maintainable as it is filed under Section 144 (4) of BNSS and therefore deserves to be rejected. Hence, I pass following order.

ORDER

Application (Exh.40) is rejected.

Kamptee
Date :03.12.2025

(R.R. Sherekar)
Judicial Magistrate First Class,
(Court No.2), Kamptee.

ENDORSEMENT

Case argued on	:	03.12.2025
Order dictated on	:	03.12.2025
Transcription ready on	:	03.12.2025
Order checked and signed on	:	03.12.2025

CERTIFICATE

I affirm that the contents of this P.D.F. File are same word to word as per original order.

Name of Steno :- **Sau. P.A.Nirmal**