



**IN THE COURT OF THE JUDICIAL MAGISTRATE,
2nd COURT, DINHATA, COOCHBEHAR**

**Present: Priyanka Pradhan
Judicial Magistrate 2nd Court**

**Misc Case- 44/2025
T.R- 19/2025
CIS-44/2025
CNR-WBCB070005282025**

Petitioner	Smt. Munni Saha, W/o Sri. Nepal Saha of vill-Boronachina, P.S- Dinhata, Dist-Cooch Behar.
Represented by	Mr. Dhiman Roy , Ld. Adv
Respondent	Sri. Nepal Saha, S/o-Surya Kanta Saha of ward no-11 Palashbari Char, P.S- Alipurduar, Dist- Alipurduar.
Represented by	Mr. Sangram Deb, Ld. Adv.

Date of filing of application	13.05.2025
Date of commencement of evidence	09.12.2025
Date on which judgment is reserved	-
Date of Judgment	08.04.2025

DETAILS OF RESPONDENT

Rank of the Respondent	Name of the Respondent	Final Order
1	Sri. Nepal Saha, S/o-Surya Kanta Saha of ward no-11 Palashbari Char, P.S- Alipurduar, Dist- Alipurduar.	Allowed

Final Order

1. This is an application filed u/s 144 of B.N.S.S by the petitioner Smt. Munni Saha against her husband Sri. Nepal Saha praying maintenance allowance for herself and for her minor son.
2. The case of the petitioner in a nutshell is that she was married to the respondent on 10.08.2015 as per Hindu rites and customs. At the time of marriage the petitioner's father had given Rs. 60,000/-, furniture, motorcycle and other valuable articles to the respondent. Due to the wedlock the petitioner gave birth to a male child on 26.08.2018. It is alleged that after the birth of the child, the respondent pressurized the petitioner to bring money from her father's house for the maintenance of their son. The petitioner

thinking about the future of her son, fulfilled the demand of the respondent. However the petitioner was inflicted to mental and physical torture and was kept in starvation. Subsequently on 20.08.2023 at about 8:00 p.m the respondent physically assaulted the petitioner. It is stated that a 'salish' was organized at the village where the respondent admitted his guilt and gave word that he would not torture the petitioner in future. Despite this, on 12.02.2025 at about 10:00 p.m the respondent again physically assaulted the petitioner and locked her in a room thinking that the petitioner was dead. After some hours, the petitioner informed the matter to her parents, who rescued her. From then on-wards the petitioner and her son are living at her father's house. During the separate stay of the petitioner the respondent neither takes any information about the whereabouts of the petitioner and her son nor sends them any maintenance. The petitioner has no source of income. On the other hand the respondent is an able bodied man, works at Utarbanga Kshetriya Gramin Bank as a casual staff and also owns an E-rickshaw from where he earns Rs.50,000/- per month. The petitioner being the legal wife of the respondent has been praying for monthly maintenance to the tune of Rs. 10,000/- (Rupees ten Thousand) for herself and Rs. 10,000/- for her minor son.

3. The respondent contested the proceeding by filing the written statement and denied all the allegations made in the main petition against him except the solemnization of marriage and the paternity of the minor son. It is alleged that the petitioner inflicted mental torture to the respondent by pressurizing him to stay separately from her parents. The petitioner voluntarily left her matrimonial home and took shelter at her father's house with her minor son. The respondent tried to bring back the petitioner but she was reluctant to accompany her husband. It is the case of the respondent that he runs a canteen at Uttarbanga Kshetriya Gramin Bank and earns Rs. 4,000/- per month and at night he rides e-rickshaw, where from his total income is Rs. 10,000/- per month. It is stated that the petitioner earns her living by teaching students and also does embroidery work from where she earns Rs. 10,000/- to Rs. 12,000/- per month. In view of the above, the respondent prayed for dismissal of the petition for maintenance.

4. Having gone through the contentions stated in the petition I find the following points for determination:

POINTS FOR DETERMINATION

(i) Whether the petitioner has refused to live with the respondent without any valid reason?

(ii) Whether the respondent has sufficient means for maintaining the petitioner and her minor son if so, whether he neglected or refused to maintain the petitioner and her son?

(iii) Whether the petitioner and her son are entitled to any maintenance as claimed by her from the respondent and if so, to what amount she is entitled?

5. During the course of hearing the petitioner's side has examined herself as P.W-1 and on the other hand the respondent has tendered evidence as D.W.1. Both parties had submitted their assets and liabilities statements on affidavit.

6. I have heard the arguments advanced by the learned counsels appearing for both the parties. On meticulous scrutiny of the pleadings of the parties, evidences adduced by both the sides and hearing the learned counsels for both the parties I find it proper to pass the following decision:

DECISION WITH REASONS

7. Section 144 of Bharatiya Nyaya Sanhita requires the proof of following facts- (i) a relationship between the parties; (ii) the petitioner is unable to maintain herself; (iii) the opposite party having sufficient means neglects or refuses to maintain the petitioner.

Let us see how far the petitioner of this case has been able to prove these requirements.

8. The factum of marriage and paternity of the child has not been denied by the respondent. Therefore, I am of the opinion that no further discussion is required in this regard. Thus with the material available on record I do not find it difficult to hold the view that the petitioner is the wife of the respondent and the minor child is their daughter.

Point No. (i):-

9. For deciding the point that whether the petitioner has refused to live with the respondent without any valid reason, I have perused the materials available on record and I find that the petitioner is staying separately from the respondent on the ground of ill treatment and torture meted out to her by the respondent. The petitioner has deposed in her evidence as P.W.1 and in her evidence-in-chief she reiterated whatever she had stated in her petition and deposed that she was married to the respondent on 10.08.2025 as per Hindu rites and customs. At the time of marriage her father had given Rs. 60,000/-, one motorcycle, gold ornaments and other valuable articles as per

the demand of the respondent. She stated that on 20.08.2023 she was assaulted by her husband and after this incident a village 'salish' was held to settle the matter but on 12.02.2025 she was again assaulted by her husband and in-laws and the next morning she informed the matter to her parents who brought her home. She stated that during the separate stay, her husband does not maintain her and her son. She stated that she has no income but her husband on the other hand works at Uttarbanga Kshetriya Gramin Bank on casual basis and at night he rides E-rickshaw from where her husband earns Rs. 50,000/- per month. She stated that due to torture, she had lodged a cruelty case against her husband and in-laws. By filing this case she claimed maintenance of Rs. 10,000/- each per month to herself and for her minor son.

10. During her cross examination she stated that she could not file the documents to show that she was medically treated for the alleged assault. She could not file any documents to show the income of her husband. She denied to the suggestions put forward by the Ld. Advocate for the respondent.

11. The D.W-1 in his evidence deposed that the petitioner is his wife. He alleged that his wife quarreled with him, assaulted his mother and voluntarily left the house. During his cross-examination he admitted that he owns three dwelling house. He admitted that his wife has filed a cruelty case against him. He further admitted that he did not send any maintenance to his wife and child. He further deposed that he could not show any papers/documents to prove the income of his wife. He denied to the suggestions put forward by the Ld. Advocate for the petitioner.

12. At the very outset let me point out that in the instant case, there are no independent witnesses. It is the word of the petitioner versus the word of the respondent. The petitioner has claimed that she was subjected to mental and physical harassment by the respondent and has specified certain date where she was subjected to physical torture and driven out of the house. However, the petitioner failed to submit any medical documents to show any injuries. But it is true that the petitioner had lodged an F.I.R against the respondent registered alleging cruelty which the respondent admitted in his evidence. Thus, there definitely appears ground to believe that the petitioner had suffered harassment during her stay at her matrimonial home and her stay was tumultuous. Then, the onus now shifts upon the respondent to disprove the claim but other than mere suggestions without being supported by any

concrete evidence, the respondent failed in disproving the claim of torture upon the petitioner. Even though the respondent in his written statement had stated that the petitioner left her matrimonial home on her own will but the respondent in his evidence has not stated the reason as to why his wife left his house. Neither there is any corroboration as to the fact that the petitioner left her matrimonial home on her own will. When the wife was compelled to live separately from her husband, the husband did not provide any alimony to her, it is a clear case of neglect and refusal to maintain. Neglect or refusal to maintain can be inferred from the words and conduct of the husband. It is the established law that in a proceeding under section 144 BNSS strict proof of tortures are not necessary like in a criminal case. From the above evidence on record, it is clear that the respondent deserted the petitioner without any reason. Although the burden of proof to establish a case u/s 144 BNSS is on the party who claims maintenance but the party is not required to prove its case beyond reasonable doubt. A proceeding u/s 144 BNSS is not the prosecution of a criminal charge nor is the respondent an accused. From the totality of evidence, it can safely be held that the petitioner was subjected to cruelty by the respondent and compelled her to live separately from her husband. Thus this point has been decided in favour of the petitioner and against the respondent.

Point No. (ii)

13. In order to come to a definite conclusion on this point I have carefully gone through the entire records. The petitioner has testified that the respondent is working as a casual worker in a Bank and also rides E-Rickshaw from where he earns Rs.60,000/- per month. On the other hand she does not have any source of income. Now she has been staying at her paternal home, her husband has not inquired about her since her separate stay nor he has paid any maintenance to her and her son. Therefore, she has claimed an amount of Rs.10,000/- per month for herself and Rs.10,000/- per month for her minor son from the respondent as their maintenance. The fact as brought by the petitioner that the respondent earns Rs.60,000/- per month remains disproved since the petitioner could not prove the income of her husband with cogent evidence. Though the respondent has stated in his written statement that the petitioner has sufficient income by teaching and doing embroidery works but the respondent failed to place any material in respect of the plea regarding the income of the petitioner, as such I am left with no other alternative than to hold that the petitioner has no source of

income. The respondent has stated in his evidence that he runs a canteen at Uttar Banga Kshetriya Bramin Bank in the day time and at night he rides E-rickshaw. The factum of admission on the part of the respondent regarding the fact that he has never paid any maintenance to his wife is indicative of negligence on the part of the respondent to maintain his wife. I have gone through decision the decision of Basanta Kumari Mohanty Vs. Sarat Kumar Mohanty reported in 1982 Cri. L.J. 485 wherein it is held that the expression “means” does not signify visible means only and if a man is healthy and able bodied he must be held to be possessed of means to support his wife. There is nothing to show that the respondent is not an able bodied man and being an able bodied man, it may safely presume that from all sources the respondent has the ability to earn. When the respondent has admitted the marriage then it was his prime obligation to maintain his wife and minor son properly. Thus this point has been decided in favour of the petitioner and against the respondent.

Point No. (iii)

14. From the discussions made above it is clear that the petitioner being the wife of the respondent and the minor child being his son are entitled to receive maintenance from the respondent. Now the question arises as to what should be the proper amount which is sufficient to maintain the petitioner and at the same time the respondent too shall not be prejudiced. It is settled principle of law that the object of section 144 of BNS is to prevent vagrancy and destitution. Now it is required to find out as to what is required by wife to maintain a standard of living which is neither lavish nor impoverished but is modestly consistent with the status of the parties. While determining the quantum of monthly maintenance this Court has to look into the surrounding circumstances too. The petitioner claims an amount of Rs. 20,000/- in total per month for herself and for her minor son from the respondent as their maintenance. The object of section 144 of B.N.SS is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife and respondent is required to maintain his wife. The respondent in his affidavit of assets and liabilities has stated that his general monthly expenses is Rs.8,000/-. Also, no other litigation of overlapping jurisdiction is pending between the parties except this case. It is true that the respondent has the responsibility to maintain his parents but he cannot avoid his liability to maintain the petitioner and her son. It is clear that the respondent is having earning source. In such a case it is his bounden

duty to look after the petitioner and her daughter. The right to life/ livelihood of the petitioner cannot be curtailed at the cost of the respondent and it would be violation of Article 21 of the Constitution of India. In the light of above discussions and reasons I am of the opinion that the petitioner and her minor son are entitled to maintenance from the respondent.

ORDERED

In the light of the above mentioned issues and reasons, I am of the opinion that the petitioner is entitled to get maintenance of Rs. 5,000/- each per month for herself and her minor son(in total Rs.10,000/-). Considering the fact of income of the respondent, necessity of the petitioner and her medical expenditures, present market condition, financial status of the parties, the petitioner is entitled to claim this amount as monthly maintenance.

In respect of the effective date of the maintenance order, I am of the considered opinion that the respondent without any reasonable ground denied maintenance to the petitioner. Hence, the petitioner and her son are entitled to get the maintenance for herself from the date of filing of the application i.e. 13.05.2025.

The respondent is directed to pay such maintenance at the aforesaid rate to the petitioner every month within the 10th day of the succeeding month in which it falls due; failing which the petitioner will be at liberty to put this order in execution.

Let a copy of this order be supplied to the petitioner free of cost.

Note in relevant register and C.I.S.

Typed and Printed by me,

**Judicial Magistrate,
2nd Court, Dinhata, Cooch Behar
Dated: 08.04.2026**

APPENDIX

List of Petitioner witnesses:

A. Petitioner witnesses, if any:

Rank	Name	Nature of evidence
P.W-1	Smt. Munni Saha	Petitioner

B. Respondent Witnesses, if any:

Rank	Name	Nature of evidence
D.W-1	Sri. Nepal Saha	Respondent

C. Court Witnesses, if any: Nil

D. Defence: Nil

E. Court Exhibits: Nil

F. Material Objects: Nil

**Judicial Magistrate,
2nd Court, Dinhata, Coochbehar**