

**IN THE COURT OF Ld. JUDICIAL MAGISTRATE, AMTA, HOWRAH**

**Present : Smt. PRATIKA RAI**  
**JO Code – WB1481**

**Misc. Exe. Case No.- 40/2024**  
**CNR No. WBHW-08000-432-2024**

**Bandana Karak ----- Petitioner**  
**vs.**  
**Alok Pal ----- Opposite Party**

**Order dated 21.05.2025**

Today is fixed for hearing of non-maintainability petition filed by the OP.

Both parties are present by filing hazira.

Ld. Counsel for the OP submitted that the instant case filed by the Petitioner u/s 144 (3) of the BNS is not maintainable in law and should be rejected at the outset as she has been receiving Rs. 5,000/- (five thousand) per month alimony pendente lite allowed by Ld. ADJ Court in Mat. Suit no. 430/23 and is not eligible for claim of any other maintenance amount. Ld. Counsel also submitted that Petitioner has chose to file this case in order to harass and humiliate the OP instead. He submitted photocopies of rulings of Hon'ble High Court, Calcutta and Hon'ble Himachal Pradesh High Court, in support of his contention.

Ld. Counsel for the Petitioner accepted that Petitioner has been receiving the alimony but the Mat. Suit no. 430/23 is filed under the provision of Hindu Marriage Act and the subsisting petition is under section 144(3) of BNS and there is no bar for simultaneous claim of maintenance either in the HMA or under the 144(3) of BNS and there rises no question of non-maintainability of the petition.

Heard both sides in full. Perused the case record, petitions and documents submitted by both the parties.

Upon careful consideration, it is seen that the instant execution case arose on the Order dtd. 05.04.2024 passed by the Ld. Judicial Magistrate Court, Amta, u/s 23 of the PWDV Act between the parties on contest, which the Petitioner preferred to execute it under section 144 (3) of the BNSS. Furthermore, while adjudicating upon the petition u/s 23 of the PWDV Act, it was also brought before the Ld. Judicial Magistrate Court, that the Petitioner was receiving Rs. 5,000/- alimony pendente lite in Mat Suit No. 05/23 under the provision of Hindu Marriage Act, but despite the fact, Ld.Court was pleased to allow the interim maintenance u/s 23 of the PWDV Act to the tune of Rs. 2,000/- per month in favor of the Petitioner.

Ld. Counsel for the OP submitted the rulings of Hon'ble High Court Calcutta in Abhisek Chatterjee vs. Piyet Chatterjee & anr. 2019(3) AICLR 837 Cal., and Honble Himachal Pradesh High Court in Bagga vs. Karmi Devi@Karmi2014(4) AICLR 921, where Hon'ble High Courts in respect of interim maintenance under section 125 of Cr.P.C and alimony pendente lite u/s 24 of the Hindu Marriage Act, observed that the higher amount is to be adjusted but this matter is filed u/s 144 (3) of the BNNS for enforcement of the order already passed and not adjudicating the matter at the initial stage.

**Judicial Magistrate, 1<sup>st</sup> Class,**  
**Amta, Howrah.**

It is pertinent to understand the provision of section 144 (3) of the Bharatiya Nagrik Suraksha Sanhita which provides that “If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:”

Moreover, in *Rajnish vs. Neha*, AIR 2021 SC 569, Hon’ble Supreme Court passed direction on the issue of overlapping of Jurisdiction by observing.

*It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Code of Criminal Procedure, or under H.M.A. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, the court directed that in a subsequent maintenance proceeding, the Applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding.*

It is suitable again to bring to notice, that Ld. Court on this matter is an executing Court u/s 144(3) of BNSS and not an adjudicating Court delving upon determining the quantum of maintenance amount. Hence, the instant petition filed by the OP for challenging non-maintainability of the petition u/s 144 (3) of BNSS filed by the Petitioner, is hereby rejected.

OP is directed to make the payment of the arrear of the interim maintenance amount pending in this case at the earliest.

Fix 19.06.2025 for payment.

**D & C by me.**

**Judicial Magistrate, 1<sup>st</sup> Class,  
Amta, Howrah.**

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