

KACM010026522022



*IN THE COURT OF THE I ADDL. SESSIONS JUDGE,  
AT CHIKKAMAGALURU.*

*Present: **Smt. B.Pushpanjali**, B.A., LL.M.,  
I Addl. District & Sessions Judge,  
Chikkamagaluru.*

*Dated this the 4<sup>th</sup> Day of January 2024*

**Crl.R.P. No.148/2022**

*Petitioner : Ajithkumar S/o Sridharaiah, Aged  
about 73 years, R/o Samse Village,  
Samse Post, Kalasa Hobli,  
Mudigere Taluk.*

*(Represented by Sri.K.M.Prashanth., Advocate)*

*Versus*

*Respondent : Shyamala W/o Ajithkumar,  
Aged about 56 years, R/o  
Samse Village, Samse Post,  
Kalasa Hobli, Mudigere Taluk.*

**ORDER**

*The petitioner has filed this revision petition under Section  
397 of Cr.P.C., challenging the orders dated 22.09.2022 passed by*

*the learned Prl.Civil Judge and J.M.F.C., Mudigere in Crl.Mis.5/2022, filed under Section 309 of Cr.P.C.*

*2. The revision petitioner is the husband/respondent and respondent herein is the wife/petitioner before the trial Court. For the purpose of convenience the parties are referred to their respective ranking before the Trial Court.*

*3. The case of the petitioner/wife is that, she has filed the petition for recovery of total sum of Rs.96,000-00 from the husband/respondent being the arrears of maintenance from 24.03.2017 to 30.11.2021, for which the respondent has filed objections on various grounds contending that the claim of the petitioner is barred by limitation. On hearing both sides and perusing the materials on record, the trial Court by its order dated 1.09.2022 held that the claim of the petitioner for Rs.96,000-00 as arrears of maintenance from 24.03.2017 to 30.11.2021 is within limitation. Thereafter, the respondent/husband filed an application under section 309 of Cr.P.C. on 21.09.2022 stating that he intends to prefer revision/appeal and to obtain necessary interim order and*

sought for one month time and prayed to adjourn the proceedings. After hearing the application the trial Court came to the conclusion that the provision under Section 309 of Cr.P.C. is not applicable to the present case and accordingly rejected the application. Aggrieved by the above said order, the respondent has filed this revision petition.

4. In spite of service of notice, respondent/wife remained absent. Trial court records were called for and received.

5. For disposal of this petition the following points arise for consideration.

1. Whether the orders of the trial Court are liable to be interfered with?

2. What order?

6. Having heard the arguments and on considering the material on record, my findings to the above points are as under:

Point No.1 : In the Negative

Point No.2 : As per final order for the following:

### **REASONS**

7. **Point No.1** :- In this case intersay relationship

*between the parties is not in dispute. The revision petitioner is the husband of the respondent/wife. A careful perusal of the records it reveals that, the respondent/wife has filed Criminal Miscellaneous 5/2022, under Section 125(3) of Cr.P.C. for recovery of arrears of maintenance of Rs.96,000/- from 24.03.2017 to 30.11.2021. After appearance, the respondent has filed objections and the trial court vide order dated 01.09.2022 held that the petition for recovery of arrears of maintenance of Rs.96,000/- for the period from 24.03.2017 to 30.11.2021 is well within the limitation.*

8. *Subsequently, counsel for the petitioner had prayed for issuance of FLW against the respondent. At that time, the respondent has filed an application under Section 309 of Cr.P.C. to adjourn the matter for one month enabling him to prefer appeal against the said order. The counsel for the petitioner has orally objected the said application. After hearing both sides, the trial Court has rejected the application filed under Section 309 of Cr.P.C. vide order dated 22.09.2022 holding that the very application filed under Section 309 of Cr.P.C. is not maintainable in a proceeding for recovery of arrears of maintenance.*

9. *A bare reading of Section 309 of Cr.P.C. which makes it clear that, in every inquiry or trial the proceedings shall be continued from day today until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following date to be necessary for reason to be recorded. According to Section 309(2) of Cr.P.C., if the courts finds it necessary or advisable to postpone or adjourn any inquiry or trial after taking cognizance of an offence or the commencement of the trial, it may do so from time to time. Here in the instant case, the trial court neither holding an inquiry or trial to entertain an application under Section 309 of Cr.P.C. Therefore, it is crystal clear that, the application filed by the respondent under Section 309 of Cr.P.C. is not maintainable in a proceedings for recovery of arrears of maintenance.*

10. *Now this Court has to ascertain whether the revision petition is maintainable against the order of the trial Court on the application filed under Section 397 of Cr.P.C. A bare reading of the order on which the present revision petition is filed, is an inter-locutory order within the meaning of Section 397(2) of*

*Cr.P.C.*

**11. Section 397 of Cr.P.C., reads as follows: 397.**

*Calling for records to exercise powers of revision.—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.*

*Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.*

*(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order*

*passed in any appeal, inquiry, trial or other proceeding.*

*(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.*

*12. A bare reading of Section 397 of Cr.P.C., indicates that the Hon'ble High Court and Sessions Court can exercise their powers by calling the records in respect of any finding of the trial Court. Sub Section (2) of Section 397 of Cr.P.C., clearly says that the power of revision confer under Sub-Section 397 shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. Therefore, the petition filed by the revision petitioner/husband is liable to be dismissed as not maintainable. Accordingly points No.1 is answered in the **negative**.*

*13. **Point No.2:** In the light of above discussions, I proceed to pass the following:*

**ORDER**

*The Crl. Revision Petition under section 397 of Cr.P.C. filed by the Revision Petitioner is dismissed.*

*Send back trial court record along with copy of  
this order.*

*(Dictated to the Stenographer Grade-I, transcript corrected and then  
pronounced by me in the open Court on this the 4<sup>th</sup> Day of January, 2024)*

*Sd/-  
(B.Pushpanjali)  
I Addl. District and Sessions Judge,  
Chikkamagaluru.*

*\*Sk.*