



IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 24TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V.SRISHANANDA

CRIMINAL PETITION NO. 104490 OF 2025

(482(CR.PC)/528(BNSS))

BETWEEN:

SRI BABAJAN S/O MABO OBSAB NAYAKWADI,
AGE: 35 YEARS, OCC. BUSINESS,
R/O. BHADRAPUR, TQ. ANNIGERI,
DIST. DHARWAD - 582201.

...PETITIONER

(BY SRI. HARISH S. MAIGUR, ADVOCATE)

AND:

1. SMT. RIYANA W/O BABAJAN NAYAKWADI
AGE: 29 YEARS, OCC. HOUSE WIFE,
2. MISS ALPIYA D/O. BABAJAN NAYAKWADI
AGE. 09 YEARS, OCC. STUDENT,
3. MISS. NAJIYA D/O. BABAJAN NAYAKWADI
AGE 6 YEARS OCC. NIL,

SINCE THE RESPONDENTS NO.2 AND 3 ARE
MINORS R/BY THEIR MINOR GUARDIAN MOTHER
I.E. RESPONDENT NO.1
SMT. RIYANA W/O BABAJAN NAYAKWADI

ALL ARE R/O. C/O. MIRJISAB MIRJENAVAR,
SANDRA NAGAR, OPP. MASJID, KUSUGAL,
TQ. HUBBALLI DIST. DHARWAD 580023.

...RESPONDENTS

(BY SRI. SHARAT P.HANAMARADDI, ADVOCATE FOR R1;
R2 AND R3 ARE MINORS R/BY R1)





THIS CRIMINAL PETITION IS FILED U/S 482 OF CR.P.C. (528 OF BNSS), PRAYING TO QUASH THE ENTIRE CRIMINAL PROCEEDINGS IN CRL.MISC.NO.217/2023 FILED U/S 128 OF CR.P.C. FOR RECOVERY, PENDING ON THE FILE OF I ADDL. PRL. JUDGE, FAMILY COURT, HUBBALLI, IN SO FAR AS THIS PETITIONER IS CONCERNED, IN THE INTEREST OF JUSTICE.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE V.SRISHANANDA)

Heard Sri Harish S.Maigur, learned counsel for petitioner and Sri Sharath P.Hanamaraddi, learned counsel for respondents.

2. Petition is filed by the husband of first respondent and father of respondents No.2 and 3 at the instructions of his relatives.

3. Petitioner was in judicial custody for having failed to pay the maintenance ordered in Crl.Misc.No.370/2022, ordering sum of ₹8,000/- as the maintenance for the first respondent and sum of ₹3,000/- each to respondents No.2 and 3. To execute the said order, a petition under Section 128 Cr.P.C. came to be filed in Crl.Misc.No.217/2023. The amount of maintenance claimed in



the said petition is from 18.11.2022 to 18.06.2023 in a sum of ₹98,000/- less sum of ₹2,700/-, in all sum of ₹95,300/-.

4. Fine levy warrants (FLW) were issued against the petitioner for payment of the said amount of ₹95,300/-. Petitioner herein failed to make the payment despite FLW came to be served on the petitioner.

5. On 30.09.2024, learned trial Judge has passed an order in Crl.Misc.No.217/2023 which reads as under:

"Counsel for the petitioners is present. Respondent is present. Respondent has submitted that he is not having any money to pay the maintenance amount and he himself submitted that he is ready to go behind the bar.

On careful perusal of the materials on record, it reveals that the total amount of Rs.95,300/- is due from the respondent and moreover since beginning he has not appeared before this Court to comply the said order despite of repeated issuance of the FLW. Therefore, left with no other option, it is just and necessary to send the respondent to suffer Civil imprisonment since he has failed to pay the single pie till today though huge arrears amount of Rs.95,300/-is due from the respondent. Accordingly, this Court proceed to pass the following:



ORDER

Hereby, Respondent is sent to the Civil prison to suffer simple imprisonment for a period of 30 days.

Accordingly, respondent is sent to J.C to suffer sentence.

Consequently, hereby directed to the Jail Authority to cause produce the Respondent on 30/10/2024.

Call on 30/10/2024."

6. Pursuant to said order, petitioner herein was sent to judicial custody.

7. Thereafter, petitioner did not choose to make the payment and therefore by order dated 12.11.2024 another order came to be passed. Again on 21.02.2024, 10.01.2025, 10.02.2025, 10.03.2025, 09.04.2025, 09.05.2025, 09.06.2025 and 09.07.2025, petitioner is sent to custody for a further of thirty days each.

8. On 07.08.2025, on behalf of the petitioner who was respondent before this Court, placed copy of the order passed by the Co-ordinate Bench of this Court reported in **(2013) 1 KCCR Page 471** in the case of **Shri Kallappa v. Smt.Yallaubai**.



9. Learned trial Judge considering the same, passed an order on 07.08.2025, which reads as under:

"Petitioner no.1 is absent.

Respondent is produced from JC through HC No. 199 of C.R, Hubballi.

Advocate Sri.CRA files vakalat on no behalf of the respondent with objection of previous counsel and also with permission of this Court and also files I.A.No.3 U/sec.13 of the Family Court Act.

Perused and same is allowed.

Consequently permitted the respondent to take legal assistance from his advocate.

That the counsel for the respondent files memo with copy of the decision rendered by the Hon'ble High Court of Karnataka in the case of Sri.Kallappa V/s. Yellubai reported in 2013(1) KCCR Page 471. In the light of the above said judgment the learned counsel for the respondent prayed to release the respondent. On perusal of the said decision it reveals that the said dictum held in the case supra is not much helpful to the present case on hand since facts and circumstances of the present case is different from the above case. Therefore submission of the learned counsel for the respondent is hereby rejected.

On enquiry, again the respondent has submitted that he is not having any means to pay the maintenance amount. As it could be seen from the records, the total amount of Rs.95,300/- is due from the respondent and now also the respondent is not ready to pay the substantial amount. Hence, this Court proceed to pass the following:

ORDER

Hereby, again respondent is sent to the Civil prison to suffer simple imprisonment for a period of 30 days.



Call on for hearing on ruling and for production of respondent by 4-9-2025."

10. Again on 06.09.2025 another order came to be passed and so also on 06.10.2025, the custody was extended for a further of thirty days.

11. Petitioner has sought for following prayer in the present petition.

"To quash the entire criminal proceedings in Crl.Misc.No.217/2023 filed u/s 128 of Cr.P.C. for recovery, pending on the file of I Addl. Prl. Judge, Family Court, Hubballi, in so far as this petitioner is concerned, in the interest of justice."

12. Petitioner is now released from the custody and he has not paid the arrears of maintenance which was subject matter of Crl.Misc.No.217/2023.

13. Since the petitioner has already undergone the civil prison in lieu of the payment of maintenance, no further orders are necessary in respect of Crl.Misc.No.217/2023.

14. Therefore, no further orders can be passed in Crl.Misc.No.217/2023. However, the respondents are at liberty to



file necessary application for recovery of the arrears of maintenance in accordance with law pursuant to the order passed in Crl.Misc.No.370/2022.

15. Sri Harish S.Maigur, learned counsel for petitioner would submit that there is a possibility of amicable settlement and one time payment would be made by the petitioner as he has no employment.

16. Learned counsel for respondents admits that he may file necessary application and if he wants to re-establish the conjugal relationship, necessary application needs to be filed before the competent Court.

17. Taking note of the above factual aspects, since the petitioner has already undergone the imprisonment period, no further orders are necessary in respect of the subject matter of Crl.Misc.No.217/2023.

18. Moreover, the petition was filed through one of the relatives. Pertinently, this is not a habeas corpus petition and therefore, such a petition itself was not maintainable.



19. Be it what it may, since the custody period has already been undergone by the petitioner in respect of the claim in Crl.Misc.No.217/2023, following order is passed.

ORDER

- i. Petition stands disposed of.
- ii. No further orders can be passed by the learned trial Magistrate in Crl.Misc.No.217/2023.
- iii. However, the respondents who are the beneficiaries of the order passed in Crl.Misc.No.370/2022 may take recourse to the law for the recovery of the arrears of maintenance subsequent to the amount claimed in Crl.Misc.No.217/2023.
- iv. Parties are also at liberty to workout the amicable settlement, if any in accordance with law.

Sd/-
(V.SRISHANANDA)
JUDGE

CLK
CT-CMU
LIST NO.: 1 SL NO.: 43