

**HIGH COURT OF TRIPURA
AGARTALA
Crl.Rev.P.No.71 of 2025**

Shri Bikash Sarkar,
S/o Lt. Hamenta Sarkar,
A resident of Vill-West Khola,
P.O.- Paikhola, P.S.- Belonia,
Pin- 799125, Dist- South Tripura
At present residing at C/o. Dipesh Das
Pratapgarh, Agartala, P.S.- Agartala Police Station,
P.O.- Agartala Post Office,
District- West Tripura, Pin-799001.

.....Petitioner(s)

Versus

1. Smt. Gita Roy,
D/o. Shri Bidhan Chandra Roy
A resident of Vill- Purba Ramchandra Ghat,
P.O.- Ramchandra Ghat, Near Ramchandra Ghat Town
Hall,
P.S.- Khowai, Pin- 799207,
Dist.- Khowai Tripura.

2. The State of Tripura.

.....Respondent(s)

For Petitioner(s)	:	Ms. Ankita Pal, Adv.
For Respondent(s)	:	Mr. Dipjyoti Paul, Adv.
Date of Hearing & Judgment and Order	:	16.01.2026
Whether fit for Reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order(Oral)

Heard Learned Counsel, Ms. A. Pal appearing on behalf of the petitioner-husband and also heard Learned Counsel, Mr. D. Paul appearing on behalf of the respondent-wife.

02. This petition under Section 19(4) of the Family Courts Act 1984 and Section 438 read with Section 442 of BNSS is filed challenging the order dated 28.08.2025 passed by Learned Judge, Family Court, Khowai, Tripura in connection with case No.Crl.Misc(Int) 14 of 2025. By the said order, Learned Judge, Family Court has awarded interim maintenance at the rate of Rs.16,000/- per month in favour the respondent-wife and her daughter w.e.f. 01.06.2025.

03. At the time of hearing, Learned Counsel for the petitioner-husband drawn the attention of the Court that the petitioner-husband is a fixed pay employee and he does not have any regular employment rather he is serving as a temporary employee under Tripura Health Protection Society but the Learned Court below did not consider the said fact. It was also submitted that in the order it was specifically mentioned that the amount of Rs.16,000/- was awarded for the maintenance of the respondent-wife and her daughter. But infact no daughter took birth during the wedlock of the parties of this proceeding. As such the order suffers from infirmity and is liable to be interfered with.

Learned Counsel further submitted that there is /was no willful negligence or refusal on the part of the petitioner-husband rather the respondent-wife voluntarily left the company of the petitioner-husband and as such the order cannot be sustained in the eye of law and urged for setting aside the order.

04. On the other hand, Learned Counsel, Mr. D. Paul appearing on behalf of the respondent-wife first of all drawn the attention of this Court that this present petition is not maintainable because against an interim order no revision lies and as such the present petition is not maintainable. Learned Counsel further submitted that based upon the statement of assets and liabilities filed by the parties the order was passed, so, there was no infirmity in the order passed by Learned Judge, Family Court. So, Learned Counsel urged for dismissal of this petition.

05. I have heard both the sides at length and perused the relevant documents annexed with the writ petition. This present petition is filed by the petitioner-husband under Section 19(4) of the Family Courts Act read with Section 438 and Section 442 of BNSS.

06. In this regard, Hon'ble the Supreme Court of India in a judgment in **Akanksha Arora vs. Tanay Maben** reported in **(2024) SCC OnLine SC 3688**, in para Nos.5, 6, 7, 8, 9, 10 & 11 observed as under:

"5. It appears that the Principal Judge, Family Court vide order dated 08.03.2022 in exercise of powers under Section 125 of the Criminal Procedure Code, 1973 (for short 'the CrPC') had fixed interim maintenance in favour of the appellant.

6. Being dissatisfied with the quantum of interim maintenance, the appellant-wife had filed a petition under Section 482 CrPC in the High Court seeking enhancement. The said petition has been dismissed by the High Court by the order impugned on the ground that it is not maintainable as the appellant-wife has a remedy of a revision under Section 397 CrPC.

7. This Court has, in a catena of decisions, provided that nomenclature of a petition is immaterial and for doing substantive justice, the High Court can always convert a petition under Section 482 CrPC to a revision under Section 397 CrPC and vice versa. The approach of the High Court in dismissing the petition filed by the appellant under Section 482 CrPC on the hyper technical ground that she had to avail the remedy of revision cannot be appreciated because the same has unnecessarily compelled the appellant to approach this Court by way of this appeal filed under Article 136 of the Constitution of India.

8. In *Madhu Limaye v. The State of Maharashtra* [(1977) 4 SCC 551], this Court held that the label of a petition filed by an aggrieved party is immaterial. The High Court can always examine the controversy in an appropriate case in exercise of its inherent powers.

9. In *Prabhu Chawla v. State of Rajasthan* [(1977) 4 SCC 551], this Court examined the relevant scope of Section 482 CrPC and Section 397 CrPC and held that nothing in CrPC, not even Section 397, can affect the amplitude of the inherent powers preserved in so many terms by the language of Section 482 CrPC. The inherent powers should not invade areas set apart for specific powers conferred under CrPC but there is no total ban on the exercise of inherent powers where abuse of process of Court or other extraordinary situation warrants exercise of inherent jurisdiction. The limitation is self-restraint, nothing more. Availability of alternative remedy of criminal revision under Section 397 CrPC, by itself, cannot be a good ground to dismiss an application under Section 482 CrPC.

10. Viewed in light of the above precedents, we feel that even if the High Court was of the view that the appellant should have invoked the jurisdiction under Section 397 CrPC for seeking enhancement of interim maintenance, it ought not to have non-suited the appellant only on the ground of alternative remedy. The judicious approach would have been to convert the petition under Section 482 CrPC into a revision under Section 397 CrPC and to have decided the same as per law.

11. In view of the above, we dispose of the appeal by setting aside the impugned order of the High Court dated 21.09.2023 and remand the matter to the High Court with further direction to convert the petition under Section 482 CrPC as a criminal revision under Section 397 CrPC and decide it in accordance with law after affording opportunity of hearing to the parties."

From the aforesaid observation of the Hon'ble Supreme Court, it appears that there is no bar in entertaining the petition in exercising revisional jurisdiction by the High Court to entertain the petition filed by the petitioner. So, the submission of Learned Counsel for respondent-wife, that this present petition is not maintainable, is not correct and cannot be legally accepted. Thus, it appears to this Court that the present petitioner-husband has rightly availed the remedy of revisional jurisdiction challenging the order dated 28.08.2025 passed by Learned Judge, Family Court, Khowai, Tripura before this Court. Now regarding quantum of interim maintenance as awarded by the Learned Family Court which is under challenge, it appears to this Court that in the petition filed by the respondent-wife, nowhere it was mentioned by her that she has got one daughter out of her marital relation with the petitioner-husband. Thus, the observation of the Learned Judge, Family Court to the extent of awarding maintenance at the rate of 16,000/- per month for the respondent-wife and her daughter is factually not correct. It may so happen that due to over sight or typing mistake the Learned Judge, Family Court has mentioned the existence of daughter. However, regarding quantum of maintenance awarded by Learned Court below, it appears that based upon the statement of assets and liabilities, Learned Court awarded Rs.16,000/- as interim maintenance till disposal of the main

petition. In this regard, Learned Counsel for the petitioner-husband could not dispute anything. However, before this Court at the time of hearing, Learned Counsel produced one Service Certificate from which it appears that the petitioner-husband is a contractual employee under the Tripura Health Protection Society, meaning thereby he has not got any regular employment. So, considering the facts and circumstances of the case, it appears to this Court that the awarding of Rs.16,000/- as an interim maintenance by Learned Trial Court appears to be harsh, rather it would be prudent that the petitioner-husband shall pay interim maintenance w.e.f. 01.06.2025 at the rate of Rs.10,000/- per month in place of Rs.16,000/- to the respondent-wife till disposal of the main petition, then the purpose of proceeding would suffice.

07. In the result, the petition filed by the petitioner-husband is hereby partly allowed with modification that the petitioner-husband shall pay interim maintenance to the respondent-wife w.e.f. 01.06.2025 at the rate of 10,000/- per month in place of Rs.16,000/- per month till disposal of the main petition. The arrears of maintenance, if any, shall be paid by four equal installments by the petitioner-husband to the respondent-wife. The mode of payment of maintenance would be made by the petitioner-husband to the respondent-wife as ordered by Learned Trial Court below.

With this observation, this present petition stands disposed of.

Supply a copy of this order to Learned Counsels of both the parties free of cost.

Pending application(s), if any, also stands disposed of.



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