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Crl.O.P.Nos.3287, 3289 & 3291 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2026

CORAM:

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.Nos.3287, 3289 & 3291 of 2026

D.Vijayakumar

...Petitioner in all petitions

Vs.

1. B.Kalaivani
2. V.Dharshan (Minor)
Rep. by his Mother and
Natural Guardian B.Kalaivani ...Respondents 1 & 2 in all petitions
3. Everwin Matriculation Hr. Sec. School,
Rep. by its Principal,
M9, Meenakshi Nagar, Balakumaran Nagar,
Kolathur, 12/3, Red Hills Road,
S J Avenue, 4th Street, Thirupathi Nagar,
Kolathur, Chennai – 600 099.
...3rd respondent in Crl.O.P.No.3289 of 2026
4. The Manager,
State Bank of India,
Ambattur (Chennai) Branch.
...3rd respondent in Crl.O.P.No.3291 of 2026

Common Prayer: Criminal Original Petitions filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita/Section 482 Cr.P.C, seeking to set aside the return docket orders, all dated 30.12.2025 passed in M.P.SR.Nos.3489, NIL and 3488 of 2025 respectively in M.C.No.596 of 2022, all on the file of the III Additional Family Court, Chennai.



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In all petitions:

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For Petitioner : Mr.M.Nirmalkumar

COMMON ORDER

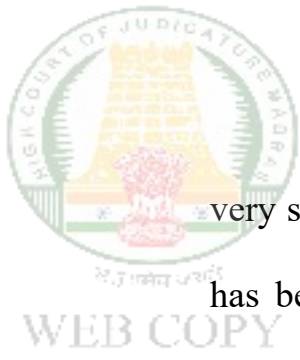
These criminal original petitions have been filed seeking to quash the return docket orders, all dated 30.12.2025 passed in M.P.SR.Nos.3489, NIL and 3488 of 2025 respectively in M.C.No.596 of 2022, on the file of the III Additional Family Court, Chennai.

2. Since no order adverse to the interest of the respondents is passed, notice to the respondents in all these petitions is dispensed with.

3. The brief facts are as follows:

3.1 The 1st and 2nd respondents herein are none other than the wife and son of the petitioner and the 1st respondent on her behalf and on behalf of her minor son/the 2nd respondent herein, filed a maintenance petition under Section 125 of the Cr.P.C., seeking to direct the petitioner herein to pay a sum of Rs.35,000/- per month towards maintenance in their favour, by suppressing the fact that 1st respondent has been working as a Teacher in Everwin Matriculation school since 2022 and earning a sum of Rs.9,990/- and that the 2nd respondent/son has been studying in the

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very same school where the 1st respondent is working and his school fees has been waived under the Right of Children to Free and Compulsory Education Act, 2009.

3.2 The III Additional Principal Family Court, Chennai, without considering any of the above said facts, vide order dated 14.06.2024, directed the petitioner to pay a sum of Rs.10,000/- per month towards maintenance in favour of the 1st respondent/wife and Rs.15,000/- per month towards maintenance in favour of the 2nd respondent/son. Subsequently, the 1st respondent on her behalf and on behalf of the minor son, the 2nd respondent herein, filed petitions under Section 125(3) of Cr.P.C. in Crl.MP.No.870 of 2025 and NIL of 2025 in M.C.No.596 of 2022 respectively, seeking to direct the petitioner to pay the arrears of maintenance and to continue to pay the monthly maintenance awarded by the Family Court.

3.3 Aggrieved by the same, the petitioner filed a petition under Section 127 of Cr.P.C in M.P.SR.No.3489 of 2025 seeking to recall the order dated 14.06.2024 and petitions under Order XVI Rule 6 r/w. 151 of CPC in M.P.SR.No. NIL of 2025 and M.P.SR.No.3488 of 2025, seeking to issue subpoena to the Everwin Matriculation Higher Secondary School represented by its Principal to produce the service records of the 1st respondent and the particulars of the students covered under the Right

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of Children to Free and Compulsory Education Act, 2009 and to issue subpoena to the Branch Manager, State Bank of India, Ambattur, Chennai to produce the Bank Statement of the 1st respondent bearing Account No.30074622230, respectively. However, the Family Court, vide docket orders, all dated 30.12.2025, returned the above petitions with the following endorsements:-

“M.P.SR.No.3489 of 2025:

Sec 127 Cr.P.C. is for only modification or change of circumstances. This petition is appeal against the order of this Court which should be filed only to the Hon'ble High Court of Madras. Hence, this petition is not maintainable.”

M.P.SR.No. of 2025:

Since main petition under Section 127 Cr.P.C returned. Hence this petition also returned.

M.P.SR.No.3488 of 2025:

Since main petition under Section 127 of Cr.P.C returned, this petition also returned.”

3.4 Aggrieved by the same, the petitioner has come up with these petitions.

4.1. Learned counsel for the petitioner submitted that the 1st respondent/wife obtained the above said maintenance order by suppressing several material facts and upon coming to know about the



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same, the petitioner filed the above petitions to show that the 1st respondent is continuously employed and earning a sum of Rs.9,990/- and that the 2nd respondent/son was admitted to school under the Right of Children to Free and Compulsory Education Act, 2009 and no fee is paid by the 1st respondent for the education of the 2nd respondent and therefore, the 1st respondent/wife is not entitled to any maintenance at the hands of the petitioner. However, without considering any of the above said facts, the Family Court, vide impugned docket orders all dated 30.12.2025, returned the petitions filed by the petitioner under Section 127 of Cr.P.C. and Order XVI Rule 6 r/w. 151 of CPC, seeking to alter the maintenance awarded based on the change of circumstances and to issue subpoena to the School authorities and the Bank official respectively, which is wholly unsustainable.

4.2. In support of his contention, the learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court in ***Sanjeev Kapoor Vs. Chandana Kapoor and others*** in Criminal Appeal No.286 of 2020 dated 19.02.2020 ***[MANU/SC/0209/2020]*** and submitted that the Family Courts have the power to alter, cancel, or review maintenance orders passed under Section 125 of the Code of Criminal Procedure (Cr.P.C.) if a settlement is breached and that such actions are not barred

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by the restrictions in Section 362 Cr.P.C. Accordingly, he prayed for setting aside the impugned return docket orders.

5. This Court gave its careful consideration to the arguments advanced by the learned counsel for the petitioner and perused the materials available on record.

6. For better appreciation, the relevant portion of the decision of the Hon'ble Apex Court in Sanjeev Kapoor (*supra*) is extracted hereunder:-

"23. The closer look of Section 125 Code of Criminal Procedure itself indicates that the Court after passing judgment or final order in the proceeding Under Section 125 Code of Criminal Procedure does not become functus officio. The Section itself contains express provisions where order passed Under Section 125 Code of Criminal Procedure can be cancelled or altered which is noticeable from Section 125(1), Section 125(5) and Section 127 of Code of Criminal Procedure, which are to the following effect:

125(1). Order for maintenance of wives, children and parents.- (1) if any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or



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(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in Clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

[Provided that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this Sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same



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to such person as the Magistrate may from time to time direct:

Provided also that an application for monthly allowance for the Interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation.- For the purposes of this Chapter;-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875(9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

125(5). On proof that any wife in whose favour an order has been made under this Section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

127. Alteration in allowance.- *[(1) On proof of a change in the circumstances of any person, receiving, Under Section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same Section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as*



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he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.]

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made Under Section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made Under Section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that -

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage.

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order -

i) in the case where such sum was paid before such order, from the date on which such order was made,

ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to



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[maintenance or interim maintenance, as the case may be] after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom [monthly allowance for the maintenance and interim maintenance or any of them has been ordered] to be paid Under Section 125, the Civil Court shall take into account that sum which has been paid to, or recovered by, such person [as monthly allowance for the maintenance and Interim maintenance or any of them, as the case may be, in pursuance of] the said.

*24. In Section 125 Code of Criminal Procedure uses the expression used is “**as the Magistrate from time to time direct**”. The use of expression 'from time to time' has purpose and meaning. It clearly contemplates that with regard to order passed Under Section 125(1) Code of Criminal Procedure, the Magistrate may have to exercise jurisdiction from time to time. Use of expression 'from time to time' in is exercise of Jurisdiction of Magistrate in a particular case. Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd edition defines 'time to time' as follows:*

Time to time. *As occasion arises*

25. The above Legislative Scheme indicates that Magistrate does not become functus officio after passing an



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order Under Section 125 Code of Criminal Procedure, as and when occasion arises the Magistrate exercises the jurisdiction from time to time. By Section 125(5) Code of Criminal Procedure, Magistrate is expressly empowered to cancel an order passed Under Section 125(1) Code of Criminal Procedure on fulfilment of certain conditions.

26. Section 127 Code of Criminal Procedure also discloses the legislative intendment where the Magistrate is empowered to alter an order passed Under Section 125 Code of Criminal Procedure Sub-section (2) of Section 127 Code of Criminal Procedure also empower the Magistrate to cancel or vary an order Under Section 125. The Legislative Scheme as delineated by Sections 125 and 127 Code of Criminal Procedure as noted above clearly enumerated the circumstances and incidents provided in the Code of Criminal Procedure where Court passing a judgment or final order disposing the case can alter or review the same. The embargo as contained in Section 362 is, thus, clearly relaxed in proceeding Under Section 125 Code of Criminal Procedure as indicated above.

27. The submissions which have been pressed by the learned Counsel for the Appellant were founded only on embargo of Section 362 and when embargo of Section 362 is expressly relaxed in proceeding Under Section 125 Code of Criminal Procedure, we are not persuaded to accept the submission of counsel for the Appellant that the Family



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Court was not entitled to set aside and cancel its order dated 06.05.2017 in facts and circumstances of the present case."
(Emphasis supplied by this Court)

7. On a perusal of the above decision, it is evident that the Hon'ble Apex Court has specifically held that Magistrate does not become *functus officio* after passing an order under Section 125 Code of Criminal Procedure, as and when occasion arises, the Magistrate exercises the jurisdiction from time to time and that by Section 125(5) Code of Criminal Procedure, the learned Magistrate is expressly empowered to cancel an order passed under Section 125(1) Code of Criminal Procedure on fulfilment of certain conditions and that the embargo as contained in Section 362 is clearly relaxed in proceeding under Section 125 of the Code of Criminal Procedure.

8. In view of the above, this Court is of the view that the Family Court had erred in returning the petition filed by the petitioner under Section 127 of Cr.P.C. and therefore, this Court is inclined to interfere with the same.



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9. Accordingly, the impugned docket order dated 30.12.2025 passed by the III Additional Family Court, Chennai, returning the petition under Section 127 of Cr.P.C. in M.P.SR.No.3489 of 2025 in M.C.No.596 of 2022 is set aside and the III Additional Family Court, Chennai is directed to take the petition in M.P.SR.No.3489 of 2025 on file and issue notice to the respondents and pass appropriate orders on merits and in accordance with law as expeditiously as possible.

10. It is made clear that this Court has not ventured into the allegation of suppression of material facts made by the petitioner as against the 1st respondent/wife and it is left open for the Family court to decide the said issue.

11. In view of the above, the other two petitions in Crl.OP.Nos.3289 and 3291 of 2026, challenging the return docket orders both dated 30.12.2025, made in petitions filed under Order XVI Rule 6 r/w. 151 of CPC in M.P.SR.Nos. NIL & 3488 of 2025 in M.C.No.596 of 2022, seeking issuance of subpoena to the concerned officials, are closed and the petitioner is at liberty to file such petitions for issuance of subpoena at the relevant point of time.



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12. Registry is directed to return the original petitions and papers to the learned counsel for the petitioner, enabling him to re-present the same before the Family Court.

13. With the above directions and observation, the criminal original petitions in Crl.OP.No.3287 of 2026 stands allowed and Crl.OP.Nos.3289 and 3291 of 2026 stand closed.

11.02.2026

skt

NCC : Yes/No

Note to office: Issue order copy on 16.02.2026.

To:

The III Additional Family Court,
Chennai.



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A.D.JAGADISH CHANDIRA, J.

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