

**DISSANAYAKE AND OTHERS**  
**v.**  
**OFFICER-IN-CHARGE, POLICE STATION, HANGURANKETA**

COURT OF APPEAL  
S.N. SILVA, J. & W.N.D. PERERA, J.  
C.A. No. 884/89  
M.C. KANDY B/27496/89  
NOVEMBER 16, 1989.

*Bail – Code of Criminal Procedure Act, No. 15 of 1979, Section 115.*

The three suspects produced before the Magistrate on a report of having committed rape, were remanded by her for continuous periods totalling 8. weeks.

**Held –**

Section 115 of the Code of Criminal Procedure Act No. 15 of 1979 provides that persons in the situation of the suspects can be remanded for a total period of 15 days and no more except where the offences are under sections 114, 191 or 296 of the Penal Code.

The words of section 115(2) admit only of one interpretation, that is, that the total period of remand can only be for a period of 15 days where the investigation has not been completed, except with regard to the three offences specified in the Section (ss. 114, 191, 296 of the Penal Code).

*Per S.N. Silva, J:*

“The learned Additional Magistrate does not appear to have paid any consideration to the legal basis on which it was sought to restrict the personal liberty of the suspects for successive periods. We have to note that this procedure is totally irregular.”

**Cases referred to:-**

(1) *Attorney-General v. Sepala Ekanayake* 1 Sri Kantha L.R. 41

(2) *Pathirana v. O.I.C. Nittambuwa Police* (1988) 1 Sri L.R. 84.

APPLICATION for bail and/or Revision of the Order of the Additional Magistrate of Kandy.

*Jayampathy Wickramaratne* with *Vijitha Wickremaratne, M.S.G. Suhaid* and *H. Withanachchi* for petitioner.

November 16, 1989.

**S.N. SILVA, J.**

Mr. Jeyampathi Wickramaratne is heard in support of the petition and affidavit filed on 13.11.1989. By the said petition an application is made on behalf of three suspects who are held in remand upon an order issued by the learned Additional Magistrate of Kandy. A certified copy of the proceedings in that case has been filed marked P1.

According to the certified copy (P1) the three suspects were produced on 28.09.1989 upon a report of the Officer-In-Charge of the Hanguranketha Police. The allegation contained in the report is that on 31.07.1989 the suspects committed rape on three persons whose names appear in the report. On this report being filed, the Additional Magistrate remanded the suspects till 05.10.1989. On 05.10.89 the suspects were further remanded till 19.10.89.

According to the Journal Entry of 17.10.89 counsel for the suspects had made submissions that since the offence is one in respect of which bail may be granted and no plaint has been filed the suspects should be released on bail. The learned Additional Magistrate does not appear to have considered this submission and had made an order extending the period of remand up to 02.11.89.

On 03.11.89 the suspects had been produced before the learned Additional Magistrate who made order remanding the suspects until 09.11.89. On 09.11.89 the suspects have been remanded upto 23.11.89.

It is apparent from the certified copy of the proceedings that the learned Additional Magistrate had remanded the suspects for a total period of 08 weeks, without considering, at any stage, the legal basis on which the orders were made.

Mr. Wickramaratna submitted that where an investigation is not completed, the only provision on which a suspect can be remanded is section 115 of the Code of Criminal Procedure Act, No. 15 of 1979. This section clearly provides that in such situation the suspect "can be remanded for a total period of 15 days and no more". This, however, is subject to an exception in respect of offences punishable under section 114, 191 and 296 of the Penal Code. Counsel also referred to two decisions of this Court, in the cases of *Attorney-General Vs. Sepala Ekanayaka* (1) and *Pathirana Vs. O.I.C. Nittambuwa Police* (2). In both these cases this Court held that the words referred to in Section 115(2) admit only of one interpretation – that is that the total period of remand can be only for a period of 15 days, where the investigation has not been completed except with regard to the three offences specified in the Section.

The learned Additional Magistrate does not appear to have paid any consideration to the legal basis on which it was sought to restrict the personal liberty of the suspects for successive periods..

We have to note that this procedure is totally irregular.

On the basis of the material placed before us, we make order directing the release of the three suspect-petitioners namely D.M.S. Dissanayake, D.M. Sunil Dissanayake and A.G. Chandrasena (being the suspects remanded in M.C. Kandy case No. B/27496/89) on bail with certified security fixed at Rs. 1000/- and with two sureties acceptable to the Magistrate's Court. The Registrar is directed to send a certified copy of this order forthwith to the Magistrate's Court of Kandy.

**W.N.D. PERERA, J.** – I agree

*Bail ordered.*