

1954

Present : Pulle J.

IN RE NOOR JEHAN

*S. C. 519—In Revision M. C. Colombo 1,211/B*

**Habeas corpus—Power of Court to remand a girl to the Salvation Army Home—Courts Ordinance (Cap. 6), s. 45.**

A Court has no jurisdiction to remand a girl to the Salvation Army Home during the pendency of a case of kidnapping her.

*Vaithalingam v. Gnanapathipillai* (1944) 46 N. L. R. 235, followed.

**A**PPPLICATION to revise an order of the Magistrate's Court, Colombo.

*M. Markhani*, for the petitioner.

April 23, 1954. PULLE J.—

In this case two persons were charged with the offence of having on the 11th March, 1954, kidnapped a girl named Noor Jehan *alias* Nagoor Umma who was born on 26th August, 1938. The learned Magistrate assumed jurisdiction under section 152 (3) of the Criminal Procedure Code and fixed the trial for the 3rd May, 1954. The girl who was produced in Court refused to go with her mother and she was remanded to the Salvation Army Home. The mother moved in revision to have the order of remand set aside on the ground that the Magistrate had no

jurisdiction to make it. At the time this application first came before me I felt that if the Magistrate had no jurisdiction I should make a further order granting the custody of the girl to the mother. Treating the application as one that should be inquired into under section 45 of the Courts Ordinance I called for a report from the Magistrate who stated that the girl was unwilling to go with the mother and that, therefore, she should not be handed over to her.

Mr. Markhani for the petitioner has drawn my attention to the case of *Vaithalangam v. Gnanapathipillai*<sup>1</sup> in which Soertsz J. held in similar circumstances that a remand to the Salvation Army Home was illegal. I would, therefore, set aside the order of remand and direct that the girl be handed over to the mother who is entitled to have the custody.

*Application allowed.*

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