

1957 Present : K. D. de Silva, J., and T. S. Fernando, J.

S. NAVARATNAM, Petitioner, and K. B. KARUNARATNE (Police Sergeant) and another, Respondents.

S. C. 447—Application in Revision in M. C. Jaffna, 11055

Children and Young Persons Ordinance, No. 48 of 1939—Section 35 (1)—Meaning and effect of expression “is satisfied”—Duty of Court to hear evidence.

When an application is made before a Juvenile Court in terms of section 35 (1) of the Children and Young Persons Ordinance, it is the duty of the Magistrate to hear evidence and be personally satisfied that the young person in question is in need of care or protection. The Magistrate cannot act merely on a report made to him by a probation officer.

APPPLICATION to revise an order of the Magistrate's Court, Jaffna.

C. Ranganathan, for the petitioner.

T. A. de S. Wijesundere, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

November 8, 1957. T. S. FERNANDO, J.—

The petitioner, a brother of a lad named Thevarajah, said to be 15 years and 10 months old today, seeks the intervention of this Court in its revisionary jurisdiction for the setting aside of an order made on 27th July 1957 by the Magistrate's Court of Jaffna sitting as a Juvenile Court directing Thevarajah to be sent to St. Vincent's School at Maggona, an approved school within the meaning of the Children and Young Persons Ordinance, No. 48 of 1939.

The facts relevant at the present stage may be set down as follows'—

On 8th April 1957, a Police officer, the respondent to the present application, produced Thevarajah before the Juvenile Court and moved that action be taken (in respect of Thevarajah) in terms of section 35 (1) of the Children and Young Persons Ordinance. Under that section, where a Magistrate's Court sitting as a Juvenile Court *is satisfied* that any person brought before it under that section is a child or young person *in need of care or protection* the Court is empowered to make certain orders as specified therein. One of these is to order that the child or young person be placed for a specified period not exceeding three years under the supervision of a probation officer. When Thevarajah was produced as stated above, the learned Magistrate made order calling for a report from the probation officer, the report to be submitted on 24th April 1957. On this latter date, the respondent Police officer stated to Court that he proposed to lead certain evidence to satisfy the Magistrate that Thevarajah stands in need of care or protection. He appears therefore to have understood that an inquiry upon evidence was necessary before his application could be granted. Inquiry was accordingly fixed for 27th April 1957.

The proceedings in court on 27th April 1957 are recorded as follows '—
“ Mr. Sabapathy who appears for the respondent (presumably Thevarajah) desires that the boy be placed under the employment of some person who can look after him and teach him a useful trade, subject to the control and supervision of the probation officer.” On this day the probation officer asked for time till 6th May 1957 to make inquiries and report to Court. On 6th May 1957 after hearing certain submissions made by (a) the probation officer (b) Mr. Sabapathy, the proctor for Thevarajah and (c) the parents of Thevarajah, the Magistrate purporting to act under section 35 (1) of the Ordinance ordered that Thevarajah be placed under the supervision of the probation officer for a period of two years, and that during this period Thevarajah will be employed under Mr. Feldano or any other employer approved by the probation officer.

Although Thevarajah had been handed over the next day to the care of his new employer, it would appear that he had run away from Mr. Feldano on 9th May 1957, and it is alleged that he had been induced to do so by one Manuel whose association with Thevarajah the probation officer believed to be undesirable. On these facts and allegations being brought to the Magistrate's notice, warrant was issued on 11th May 1957 for Thevarajah's arrest, followed by an open warrant which was ordered on 25th June 1957. Thevarajah was eventually arrested and produced before the Magistrate on 27th July 1957 and on that day, on representations made to court by Thevarajah's parents and by the probation officer, the order made on 6th May 1957 placing Thevarajah under the supervision of the probation officer was cancelled and order was made by the Magistrate directing Thevarajah to be sent to the approved school referred to above for a period of three years.

Both orders, viz., those made on 6th May and on 27th July 1957, were appealable. By way of an excuse for failure to appeal against the order of 27th July, it is alleged by the present petitioner, who is the elder brother of Thevarajah, that the Manager of St. Vincent's School at Maggona refused to permit Thevarajah to sign a petition of appeal forwarded through him. This allegation made upon affidavit by the petitioner has not been controverted, and in these circumstances we have been urged to deal with the matter by way of revision. We are disposed to do so on account of the conclusion we have reached in respect of the regularity of the order made on 6th May purporting to be one under section 35 (1) of the Ordinance. The order which is the subject of grievance in this application in revision is the later order (of 27th July) purporting to have been made under section 37 (1) of the Ordinance, and this later order can be sustained only if the earlier order had been regularly made.

The question for our decision turns upon the meaning of the expression “ is satisfied ” occurring in section 35 (1). It is apparent upon a perusal of the record of the proceedings that no evidence was taken in the Magistrate's Court, and the order of 6th May has undoubtedly followed upon an acceptance by the learned Magistrate of the opinion of the probation officer contained in the latter's report of 24th April that Thevarajah was in need of care or protection. It is possible that the submissions made by Mr. Sabapathy on 27th April also contributed to the omission on

the part of the Magistrate to proceed to inquiry upon evidence as indicated in his order of 24th April ; but it seems to me that an implied willingness on the part of the young person (given expression to by his lawyer) to submit to the making of an order placing him under the supervision of a probation officer did not have the effect of rendering unnecessary compliance with the requirement that the Magistrate should have been himself satisfied that the young person was in need of care or protection. Could the Magistrate then have been satisfied without evidence and merely on a report made to him by the probation officer ?

No Rules of Court as envisaged in section 12 of the Ordinance have hitherto been made for regulating the procedure and practice relating to the hearing and determination of an application relating to a young person. There is however nothing in the Criminal Procedure Code or in Part I of the Ordinance relating to the procedure in Juvenile Courts which appears to justify the making of orders under section 35 of the Ordinance without the necessity of taking evidence. Some guidance on the question arising for decision on this application may be obtained by reference to the corresponding English Law. The Children and Young Persons Ordinance, No. 48 of 1939, has been adapted from the Children and Young Persons Act of 1933 (23. Geo. V. Ch. 12), and sections 35 and 37 of our Ordinance are closely modelled on sections 62 and 66 respectively of the English Act. Rules 19 to 22 of the Summary Jurisdiction (Children and Young Persons) Rules of 1933—S. R. & O. 1933, No. 819. L.23 clearly indicate that the Court shall hear evidence on behalf of the applicant and, where tendered, on behalf of the child or young person concerned.

Where a statute has conferred a power on a judicial authority to make an order affecting the liberty of an individual on such authority being satisfied that a certain state of affairs exists, I am of opinion that there should be proof of the existence of that state of affairs offered before such authority in the normal way proof is offered in judicial proceedings. The opinion of the probation officer in this case cannot take the place of proof that the young person in question is in need of care or protection. The legislature made the making of the order conditional on the Magistrate himself being satisfied. If the legislature intended otherwise, it would have been sufficient if power had been conferred on the Magistrate to make the order specified in section 35 on a report being made to him by a probation officer that the young person is in need of care or protection. For the reasons I have set out above, I am of opinion that the expression in question must be taken as meaning "is satisfied on evidence". If this be the true meaning of the expression occurring in section 35, then the order of 6th May was made without authority. If so, it follows that the order now complained of is also irregular. In the circumstances related above I would set aside the order of 27th July 1957 under which Thevarajah was sent to St. Vincent's Approved School at Maggona, and direct that he be released forthwith from the School. The order of 6th May 1957 has already been cancelled by the learned Magistrate, and no direction is necessary thereon from this Court.

K. D. DE SILVA, J.—I agree.

Order set aside.