

IN RE SHAMILA BEGAM

COURT OF APPEAL

P.R.P. PERERA, J. & S.N. SILVA, J.

C.A. No. 476/89

M.C. FORT NO. 64233

SEPTEMBER 20, 1989.

Custody – Custody of married party – Order releasing suspect to custody of parents.

Shamila Begam the 3rd suspect was married to the 1st suspect on 31.05.1989. On 07.06.89 the Magistrate made Order releasing the 3rd suspect to the custody of her parents on a bond of Rs. 5000/-.

Held –

The Magistrate had no authority to release the 3rd suspect to the custody of the parents.

Per S.N. Silva, J.

“It is inconceivable as to how in a charge under section 357 of the Penal Code, (being the offence disclosed in the report) the girl who is the alleged victim of the offence can also be treated as a suspect. Be that as it may, the Magistrate should rightly consider whether she should be released on bail pending trial.”

Case referred to:-

(1) *Vythiyalingam v. Gnanapathipillai* 46 NLR 235.

APPLICATION in revision of the Order of the Magistrate of Colombo Fort.

U.D.M. Abeysekera with *C.F. Jayawickrema* for Petitioner.

Miss I. Demuni, S.C. for Attorney-General.

September 20, 1989.

S.N. SILVA, J.

The Petitioner being the 2nd suspect in case No. 64233 M.C. Fort Colombo has filed this application in Revision in respect of certain orders made by the learned Magistrate. Upon this application being made, Court directed the issue of notice on the Hon. Attorney-General and the matter is argued today.

Mr. Abeysekera appearing for the petitioner stated that he was restricting the relief sought to a review of the order dated 7.6.89 made by the learned Magistrate releasing the 3rd suspect Shamila Begam to the custody of her parents on a bond of Rs. 5,000/- Mr.

Abeysekera submitted that the 3rd suspect is the wife of the 1st suspect Abdul Latiff Mohamed Razeem. He produced the marriage certificate, the 1st suspect and the 3rd suspect were married on 31.5.89 at 8.30 a.m. Counsel submitted that the learned Magistrate had no authority to release the 3rd suspect to the custody of her parents. He relied upon the Judgment of the Supreme Court in the case of *Vaithyalingam vs. Gnanapathipillai*. Learned State Counsel appearing for the Attorney-General concedes that the learned Magistrate had no authority to make an order releasing the 3rd suspect to the custody of her parents.

We have considered the submissions of counsel and we are of the view, that in the circumstances stated above, the learned Magistrate had no authority to make an order releasing the 3rd suspect to the custody of her parents, on a bond. In the case of *Vaithyalingam Vs. Gnanapathipillai* referred to above, Soertsz J. in a similar situation set aside the order of the learned Magistrate and directed the Magistrate " to have the girl produced before him and to tell her that she is free to go where she chooses ". In the instant case, the girl in question has been produced as a suspect. It is inconceivable as to how in a charge under Section 357 of the Penal code, (being the offence disclosed in the report) the girl who is the alleged victim of the offence can also be treated as a suspect. Be that as it may, since the girl has been named a suspect, the Magistrate should rightly consider whether she should be released on bail pending trial.

Accordingly we set aside the order dated 7.6.89 whereby the Magistrate released the 3rd suspect to the custody of her parents on a bond of Rs. 5,000/-. The Magistrate is directed to have the 3rd suspect produced before the Magistrate on an early date and to make an order releasing the 3rd suspect on bail or on a personal bond pending the trial of the case.

P.R.P. PERERA, J. – I agree.

Order set aside.