

1953

Present : Swan J.

In re M. L. M. SALEEM

S. C. 609, with Application in Revision 298—M. C. Kandy, 7,842

Bail—Forfeiture of bond—Circumstances when it is wrong.

Where a person who gave bail for the appearance of an accused person did all that was possible to see that the accused was brought before court—

Held, that the bond should not be forfeited.

APPPEAL, with application in revision, from an order of the Magistrate's Court, Kandy.

R. R. Crossette-Thambiah, Q.C., with *S. Saravanamuttu*, for the surety-appellant.

Ananda Pereira, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

¹ (1931) 2 K. B. 546.

² (1952) 2 Q. B. 735.

December 14, 1952. SWAN J.—

In this case the appellant had given bail for the appearance of one D. Edward *alias* Wijesiri *alias* Cyril Jayawardena. He was also surety for the same accused in M. C. Colombo South 35106 and 26287 and M. C. Negombo 65604. The accused had absconded in all three cases and a warrant was out for his arrest. On the 6th March, 1953, the appellant traced the accused and after considerable difficulty and at the risk of his own life handed him over to the Moratuwa Police. The Moratuwa Police took him to Negombo and instead of remanding the accused the Magistrate there warned him to appear on the next day. The appellant had sent a telegram to the Negombo Magistrate notifying that the accused had been arrested and produced and begging to be released from his obligation. The Magistrate replied that the accused was warned to appear on the 14th March and that the appellant was liable for his appearance. When the case was called on the 14th March the accused was absent. The appellant explained matters to court and the learned Magistrate did the right thing when he discharged the appellant.

In this case, however, although the facts were fully explained to the Magistrate the appellant's bond was forfeited to its entire extent. Learned Crown Counsel very properly stated that he could not support the order made by the learned Magistrate. There can be no doubt that the appellant did all that was humanly possible to see that the accused was brought before court. In the circumstances I set aside the order of forfeiture. The appellant's bond is cancelled and discharged.

Order set aside.

