

1964

*Present : Sri Skanda Rajah, J.*

A. AMIRTHALINGAM, Petitioner, *and* THE ATTORNEY-GENERAL  
and 2 others, Respondents

*S. C. 473/1963—Application for the re-transfer of M. C. Jaffna 25792 from  
M. C. Colombo to M. C. Jaffna*

*Courts Ordinance—Section 43—Transfer of case thereunder—Application for re-  
transfer—Tender of affidavits by Attorney-General—Right of petitioner to file  
counter-affidavits.*

Where, in an application for the re-transfer of a criminal case transferred from one court to another under the provisions of section 43 of the Courts Ordinance, affidavits are filed by the Attorney-General showing cause against the motion, the petitioner is entitled to file counter-affidavits.

**A**PPPLICATION for the re-transfer of a case from the Magistrate's Court, Colombo, to the Magistrate's Court, Jaffna.

*M. Tiruchelvam, Q.C., with T. W. Rajaratnam and K. Kanthasamy, for the Petitioner.*

*A. C. Alles, Solicitor-General, with R. I. Obeyesekera, Crown Counsel, for the 1st to 3rd Respondents.*

January 24, 1964. SRI SKANDA RAJAH, J.—

This is an application for the re-transfer of a case which was transferred by the Attorney-General by his fiat under the provisions of section 43 of the Courts Ordinance from the Magistrate's Court of Jaffna to the Magistrate's Court of Colombo.

In view of the following comment of my brother Weerasooriya in the case of *Paramalingam v. Attorney-General*<sup>1</sup>: " But as a result of the attitude of silence adopted by the Attorney-General in regard to the reasons that moved him to issue his fiat, the position is simply this: that no cause has been shown against the petitioner's application ", the Attorney-General tendered this day copies of three affidavits, one each by the two accused and another by the Assistant Superintendent of Police, Jaffna, which had been submitted to the Attorney-General before he issued the fiat.

Mr. Tiruchelvam, who appears for the petitioner, asks for time to file affidavits controverting the averments in those affidavits. The learned Solicitor-General argues that the petitioner is not entitled to file such affidavits.

<sup>1</sup> (1959) 63 N. L. R. 202 at page 206.

In the above case Weerasooriya, J., quoted a previous decision of this Court, namely, *The King v. Ludowyk*<sup>1</sup>, and said that the matter is open to the fullest examination by this Court.

I am of the view that it is open to this Court to decide the question whether the material that was available to the Attorney-General before he issued the fiat was sufficient and/or true. In order to determine that question this Court may also take into consideration any fact, which had not been disclosed to the Attorney-General or which may tend to throw doubt on the averments in the affidavits that were placed before him. It should be open to the petitioner, who would naturally have been in the dark till today regarding the grounds which induced the Attorney-General to issue the fiat, to show that there was *suppressio veri* and/or *suggestio falsi* in those affidavits and that it is not likely that he would have considered it 'expedient' to issue the fiat had he been made aware of the real state of affairs—the word 'expedient' in section 43 is equivalent to "expedient in the interests of justice". Otherwise, it may not be possible for this Court to examine this matter as fully as it should. Therefore, I hold that Mr. Tiruchelvam's application is reasonable and allow two weeks' time to file affidavits. The matter to be listed for argument thereafter.

*Petitioner granted time to file affidavits.*

<sup>1</sup> (1935) 36 N. L. R. 397.

