

1958

*Present : H. N. G. Fernando, J.**In re ANULAWATHIE PERERA**S. C. 235—Application in Revision in M. C. Colombo South, 80505**Surety—Bond given by him for appearance of an accused—Accused's failure to appear—Forfeiture of bond.*

A person who enters into a bond as surety for the appearance of an accused cannot be held responsible if the failure of the accused to appear on the appointed date is due to causes completely beyond the control of the accused and is not attributable to any desire on his part to evade attendance.

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

E. A. G. de Silva, for the petitioner.

M. Hussein, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

December 11, 1958. H. N. G. FERNANDO, J.—

The petitioner had entered into a bond as surety for the appearance of the accused in Case No. 80505 M. C. Colombo South. The case had been fixed for trial on 3rd June 1958. The accused failed to appear on that date, and the Magistrate forthwith issued a Warrant for the arrest of the accused and also noticed the petitioner. On 6th June, the petitioner appeared and was asked to show cause why her bond should not be forfeited. She then stated that the accused had been remanded on 2nd June 1958 in a case pending against him in the Magistrate's Court of Puttalam: her position presumably was that the accused's failure to appear on 3rd June was due to the fact that he had on the previous day been remanded into custody at Puttalam. The Magistrate does not hold that that the petitioner's allegation was false, but he considers that the petitioner should have informed him of the remand so that he might have issued notice on the Jail authorities at Puttalam to produce the accused before him. On this latter ground, the Magistrate has forfeited Rs. 1000 out of the security furnished by the petitioner.

With respect, I think the Magistrate has taken an unrealistic view of the matter. If he meant that he should have been informed of the Puttalam remand in time to enable him to secure the attendance of the accused on the fixed date of trial (June 3rd, 1958), that was expecting the impossible: the Puttalam remand is stated to have been ordered only on 2nd June. If the Magistrate meant that the petitioner should have been present herself on June 3rd in order to furnish information as to the whereabouts of the accused, I think the answer is that a surety does not undertake any such obligation. The obligation of a surety relates to the

appearance of the accused person on the due date, and the surety's bond must be forfeited if no good cause is shown for the failure of the accused to appear. In other words, *the surety guarantees only the conduct of the accused, and not his own conduct.* If the conduct of the accused, namely his failure to appear, is excusable, then there is no default of the accused for which the surety can be held responsible.

Upon the facts stated to the Magistrate on June 6th by the petitioner which were not contradicted either before him or in this Court, the failure of the accused to appear on 3rd June was due to causes completely beyond his control and was not attributable to any desire on his part to evade trial in the Colombo case. That being so, there was no default on his part for which the petitioner was vicariously liable. I would therefore quash the order of forfeiture made against the petitioner.

Order quashed.