

1961

*Present : L. B. de Silva, J.***S. KANDASAMY, Petitioner, and C. SUBRAMANIAM, Respondent**

*S. C. 469/61—Application for the transfer of M. C. Mallakam 10615  
to be heard by a Judge other than the Addl. District Judge and  
Addl. Magistrate, Jaffna*

*Criminal procedure—Bias of Magistrate—Right of complainant to have case heard by a  
different Magistrate.*

Where, in a criminal case, the complainant has reason to fear that he will not obtain an impartial and fair hearing from the Magistrate, it is open to him to make an application for the hearing of the case to be taken up before a different Magistrate.

**A**PPPLICATION to set aside an order of the Magistrate's Court,  
Mallakam.

*S. C. E. Rodrigo*, for the complainant-petitioner.

*T. K. Curtis*, for the accused-respondent.

October 16, 1961. L. B. DE SILVA, J.—

The Complainant Petitioner has made this application for the hearing of this case to be taken up before another Magistrate on the ground that the learned Additional District Judge and Magistrate of Jaffna, who is also Magistrate for Mallakam had been invited by the accused respondent to be the chief guest at a College dinner about a month prior to the date when he made the application before the Magistrate that the case be heard by another Judge.

The accused is the Principal of the College in question and the complainant is a teacher in that College. The learned Magistrate took the view that he was confident that he could impartially hear and decide this case in spite of the fact that he had been one of the two distinguished guests at the dinner in question. He also asked complainant's lawyer who was a senior proctor of this Court whether he had confidence in the Magistrate's impartiality, and the complainant's proctor assured him that he had absolute confidence in the Judge but was making the application as a matter of prudence on the instructions of his client.

The learned Judge also took the view that an accused person may have a right to raise an objection of this nature but it was not open to the complainant to do so.

I am of the view that the learned Magistrate has misdirected himself when he said that it was not open to a complainant to raise an objection of this nature. Probably what he meant was that if such an application had been made by an accused such application would have been more readily granted than where the complainant made an application of that kind. It would appear from the authorities cited to this Court that the real test in deciding an application of this nature is not whether the Judge in fact would be prejudiced and that the parties would not get an impartial hearing but whether the party to a case or even the general public may have some reason to feel that the course of justice was not absolutely fair and impartial.

In the circumstances of this case the Complainant Petitioner may have some reason to fear that he may not get an impartial and fair hearing of this case because the accused Respondent had invited the learned Magistrate to be one of the two chief guests at the College dinner at which the accused would have presided as the Principal. In these circumstances I think it is in the best interests of justice that the application of the

complainant to have this case heard before another Magistrate be allowed. In allowing this application I wish it to be clearly understood that this Court is not in anyway suggesting that the parties would not have had a fair and impartial trial before the learned Magistrate who is a judge of considerable experience and seniority in the Judicial Service. Counsel for the accused-respondent only asks that this case be heard on the 28th October, 1961 for which date the case has been fixed for trial because he alleges that the complainant is only attempting to delay the decision of this case.

I direct that this case be heard by the learned District Judge of Jaffna who I am informed is also an Additional Magistrate for the division of Mallakam. I would request the learned District Judge to take up this case for hearing at as early a date as possible.

*Application allowed.*