

1966

*Present : Abeyesundere, J., and Alles, J.*

E. DON CHARLES, Appellant, and THE QUEEN, Respondent

*S.C. 27/66—D.C. Colombo (Criminal), N2221/47114/B**Bail bond—Order of forfeiture made against surety—Circumstances when it may be set aside.*

An order of forfeiture of Rs. 1,000 in respect of the bail bond furnished by the accused was made against the surety-appellant because of the failure of the accused to be present in the District Court on the due date. The surety satisfied the Supreme Court in appeal that the accused was ill on the date on which he was required to be present.

*Held*, that the order of forfeiture should be set aside.

**A**PPEAL from an order of the District Court, Colombo.

*R. Manikkavasagar*, for the Surety-Appellant.

*N. Tittavella*, Crown Counsel, for the Attorney-General.

June 20, 1966. ABEYESUNDERE, J.—

This is an appeal by a surety from an order made by the Additional District Judge of Colombo forfeiting Rs. 1,000 of the bail bond furnished by the accused in the District Court of Colombo in case No. N/2221/47114/B. The forfeiture has been made because of the failure of the accused to be present in the District Court after the conclusion of the proceedings

in the Supreme Court on an appeal made to that Court unsuccessfully by the accused. When the surety was asked by the learned Additional District Judge whether he had cause to show why the bond should not be forfeited, he stated that he had no cause to show. It was submitted on his behalf, by Counsel appearing for him in the appeal before us, that the surety was unable to show cause as he did not know the reason why the accused failed to appear in the District Court. It was further submitted on behalf of the surety that thereafter the surety had ascertained that the failure of the accused to appear in the District Court was due to illness. The surety has produced along with his appeal a medical certificate dated 2nd July, 1965, from Dr. D. S. de Simon to the effect that P. Sivasubramaniam is suffering from Neural Leprosy. Crown Counsel who appeared for the respondent stated that he was not in a position to contradict the fact that the accused was ill on the date on which he was required to be present in the District Court.

For the aforesaid reasons, we are of the view that it would be unjust to forfeit any sum and therefore we set aside the order of forfeiture of Rs. 1,000 made against the surety-appellant by the Additional District Judge.

ALLES, J.—I agree.

*Appeal allowed.*