entitled simply to say that if the judge had jurisdiction and had all the facts before him, the Court of Appeal cannot review his order unless he is shown to have applied a wrong principle. The Court must if necessary examine anew the relevant facts and circumstances in order to exercise a discretion by way of review which may reverse or vary the order. Otherwise in interlocutory matters the judge might be regarded as independent of supervision. Yet an interlocutory order of the judge may often be of decisive importance on the final issue of the case, and one which requires a careful examination by the Court of Appeal." [1]

I think the above remarks apply with equal force to appeals provided by the Courts Ordinance and may fairly be used as a guide.

The judgment of the learned District Judge is set aside and the plaintiff is declared entitled to his costs. This appeal is allowed with costs.

NAGALINGAM J.—I agree.

Appeal allowed.

1949 *Present :* **Gratiaen J.**

In re ATHURUPANE

S. C. 457—In revision M. C. Panadure, 8,977

Criminal Procedure Code—Postponement of proceedings—Rules for remanding accused—Bail—Judicial discretion—Cautious exercise necessary—Sections 289 (2) and (4), 396.

Where an accused person is remanded for a term not exceeding the period prescribed in section 289 (2) of the Criminal Procedure Code it is essential that he should be produced in Court at the expiry of that term so that the Magistrate might bring his mind to bear once more on what would be the appropriate order to make should the inquiry or trial be postponed.

The fixing of bail calls for the exercise of judicial discretion and for the most anxious care in each case.

ORDER made in revision in respect of certain orders of the Magistrate, Panadure.

Accused present in person.

R. A. Kannangara, Crown Counsel, for Attorney-General.

[1] *Evans v. Bartlam, (1937) A. C. 473 at 486.*

September 27, 1949. GRATIAEN J.—

This case was brought to my notice when I recently visited the remand jail at Welikade. It was then reported to me that the accused one Reginald Athurupane, a young lad of 17, has since June 27, 1949, been continuously on remand pending his trial in the Magistrate's Court of Panadure on charges of criminal trespass and connected offences. I considered it necessary that I should call for the record in the case for the purpose of satisfying myself with regard to the legality and propriety of the orders made by the learned Magistrate in this connection. I requested the Attorney-General to be good enough to arrange for Crown Counsel to assist me in examining this matter, and I am indebted to Mr. Kannangara for the valuable help which he has placed at my disposal.

On an examination of the record it appears that on June 27, 1949, the Sub-Inspector of Police, Panadure, instituted criminal proceedings against the accused under section 148 (*b*) of the Criminal Procedure Code charging the accused with the commission of the offences which I have referred to. It is not apparent from the record whether summons was issued in the first instance, but I find that on the date on which the proceedings commenced, namely, June 27, 1949, the accused was present and pleaded "not guilty". The trial was fixed for August 29, 1949, and an order was made granting the accused bail in the sum of Rs. 750 with one surety. How a young man could have been expected to furnish such an excessive amount at such short notice pending his trial on bailable offences I fail to understand. As was to be expected, the accused was unable to furnish bail and he was accordingly remanded under section 289 pending his trial.

The warrant committing the accused to custody pending trial commanded the Fiscal to take the accused to the remand jail in Colombo to be kept there until August 29, 1949, on which date he was to be produced in Court. This warrant of committal is to my mind in direct contravention of the provisions of section 289 (2) of the Criminal Procedure Code. Under the section "No Magistrate shall remand an accused person to custody under section 289 for a term exceeding seven days at a time save and except at such Magistrates' Courts as the Minister of Justice shall from time to time proclaim to be Magistrates' Courts at which longer remands may be made, when it shall be lawful to remand accused persons at any such Magistrates' Courts *for a term not exceeding fourteen days*". In the present case the learned Magistrate has thought fit to remand the accused to custody, in excess of the jurisdiction vested in him, for a period of two months. Learned Crown Counsel concedes that this order was contrary to law.

On August 29, 1949, when the accused was produced in Court the trial was postponed until October 31, 1949, as he was for obvious reasons unable to take the necessary steps to place his defence before the learned Magistrate. Without further consideration, apparently, as to what would represent a reasonable sum which should be furnished as bail in the circumstances of the case, the learned Magistrate remanded the accused for a further period of two months and two days. This order

is equally irregular. I notice however that on this occasion an order was made, with the intention presumably of paying lip-service to the strict requirements of section 289 (2), that the warrant (and not the accused) should be returned to the Court for extension at the expiry of each successive period of 14 days. Learned Crown Counsel informs me that this practice has come into force in various Magistrates' Courts in the Island and he concedes that it amounts to an unwarranted circumvention of the provisions of section 289 (2). Where an accused person is remanded for a term not exceeding 14 days, it is essential that he should be produced in Court at the expiry of that term so that the Magistrate might bring his mind to bear once more on what would be the appropriate order to make should the trial be postponed. If it were otherwise, the accused would be deprived of the opportunity to make such representations as may be necessary for the purpose of applying that bail in a smaller sum might be granted.

Under our Criminal Procedure Code bail " shall be fixed with due regard to the circumstances of the accused and shall not be excessive "— section 396 of the Code. The fixing of bail calls for the exercise of judicial discretion and for the most anxious care in each case. As has been pointed out in a series of decisions of the English Courts, the main consideration that should apply is whether it is probable that the accused will appear to stand his trial. The other matters for consideration include the nature of the accusation, the nature of the evidence in support of the accusation, and the severity of the punishment which conviction will entail. Section 289 (4) also lays down that where the accused has attended the Court on summons he *shall* be enlarged on his own recognizance or on his simple undertaking to appear, *unless for reasons to be recorded the Court orders otherwise.* In the present case the effect of the various orders made by the learned Magistrate is that the accused has already been in jail as an unconvicted person for a period of three months, and that he would have been on remand for yet another month if these proceedings had not been brought to my notice. I quash the orders made by the learned Magistrate committing the accused and direct that the accused be handed forthwith by the jail authorities to the Fiscal to be produced before the learned Magistrate who is at present officiating in Panadure at the earliest possible date. On being produced before the learned Magistrate he shall be enlarged on his own recognizance to appear in Court on the date fixed for trial. The accused has been examined in open Court before me and it appears that he is a person of fixed abode.

If special grounds exist in any case to justify the belief that the granting of bail in a reasonable sum within the means of the accused who is charged with a bailable offence is likely to defeat the ends of justice there should be something on record to indicate that these circumstances have been brought to the notice of and been considered by the Magistrate. There are always grave objections to the incarceration of unconvicted persons charged with bailable offences and it can only be in rare cases that reasons of such cogency arise as to out-weigh these objections. To fix bail in

a sum which is excessive almost invariably has the effect of an order refusing bail. If the unconvicted person is a young lad standing his trial on a bailable offence, such a procedure is almost always indefensible. I have ascertained from the statistics maintained by the Prison authorities that during the year 1948 the number of unconvicted persons remanded for failing to furnish security amounted in the Colombo jails alone to 7,154, and during the first half of this year to 3,215. I find it difficult to satisfy myself that in every one of these instances the judicial discretion which was vested in the Magistrate was wisely and cautiously exercised.

Orders quashed.