
Present: Akbar J.

1929.

In the Matter of a Contempt of Court by P. C. Siriwardene.

Habeas corpus—Application for writ—Dismissal—Similar application to another Judge—Powers of Supreme Court—Courts Ordinance, No. 1 of 1889, s. 49.

Each Judge of the Supreme Court is bound to entertain an application for a writ of *habeas corpus* and to determine the application on its merits, notwithstanding the fact that another Judge has refused a similar application by the applicant.

RULE issued by the Supreme Court on the respondent to show cause why he should not be punished for contempt of Court.

The facts appear from the judgment.

N. E. Weerasooria, for the respondent.

July 5, 1929. **AKBAR J.**—

The applicant on May 21 swore an affidavit asking for the custody of two children who he said were his children, their mother, the respondent, having been his mistress. In this affidavit he stated that the respondent was leading a bad life, that she was not taking due care of the children, and that he was in a position to give proper education to them by boarding them in a boarding school. He made no mention of any previous application by him to any Court in respect of these children. When I asked him to quote the number of any maintenance case in which he was sued by the respondent, he referred me to P. C., Colombo, 13,743. This case discloses the previous history of this matter. The respondent applied for the maintenance of these two children on February 6,

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1928. About the same time the applicant made an application to this Court for a writ of *habeas corpus*, which was referred to the Police Magistrate of Colombo for report. At the request of both the applicant and the respondent the petition and affidavit sent by the applicant were sent to the Police Magistrate, Colombo, to be inquired into in the maintenance case, P. C., Colombo, 13,743. The petitioner urged the same grounds which he has mentioned in the affidavit before me, but the Police Magistrate disbelieved his case and ordered him to pay Rs. 35 per month for the two children. During the course of his cross-examination he was actually asked the question whether he had not applied to the Supreme Court in 1928, because he was aware of the institution of the maintenance case, but the question was dropped as the summons in the maintenance case was served a few days after his application to the Supreme Court. The proceedings also show that the petitioner went to a different Proctor to file these papers now before me. Mr. J. H. Ratnaike, Proctor, admitted that he was not told by the petitioner about the previous applications made by the petitioner. So that on the facts there can be no doubt at all that the petitioner deliberately refrained from mentioning the previous application by him and the result of the maintenance case in which he did not appeal to this Court. To say the least, his affidavit was disingenuous. On these facts I issued a notice on him to show cause why he should not be punished for a contempt of this Court. Mr. Weerasooria however has brought to my notice a decision of the Privy Council, namely, the case of *Eleko v. Government of Nigeria*,¹ in which the Privy Council held that an applicant was entitled to make his application in similar circumstances to any Judge of the High Court and that the Judge must hear the case on the merits. They further held that a Judge was bound to hear and determine such an application on its merits notwithstanding that some other Judge had already refused a similar application. It is significant that under the Courts Ordinance, No. 1 of 1889, section 49, the Supreme Court or any Judge thereof is authorized to grant and issue a writ of *habeas corpus*. I am bound by the decision of the Privy Council that the application of the applicant must be considered on its merits notwithstanding the fact that the same question had been determined against the applicant by another Judge of this Court. The rule must therefore be discharged.

Rule discharged.

¹ (1928) A. C. 459.