

1963

*Present : Abeyesundere, J.*

G. B. PERERA, Petitioner, *and* DISSANAYAKE (Police Sergeant)  
Respondent

*S. C. 57—Application for the transfer of M. C. Gampola, 9263 to another  
Court*

*Criminal procedure—Transfer of a case from one Court to another—Courts Ordinance,  
s. 42.*

A Magistrate refused to record a very relevant answer given by a witness to a question put to him in cross-examination. He did not rule that the evidence was inadmissible. The accused thereupon made the present application under section 42 of the Courts Ordinance for the transfer of the case to another Court.

*Held*, that, for the purpose of securing a fair trial, it was necessary that the case should be heard in another Magistrate's Court.

**A**PPPLICATION under section 42 of the Courts Ordinance for the transfer of a case from the Magistrate's Court of Gampola to another Court.

*S. Sharvananda*, for the accused-petitioner.

*G. P. S. de Silva*, Crown Counsel, for the Attorney-General.

April 2, 1963. ABEYESUNDERE, J.—

This is an application by G. B. Perera, the accused in case No. 9263 of the Magistrate's Court of Gampola, for an order under section 42 of the Courts Ordinance to transfer that case from the Magistrate's Court of Gampola to any other Court on four grounds, three of which are not sustainable. The fourth ground as stated in his affidavit by Mr. A. M. I. Gunaratne, Crown Proctor of Gampola, who appeared for the accused in the proceedings in the Magistrate's Court of Gampola, is as follows :

“ On 7.1.1963 when evidence of V. P. Gunasekera was being recorded the Court failed to record a very relevant answer given by the witness, viz., ‘ that he did not insure the car as it was in the garage ’. When the Court's attention was drawn to this fact and the Court was invited by me to have the answer recorded the Court refused to do so.”

There is no affidavit filed by the Proctor who appeared for the prosecution in this case contradicting the aforesaid averment. I have no reason to disbelieve the statement made by Mr. Gunaratne. The Magistrate was not legally entitled to refuse to record the answer given by the witness Gunasekera to a question put to him in cross-examination unless he held that such evidence was inadmissible. The record of the proceedings does not disclose that the Magistrate had ruled such evidence to be inadmissible. I think that for the purpose of securing a fair trial of the case it is necessary that the case should be heard in another Magistrate's Court. Crown Counsel who appears for the

Attorney-General does not oppose the application for the transfer of the case to another Magistrate's Court. I order that case No. 9263 of the Magistrate's Court of Gampola be transferred to the Magistrate's Court of Kandy.

*Application allowed.*

---