

1945

Present: **Wijewardene J.****EDWIN PERERA,** Appellant, and **BISSO MENIKA,** Respondent.95—*M. C. Kandy, 15,420.**Maintenance—Application by wife—Invitation by husband to come back—Refusal of wife—False allegation of adultery—Sufficient reason.*

Where, in an application for maintenance by a wife against her husband, the applicant refused an invitation by the respondent to go back to him,

Held, that a false allegation of adultery made by the respondent against the applicant was a sufficient excuse for her refusal.

A PPEAL from an order of the Magistrate of Kandy.

Cyril E. S. Perera (with *S. W. Jayasuriya* and *E. P. Wijetunge*), for defendant, appellant.

No appearance for the applicant, respondent.

March 21, 1945. WIJEYWARDENE J.—

The applicant is the wife of the respondent and has two children aged five and two years. The applicant claimed maintenance in this action for herself and the younger child only, as the respondent had removed the elder child when she was in hospital.

This action was filed in July, 1944. Summons could not be served on the defendant till October. He appeared in Court in October and "invited her back" to his house. The applicant refused to go with him alleging that he was living in adultery and had been treating her habitually with cruelty.

The applicant has failed to prove that the defendant was living in adultery with the servant woman, *Bandara Menike*.

The Magistrate has accepted the evidence of the applicant that the respondent assaulted her on three occasions and threatened once to stab her. She stated that the respondent used to say that the servant woman *Bandara Menike* looked after the elder child better and she added, "He abuses me and speaks well of *Bandara Menike*".

When she filed the present action for maintenance, the defendant on whom the summons could not be served for three months seized the opportunity to file an action for divorce stating that she had committed adultery with one *Ekanayaka*. He says he based that allegation on a letter D 2 and two envelopes D 1 and D 3 discovered by him. The applicant filed answer immediately denying the allegations made against her and stating that the respondent was living in adultery with *Bandara Menike*. The defendant, thereupon, withdrew the divorce action, as, he says, he "wanted to contest this case". It is difficult to understand the reason given by the defendant for withdrawing the action especially in view of the fact that he filed the divorce action after the institution of the present proceedings against him. In the present action he persisted in alleging

that the applicant was "intimate with Ekanayaka". He made no effort to prove the genuineness of D1, D2 and D3. I think the Magistrate is right in holding that D1, D2 and D3 have been fabricated.

I do not think that the defendant has been honest in his "invitation" to the applicant to go back to him but has made that offer with the sole object of escaping his obligation to maintain her. Moreover, I think the applicant has sufficient reason within the meaning of section 4 of the Maintenance Ordinance for refusing to live with the defendant especially in view of the baseless charge of adultery made against her in the divorce action and repeated in this case.

I dismiss the appeal.

Appeal dismissed.
