

1944

Present: Soertsz J.

VAITHALINGAM *et al.*, Applicants and GNANAPATHIPILLAI
et al., Respondents.

In revision M. C. Jaffna, 5,059.

Jurisdiction—Inquiry into charge of kidnapping a girl from lawful guardianship—Power of Court to order the girl to remain in Salvation Army Home pending inquiry.

Where pending an inquiry into a charge of kidnapping a young woman of 16 years of age from lawful guardianship preferred against the father, the Magistrate ordered that the young woman should remain in the Salvation Army Home.

Held, the Court had no jurisdiction to make the order.

THIS was an application in revision.

H. V. Perera, K.C. (with him *H. W. Thambiah*), for petitioner.

H. W. Jayawardene, for respondent.

August 4, 1944. SOERTSZ J.—

This is a joint application made by the husband and by the mother of a young woman named Manomany said to be 16 years of age asking that the order made by the Magistrate of Jaffna dated June 3, 1944, be set aside in the exercise of our revisionary jurisdiction.

An inquiry is pending in the Magistrate's Court in regard to a charge of kidnapping Manomany from lawful guardianship preferred against her father and others. Pending this inquiry the Magistrate has ordered that Manomany should remain in the Salvation Army Home in Jaffna. That is the order that is sought to be revised.

Perhaps, motives of almost paternal solicitude led the Magistrate to make this order, but there does not seem to be any vestige of a jurisdiction vested in a Magistrate or Judge to make such an order. The Magistrate appears to think that he gets over this difficulty by saying that the girl "is of tender years and the evidence may be tampered with. As I stated before, no court of competent jurisdiction has so far given the custody of the girl either to the father or to the mother and I am overriding no order of any court in ordering the girl to remain in the Salvation Army Home".

This is extraordinary reasoning. It implies that if any court has not made an order at some time or other regarding the custody of a young woman of 16 years of age or thereabout, a Magistrate is free to direct that young woman to stay here or to stay there. If that is the position in law, it means that all young women of that age, or thereabout, have had mistaken ideas of the extent of their liberty and have not appreciated the fact that they are the protegees of Magistrates. In regard to the other reason given by the Magistrate that if she is free her evidence may be tampered with, by party of reasoning, every witness, man, woman or child, must be liable to an order by a Magistrate in regard to the place in which they should stay pending an inquiry or trial, lest their evidence be tampered with. These are startling propositions.

I set aside the order. Telegraph to the Magistrate to have the girl produced before him and to tell her that she is free to go where she chooses. Let that order be made in the presence of the petitioners.

Order set aside.