

Present : Maartensz A.J.

THE KING v. ABEYRATNE.

D. C. (Crim.) Kalutara, 5,092

District Court—Appeal—Power of District Judge to refuse to forward petition of appeal—Criminal Procedure Code, s. 342.

A District Judge is not entitled under section 342 of the Criminal Procedure Code to refuse to forward a petition of appeal to the Supreme Court on the ground that it is filed out of time.

APPPLICATION for an order on the District Judge of Kalutara directing him to forward to the Supreme Court a petition of appeal filed in the District Court of Kalutara.

October 3, 1929. MAARTENSZ A.J.—

According to the affidavit filed with this application the learned District Judge refused to admit the appeal filed by the accused who was convicted because it was filed two days after the appealable time had elapsed. There is nothing in the Criminal Procedure Code which entitles a District Judge to refuse to forward to this Court the record of the case in which an appeal has been filed whether it has been filed in time or not. On the contrary, under section 342 of the Criminal Procedure Code he is bound to transmit the record of the case with the appeal and issue notice to the party in whose favour the judgment or order appeal against was pronounced.

I would invite the District Judge's attention to *In the Matter of an Application in the Police Court of Hambantota, No. 4,342*,¹ in which Bertram C.J. observes that he is unable to see what justification the Magistrate has in withholding from the Supreme Court a petition addressed to the Supreme Court. In that case the appeal was not forwarded on the ground that no appeal lay, but this observation would apply equally to the case in which an appeal is not admitted because it is out of time. As observed by the Chief Justice, it is not for the Police Court to decide whether an appeal lies or not.

I accordingly direct the District Judge to admit and transmit the petition of appeal with the record in accordance with the provisions of section 342 of the Criminal Procedure Code, and to release the accused on his entering into a recognizance as laid down in section 341 of the Criminal Procedure Code. As the accused is in gaol this order should be transmitted to the District Judge forthwith.

Application allowed.