

1948

Present : Basnayake J.

ELO SINGHO, Petitioner, and JOSEPH (Inspector of Police),  
Respondent.

APPLICATION TO RE-LIST APPEAL IN M. C. HORANA, 2,397  
(S. C. 1,233/1947).

*Appeal—Dismissal of appeal from Magistrate's Court—No appearance for appellant—  
Application to re-instate—Power of Supreme Court—Criminal Procedure  
Code, Section 344 (2).*

The Supreme Court has no power to re-instate a criminal appeal which  
has been dismissed in the absence of the appellant.

**A**PPPLICATION to re-list a criminal appeal.

*H. A. Kottegoda*, for the applicant.

*Ananda Pereira*, Crown Counsel, for the Attorney-General.

March 15, 1948. BASNAYAKE J.—

This is an application for reinstatement of the appeal in M. C., Horana, Case No. 2,397, which was dismissed by my brother Windham on December 2, 1947. The decision of my brother is thus recorded in his formal order "It is considered and adjudged that the judgment of the Magistrate's Court of Horana dated September 15, 1947, be and the same is hereby affirmed and his appeal is dismissed." It is not suggested that the order is one made *per incuriam* nor does learned counsel rely on any provision of law or decision of this Court.

Section 344 (2) of the Criminal Procedure Code provides that if when an appeal comes on for hearing the appellant does not appear to support his appeal the Court shall consider the appeal and may make such order thereon as it may deem fit. It is not free in an appeal under the Criminal Procedure Code to do what it is authorised to do by the Civil Procedure Code in appeals thereunder. In appeals under the latter Code the Court has power in its discretion—Section 769—to dismiss an appeal if the appellant does not appear either by Counsel or in person. Express provision is also made therein for the reinstatement, in certain circumstances, of an appeal dismissed for non-appearance. The Criminal Procedure Code makes no such provision for the reason that the Court is required to consider every appeal regardless of whether the appellant is present or not.

The reinstatement of an appeal carries with it the implication that the Court will revise its decision. This Court has no power to revise its own order unless it be an order made *per incuriam*. Except in the case of an order made *per incuriam* the reinstatement of an appeal in a criminal case decided by it is therefore purposeless and cannot in my view be allowed.

The application is refused.

*Application refused.*