

1961

*Present : Sansoni, J.*

D. M. NANHAMY, Appellant, *and* L. RANAWANA  
(Inspector of Police), Respondent

*S. C. 753—M. C. Anuradhapura, 20964*

*Appeal—No appearance for accused-appellant—Dismissal—Re-instatement not permissible—Criminal Procedure Code, s. 344 (2).*

The Supreme Court has no power to re-instate a criminal appeal in which no Counsel appeared on behalf of the accused-appellant but which was dismissed by the Court after consideration under section 344 (2) of the Criminal Procedure Code.

**A**PPEAL from a judgment of the Magistrate's Court, Anuradhapura.

*Raja Bandaranayake*, for the 1st Accused-Appellant.

*A. A. de Silva*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

March 10, 1961. SANSONI, J.—

The 1st accused-appellant appealed against his conviction for an offence punishable under Section 396 of the Penal Code. When the appeal came on for hearing, no counsel appeared on his behalf but the Court, after consideration of the appeal under Section 344 (2) of the Criminal Procedure Code, dismissed the appeal.

An application was thereafter made to reinstate the appeal, and the matter came up before me again. Crown Counsel then pointed out that there is no power to reinstate a criminal appeal which has been dealt with.

Following the decision of Basnayake J. in *Elo Singho v. Joseph*<sup>1</sup>, I hold that Crown Counsel's contention is correct. There have been cases where the Court has, acting in revision, set aside a previous order made in appeal on the ground that such an order was made *per incuriam*, but such cases must necessarily be rare, and this is certainly not such a case since the appeal is based on questions of fact.

I therefore decline to interfere and I order that the sentence imposed by the Magistrate be carried out.

*Appeal dismissed.*

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