

[IN REVISION.]

1940

*Present : Howard C.J.*PUNCHI MUDIYANSE *v.* JAYASURIYA.*M. C. Ratnapura, 25,209.*

Revision—Powers of the Supreme Court—Not limited to cases where there is no appeal—Criminal Procedure Code, s. 357.

The powers of revision vested in the Supreme Court under section 357 of the Criminal Procedure Code are not limited to cases where there is no appeal or where no appeal has for some reason or other not been taken.

The King v. Noordeen (13 N. L. R. 115) followed.

THIS was an application for revision by the Solicitor-General.

Nihal Gunasekera, C.C., for the Solicitor-General.

R. C. Fonseka, for the accused, respondent.

Cur. adv. vult.

February 7, 1940. HOWARD C.J.—

This is an application by the Solicitor-General asking me to deal with the proceedings in *M. C. Ratnapura, No. 25,209*, by way of revision under the powers vested in the Supreme Court by section 357 of the Criminal Procedure Code. Counsel for the accused-respondent has taken the preliminary objection that the revisionary powers of the Supreme Court cannot be employed in a case such as this where the Solicitor-General could have appealed under section 338 of the Code. In connection with this contention I was referred to the case of *Inspector of Police, Avisawella v. Fernando*.¹ In that case the accused person had been warned and discharged and the Solicitor-General made an application to revise the sentence. It was held by Mr. Justice Akbar that where the proper remedy is by way of appeal, an application for revision will not be entertained save in exceptional circumstances. On the other hand it was held by Wood Renton J. in *The King v. Noordeen*², that the Supreme Court has full powers of revision in all criminal cases and that power is not limited to those cases in which either no appeal lies, or for some reason or other an appeal has not been taken. The present case unlike that of *Inspector of Police, Avissawella v. Fernando*, which was an application for enhancement of sentence, involves the quashing of all proceedings before the Magistrate and an order that non-summary proceedings be taken on a charge of an offence punishable under section 300 of the Penal Code. The Supreme Court has been accustomed in such cases to make use of its revisionary powers. Thus on an application by the Solicitor-General in *M. C. Badulla*, case No. 29,123 (114), decided on April 4, 1939, Soertsz J. set aside an order of the Magistrate made after a summary trial and imposing a fine of Rs. 20 on the accused and sent the case back with a direction that non-summary proceedings should be taken. Similarly in *P. C. Matala*, No. 863, decided on July 15, 1938, Abrahams C.J. set aside a sentence of

¹ 30 N. L. R. 483.

² 3 N. L. R. 115

four months' rigorous imprisonment passed by the Magistrate on the accused after a summary trial and directed the case to be remitted to the Magistrate to proceed to take evidence under section 155 of the Criminal Procedure Code. In that case the Court brought its revisionary powers into operation on its own motion. There is no doubt that the powers granted by section 347 (a), made exercisable on revision by section 357 (1), allow me when interfering with the acquittal in this case to order that non-summary proceedings be taken. There are, moreover, exceptional circumstances in this case rendering the exercise of such powers desirable. I therefore quash all proceedings had by the Magistrate and direct that the case be remitted to another Magistrate to take evidence under section 155 of the Criminal Procedure Code.

Proceedings quashed.

