

**A** **ATTORNEY-GENERAL**

v.

**YEE NOON**

**B** [SUPREME COURT, 1964 (Hammett P.J.), 23rd, 27th October, 26th November]

Appellate Jurisdiction

**C** *Criminal law—enlargement of time for appeal—refusal of application by Magistrate's Court—subsequent application to Supreme Court—Penal Code (Cap. 8) s.340(1)—Criminal Procedure Code (Cap. 9) ss.314(1), 316(1), 316(2) (c).*

*Criminal law—practice and procedure—application to Supreme Court for enlargement of time for appeal after refusal of application by magistrate—Criminal Procedure Code (Cap. 9) ss.314(1), 316(1).*

*Appeal—no appeal against refusal by magistrate of application for enlargement of time for appeal—Criminal Procedure Code (Cap. 9) ss.314(1), 316(1).*

**D** An application for an extension of time within which to appeal against the dismissal of a charge of receiving stolen property was made by an inspector of police to a magistrate under section 316(1) of the Criminal Procedure Code, but was refused. The Attorney-General then made a like application to the Supreme Court.

**E** *Held:* The refusal of the application by the magistrate was not an order against which an appeal lay under section 314(1) of the Criminal Procedure Code. Power to enlarge the time for appeal being vested by the proviso to section 316(1) of the Criminal Procedure Code both in the Supreme Court and in the Magistrate's Court, it was open to an appellant to apply to the Supreme Court for enlargement of time notwithstanding the refusal of a previous application by a magistrate.

**F** *Asgar Ali v. R.* (1964) 10 F.L.R. 235 followed.

*Isad Ali v. R.* (1958) 6 F.L.R. 1, not followed.

**G** Case referred to: *Nassor v. R.* (1945) 1 Tanganyika L.R. (Revised) 289.

Application for enlargement of time for appeal. The application was adjourned from Court to Chambers and the judgment was given in Chambers.

**H** *B. A. Palmer* for the applicant.

*F. M. K. Sherani* for the respondent.

HAMMETT P.J.: [26th November, 1964]—

This is an application by the Attorney-General for extension of time within which to appeal from the decision of the Magistrate's Court dated 24th August, 1964, acquitting the accused on a charge of Receiving Stolen Property contrary to section 340(1) of the Penal Code.

A

Under the provisions of section 314(1) of the Criminal Procedure Code, no appeal lies against an order of acquittal except by or with the sanction in writing of the Attorney-General. By section 316(1) an appeal must be lodged within 14 days of the date of the decision appealed against.

B

On 9th September, 1964, i.e. after the expiration of the time within which an appeal should have been lodged, a Police Inspector applied to the Magistrate's Court for extension of time within which to appeal against the acquittal, under the provisions of the proviso to section 316(1) which reads :—

C

“Provided that the magistrate's court or the Supreme Court may, at any time, for good cause, enlarge the period of limitation prescribed by this section.”

He informed the Court that he had been instructed by a Superintendent of Police to make the application and that he did not know either the grounds of appeal or whether the Attorney-General had sanctioned the appeal.

D

In these circumstances the application was, as has been conceded by the Crown, very properly refused.

The Attorney-General has not appealed against that refusal but has applied *de novo* to the Supreme Court for an order enlarging time within which he may appeal against the acquittal.

E

Mr. Sherani for the accused has objected to this application being entertained on the ground that once having elected to apply to the Magistrate's Court, the Attorney-General is bound by the decision of that Court and cannot now make a fresh application to the Supreme Court. He submits that the only remedy open to the Attorney-General is to appeal against the order of the Magistrate's Court refusing to extend time within which to appeal. He bases his submission on the decision of Lowe C. J. in the case of *Isad Ali v. Reginam* (1958) 6 F.L.R. 1. If that decision is good law, I am of the opinion that Mr. Sherani's submission must be upheld.

F

In the case of *Asgar Ali v. Reginam* (1964) 10 F.L.R. 235 Mills-Owens C. J. declined to follow the decision in *Isad Ali's* case, which, for cogent reasons, he held was not good law. One of the cases to which he referred in his judgment was *Abdullah Nassor v. Reginam* (1945) 1 Tanganyika L.R. (Rev.) 289, where the identical point arose. That case was not considered by Lowe C.J. when he gave his decision in *Isad Ali's* case. After reading these authorities I incline to the view that if Lowe C. J. had known of *Abdullah Nassor's* case it is doubtful if he would have reached the conclusion he did. At all events it is quite clear to me that the decision in *Isad Ali's* case can no longer be regarded as good law.

G

H

- In my view, for the reasons set out in Asgar Ali's case, the refusal of a Magistrate's Court under Criminal Procedure Code section 316 to enlarge time within which an appeal may be lodged is not an "order" against which an appeal lies within the meaning of the term "judgment, sentence or order" in section 314(1). The proviso to section 316(1) vests power to enlarge time both in the Supreme Court and the Magistrate's Court and there is no express provision requiring an election to be made or to the effect that an applicant is bound by a refusal of the Court to which application is first made.
- A** The construction in Isad Ali's case that an election must be made, appears to me to have been adopted because of the view then held that there was a right of appeal under section 314. Now that it has been decided that there is no right of appeal, that construction ceases to have validity and I see no other reason why an obligation to elect should be implied. It is therefore, in my view, open to an appellant to apply to the Supreme Court for enlargement of time within which to appeal notwithstanding the refusal of a previous application therefor to the Magistrate's Court.
- B**
- C**

On the merits of the application it is clear from the express provision of section 316(2) (c) that it is "good cause" for enlarging time for appealing where the sanction of the Attorney-General is required by virtue of section 314.

- D** In these circumstances this application will be granted. I enlarge the time within which an appeal may be lodged in the Magistrate's Court by the Attorney-General until 3rd December, 1964.

*Application granted.*