

[IN REVISION.]

1938

Present : Poyser S. P. J.

RANASINGHE *v.* PUNCHIHAMY.

*P. C. Matara, 25,392.*

*Powers of Supreme Court in revision—Revision refused by another Judge—  
No fresh material.*

The Supreme Court will not ordinarily exercise its powers of revision where another Judge of the Court has refused to do so and where no new material has been adduced in support.

THIS was an application for revision of an order of the Police Magistrate of Balapitiya.

*H. W. Thambiah* (with him *M. M. Kumarakulasingham*), in support.

*J. R. Jayawardana* (with him *Colvin R. de Silva*), for respondent.

*Cur. adv. vult.*

November 16, 1938. POYSER S.P.J.—

This application first came before Koch J. on June 30, 1938. There was no appearance in support and it was refused. Subsequently, on the same day, Counsel did appear and moved that he be heard in support and was heard. Koch J. however again refused to exercise revisionary powers and the order of the Supreme Court embodying such refusal

<sup>1</sup> (1909) 30 *I. L. R. Calcutta* 687.

<sup>2</sup> (1929) *I. L. R. 46 Madras* 948.

was sent to the Police Court on July 2. On August 3, Maartensz J. ordered that the application should be relisted and de Kretser J. on September 26 ordered notice to issue on the respondent.

Mr. Thambiah who appeared for the applicant argued that the Magistrate's order was wrong in law and in support of his argument cited a judgment of Garvin S.P.J. (S. C. No. 345, S. C. Minutes of June 11, 1926). He also argued that the revisionary powers of this Court are very wide and that I could exercise revisionary powers in spite of the previous order of Koch J.

I do not think I should accede to this request. In the first place it was conceded in the lower Court that the extension of maintenance granted was justified on the merits and secondly I do not think it would be right, except under the most exceptional circumstances, to exercise revisionary powers when another Judge has refused to do so.

If Koch J. had refused this application for want of appearance there might be no objection to granting it, but I must assume that Koch J. when Counsel did appear considered the application on its merits and I must also assume that Maartensz J. when he ordered the application to be relisted did so on the grounds that the application had been dismissed for want of appearance, and I would add that the notes made by the Registrar on the record support this latter assumption.

In view of the above it would I consider be establishing a very undesirable precedent to exercise revisionary powers when another Judge has refused to do so and when no new material is adduced in support of the application.

The application is refused with costs.

*Application refused.*

