

1978 May 29

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU, JJ.]

ANNA NEOCLEOUS,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(Application in Criminal Appeal No. 3818).

*Criminal Procedure—Appeal—Default of appearance of appellant and her counsel—Dismissal—Section 143 (3) of the Criminal Procedure Law, Cap. 155—Whether open to Court of Appeal to reinstate it—Question left open—Assuming reinstatement possible,*  
5 *it is a matter involving exercise of judicial discretion—Appeal devoid of any merit—In any event not the proper course to reinstate it for further hearing.*

10 When appellant and her counsel failed to appear at the continued hearing of the above appeal the Court of Appeal, acting under section 143 (3)\* of the Criminal Procedure Law, Cap. 155, found that there was no merit in it and dismissed it summarily, after considering it on the basis of the record and of what counsel had already submitted.

Upon application for reinstatement of the appeal:

15 *Held*, that even assuming, without so deciding, that this Court could, in the exercise of its inherent powers, set aside its relevant Order and reopen the hearing of the appeal, that would have been a course of action involving the exercise of judicial discretion; that having in mind the particular facts of this case  
20 and the law applicable thereto this Court is of the view that this was an appeal devoid of any merit and that, accordingly, it would, in any event, not be the proper course to reinstate it for further hearing.

*Application dismissed.*

\* Quoted at p. 112 *post*.

**Application.**

Application by the appellant for the reinstatement of an appeal which was dismissed by the Court under section 143 (3) of the Criminal Procedure Law, Cap. 155.

*S. McBride*, for the appellant. 5

*N. Charalambous*, Counsel of the Republic, for the respondents.

The following decision was delivered by:

TRIANAFYLLIDES P.: We are dealing with an application for the reinstatement of Criminal Appeal No. 3818. The application has been made by the appellant and the history of the proceedings is as follows: 10

The appeal was partly heard on February 2, 1978, and it was then adjourned for continuation of its hearing on February 4, 1978. During the first day of the hearing of the appeal counsel for the appellant appeared and commenced, but did not conclude, his opening address. On February 4, 1978, counsel for the appellant did not appear. As has transpired since—and in this connection we have not the slightest reason to doubt what counsel for the appellant has told the Court—he was under the mistaken impression that the appeal was to be continued on February 11, 1978. 15 20

On February 4, 1978, in view of the absence of the appellant and of her counsel we decided to act under section 143 (3) of the Criminal Procedure Law, Cap. 155, which reads as follows: 25

“ 143 .....

(3) If the appellant or his advocate does not appear to support his appeal, the Court shall consider the appeal and may make such order thereon as it may deem fit”.

We had at the time before us the record of the appeal, including the evidence given at the trial, the grounds of appeal and we knew what was the main submission of counsel for the appellant; so, after having considered the appeal, we made the following Order: 30

“ This case was fixed today for continuation of its hearing at 11 a.m. As counsel for the appellant has failed to appear we have decided to proceed to deal with it under 35

section 143 (3) of the Criminal Procedure Law, Cap. 155. Having considered the appeal on the basis of the record, and of what counsel has already submitted, we find that there is no merit in it and we dismiss it summarily.”

5 Thus, by virtue of the above Order, we, in effect, disposed of the appeal on its merits.

10 It is not necessary for us to pronounce finally on this occasion on whether in a case such as the present one, in which we have already proceeded to act under section 143 (3) of Cap. 155, it would never be open to us, in the exercise of our inherent powers, to set aside our relevant Order and to reopen the hearing of the appeal. But, even assuming, without so deciding, that we could have done so, that would have been a course of action involving the exercise on our part of judicial discretion; and, 15 having in mind the particular facts of the present case and the law applicable thereto, we are, indeed, of the view that this was an appeal devoid of any merit and that, therefore, it would, in any event, not be the proper course to reinstate it for further hearing.

20 As a result this application has to be dismissed.

*Application dismissed.*