

1965
Sept. 30

[VASSILIADES, TRIANTAFYLLIDES AND JOSEPHIDES, JJ.]

MEHMET
HALIL
HAMOUZA
v.
THE POLICE

MEHMET HALIL HAMOUZA,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 2789)

Criminal Law—Appeal against sentence—Sentence manifestly excessive—Offence against the Post Office Law, Cap. 303—Sentence measured by trial Judge on wrong principles—Set aside and substituted by the appropriate one.

Postal services—Conveying letters otherwise than by post contrary to section 24 (1) (a) of the Post Office Law, Cap. 303—Appropriate sentence in the circumstances would be the recovery of the revenue lost.

Section 24 (1) (a) of the Post Office Law, Cap. 303, reads as follows :—

“ Whoever shall convey otherwise than by the post a letter not exempted from the exclusive privilege of the Postmaster-General shall for every letter be liable to a penalty not exceeding one pound :”

The appellant was on his own plea convicted of the offence of conveying 383 letters otherwise than by post, contrary to section 24 (1) (a) of the Post Office Law, Cap. 303, and was sentenced to pay a fine of £120. He appealed against sentence mainly on the ground that it was manifestly excessive in the circumstances of the case.

At the hearing of the appeal counsel of the Republic conceded that in dealing with this case the Court must take judicial notice of the conditions prevailing in Cyprus at the material time, as these are connected with the circumstances under which the offence was committed.

Held, (1) we take the view that this was a correct and proper concession to be made by the Counsel for the Republic. It seems to us that in measuring the sentence, the trial Judge took into consideration the emergency, but placed it on the wrong side of the scales. It seems clear to us that the law in question, which may be described as a revenue Law, was intended to

operate for the protection of postal revenue in normal conditions ; and not in circumstances such as those in which the present offence was committed. We think that the circumstances of this case do not permit that the matter be carried beyond what was intended and provided for by the Post Office Law.

(2) We do not propose going into the merits of the case ; but we think that the appropriate sentence in the particular circumstances under which this offence was committed would be the recovery of the revenue lost. We, therefore, think that the sentence imposed was manifestly excessive, the trial Judge having acted on wrong principle in measuring the sentence as he did.

(3) We also take into consideration the fact that appellant was kept in custody for 12 days in connection with this case, prior to trial. We, therefore, come to the conclusion that the sentence imposed, must be set aside, and be substituted by a sentence measured at the postal charges of 15 mils each, for 383 letters, which amounts to £5.745 mils.

Appeal allowed. Sentence set aside and substituted by a fine of £5.745 mils.

Appeal against sentence.

Appeal against the sentence imposed on the appellant who was convicted on the 14.7.65 at the District Court of Nicosia (sitting at Morphou) on one count of the offence of conveying letters otherwise than by post, contrary to section 24 (1) (a) of the Post Office Law, Cap. 303 and was sentenced by Pitsillides, D.J. to pay a fine of £120.

A. Dana with A. M. Berberoglou, for the appellant.

L. G. Loucaides, counsel of the Republic, for the respondents.

The Judgment of the Court was delivered by :

VASSILIADES, J.: This is an appeal against the sentence imposed by the District Court of Nicosia sitting at Morphou in a prosecution under section 24 (1) (a) of the Post Office Law Cap. 303.

The grounds of appeal may be summarized in the submission made on behalf of the appellant, that the sentence is manifestly excessive, in the circumstances of the case.

The sentence of £120 fine was imposed after a conviction founded on a plea of guilty to the charge of conveying

otherwise than by post, 383 letters not exempted from the exclusive privilege of the Postmaster-General, contrary to section 24 (1) (a) of the Post Office Law. The charge is worded on the provisions of this section of the Post Office Law, which is obviously intended to protect the privilege of the Postmaster-General for the exclusive transport of post, which is a State monopoly.

Counsel for the Republic conceded that in dealing with this case the Court must take judicial notice of the conditions prevailing in Cyprus at the material time, as these are connected with the circumstances under which the offence was committed. We take the view that this was a correct and proper concession to be made by the Counsel for the Republic. It seems to us that in measuring the sentence, the trial Judge took into consideration the emergency, but placed it on the wrong side of the scales. It seems clear to us that the Law in question, which may be described as a revenue Law, was intended to operate for the protection of postal revenue in normal conditions ; and not in circumstances such as those in which the present offence was committed. We think that the circumstances of this case do not permit that the matter be carried beyond what was intended and provided for by the Post Office Law.

We do not propose going into the merits of the case ; but we think that the appropriate sentence in the particular circumstances under which this offence was committed, would be the recovery of the revenue lost. We, therefore, think that the sentence imposed was manifestly excessive, the trial Judge having acted on wrong principle in measuring the sentence as he did.

We also take into consideration the fact that appellant was kept in custody for 12 days in connection with this case, prior to trial. We therefore, come to the conclusion that the sentence imposed, must be set aside, and be substituted by a sentence measured at the postal charges of 15 mils each, for 383 letters, which amounts to £5.745 mils.

The appeal is allowed ; and the sentence substituted by a fine of £5.745 mils. The Registrar to adjust refund of the deposit, accordingly.

Appeal allowed. Sentence set aside and substituted by a fine of £5.745 mils. Directions to Registrar as above.