

1979 June 6

[TRIANTAFYLIDES, P., DEMETRIADES, SAVVIDES, JJ.]

NICOS KASSOS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeals Nos. 4008, 4009, 4010*).

Criminal Law—Sentence—Possession of gaming machines without a licence—Forfeiture order—Discretion of trial Judge—Reasons should be given by trial Judge for deciding to exercise his discretion in favour or against an accused person in relation to the making of a forfeiture order—And this was especially necessary in this case where the order was made against a person who was not an accused at the trial—Retrial ordered regarding the question of sentence.

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The appellant pleaded guilty to the offence of possessing gaming machines without a licence. The trial Court did not pass any sentence upon him, but it ordered, in the exercise of its relevant discretionary powers, that the gaming machines should be forfeited. In his plea in mitigation he told the trial Court that the gaming machines in question did not belong to him.

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Upon appeal counsel for the appellant argued that the trial Judge did not give reasons for exercising his discretion in a manner entailing the forfeiture of the gaming machines, which did not belong to the appellant but to another person who was not, also, an accused person before the Court. Counsel for the respondents agreed with counsel for the appellant that this was a proper case for a retrial as regards the sentence to be imposed.

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Held, that a trial Judge in deciding to exercise his discretion either in favour or against an accused person in relation to the making of an order of forfeiture should give reasons for doing so; that this was especially necessary in this case where the forfeiture order was, actually, made against a person who was not an

accused at the trial; and that, therefore, the orders of forfeiture are set aside and a retrial is ordered as regards the question of sentence which has, necessarily, to take place before another Judge of the District Court of Nicosia.

Appeals allowed. Retrial ordered. 5

Cases referred to:

Antoniades and Another v. The Police, 1964 C.L.R. 139 at p. 142.

Appeals against sentence.

Appeals against sentence by Nicos Kassos who was convicted on the 3rd March, 1979 at the District Court of Nicosia (Criminal Cases Nos. 27104/78—27106/78) of the offence of possessing a gaming machine without a licence, contrary to section 6B of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151 (as amended by Laws 23/65 and 19/78) and Artemides D.J. imposed no sentence on him but ordered the forfeiture of the gaming machines concerned. 10
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A. Ladas, for the appellant.

A. M. Angelides, Counsel of the Republic, for the respondents. 20

TRIANAFYLLIDES P. gave the following judgment of the Court. The appellant has been convicted on his own plea in criminal cases Nos. 27104/78, 27105/78 and 27106/78, in the District Court of Nicosia, of the offence of possessing a gaming machine, without a licence, contrary to section 6B of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151, as amended by the Betting Houses, Gaming Houses and Gambling Prevention (Amendment) Law, 1965 (Law 23/65) and by the Betting Houses, Gaming Houses and Gambling Prevention (Amendment) Law, 1978 (Law 19/78). 25
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When convicted in all the said three cases, on March 3, 1979, he told the trial Court, in his plea in mitigation, that the gaming machine involved in each one of those cases did not belong to him and that he expected that the person who had brought such machine to his coffee-shop at Astromeritis would have obtained the necessary licence, and he added that he had said to the police that he had no objection to the removal of the machine from his premises. 35

The trial Court did not pass any sentence upon the appellant,

but it ordered, in each case, in the exercise of its relevant discretionary powers, that the gaming machine concerned should be forfeited.

5 It has been argued during the hearing of these appeals—which were heard together in view of their nature—that the trial Judge did not give reasons for exercising his discretion in a manner entailing the forfeiture of the gaming machines in question, which did not belong to the appellant but to another person who was not, also, an accused person before the Court.

10 In *Antoniades and another v. The Police*, 1964 C.L.R. 139, it was stressed (at p. 142) that a trial Judge in deciding to exercise his discretion either in favour or against an accused person in relation to the making of an order of forfeiture should give reasons for doing so; and this was especially necessary in the
15 present case where the forfeiture order was, actually, made against a person who was not an accused at the trial.

Counsel for the respondents has very fairly agreed with counsel for the appellant that this is a proper case for a retrial as regards the sentence to be imposed regarding the offences to
20 which the appellant has, respectively, pleaded guilty in each one of the three criminal cases in question.

We, therefore, hereby set aside the orders for the forfeiture of the gaming machines concerned, and we order a retrial as regards the question of sentence in each of the said three criminal cases,
25 which has, necessarily, to take place before another Judge of the District Court of Nicosia.

Appeals allowed. Retrial ordered.