

1979 October 8

[MALÁCHTOS, DEMETRIADES AND SAVVIDES, JJ.]

PANAYIOTIS IOSIF,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No. 4040*).

Criminal Law—Sentence—Forgery of cheques and obtaining money by false pretences—Concurrent sentences of five and three years' imprisonment, respectively—Not manifestly excessive or wrong in principle.

5 *Court of Appeal—Appeal against sentence—Principles on which Court of Appeal acts.*

10 The appellant pleaded guilty to three counts of the offence of forgery of three cheques and to three counts of the offence of obtaining money by false pretences and was sentenced to five years' imprisonment on each of the forgery counts and to three years' imprisonment on each of the obtaining money by false pretences counts, all sentences to run concurrently. The amount involved in the above counts was C£5,500.—. In passing sentence upon the appellant the Assize Court took into account another
15 pending case against him of a similar nature and also a similar previous conviction for which he was bound over.

Upon appeal against sentence:

20 *Held*, that the Court of Appeal cannot substitute on appeal its own assessment of the right sentence in place of that of the trial Court; that this Court can only interfere if the sentence imposed by the trial Court is either manifestly excessive or wrong in principle; that the sentence imposed by the Assize Court is neither manifestly excessive nor wrong in principle but it is the proper sentence; and that, accordingly, the appeal must be
25 dismissed.

Appeal dismissed.

Appeal against sentence.

Appeal against sentence by Panayiotis Iosif who was convicted on the 14th May, 1979 at the Assize Court of Nicosia (Criminal Case No. 10808/79) on three counts of the offence of forgery and on three counts of the offence of obtaining money by false pretences, contrary to sections 331, 333, 334, 336 and 297, 298 of the Criminal Code, Cap. 154, respectively and was sentenced by Papadopoulos, S.D.J. Nikitas and Laoutas, D.J.J. to five years' imprisonment on each of the forgery counts and to three years' imprisonment on each of the obtaining money by false pretences counts, the sentences to run concurrently. 5 10

M. Christofides, for the appellant.

A. M. Angelides, Counsel of the Republic, for the respondent.

MALACHTOS J. gave the following judgment of the Court. 15
The appellant in this appeal was convicted on his own admission by the Nicosia Assizes on three counts for forgery of three cheques contrary to sections 331, 333, 334 and 336 of the Criminal Code, Cap. 154, and on three other counts for obtaining money by false pretences contrary to sections 297 and 298 of the Criminal Code, Cap. 154, and was sentenced to five years imprisonment to each one of the counts of forgery and to three years imprisonment to each one of the counts of obtaining money by false pretences, all sentences to run concurrently as from 14th May, 1979, the day of his conviction. He has filed the present appeal on the ground that the sentence imposed is excessive. 20 25

The facts of the case shortly put are the following: The appellant in December, 1978, acting as an estate agent helped a certain Christos HjiVassili, a Greek Cypriot residing in London to sell a piece of immovable property situated in Nicosia town for the sum of £30,000. For this purpose the said Christos Hji Vassili came to Cyprus and collected this amount in cash and after paying his debts amounting to £5,000.- he paid the balance to a bank and received eleven Banker's drafts payable to him in Cyprus Pounds for various amounts varying from £1,000 to £3,500.- each. One of these drafts for £1,000 was delivered to the appellant as his commission and three others two of which for the sum of £2,000 each, and the third one for the sum of £1500 were also delivered to him to find persons 30 35 40

in the United Kingdom who were interested to pay their value in United Kingdom currency and to receive Cyprus Pounds in Cyprus where the said drafts were payable. The appellant after endorsing the said drafts forging the signature of Christos Hji Vassili collected in London the amount of the equivalent of C£5,500.—in Sterling and according to his allegations he lost it in gambling in the Olympic Casino.

The Assize Court in passing sentence upon the appellant took into account, besides the facts and circumstances of this case, another pending case against him of a similar nature, and also a similar previous conviction for which he was bound over.

Counsel for the appellant in his effort to persuade us that the sentence is manifestly excessive, repeated today the plea in mitigation before the trial Court i.e. that the intention of the appellant was to give the money collected to Christos Hji Vassili but in view of the fact that he has a passion for gambling he acted in the way he did. He further stated that the appellant is of ill health suffering from his heart.

It is well established in many cases decided by this Court that we cannot on appeal substitute our own assessment of the right sentence in place of that of the trial Court. This Court can only interfere if the sentence imposed by the trial Court is either manifestly excessive or wrong in principle.

In the present case we must say that the sentence imposed by the Assize Court is neither manifestly excessive nor wrong in principle, but it is in our view, the proper sentence imposed in the circumstances.

The appeal is, therefore, dismissed.

Appeal dismissed.