1988 May 31

(SAVVIDES, J)

IN THE MATTER OF AN APPLICATION BY CHARALAMBOS SAVVA «PAMBOS» OF LARNACA FOR ORDERS OF CERTIORARI AND MANDAMUS,

AND

IN THE MATTER OF A JUDGMENT OF THE DISTRICT COURT OF LARNACA IN CRIMINAL CASE NO 6263/85 DATED THE 8 7 1986

(Application No 11/87)

Criminal procedure—Property coming into the possession of Police in connection with criminal proceedings—The Criminal Procedure Law, Cap 155, section 170—Conviction of accused, sentence of imprisonment and order for the forfeiture of £700 - seized and/or handed by him to the Police—Conviction quashed on appeal—Application under said section for the return of the said sum—In the circumstances the application should have been granted

The applicant was charged before the District Court of Larnaca in respect of offences under section 17(A) (1)(a) (b) (aa) of the Cyprus Sports Organisation Law 41/69, as amended by Law 79/80 During the trial the prosecution produced to the Court £700 - seized from and/or handed by the applicant to the Police during the investigation of the case The trial Court found the accused guilty on various counts and sentenced him to one year s imprisonment The Court ordered the forfeiture of the £700 On appeal the applicant' s conviction was quashed*

Following his said acquittal, the applicant applied under section 170 of the Criminal Procedure Law, Cap 155, for the return of the £700 The application was dismissed As a result and, having obtained the necessary leave**, he filed the present application for orders of certioran and mandamus

Held, *granting the application.*

(1) The provisions of section 170 are clear and leave no room for any ambiguity Section 170 empowers the Court to make an order

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** See Savva «Pambos» v The Police (1986) 2 C L R 30*
*** See Re Savva «Pambos» (1986) 1 C L R 518*

for the delivery of the property to the person appearing to the Court to be the owner thereof and only in cases where the owner cannot be ascertained then it may make an order with respect to such property as the Court may see fit.

(2) In this case the money was in the absolute possession of the applicant. Such money had not been stolen by him or came into his possession by any illegal means. The mere fact that such money might have been used for an illegal purpose does not render their possession illegal. In the light of the decision of the Court of Appeal applicant's possession of the £700.- could not be treated as possession for illegal purpose.

(3) The decision in *Irving v. National Provincial Bank Ltd.* [1962] 1 All E.R. 157 is distinguishable from this case, because there the outcome depended on the onus of proof between two rival claimants.

Application granted with costs.
Orders for certiorari and mandamus issued.

Cases referred to:

Irving v. National Provincial Bank Ltd. [1962] 1 All E.R. 157.

Application.

Application for an order of certiorari for the purpose of bringing up and quashing the judgment of the District Court of Larnaca in Criminal Case No. 6263/85 dated 8th July, 1986 dismissing applicant' s application for the return to him of the sum of £700.- forfeited in the above Criminal case and for an order of mandamus directing the trial Court to return to applicant the above sum.

K. C. Saveriades, for the applicant.

S. Matsas, for the respondents.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant in the present application prays for -

A. An order of Certiorari for the purpose of quashing the judgment of the District Court of Larnaca in Criminal Case No. 6263/85 dated the 8th July, 1986, dismissing the application of the applicant dated 8th April, 1986, for the return to him of a sum of £700.- under the provisions of Section 170 of the Criminal Procedure Law, Cap. 155.

B. An order of Mandamus directing the District Court of Larnaca to return to applicant the sum of £700 - referred to in paragraph (A) hereinabove as per the provisions of section 170 of the Criminal Procedure Law, Cap. 155.

The present application was filed after leave was granted to the applicant on the 15th December, 1986 on an ex parte application to this Court and was served on the Attorney-General of the Republic, the Registrar of the District Court of Larnaca and the Divisional Commander of Police at Larnaca.

The facts of the case are briefly as follows:

The applicant was charged before the District Court of Larnaca in Criminal Case No. 6263/85 in respect of offences under sections 17A(1) (a) (b) (aa) of the Cyprus Sports Organization Law 41/69, as amended by Law 79/80. He was charged on a number of separate counts in some of them personally and in others jointly with other persons. Applicant was acquitted on count 1 but he was convicted on the remaining counts 2, 3, 4, 5 and 6 and was sentenced on the 15th October, 1985 to one year' s imprisonment on counts 2 and 4 to run concurrently whilst no sentence was passed on him on counts 3,5 and 6.

Counts 2 and 3 charged the applicant with promising to give on 16.5.1985 and 17.5.1985 at Larnaca and count 6 with having given £300 to a certain Demetris Christophides, a football player of «ETHNIKOS ASSIAS» with the intention of altering in favour of «ORFEAS ATHIENOU» the result of a football match which was to be held between the aforesaid two clubs on 19.5.1985.

During the trial of the case the prosecution produced to the court the sum of £700 seized from and/or handed by the applicant during the investigation of the case. After the close of the case for the prosecution defending counsel for the applicant submitted to the trial court that no prima facie case had been made out because there was no evidence as to the legal constitution of the two clubs involved in the case as required by section 17A of Law 79/80 and invited the court to acquit the applicant.

The trial Judge instead of proceeding to give his ruling on the a above submission allowed the prosecution to reopen its case and adduce further evidence in order to prove the legal constitution of the two clubs in question as required by Law. As a result, evidence was adduced and on the basis of the whole evidence the applicant

was found guilty and was sentenced to one year' s imprisonment and the sum of £700 handed over by the accused to the police was forfeited.

The applicant filed an appeal against his conviction (Criminal Appeal No. 4690), as a result of which his conviction on all counts was quashed and he was acquitted accordingly (see *Savva «Pambos» v. The Police* (1986) 1 C.L.R. 30.

In accordance with the judgment in the above appeal the Court of Appeal decided, inter alia, that:

(a) For the purposes of the Cyprus Sports Organization Law the 'club' must be a legally constituted club or organization in the Republic;

(b) No offence is committed under s.17(A) of the aforesaid law for any act with the intention of altering the result between two foot-ball teams, if the said teams are not clubs or organizations legally constituted;

(c) By the time the prosecution closed its case, there was no proof that the aforesaid foot-ball teams of ETHNIKOS Assias and ORFEAS Athienou were clubs or organizations legally constituted, and

(d) The trial Court had no power under the law to allow the prosecution, after it had closed its case, to adduce further evidence in order to prove the said substantial element of the offence which was lacking.

In the light of the judgment of the Supreme Court in the appeal the applicant by an application dated the 8th of April, 1986, applied to the District Court of Larnaca for the return to him of the aforesaid sum of £700 under the provisions of section 170 of Cap. 155. His Honour Judge G. Nicolaou after having heard arguments on behalf of the applicant on the one hand and the Police on the other hand, delivered his ruling on the 8th July, 1986 whereby applicant' s application was dismissed as having no substance and refused to order the refund to him of the sum of £700.

The grounds upon which the remedies applied for are based are:

«(a) The said judgment dated the 8th July, 1986 was wrong in law.

(b) There was an error of law apparent on the face of the record.

(c) The said judgment was contrary to the provisions of s. 170 of the Criminal Procedure Law, Cap. 155.

(d) The said judgment was contrary to the ratio decidendi of the judgment of the Supreme Court dated the 13th March, 1986 in Criminal Appeal No. 4690 connected with Criminal Case No. 6263/85 of the District Court of Larnaca, referred to above.

(e) The Hon. trial judge had no power to disregard the binding force of the judgment of the Supreme Court, referred to above and further, he had no power to 'reopen' the case, thus disregarding the principle of finality in judicial litigation, and

(f) The Hon. trial judge misinterpreted and/or misapplied the judgment of the Supreme Court, referred to above.»

Counsel for applicant submitted that:

(a) The Court disregarded the binding force of the judgment of the Supreme Court in Criminal Appeal 4690 and, therefore, acted in excess and/or outside the jurisdiction or powers with which it is vested.

(b) The reasons given by the court in dismissing applicant' s application for the return of the sum of £700 are wrong in law.

(c) The Court by altering and/or weakening the effect of the judgment of the Supreme Court in Criminal Appeal 4690 indirectly refused to adjudicate according to its powers.

Learned counsel for applicant made reference to extracts from the judgment of the trial Court on which the Court relied to refuse the application and submitted that the trial Judge wrongly interpreted the facts and applied the law in the circumstances of the case. The Court by so acting, counsel contended, closed its eyes to the binding force of the judgment of the appellate Court and thus acted in excess of its jurisdiction or powers with which it is vested. Also the interpretation or evaluation of an acquital is on the basis of its findings fallacious. He finally concluded that had the trial Court followed the reasons given by the appellate Court in

acquitting the accused it should not have proceeded to make an order for the forfeiture of the money seized from the appellant.

Counsel for the respondents, on the other hand, contended that under s. 170 of Cap. 155 a discretion is given to the Court to make an order for the return of property seized by the police to the person appearing to the Court to be the owner thereof and if the owner cannot be ascertained make such order with respect to the property as to the Court may deem fit.

The acquittal of the accused, counsel submitted, is not by itself the only criterion which the Court should take into consideration in directing the return or the forfeiture of the property seized by the police and that in the circumstances of the present case the trial Judge exercised his discretion properly in refusing the return of the property and directing its forfeiture.

In support of his argument counsel sought to rely on the dicta in the judgment of *Irving v. National Provincial Bank Ltd.* [1962] 1 All E.R., p.157 at p.159 the facts of which, he submitted, were similar to those in the present case.

Section 170 of the Criminal Procedure Law, Cap. 155 provides as follows:

> «170. (1) Subject to the provisions of subsection (2) of this section, where any property has come into the possession of the police in connection with any criminal proceedings, the Court may, on application either by a police officer or by a claimant of the property, make an order for the delivery of the property to the person appearing to the Court to be the owner thereof or, if the owner cannot be ascertained, make such order with respect to the property as to the Court may seem fit.
>
> (2)An order under this section shall not affect the right of any person to take within six months from the date of the order legal proceedings against any person in possession of property delivered by virtue of the order for the recovery of the property, but on the expiration of those six months the right shall cease.»

The provisions of section 170 are clear and leave no room for any ambiguity. Section 170 empowers the Court to make an order for the delivery of the property to the person appearing to the

Court to be the owner thereof and only in cases where the owner cannot be ascertained then it may make an order with respect to such property as the Court may see fit.

There is no dispute in the present case that the sum of £700.- was in the absolute possession of the applicant and it was handed by him to the Police at their request in the course of their inquiries in the commission of the alleged offences. The applicant was not convicted in respect of any offence for the possession or use of any illegal or prohibited goods under the provisions of any law and which are subject to forfeiture irrespective of the conviction or acquittal of the person on whose possession they are found and who claims to be owner thereof.

The money found in the possession of the accused were legal tender claimed by him as his own and which had not been stolen by him or came into his possession by any illegal means. The mere fact that such money might have been used for an illegal purpose does not render their possession illegal. The case of *Irving v. National Provincial Bank Ltd. (supra)* on which counsel for respondent sought to rely is distinguishable from the present case. In that case the money seized from the accused were connected with a criminal offence and in particular with theft. The whole case turns as to whether the plaintiff or the defendant were the persons entitled to be handed over the money in question and the issue turned on the incidence of the onus of proof between the two claimants. The facts of that case were briefly as follows:

The plaintiff was convicted of breaking and entering branches of the defendants' bank and of another bank and of stealing money. Bank of England notes amounting to 154 pounds and ten shillings seized by the police from the plaintiff' s possession formed exhibit at his trial. On appeal his conviction relating to the defendant bank was quashed. The defendant obtained an order from a Magistrate's Court under section 1(1) of the Police (Property) Act, 1897, the provisions of which correspond to section 170 of Cap. 155 in pursuance of which the police handed over the ceased sums of money to the defendant. The plaintiff sued the defendant for the return of the money. The plaintiff did not satisfy the trial Judge of his right to the money nor were the defendants in a position to prove that the notes were theirs. The issue, therefore, depended on the incidence of the onus of proof.

In the present case there was no claim by any other person that he was the owner of the money in question. They were only claimed by the applicant from whose lawful possession they were seized by the police. The Court of Appeal in acquitting the applicant found that no offence was committed under s.17(A) of the Cyprus Sports Organization Law 41/69 as amended by Law 79/80 and, therefore, in the light of such decision the possession by the applicant of the said sum could not be treated as possession for use for an illegal purpose. Therefore, the Court in making an Order for its forfeiture did not execute its discretion correctly and acted in such a way as to nullify the effect of the decision of the Court of Appeal in acquitting the accused and wiping off the result of any conviction. In the circumstances of the present case upon the acquittal of the applicant this amount should have been returned to him by the police even without the need of any application on his part to the Court for its return. Once the police did not have any claim from any other person then such money lawfully belonged to and should have been returned to the applicant.

In the circumstances of the present case the applicant succeeds and an order of certiorari is hereby made quashing the judgment of the District Court of Larnaca in Criminal Case 6263/85 dated 8th July, 1986 dismissing applicant' s application dated 8th April, 1986 for the return to him of a sum of £700.- and also an order of the Court directing the District Court of Larnaca to return to the applicant the sum of £700.- referred to hereinabove which was seized by the Police from the applicant and was an exhibit in Criminal Case 6263/85. It is further directed that the costs of the applicant be paid by the Republic.

Application granted.
Costs to be paid by the Republic.