[WILSON, P., VASSILIADES AND JOSEPHIDES, JJ. AND MUNIR, AG. J.]

VEDAT AHMET HASIP,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 2710)

Criminal Procedure—Remand order—Criminal Procedure Law, Cap. 155, *section* 24*—Power of a Judge to remand a person in custody is discretionary—It should, therefore, be exercised judicially—And it is desirable that a judge dealing with applications for a remand order should keep a record of appearances and a summary of the statements made and, where the application is contested, give reasons—albeit brief—of his decision—An application for a remand order is not "a case" within the meaning of the word in Article* 159.2 *of the Constitution—Meaning of the word "case" and "accused" in Article* 159.2 *of the Constitution and in a number of sections of the Criminal Procedure Law, Cap.* 155.

Constitutional Law—Remand—Application for a remand order is not "a case" within Article 159.2 *of the Constitution—That paragraph becomes operative only in criminal cases where there is an "accused" charged before a Court—Therefore, an application for a remand order concerning a person belonging to the Turkish Community may be made to a Judge belonging to the Greek Community—Constitution of the Republic of Cyprus, Article* 159.2 *and* 4*—Meaning of the word "case" and "accused" in that Article—Point* 17 *of the Zurich and London Agreements of the* 11*th February,* 1959.

Paragraph 2 of Article 159 of the Constitution provides: "A court exercising criminal jurisdiction in a case where the accused and the person injured belong to the same Community, or where there is no person injured, shall be composed of a judge or judges belonging to that Community".

The subject matter of this appeal is a remand order for 8 days affecting appellant, a member of the Turkish Community, made on the 16th May, 1964, under the provisions

of section 24 of the Criminal Procedure Law by a Judge belonging to the Greek Community, on the application of a Police Officer for a renewal of the remand in police custody for eight days, pending police investigations into the commission of the offence of endeavouring to procure an alteration in the Government of the Republic by the show of armed force, in connection with which the appellant had been arrested and was being held. The application was based on the statement that the police investigations had not yet been completed.

The appeal was mainly argued on the following grounds :

"1. The learned judge who was exercising criminal jurisdiction was wrong in Law when he made the order of remand because the appellant being a member of the Turkish Community and there being no person injured, the Court giving such an order ought to have been composed of a Turkish judge and not a Greek judge as was the case.

2. The order of remand was unjustifiable because the Police had already obtained remand orders against the appellant on three previous occasions each for 8 days, and the police had already sufficient time to complete their investigation."

There was a third ground which was abandoned in the course of the argument.

Held, (MUNIR, J., *dissenting*) :

(1) Paragraph 2 of Article 159 becomes operative only in criminal cases where there is an accused charged with an offence in a criminal case before a court, and that, consequently, an application for a remand order does not come within the provisions of Article 159, paragraph 2.

(2) The power conferred on a Judge to remand a person in custody is undoubtedly discretionary, and this is a complaint that the judge has not exercised his discretion in a judicial manner.

Suffice it to say that no material was put on behalf of the appellant before this Court to show that the judge's discretion was not exercised judicially.

Appeal dismissed.

Cases referred to :

The Cyprus Grain Commission and the New Vatili Cooperative Credit Society, 4 R.S.C.C. page 91 ;

Osman Saffet and The Cyprus Palestine Plantations Co., 4 R.S.C.C. 87.

Bowers v. *Gloucester Corporation* (1963) 1 All E.R. 437 at p. 439.

Petrides v. *The Greek Communal Chamber*, and another (1963) 2 C.L.R. 417

Georghios S. Papaphilippou and The Republic, 1 R.S.C.C. p. 62, at pp. 64–65.

Lazaris Demetriou and another and the Republic, 3 R.S.C.C. p. 121, at p. 127.

Directions to Judges :

For the guidance of Judges in future we express the view that it is desirable that a judge dealing with an application for a remand order should keep a record of the appearances made before him and a summary of the statements made, and, at the same time, if the application is contested, give grounds—albeit brief—of his decision, to help this Court on appeal in determining the matter. Furthermore, where the application for remand is contested, evidence should be heard on behalf of the police to satisfy the judge as to the use of the time made, prior to the application by the police, in investigating the commission of the offence, and as to the exact stage reached in the investigation, and the time required for its completion.

Appeal.

Appeal against a remand order made on the 16th May, 1964, under the provisions of section 24 of the Criminal Procedure Law, Cap. 155, by the District Court of Nicosia (Demetriades D.J.) whereby the appellant was remanded in police custody for 8 days pending completion of the investigation into an alleged offence of endeavouring to procure an alteration in the Government of the Republic of Cyprus, by the show of armed force.

Cur. adv. vult.

A. Dana for the appellant.

A. Frangos, Counsel of the Republic, for the respondents.

The following judgments were delivered :—

WILSON, P. : I concur in the reasons for judgment which will be given later by Mr. Justice Josephides.

I realise that the use of the word " case " in Article 159 of the Constitution and in the relevant sections of the Criminal Procedure Law, Cap. 155, at first glance, appear to cause some confusion. In the Criminal Procedure Law itself the word " case " is used with a different meaning in different places and this, I think, perhaps is the real cause of the difficulty in the interpretation of the Constitution and the provisions of the Criminal Procedure Law, Cap. 155.

In agreeing with my brother Josephides I have one exception to make. During the course of his judgment he will rely upon the principle of strict interpretation of Article 159 of the Constitution as contended for by counsel for the respondent. I arrive at the conclusion at which he arrives on the basis of the reasoning that he employs without finding it necessary to hold that the Article 159 must be strictly construed. In my view an examination of Article 159 and the Criminal Procedure Law the word " case " may be given its ordinary, plain dictionary meaning in the different contexts in which it is employed.

The reasons for judgment will now be given by the other Members of the Court.

VASSILIADES, J. : I will deliver an oral judgment which may require some revision in due course. The urgency of the case was such that between taking the time required for working on a written judgment on the one hand, and giving an oral judgment the earliest possible on the other, I thought that the latter alternative was preferable.

This is an appeal in a series of nine similar appeals, all arising from three remand orders affecting the three appellants. Each remand order was renewed on three different dates. All the appeals turn mainly on the same point, *i.e.* whether a Judge holding office in the Judicial Service of the Republic and belonging to one community has jurisdiction to make an order remanding in Police custody a citizen of the Republic belonging to the other community. The question arises from the provisions of Article 159 of the Constitution.

It was agreed at the outset of the proceedings that the Court should deal with one of the appeals, appeal No. 2710, where the subject matter is a remand order for 8 days made

on the 16th May, affecting appellant Vedat Ahmet Hasip. The other two appeals by this same appellant are No. 2704 against a remand order for 8 days made on the 28th April, 1964 ; and, No. 2707 against a similar order made on the 8th May, 1964. Both these last mentioned orders have expired ; and interesting as the appeals may be academically, I do not think that they should be allowed to form the subject matter of an appeal filed after expiry of the remand order.

Going now to the appeal under consideration, No. 2710, in respect of the remand order made on the 16th May, which is still in force, I would observe that the order will normally expire tomorrow. The appeal was filed on the 19th May, that is to say, five days prior to the expiry of the order, and it was fixed for hearing on the 21st, *i.e.* two days after filing, which clearly indicates that this Court was anxious to give the appellants an opportunity to be heard the earliest possible.

The remand order was made by a District Judge under the provisions of section 24 of the Criminal Procedure Law, Cap. 155, on the application of a Police Officer for a renewal of the remand in police custody for eight days, pending Police investigations into the commission of the offence of endeavouring to procure an alteration in the Government of the Republic by the show of armed force, in connection with which the appellant had been arrested and was being held. The application was based on the statement that the police investigation had not yet been completed.

There is nothing on the record to show whether the appellant raised any objection, or made any statement to the Judge when he was before him for the renewal of the remand order. Affidavits, however, have been filed in this connection by each party to the appeal. In paragraph 6 of his affidavit, the appellant states that he objects to further remand and informed the Judge that he had already instructed his advocate to file an appeal against his detention. Appellant further states in his affidavit that he is a member of the Turkish community. An affidavit by a Police Inspector who was present at the proceedings, filed by the respondent, states that to the Judge's enquiry whether he objected to the remand, appellant replied " all right, Sir."

Section 24 of Cap. 155, under which the remand order was renewed provides that—" Where it shall be made to appear to a Judge that the investigation into the commission

of an offence for which a person has been arrested has not been completed, it shall be lawful for the Judge, whether or not he has jurisdiction to deal with the offence for which the investigation is made, upon application made by a Police Officer not below the rank of an Inspector, to remand from time to time such arrested person in the custody of the Police for such time, nor exceeding eight days at any one time, as the Court shall think fit, the day following the remand being counted as the first day".

It is not unusual in practice, as far as I know, for the Judge to make no detailed record of the statements made before him in connection with an application for a remand order. So it is reasonable, I think, to assume that before making his order in the present case, the Judge was satisfied that the investigation into the commission of the serious offence under consideration, had not been completed, and that the other requirements of the statute being present, the powers conferred upon him by section 24 should, in the circumstances, be exercised by remanding the appellant in custody for eight more days.

From that order the appellant now appeals on the grounds set out in the notice prepared by counsel on his behalf, and filed on the 20th May. The notice contains three grounds the first of which is the ground upon which the appeal was mainly argued. The second was abandoned, and I need not refer to it. The third ground, going to the merits of the application for remand, assumes jurisdiction, which, the appellant contends, should not have been exercised in the circumstances, as the "police had already had sufficient time to complete their investigation".

As the appeal mainly turns on the first ground, I shall read it out verbatim from appellant's notice :—

> "The learned judge who was exercising criminal jurisdiction was wrong in Law when he made the order of remand because the appellant being a member of the Turkish Community and there being no person injured, the Court giving such an order ought to have been composed of a Turksh judge and not of a Greek judge as was the case."

An appeal being a creature of statute, the first question which arises is whether the legal foundation for such a proceeding exists. As far as I can say at this moment, no appeal lay against a remand order under the Criminal Procedure Law. But, article 11 of the Constitution of Cyprus to which the Criminal Procedure Law became

subject since the establishment of the Republic, specially provides at the end of paragraph 6, that any decision of the Judge for a remand order shall be subject to an appeal.

According to Article 188 of the Constitution by which the Criminal Procedure Law together with all other laws in force in Cyprus on the day of the coming into operation of the Constitution, was kept alive, must be read, construed and applied with such modification as may be necessary to bring it into conformity with the Constitution. A right of appeal against a remand order must, therefore, be read in the Criminal Procedure Law. But then, other provisions in the Law governing proceedings on appeal, may also come into play. Moreover, Rules and practice-directions may have to be considered. The point has not been taken by counsel, and has not been argued in this case ; so I prefer to assume that the appeal is properly before the Court, although speaking for myself, I should like to leave the question open. I would be very slow to accept the proposition that Article 11 of the Constitution gives an absolute right to a person affected by a remand order, to pursue an appeal at all times and in all circumstances. For instance to file his appeal after expiry of the order ; or to lodge an appeal a few hours before expiry, so that there is no time for notices to issue and other necessary preparation to be made for a hearing during the validity of the order ; or to appeal against an order made with his consent ; or upon grounds which were not put before the Judge when he was being called upon to exercise his statutory powers and discretion ; and so on.

Be that as it may, however, I now come to the provisions of Article 11 under which the appeal is taken. This Article is found in Part II of the Constitution dealing with fundamental rights and liberties. Other articles in the same Part provide against torture or inhuman treatment (Art. 8) ; against slavery or servitude (Art. 9) ; for the right " to move freely throughout the territory of the Republic " (Art. 13) ; the right to own and possess property (Art. 23) ; that all persons are equal before the law, entitled to equal protection and treatment thereby (Art. 28) ; etc., etc.

In states with a written constitution, such instrument is, as a rule, intended to constitute the political structure of the state and the foundation upon which all state-legislation must rest. It is mainly intended to regulate the composition of the principal organs of government, and their relationship to each other. It does not, generally speaking, give the detail of the law, or the way in which the law is to be applied.

But Article 11 of our Constitution does go into detail. After stating in paragraph 1 that " every person has the right to liberty and security of person ", it proceeds to make detailed provision in seven more paragraphs covering arrest, detention, police custody, remand orders, legal proceedings regarding the " lawfulness of the detention ", and " an enforceable right to compensation ".

Comparing some of these provisions with the corresponding matter in the relative sections of the Criminal Procedure Law (Cap. 155) one reaches the conclusion that the draftsmen of the Constitution and its creators, had in mind the relative law in force in Cyprus at the time. I believe there can be no doubt about that. It must also be assumed, I think, that the legislators had equally in mind the provisions of Article 2 of the Constitution which introduced into the structure of the new state and the life of the Country, the division of its people into two communities : the Greek Community and the Turkish Community. Also, that the legislators had in their mind the provisions of clause 17 of the Zurich Agreement regarding the trial of civil disputes, of disputes relating to personal status and religious matters, and the trial of criminal cases ; that is to say the provisions from which Articles 87 and 159 of the Constitution originated.

Reading these articles and their origin, I arrive at the conclusion, the only reasonable conclusion in my opinion, that " the judge " contemplated and referred to in paras. 5 and 6 of Article 11 of the Constitution, is the judge in section 24 of the Criminal Procedure Law (Cap. 155) as expressly defined in section 2 of the same statute ; that is to say " any member of a District Court ". But for the provisions in Article 159,—which I shall come to in a minute—there can be no doubt about that I think. If it were otherwise intended, para. 5 would be framed accordingly. It could, for instance, refer to a judge of his own community, instead of " a judge " ; or be made " subject to Article 159 " and refer to " judge or judges " as it was done in para. 2 of Article 155. But for Article 159, I do not think that any one could suggest that the " judge " in Article 11 is any other than " any member of a District Court ". This is also confirmed by the terms in which the notice of appeal is framed. And moreover, it is a position resting upon sound practical reasons which exist in the circumstances usually attending remand orders. I do not think I need go into further detail or examples. After all, the provisions in para. 6 of Article 11, are there to check unnecessary detention in connection with criminal

investigation ; they are to strike the proper balance between a recognised personal right on the one hand, and the public interest on the other. They are not there to provide for the determination or adjudication of the right.

I now come to Article 159. In my opinion, the matter here is equally clear. Article 159 must be read and interpreted in the context in which it is found. It is one of the articles in Part X which deals with " the High Court and the Subordinate Courts "; and it follows Article 158 which provides for the establishment of courts " of civil and criminal jurisdiction " by a law to be enacted under the Constitution within four months of the establishment of the Republic (Art. 190). It cannot, I think, be said that Article 159 can apply to any other Courts ; or to proceedings other than those described therein.

Such a law was in fact enacted in December, 1960, and it is law 14 of that year, known as the Courts of Justice Law, 1960. Section 4 provides for the composition of the District Courts ; and section 6 for the appointment of the judges thereof. Section 22 provides for the civil jurisdiction of the District Courts ; and section 24 for the criminal jurisdiction of those courts and their judges. I do not think that it can be suggested that when Article 159 speaks of " a court exercising civil jurisdiction " (paras. 1 and 3) ; and of " a court exercising criminal jurisdiction " or dealing with " a criminal case " (paras. 2 and 4) it refers to any courts or proceedings other than those under the Courts of Justice Law, 1960 ; the courts composed by such judge or judges as the High Court may determine or direct from time to time under Articles 155 and 159.

Now, " a court exercising criminal jurisdiction in a case where the accused and the person injured belong to the same community, or where there is no person injured ", referred to in para. 2 of Article 159, must, I think, be a court dealing with a " criminal proceeding " as defined in the interpretation section of the Courts of Justice Law (sect. 2) ; that is to say a " proceeding instituted before any court against any person to obtain punishment of such person for any offence against any Law or public instrument ". And surely an application for a remand order is not such a proceeding.

There is one more point that I should like to touch before leaving Article 159 ; a point which does not call for decision in this case, but is closely connected with the article in question, and may give cause for serious consideration in the circumstances now prevailing in the Island. It seems

to me that the provisions in Article 155 (3) and Article 159, rest on the postulate that there are available in all courts, at all material times, judges belonging to both the communities upon which the constitutional structure was made. So long as that postulate did in fact exist, no difficulty ever arose in this connection. But unfortunately it is now a fact only too well known to the people of Cyprus, that at present, there are certain areas in the territory of the Republic, where persons belonging to the one community or to the other, cannot, for reasons beyond their control or for reasons of personal safety, make themselves available or have access for any purpose. A proceeding connected with a murder case before the District Court of Famagusta recently, brought on the surface this factual position. Speaking for myself, I would be very slow to accept the proposition that by reason of the provisions of Article 159, the law of the Republic, civil and criminal, becomes a dead letter in such areas, incapable of enforcement on the members of the community whose judges are not available at the material time. I would be very reluctant to hold that because the factual postulate upon which the provisions in question were placed by the makers of the Constitution, has intentionally or unintentionally, been removed, the legal rights of a great number of people become unenforceable. I touched the point in this case because I consider it too serious to be passed unheeded. And I leave it at that.

Coming now to the third ground, *i.e.* that the remand order was unjustifiable as the police had already had sufficient time to complete their investigation, I do not find it necessary to say more than that in my opinion there is no material on the record upon which this Court, as a Court of Appeal, could reach the conclusion that the original judge wrongly exercised his powers in making the remand order in question.

I am therefore clearly of opinion that the appeal must fail.

JOSEPHIDES, J. : This is an appeal against the order of Judge Demetriades, District Judge, dated the 16th May, 1964, remanding the appellant in police custody for 8 days.

Before that order was made the Judge had before him an application (in Criminal Form No. 5 of the Criminal Procedure Rules) by Police Inspector G. Papageorghiou who reported that between the 1st January, 1964, and the 18th April, 1964, at Evdymou, in the District of Limassol, the following offence was committed : " Endeavouring to

procure an alteration in the Government of the Republic of Cyprus by the show of armed force" (see section 41 of the Criminal Code); and that the investigation into the commission of this offence, for which the appellant had been arrested, had not been completed; and he applied under section 24 of the Criminal Procedure Law, Cap. 14 (new edition Cap. 155) for the remand in police custody for 8 days of the said appellant. Although the application form used by the police inspector refers only to section 24 of the Criminal Procedure Law, nevertheless, it was common ground that the application was also based on paragraphs 5 and 6 of Article 11 of the Constitution which, since the establishment of the Republic, is the supreme law of the land.

The appellant was originally arrested on the 18th April, 1964, and has since been in police custody by virtue of remand orders made by a Judge of the District Court.

The appeal was mainly argued on the following grounds: "(1) The learned judge who was exercising criminal jurisdiction was wrong in Law when he made the order of remand because the Appellant being a member of the Turkish Community and there being no person injured, the Court giving such an order ought to have been composed of a Turkish judge and not a Greek judge as was the case.

"(2) The order of remand was unjustifiable because the Police had already obtained remand orders against the Appellant on three previous occasions each for 8 days, and the police had already sufficient time to complete their investigation."

There was a third ground which was abandoned in the course of the argument.

As regards the *first ground*, appellant's cousel based his argument on the provisions of Article 159, paragraph 2, of the Constitution which reads as follows:

> "A court exercising criminal jurisdiction in a case where the accused and the person injured belong to the same Community, or where there is no person injured, shall be composed of a judge or judges belonging to that Community."

Relying on the aforesaid provision appellant's counsel contended that the appellant should have been brought up before a Turkish Judge and the application for the remand order dealt with by such a Judge, and not by Judge Demetriades, who is a Greek Judge. He submitted that

the word "case" in the first line of paragraph 2 of Article 159, is not used in a restricted or limited sense to mean a case in which a charge has been preferred before a Court against a person, but that it was used in a general or wider sense to cover all stages of investigation against a person suspected of having committed a crime.

He further submitted that the word "accused" in the first line of the aforesaid paragraph 2, did not really refer to a person who had actually been charged with a specific offence before a Court of Law after the filing of a case but that it referred in a general sense to a person who was accused of having committed a crime, either accused by the police or some other person.

Finally, he submitted that the second limb of paragraph 2 of Article 159 should be read as follows: "A court exercising criminal jurisdiction in a case . . . .where there is no person injured, shall be composed of a judge or judges belonging to that Community" and, as in this case, there was no person injured, the application for a remand order should have been made to a Turkish Judge, as the appellant is a member of the Turkish Community.

Respondent's counsel, on the other hand, submitted that Article 159, paragraph 2, became operative in criminal cases where the proceedings had reached a stage where there was an accused charged with an offence in a criminal case filed before a court, and he referred to Article 11, paragraphs 5 and 6, of the Constitution in which reference is made to "a person arrested" in both paragraphs instead of to "the accused", which is the word used in Article 159, paragraph 2. He also referred to a number of sections in the Criminal Procedure Law, Cap. 155, in which reference is made to "a person who is arrested" and not to "an accused", in provisions before section 24 and in section 24 of the Criminal Procedure Law; and he pointed out that a person is described as an "accused" as from section 38 of that Law onwards, after the filing of the charge in court.

It is common ground that in these proceedings there was no charge preferred before the court against the appellant under the provisions of sections 37 and 38 of the Criminal Procedure Law whereby criminal proceedings against him would have commenced.

Finally, he submitted that as the provisions of Article 159 offend against the provisions of Article 28 of the Con-

stitution, which is one of the fundamental rights and liberties provided in the Constitution, such Article (Article 159) should be strictly interpreted.

In considering this matter, I think it will be helpful if we examine briefly the history and provisions conferring the power on a judge to remand a person in police custody. The Criminal Procedure Law, Cap. 155, was enacted in 1948 and its long title is : " A Law to amend and consolidate the Law relating to Procedure in Criminal Proceedings ". Prior to 1948 there was in force The Criminal Evidence and Procedure Law, 1929, with amendments, in which there was a provision similar to the one contained in section 24 of the present Criminal Procedure Law, Cap. 155. That section reads as follows :

> " 24. Where it shall be made to appear to a Judge that *the investigation into the commission of an offence for which a person has been arrested has not been completed*, it shall be lawful for the Judge, whether or not he has jurisdiction to deal with the offence for which the investigation is made, upon application made by a police officer, not below the rank of an inspector, to remand, from time to time, such arrested person in the custody of the police for such time not exceeding eight days at any one time as the Court shall think fit, the day following the remand being counted as the first day."

On the basis of that section when forms came to be made in 1953 a form of application (Criminal Form No. 5) was prescribed under the Criminal Procedure Rules, 1953 (see Subsidiary Legislation, Volume II (Green Book), at page 344).

Until the Constitution of the Republic of Cyprus came into operation in August, 1960, the provisions of section 24 of the aforesaid Law were applied by all Judges on an application made in Criminal Form No. 5.

As is well known, Part II of our Constitution, which contains provisions regarding fundamental rights and liberties, is substantially based on the Rome Convention for the Protection of Human Rights and Fundamental Freedoms, dated the 4th November, 1950. Our Article 11 is based on Article 5 of the Rome Convention with this exception, that while paragraph 5 of our article 11 reproduces partly the provisions of Article 5, paragraph 3, of the Rome Convention, the provisions of paragraph 6 of Article 11 are not to be found at all in the Rome Convention, but they re-enact substantially the provisions of section 24 of our

Criminal Procedure Law with some variations and with the proviso that the total period of such remand in custody shall not exceed three months ; and with the express provision that " any decision of the judge under this paragraph shall be subject to appeal ". Paragraphs 5 and 6 of Article 11 of our Constitution read as follows :

" 5. The person arrested shall, as soon as is practicable after his arrest, and in any event not later than twenty-four hours after the arrest, be brought before a Judge, if not earlier released.

" 6. The judge before whom the person arrested is brought shall promptly proceed to inquire into the grounds of the arrest in a language understandable by the person arrested and shall, as soon as possible and in any event not later than three days from such appearance, either release the person arrested on such terms as he may deem fit or where *the investigation into the commission of the offence for which he has been arrested has not been completed* remand him in custody and may remand him in custody from time to time for a period not exceeding eight days at any one time :

Provided that the total period of such remand in custody shall not exceed three months of the date of the arrest on the expiration of which every person or authority having the custody of the person arrested shall forthwith set him free.

Any decision of the judge under this paragraph shall be subject to appeal ".

Paragraphs 1 to 4 of Article 159 are basic provisions of the Constitution and are based on Point 17 of the Zurich Agreement (dated 11th February, 1959), and the London Agreement (dated 19th February, 1959). Point 17 of the Zurich and London Agreements reads as follows :

" 17. Civil disputes, where the plaintiff and the defendant belong to the same community, shall be *tried* by a tribunal composed of judges belonging to that community. If the plaintiff and the defendant belong to different communities, the composition of the tribunal shall be mixed and shall be determined by the High Court of Justice.

In *criminal cases*, the tribunal shall consist of judges belonging to the same community as the *accused*. If the injured party belongs to another community the composition of the tribunal shall be mixed and shall be determined by the High Court of Justice."

It will be seen that the words used in the Zurich and London Agreements are " in criminal cases " and " the accused " in the same way that the words in paragraph 2, Article 159, are " a court exercising *criminal* jurisdiction in a *case* where the *accused*.....".

Undoubtedly the object of the provisions of section 24 of the Criminal Procedure Law, and of Article 11, paragraph 6 of the Constitution, is to help the police in cases where " the investigation into the commission of an offence for which a person has been arrested has not been completed ". In fact, these very words appear in both provisions (with a slight grammatical variation). It, therefore, follows that an application for a remand order is an application which is made prior to the commencement of criminal proceedings by the filing of a charge before a court under the provisions of sections 37, 38 and 43 of the Criminal Procedure Law. In order to commence criminal proceedings against any person a charge in the prescribed form is presented to a Judge of the court in which the charge is preferred and the Judge may direct that the same shall be filed or he may refuse to give such a direction. After the filing of the charge by the Registrar, either a summons is issued to the " accused " or a warrant to compel his attendance (sections 43 and 44 of the Criminal Procedure Law).

It will also be observed that while the word " accused " appears in paragraph 2 of Article 159, the framers of the Constitution used the expression " person arrested " in paragraphs 4, 5 and 6 of Article 11, no doubt to distinguish persons against whom a charge or a case has actually been filed in Court and persons against whom an investigation into the commission of an offence is being carried out but has not been completed.

Finally, Article 155, paragraph 3 of the Constitution which empowers the High Court to determine the composition of the Court in " mixed " cases provides that " The High Court shall..... determine the composition of the Court..... which is *to try* a *criminal case* in which the accused and the injured party belong to different communities.....". There again, reference is made to the trial of a criminal case.

One has to look at the whole context and not divorce certain expressions from paragraph 2, Article 159. And this paragraph has to be read together with paragraph 4, of the same Article (" in a criminal case ") and Article

155, paragraph 3 (" to try a criminal case"), and point 17 of the Zurich and London Agreements (" in criminal cases ").

Finally, as the provision requiring the administration of justice to be based on communal criteria was introduced for the first time in Cyprus on the establishment of the Republic in 1960, and as this provision is an inroad in the universally accepted concept of justice and the independence and impartiality of the judiciary, such provision should be strictly interpreted.

For all these reasons I am of the view that paragraph 2 of Article 159 becomes operative only in criminal cases where there is an accused charged with an offence in a criminal case before a court, and that, consequently, an application for a remand order does not come within the provisions of Article 159, paragraph 2. It, therefore, follows that Judge Demetriades was empowered to make the remand order appealed against.

A question which exercised my mind, and on which I asked counsel to make their submissions, was whether the question as raised before us, regarding the provisions of paragraph 2 of Article 159 of the Constitution, did not amount to an ambiguity, in which case the Supreme Constitutional Court would have exclusive jurisdiction to make an interpretation of the Constitution under the provisions of Article 149 (*b*). I also invited counsel's attention to the case of *The Cyprus Grain Commission* and *The New Vatili Cooperative Credit Society*, 4 R.S.C.C. page 91 ; and *Osman Saffet* and *The Cyprus Palestine Plantations Co.*, 4 R.S.C.C. 87. But both counsel were agreed (as were my brother Judges) that this was not a case of ambiguity and they invited this Court to interpret and apply Article 159, paragraph 2.

To quote the words of Lord Parker, C.J. in a recent case (*Bowers* v. *Gloucester Corporation* (1963) 1 All E.R. 437 at p. 439), " I think that this is a typical case where, in argument before the Court, a confusion has arisen between a provision which is ambiguous and a provision which is difficult to interpret. It may well be that many sections of Acts are difficult to interpret, but can be interpreted by the proper canons of construction." As Lord Parker says in the same case (in relation to a penal section) a provision can only be said to be ambiguous where, having applied all the proper canons of interpretation, the matter is still left in doubt (at page 439). (See *Petrides* v. *The Greek Communal Chamber*, and another (1963) 2 C. L. R. 417).

It may well be that this is not a case of ambiguity but a case where a provision of the Constitution is difficult to interpret, but can be interpreted by the proper canons of construction. As the matter was not fully argued before us I would like to leave it open, and I have decided the question raised in this appeal on the assumption that it is not a case of ambiguity.

The *second ground* of appeal was that the remand order was unjustified as the police had obtained remand orders against the appellant on three previous occasions, each for 8 days, and that they had had sufficient time to complete their investigation.

The power conferred on a Judge to remand a person in custody is undoubtedly discretionary, and this is a complaint that the Judge has not exercised his discretion in a judicial manner Suffice it to say that no material was put on behalf of the appellant before this Court to show that the Judge's discretion was not exercised judicially.

For the guidance of Judges in future we express the view that it is desirable that a judge dealing with an application for a remand order should keep a record of the appearances made before him and a summary of the statements made, and, at the same time, if the application is contested, give grounds—albeit brief—of his decision, to help this Court on appeal in determining the matter Furthermore, where the application for remand is contested, evidence should be heard on behalf of the police to satisfy the judge as to the use of the time made, prior to the application by the police, in investigating the commission of the offence, and as to the exact stage reached in the investigation, and the time required for its completion.

In the result, I would dismiss the appeal.

MUNIR, ACTING J. : This is an appeal against an order made on the 16th May, 1964, by a District Judge of the District Court of Nicosia remanding the appellant in police custody for a period of eight days from the said date The form, Criminal Form No. 5 (Form J. 13), by which the police officer in question has made the application for remand, states that the offence in respect of which such application for remand was being made is that of " Endeavouring to procure an alteration in the Government of the Republic of Cyprus, by the show of armed force ." It is common ground that the appellant belongs to the

Turkish Community, as defined in Article 2 of the Constitution, and that the District Judge who granted the remand in question belongs to the Greek Community, as defined in the said article 2.

The appellant's notice of appeal contains the following three grounds :

" 1. The learned judge who was exercising criminal jurisdiction was wrong in law when he made the order of remand because the appellant being a member of the Turkish Community and there being no person injured, the Court giving such an order ought to have been composed of a Turkish Judge and not of a Greek Judge as was the case.

2. In any event the learned Judge was wrong in law to have given the order of remand without having the appellant brought before the Court and thus depriving him of his right to challenge the grounds of the application made against him.

3. The order of remand was unjustifiable because the Police had already obtained remand orders against the appellant on three previous occasions each for 8 days, and the police had already had sufficient time to complete their investigation."

In the light of facts disclosed in the affidavit made by Police Inspector George Papageorgiou on the 21st May, 1964, which was filed in support of the notice given on behalf of the Attorney-General of his intention to oppose the appeal and from which it appears that the judge granting the remand was taken to the Central Prison, Nicosia, where the appellant was being held in custody, counsel for the appellant decided not to press the issue raised in ground No. 2 and counsel of the Republic was accordingly not called upon to address the Court on this ground. The only two grounds of appeal which are left for consideration by this Court are, therefore, grounds Nos. 1 and 3.

Ground No. 1 :

The gist of the submissions made by learned counsel for the appellant in support of this ground of appeal is to the effect that by virtue of paragraph 2 of Article 159 of the Constitution a Greek Judge has no jurisdiction to make the remand order in question because the granting of such a remand, being the exercise of criminal jurisdiction in a case in which there was no injured person, was, by virtue of paragraph 2 of Article 159, within the jurisdiction

of a judge belonging to the same Community as that to which the person in respect of whom an application for such a remand order was being made belonged, namely, the Turkish Community. He submitted that the word " case " in the first line of paragraph 2 of Article 159 should not be interpreted in the restricted sense of meaning a criminal trial, that is to say, he submitted that it should not be confined to that part of the exercise of criminal jurisdiction which took place after a charge is formally preferred against an accused person before the Court. In support of this submission he gave as an example the use of the word " case " in section 17 of the Criminal Procedure Law (Cap. 155) in which the word " case " is likewise used in a wider sense as meaning " the case " which is still the subject-matter of police investigation before the preferment of a formal charge. Counsel for the appellant also submitted that the expression " the accused ", which also occurs in the first line of paragraph 2 of Article 159, means any person who is accused of an offence at any stage and includes, as in this case, a person such as the appellant who is accused by the police, as appears from the relevant Form J. 13, of the specific offence stated in the said Form and referred to earlier in this judgment. In the submission of counsel for the appellant the expression " accused " is not, and should not be, restricted only to persons who are accused of an offence after a charge has formally been preferred against them. Counsel for the appellant finally submitted that it would be contrary to the spirit, and defeat the purpose, of Article 159 if the Court were to give an unnecessarily restricted interpretation to the words " case " and " accused " in paragraph 2 of Article 159 which would result in a judge, not belonging to the same Community as the person who is accused of committing a criminal offence, being empowered to deprive such person of his liberty for a total period of three months, by periods not exceeding eight days at any one time, when, by virtue of the said Article 159, such a judge would not be empowered to sentence such person even to a fine of 50 mils.

Counsel of the Republic largely based his submission concerning this Ground on the word " accused " in paragraph 2 of Article 159 and, in dealing with the contention of counsel for the appellant on this ground, did not base his argument on the meaning to be given to the word " case ". He submitted that a person did not become an " accused " in a criminal case until a charge had been formally preferred against him before a Court and he drew

a distinction between the expression " accused ", as used in paragraph 2 of Article 159, and the expression " person arrested ", which is used in paragraphs 5 and 6 of Article 11 and similar expressions which are used in sections 13, 17 and 24 of the Criminal Procedure Law (Cap. 155).

It might be convenient at this stage to set out in full the relevant provision of Article 159 of the Constitution, which is paragraph 2 thereof and which reads as follows :

" 2. A court exercising criminal jurisdiction in a case where the accused and the person injured belong to the same Community, or where there is no person injured, shall be composed of a judge or judges belonging to that Community."

Having given careful consideration to the able arguments put before the Court by learned counsel I have come to the conclusion that when a Judge makes an order, as in the present case, remanding a person in police custody under Article 11 and section 24 of the Criminal Procedure Law (Cap. 155) (which has continued in force after the date of the coming into operation of the Constitution by virtue, and subject to the provisions, of Article 188 thereof) he is, in so doing—

(*a*) " exercising criminal jurisdiction "; and

(*b*) in so " exercising criminal jurisdiction " he is doing so " in a case ... where there is no person injured ",

in the sense of paragraph 2 of Article 159, and it follows, therefore, in my opinion that a Judge making such a remand order must, by virtue of paragraph 2 of Article 159, belong to the same Community as that to which the person in respect of whom the remand order is made belongs.

I have come to the above conclusion for the following reasons :

(i) there can be no doubt, to my mind, that when a Judge makes a remand order under Article 11 and section 24 of the *Criminal* Procedure Law (Cap. 155) he is in so doing " exercising *criminal* jurisdiction " *i.e.* jurisdiction conferred upon him by the machinery of the Criminal Procedure Law. He is performing the exercise of a judicial function, exercising a judicial discretion and making a judicial decision in the course of *criminal* procedure, which decision is expressly made subject to appeal by paragraph 6 of Article 11 of the Constitution. This exercise of a judicial

function must be distinguished from non-judicial functions of a Judge, such as the taking of a dying deposition, etc. ;

(ii) it is true that paragraph 2 of Article 159 speaks of a "*court*" exercising criminal jurisdiction. It should be observed, however, that of the very few expressions which are singled out for definition in Article 186 of the Constitution, the expression "court" is one of them and that "court" is defined therein as including "any judge thereof";

(iii) a court, or any judge thereof, in "exercising criminal jurisdiction" cannot do so *in vacuo* but must, of necessity, do so in respect of a certain criminal "matter", "proceeding", "cause", "case" or by whatever name such matter or thing, in respect of which such criminal jurisdiction is being exercised, might be called ;

(iv) in examining the grammatical construction of paragraph 2 of Article 159 the expression "in a case" should not, in my opinion, be so linked with the expression which precedes it, namely, the expression "exercising criminal jurisdiction", so as to limit or qualify the latter expression. In other words, when paragraph 2 of Article 159 speaks of a court (or a judge thereof) exercising criminal jurisdiction it covers, to my mind, *all* exercise of "criminal jurisdiction" by such court or judge thereof and the words which follow the expression "criminal jurisdiction", namely, "in a case", should be linked with the ensuing words and be read as describing the two alternative cases described in the paragraph, *i.e.* where the accused and the person injured belong to the same Community and where there is no person injured. In my opinion the grammatical structure of the paragraph and its ordinary logical construction should be analyzed and broken up to read as follows :

"2. A court exercising criminal jurisdiction—in a case—

(i) where the accused and the person injured belong to the same Community, or

(ii) where there is no person injured, shall be composed of a judge or judges belonging to that Community."

(v) even assuming, for the sake of argument, that the expression " in a case " grammatically qualifies and restricts the preceding expression " exercising criminal jurisdiction ", *i.e.* that the exercise of criminal jurisdiction is restricted to such exercise " in a case ", then, in my opinion, there is no reason whatsoever, in the absence of any express or implied provision in paragraph 2 of Article 159 to the contrary, to give a restricted meaning to the word " case " and to limit to that part of the judicial criminal process which commences after a formal charge has been preferred before a court. Had it been the intention of the drafters of the Constitution to make such a restriction or limitation they could easily have used the expression " in a trial " or " in a criminal trial ", etc. (c.f. paragraph 3 of Article 155 where the expression " *try* a *criminal* case " is used) instead of the expression " in a case ";

(vi) counsel for the appellant has drawn our attention to two instances in paragraphs (*a*) and (*b*) of section 17 of the Criminal Procedure Law (Cap. 155), where the legislature has used the word " case " as meaning the case which is still the subject-matter of police investigation in the course of the criminal process and *before* a charge is preferred under section 37 of that Law. Both paragraphs (*a*) and (*b*) of section 17 speak of " investigation of the case ". In subsection (2) of section 19 of Cap. 155, which deals with warrants of arrest, *again before* the preferment of a charge under section 37, reference is also made to the court " having jurisdiction in the case ". If further authority were to be required in support of the view that in English criminal law, on which the criminal law of this country is based, the expression " case " is used as meaning, and including, that part of a case *which is still the subject of police investigation*, then one cannot do better than refer to subsections (1) and (2) of section 38 of the Magistrates' Courts Act, 1952 (15 and 16 Geo. 6 and 1 Eliz. 2 c. 55) of the United Kingdom, which read as follows :

> " 38 (1) On a person's being taken into custody for an offence without a warrant, a police officer not below the rank of inspector,

or the police officer in charge of the police station to which the person is brought, may, and, if it will not be practicable to bring him before a magistrates' court within twenty-four hours after his being taken into custody, shall, *inquire into the case* and, unless the offence appears to the officer to be a serious one, release him on his entering into a recognizance, with or without sureties, for a reasonable amount, conditioned for his appearance before a magistrates' court at the time and place named in the recognizance.

(2) Where, on a person's being taken into custody for an offence without a warrant, it appears to any such officer as aforesaid that the *inquiry into the case* cannot be completed forthwith, he may release that person on his entering into a recognizance, with or without sureties, for a reasonable amount, conditioned for his appearance at such a police station and at such a time as is named in the recognizance unless he previously receives a notice in writing from the officer in charge of that police station that his attendance is not required ; and any such recognizance may be enforced as if it were conditioned for the appearance of that person before a magistrates' court for the petty sessions area in which the police station named in the recognizance is situated."

(See Halsbury's "Laws of England", 3rd edition, Vol. 10, para. 646, page 353) ;,

(vii) in my opinion the moment a citizen is arrested under due process of criminal law and the machinery of criminal justice is put into motion in respect of such person, particularly after the police have decided to hold such person for a specific offence (as specifically averred in this case in Form J. 13) and, *a fortiori* the moment a court or a judge thereof commences to exercise criminal jurisdiction in such process, then those steps in the administration of criminal justice are so closely linked with the proceedings which follow after the preferment of the formal charge as to form part and parcel of "the case" con-

cerning such person, in the ordinary and accepted sense of that term and certainly, in my opinion, in the sense in which such term is used in paragraph 2 of Article 159;

(viii) it is significant that in paragraph 4 of Article 159, which deals with the case where the accused and the person injured belong to different Communities, the expression used is not "in a case" (as in paragraph 2 of Article 159) but "in a *criminal* case". It may well be that in such a "mixed case", where it might have been the intention to empower a judge of either Community to grant a remand in a "mixed case", the drafters of the Constitution wished to restrict the application of paragraph 4 to that part of the case which commenced after the preferment of the charge, and, therefore, on this occasion used the expression "*criminal* case", whereas in paragraph 2 of the very same Article, where no such restriction was intended, the unqualified and unrestricted term "a case" is deliberately used in contradistinction to "*criminal* case";

(ix) I would here observe that learned Counsel of the Republic does not appear to have taken the view that the expression "in a case" should be given a restricted meaning and be interpreted as being confined only to that part of a case after the preferment of a charge and has not thought it necessary, and rightly so in my opinion, to address the Court specifically on this point;

(x) with regard to the meaning to be given to the expression "the accused" in paragraph 2 of Article 159, I agree with the submission made by counsel for the appellant that the expression, in the context in which it is used in paragraph 2 of Article 159, and in the absence of any express or implied provision to the contrary, must be given its ordinary meaning, namely, as meaning a person who is *accused* of a criminal offence. When a person is arrested by the police, and particularly where, as in this case, as many as three remands have been applied for and granted in respect of a *specific* and categorical offence described and stated on the application for remand form (J. 13), to say that such a person is not "the accused" and is not "accused" of committing that offence would amount, in my opinion, to

violating the ordinary meaning of that word. Lawyers in criminal practice generally, law officers, police and other officers concerned with the administration of criminal justice, have always, in my experience, referred to a person in respect of whom police investigations are pending as "the accused". For example, when a police docket or case file has been opened the subject of that docket, in connection with whom the police are carrying out investigations, has always been referred to by the police and law officers in this country as "the accused". I can see no logical, grammatical or any other reason why, in the context in which the word "accused" is used in paragraph 2 of Article 159 without any qualification, the word "accused" should be confined, in point of time, to those accused persons who continue to be accused persons after a formal charge has been preferred against them before a court. It is true that, as learned counsel for the Republic has pointed out, the expression "person arrested" is used in paragraphs 5 and 6 of Article 11 and in other parts of the Criminal Procedure Law (Cap. 155). I would point out, however, that expressions may be given different meanings in different parts and contexts of one and the same Constitution (c.f. the Judgments of the Supreme Constitutional Court in the cases of *Georghios S. Papaphilippou and The Republic*, 1 R.S.C.C., p. 62, at pp. 64–65 and *Lazaris Demetriou and Another and the Republic*, 3 R.S.C.C., p. 121, at p. 127. Thus, in paragraphs 4 and 5 of Article 12, even where a person has been *charged* with an offence he is not referred to as "the accused" or "an accused person" but is referred to, in the style of that Article, as the "person charged." If the submission of counsel of the Republic as to the restricted meaning to be given to the expression "the accused" in paragraph 2 of Article 159 were correct, then one would expect to see the same expression used in, for example, paragraphs 4 and 5 of Article 12 instead of the expression a "person charged with an offence";

(xi) even if there were any doubt as to the meaning of the expressions "in a case" and "the accused" as used in paragraph 2 of Article 159 and, therefore, any doubt as to the application of its pro-

visions to the granting of a remand order (as to which, in my opinion, for the reasons which I have stated above, there is no such doubt) then, in my view, any such doubt should have been resolved in favour of the application of the said paragraph 2 to the making of a remand order, such as the subject-matter of this appeal, for the following reasons :

(*a*) I agree with the submission made by counsel for the appellant that in construing paragraph 2 of Article 159 due regard must be had not only to the letter but also to the spirit and intention of Article 159. Whatever may have been the political reasons for incorporating the substance of Article 159 in the Zurich Agreement, on which Article 159 is based, and whatever views may be held for or against such a provision (all of which I need hardly say is not the slightest concern of this Court), the Court must, in interpreting paragraph 2 of Article 159, give effect to what is to my mind the clear intention of the constitutional legislators, namely, that, *inter alia*, broadly speaking, criminal cases concerning Turks alone should be dealt with by Turkish Judges and those concerning Greeks alone by Greek Judges. When the effect of Article 159 is that a court or a judge thereof is not empowered to convict or to fine an accused person, in a case in which paragraph 2 of Article 159 applies, even to a fine of one mil or to sentence him to imprisonment for even one day, it surely goes against the spirit and clear intention of that Article to give an unnecessarily restricted interpretation to paragraph 2 of Article 159 the result of which would be to empower a court or a judge thereof, not empowered to impose the smallest fine or the shortest imprisonment in respect of a particular person, to deprive that same person of his liberty for periods not exceeding eight days and amounting in the total to a period not exceeding three months ;

(*b*) in resolving any doubt which there might have been, due regard must also be had,

in my opinion, to the practice which has been followed by the courts and judges thereof and all organs of the Republic concerned, including the Office of the Attorney-General, the Police, Gendarmerie, etc., since the coming into operation of the Constitution. By saying this I do not mean if the practice which has been adopted hitherto was wrong or unconstitutional that this Court would be bound by such practice ; what I mean is that in interpreting a provision such as paragraph 2 of Article 159 the Court, in case of doubt, could derive assistance from the manner in which responsible organs of the Republic, such as those which I have mentioned, have been interpreting and applying the relevant provisions of that Article since the coming into operation of the Constitution. It appears that the invariable practice followed in this Republic up till now (with apparently certain isolated exceptions), and particularly in Nicosia (where Greek and Turkish Judges are stationed) has been for accused persons to be taken before the judge of the Community to which such accused person belongs when an application for a remand order is made under Article 11 and section 24 of Cap. 155 ;

(c) paragraph 6 of Article 11 provides, *inter alia*, that when a person is brought before a judge on an application for his remand, the judge shall proceed to inquire into the grounds of the arrest "in a language understandable by the person arrested." This provision does not, of course, in itself, and without the provisions of paragraph 2 of Article 159, mean that such person shall be taken before a judge belonging to the same Community as that to which he belongs (and I am aware that it appears that in this case the appellant understood the language in which the judge granting the remand spoke, namely Greek), but when paragraph 6 of Article 11 is read in conjunction with Article 159 it would, to my mind, clearly indicate, (should there otherwise have been any doubt) that it was not the inten-

tion of the drafters of the Constitution that remand proceedings under paragraphs 5 and 6 of Article 11, which expressly require the judge concerned to inquire into the grounds of the arrest "in a language understandable by the person arrested", should be excluded from the purview of paragraph 2 of Article 159;

(*d*) in a country the criminal laws of which are based on the Common Law of England one of the fundamental principles of which under the Magna Carta is that a person should be judged by his "peers" or "equals", and furthermore, in a country where, in addition to that Common Law principle, there is a constitutional provision that criminal proceedings concerning a person should be dealt with by a judge or judges belonging to his Community, I see nothing more reasonable and logical than to resolve any doubt, which there might have been as to whether or not remand proceedings are covered by paragraph 2 of Article 159, in favour of such remand proceedings being so covered;

(*e*) likewise, in resolving a doubt of this nature, had it existed, I would also have had due regard to the principle applicable in all criminal proceedings, and particularly in all such proceedings where the liberty of the citizen is involved, that any such doubt should be resolved in favour of the accused person.

I am, therefore, of the opinion, for the reasons given above, that as the appellant in this case belongs to the Turkish Community, the judge exercising the criminal jurisdiction of granting a remand order in this case must, by virtue of paragraph 2 of Article 159, belong to the same Community as that to which the appellant belongs and that the District Judge who granted the remand order in question in this case, not being a member of the same Community as that to which the appellant belongs, did not have jurisdiction to grant the said remand order which, in my opinion, must, therefore, be declared null and void and of no effect whatsoever.

Ground No. 3 :

Having come to the conclusion that the remand order in question is null and void it becomes unnecessary for me to deal with ground No. 3 of this appeal, which concerns the merits or grounds on which the said remand order was made. I would, therefore, confine myself to making the general observation that, whatever may have been the practice of the judges regarding the granting of remand orders prior to the coming into operation of the Constitution, I am of the opinion that in view of the express provision of paragraph 6 of Article 11, making any decision of the judge remanding a person in custody under that paragraph " subject to appeal ", it is certainly advisable, if not imperative, for the grounds for such an appealable decision to be recorded by the judge granting such a remand. I would have thought that the longer the period of remand is extended (in this case it has now been extended to 34 days) the weightier and more reasoned should the grounds for making such extension be on each successive extension. In this case even on the third occasion on which the remand order was made, bringing the total period of detention of the appellant to 34 days, the learned District Judge does not appear to have made any record of the investigation which he was required to conduct under paragraph 6 of Article 11 nor has be recorded any reason for extending the remand but has merely made the formal order " Remand in police custody for eight days granted." Nor is there any light thrown on the matter in the affidavit of Police Inspector George Papageorghiou of the 21st May, 1964, which was filed by Counsel for the Republic in support of his notice of opposition to this appeal. The affidavit, in this connection, is simply confined to stating that " the appellant is being held in custody for a very serious offence " and that " the investigation into the commission of the offence for which the appellant has been arrested has not been completed." This latter statement appears to be nothing more than a mere repetition of the formal printed wording of the application for remand form (Form J. 13) and adds very little to the matter.

I am, therefore, of the opinion that this appeal should be allowed and that the remand order in question dated the 16th May, 1964, should be set aside.

WILSON, P. : In the result the appeal is dismissed.

Appeal dismissed.