

THE ATTORNEY-GENERAL OF THE REPUBLIC,
Applicant,

THE ATTORNEY-
GENERAL
OF THE
REPUBLIC
v
ANDREAS
COSTA
CHRISTO-
DOULIDES
STENIOTIS

v

ANDREAS COSTA CHRISTODOULIDES STENIOTIS,
Respondent

(Criminal Application No 5/67)

*Criminal Procedure—Trial of Criminal Cases—Place of trial—
Transfer of a case from one court to another—Right to appl
conferred on the Attorney-General as well as on the defence—
Need of affidavit evidence in support in the latter case viz
when the application is made by the defence—Power of the
Supreme Court to order the change of place of the preliminary
inquiry or of the trial—Grounds upon which such order may
issue . (a) that “ a fair and impartial ” preliminary inquiry
or trial cannot be held in the Court before which, but for such
order, it would have been held , (b) that such an order is expedient
for the ends of justice—The Criminal Procedure Law, Cap 155,
section 174 (1) (a) (e) and (2)—Cfr. The English Administration
of Justice (Miscellaneous Provisions) Act, 1938, section 11
and the cases cited in Archbold, 36th edition (1966),
paragraph 263*

*Words and phrases—“ Fair and impartial ” preliminary inquiry
or trial in section 174 (1) (a) of the Criminal Procedure Law,
Cap. 155, to mean “ fair and impartial ” not only to the accused
but also to the prosecution for the purposes of justice.*

*Trial in Criminal Cases—Change of place of trial—See under
Criminal Procedure above*

Transfer of trial—From one Court to another—See above

This is an application by the Attorney-General under the provisions of section 174 (1) (a) and (e) of the Criminal Procedure Law, Cap. 155 for an order of this Court transferring the trial of a murder case from the Assize Court of Paphos to the Assize Court of Nicosia. The material parts of section 174 are fully set out in the judgment of the Court, *post*. It is the submission on behalf of the Attorney-General that the attendance of five material Turkish prosecution witnesses before the Assize Court is necessary if justice is to be done

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in the present case, and that such attendance will not materialise unless such conditions of safety are created which will induce these witnesses to attend ; and it is believed that such conditions cannot be secured unless the trial is held in Nicosia

The Court granted the order applied for subject to the following terms :

(a) all costs resulting from the transfer of the case, costs of defence witnesses, etc , shall be borne by the prosecution :

(b) if the next sitting of the Assize Court of Nicosia is not due before the 8th January, 1968, then the Attorney-General is to apply to the Supreme Court to consider the question of directing a special sitting of that Assize Court.

Cases referred to :

Attorney-General of the Republic v. Ibrahim, 1964 C L.R. 195,
at p. 251

Application.

Application under section 174 (1) (a) and (e) of the Criminal Procedure Law, Cap. 155, for an order of the Court transferring the trial of a murder case from the Assize Court of Paphos to the Assize Court of Nicosia.

K. Talarides, Counsel of the Republic, for the applicant.

E. Komodromos, for the respondent.

The following judgment was delivered by :

JOSEPHIDES, J.: This is an application by the Attorney-General of the Republic under the provisions of section 174 (1) (a) and (e) of the Criminal Procedure Law, Cap. 155, for an order of this Court transferring the trial of a murder case from the Assize Court of Paphos to the Assize Court of Nicosia. Section 174 (1) (a) and (e) reads as follows :

“ 174. (1) Whenever, upon application as hereinafter provided, it is made to appear to the Supreme Court—

(a) that a fair and impartial preliminary inquiry or trial cannot be held in any Court ;

“(e) that such an order is expedient for the ends of justice,

it may order that the preliminary inquiry or trial be held by or before a Court other than the Court before which, but for such order, it would have been held”.

In applying this section I think it should be borne in mind that the expression “fair and impartial” trial should be interpreted to mean fair and impartial not only to the accused but also to the prosecution for the purposes of justice.

There is another point which should be touched upon at this stage and that is the provisions of sub-section (2) of section 174 of the Criminal Procedure Law, which reads as follows :

“(2) Every application for the exercise of the powers conferred by this section shall be made by motion which shall, except when the application is made by or on behalf of the Attorney-General, be supported by affidavit”.

It will be seen that this right to apply to the Supreme Court for the transfer of a case from one Court to another is conferred not only on the Attorney-General of the Republic but also on the defence, with the difference, that where the application is made by the Attorney-General then no affidavit need be filed in support of the application. In this case a full statement of facts is given in eleven paragraphs in the application itself, and no affidavit has been filed in support of the facts. It is true that this Court may, in a proper case, ask for evidence on oath to substantiate the main facts relied upon but, having regard to the facts and circumstances of this case, I do not think that any useful purpose would be served by asking the Attorney-General either to file an affidavit or to adduce oral evidence, because in respect of the main part of the evidence, that is, the disclosure of the source of information, privilege is most likely to be claimed in the public interest.

Our provision for the change of a place of trial is not novel and there is similar provision in England where the Queen’s Bench Division of the High Court of Justice has jurisdiction to change the place of trial of any felony or misdemeanour, whenever it is necessary for the purpose of securing, so far as possible, a fair and impartial trial : see the Administration of Justice (Miscellaneous Provisions) Act, 1938, section 11, and the cases cited in Archbold, 36th edition (1966), paragraph 263. So far as I am aware,

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this power of the Supreme Court in Cyprus has been exercised in two cases over the past 5 or 6 years. Those cases are not reported but it so happens that I was the Judge who dealt with the matter and I think I can refer to them. The one is the *Rodosthenous* case in 1961 (transfer of case from Limassol to Nicosia), and the other is the *Zacharia and Lazaris Demetriou* case (again transfer of case from Limassol to Nicosia), I think in 1961. I say "I think", as I am stating all these from memory because, unfortunately, our Court records are in the old Court-house in the Turkish quarter of Nicosia and they have not been made available to us (cf. *Attorney-General of the Republic v. Ibrahim* 1964 C.L.R. 195 at p. 251).

Having dealt with the legal aspect of the matter I shall now state briefly the facts in this case.

The charge against the respondent is that on the 23rd July, 1967, at Koloni, in the District of Paphos, he did, by an unlawful act and with premeditation, cause the death of one Ergun Mehmet of Mandria by firing against him. The charge is laid under sections 203 and 204 of the Criminal Code. The preliminary inquiry was held in the District Court of Paphos on the 28th August, 4th September, 11th September and 5th October, 1967 when the accused was committed for trial before the Assize Court of Paphos sitting on the 8th January, 1968.

Six Turkish witnesses, who had been duly sub-poenaed, failed to attend the Court on the 28th August, and a warrant of arrest was issued against them to compel their attendance. On the 4th September one of the witnesses, Talat, was escorted by the United Nations Police Force and gave evidence at the preliminary inquiry, but the rest did not attend either on that day or indeed on any other day. On the 4th September, in the course of the preliminary inquiry, learned counsel for the Republic informed the Court that, according to information, the witnesses had been threatened that if they attended Court and gave evidence their lives would be in danger and that, consequently, they had gone into hiding with the result that it had proved impossible to trace them. When the preliminary inquiry was continued on the 5th October, 1967, learned counsel for the Republic again informed the Court that the witnesses, did not attend and that the warrants of arrest against them had not been executed. He further informed the Court that according to information received by the appropriate authorities of the United Nations all possible efforts were made on their behalf to bring these witnesses before the Court to give evidence but, unfortunately, those efforts had failed.

It is the submission on behalf of the learned Attorney-General of the Republic that the attendance of all five Turkish witnesses before the Assize Court is necessary if justice is to be done in the present case, and that such attendance will not materialise unless such conditions of safety are created which will induce these witnesses to attend ; and it is believed that such conditions cannot be secured unless the trial is held in Nicosia. It is further submitted that the United Nations Police Force, who have so far offered their good offices, believe that their efforts to secure the attendance of these witnesses will be greatly facilitated if the trial is held in Nicosia. The threat against the witnesses, according to police information, emanated from Paphos.

Finally, it is submitted on behalf of the Attorney-General that the safety of all prosecution witnesses cannot be effectively secured by the police in Paphos while in Nicosia strict security measures can be taken.

There is another ground which is relied upon by the Attorney-General of the Republic, to the effect that the atmosphere in Paphos is not calm enough to secure an impartial trial. As I intimated in the course of the argument, if this ground stood alone I would not be prepared to grant the order in the circumstances of this case.

Learned counsel for the respondent submitted that this Court should refuse the application mainly on the following grounds :

- (a) that it will be difficult for the trial Court sitting in Nicosia to inspect the locus at Paphos ;
- (b) that the defence will have great difficulty and will undergo great expense in having to bring their witnesses to Nicosia ;
- (c) that learned counsel for the defence will not find it possible to appear before the Assize Court in Nicosia ;
- (d) that no evidence has been adduced by or on behalf of the Attorney-General to substantiate his submissions and that they are all based on information ;
- (e) that witnesses should not be allowed to choose the Court in which they will give their evidence, and that they should be compelled to attend the proper Court ; and, finally,
- (f) that the respondent has been in custody since the 23rd July, 1967, and if the case is transferred to Nicosia this will mean a long delay for the trial

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of the case because the next Assize sitting in Nicosia will be held after the 8th January, 1968, when the Paphos Assizes are due to begin.

I have given my best consideration to the able argument of learned counsel for the defence but I have not been persuaded that the grounds put forward by him outweigh those submitted on behalf of the Attorney-General for the granting of the order.

Considering that in granting the order I shall impose certain terms, I think that the question of the extra expense will be covered. As regards the inspection of the locus, I have no doubt that if the trial Court considers it necessary for the purposes of justice it will proceed to Paphos to inspect it. I have already dealt with the question whether the information placed before this Court by the Attorney-General should be on oath or otherwise. Regarding the delay which may result from the transfer of the case to Nicosia I shall also make provision in my order.

Considering all the circumstances of this case, I am satisfied that a fair and impartial trial cannot be held in the Assize Court of Paphos and that it is expedient for the ends of justice to have the trial of the case transferred to Nicosia. I accordingly order as follows :

The trial of the accused Andreas Costa Christodoulides Steniotis in Paphos Case No. 2488 of 1967 on a charge of premeditated murder shall be held before the Assize Court of Nicosia instead of the Assize Court of Paphos.

This order is subject to the following terms :

- (a) all costs resulting from the transfer of the case, costs of defence witnesses, etc., shall be borne by the prosecution ; and
- (b) if the next sitting of the Assize Court of Nicosia is not due before the 8th January, 1968, then the Attorney-General of the Republic is to apply to the Supreme Court to consider the question of directing a special sitting of that Assize Court.

Order accordingly.

Order in terms, transferring the trial of Paphos Case No. 2488 of 1967 before the Assize Court of Nicosia instead of the Assize Court of Paphos.