

EVANGELOS CHRISTOFI,

*Appellant,*

v.

THE POLICE,

*Respondents.*

EVANGELOS  
CHRISTOFI  
v.  
THE POLICE

(Criminal Appeal No. 3190).

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*Criminal Procedure—Appeal—Joinder of counts—Joinder of persons in one charge—Objection taken before commencement of the preliminary inquiry—Ruling of the Judge overruling said objection—Such ruling is not a “decision” within the provisions of section 25 (2) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960)—It is not, therefore, subject to appeal—See also section 131 (1) of the Criminal Procedure Law, Cap. 155—Cf. sections 39 and 131 to 153 inclusive of the said Law, Cap. 155.*

*Statutes—Construction—“Decision” in section 25 (2) of the Courts of Justice Law, 1960 (supra).*

*Appeal—No appeal lies against a ruling of a District Judge overruling an objection taken before the commencement of preliminary inquiry to the joinder of A with B in one charge—See supra.*

*Words and Phrases—“Decision” in section 25 (2) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960).*

The facts sufficiently appear in the judgment of the Court, dismissing the ruling of the Judge whereby he overruled the appellant's objection that, as he was charged with an offence triable summarily, he could not properly be joined in the same charge with the other co-accused, charged with a felony *i.e.* an offence triable on information.

### **Appeal against ruling.**

Appeal by Evangelos Christofi against a ruling of the District Court of Limassol (Boyiadjis, D.J.) given on the 11th August, 1970, in Criminal Case No. 8628/70, whereby it was ruled that a preliminary inquiry be held in the case of the appellant and another person who were charged together

in a charge sheet charging appellant of being a member of an unlawful association, contrary to section 56 (1) of the Criminal Code, Cap. 154, and the other person of holding an office in an unlawful association contrary to section 56 (2) of the Criminal Code.

*A. Myriantis*, for the appellant.

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

The judgment of the Court was delivered by :—

VASSILIADES, P.: The appellant before us is a police sergeant, 38 years of age, who was charged together with another person in the District Court of Limassol on a charge containing two counts. The first count concerns the other person (the first accused in the proceedings) charging him with the offence of holding an office in an unlawful association contrary to section 56 (2) of the Criminal Code, Cap. 154 ; the second count concerns the appellant, charging him with the offence of being a member of the same unlawful association contrary to section 56 (1) of the Code.

The offence of holding an office in an unlawful association (provided in sub-section 2) is a felony punishable with imprisonment for 7 years. The offence of being a member of an unlawful association (provided in sub-section 1) is punishable with imprisonment for three years.

On the 11th August, 1970, the case came before a District Judge, who was to hold the preliminary inquiry. At the opening of the case, counsel for the appellant submitted that as his client was charged with an offence punishable with imprisonment not exceeding three years, he was triable summarily ; and, therefore, no preliminary inquiry could be held in his case. The prosecuting officer submitted that the two accused were rightly charged together as they had committed practically the same offence, the one being an officer and the other being a member of the same unlawful association. He added that evidence would be adduced that both accused were meeting and discussing the problems of the unlawful association. Therefore—the prosecution submitted—the two accused were rightly joined in the same charge under section 39 of the Criminal Procedure Law, Cap. 155, and a preliminary inquiry should be held in the case of both accused. The Judge, accepting the submission, overruled the objection and proceeded with the taking of evidence in the preliminary inquiry. Against that ruling the appellant before us took the present appeal.

The first question which arises is whether such an appeal lies. Counsel on behalf of the appellant submitted that the appeal lies under section 25 (2) of the Courts of Justice Law, 1960 (No. 14 of 1960) which reads :—

“ 25 (2). Subject to the provisions of the Criminal Procedure Law, but save as otherwise in this sub-section provided, every decision of a Court exercising criminal jurisdiction shall be subject to appeal to the High Court.

Any such appeal may be made as of right against conviction or sentence on any ground.”

The submission on behalf of the appellant is that the decision to hold a preliminary inquiry is a “ decision ” of a Court exercising criminal jurisdiction and, therefore, it is subject to an appeal to the Supreme Court.

We find ourselves unable to accept this submission. The section provides that an appeal lies under sub-section (2) “ subject to the provisions of the Criminal Procedure Law ”, save as “ otherwise provided ” in the sub-section. The provisions in the Criminal Procedure Law, Cap. 155, governing appeals in criminal cases, are contained in Part V of the statute, section 131 to 153 inclusive. The opening section 131 (1) reads :—

“ 131 (1). Subject to the provisions of any other enactment in force for the time being, no appeal shall lie from any judgment or order of a Court exercising criminal jurisdiction except as provided for by this Law.”

It is clear, we think, that when sub-section (2) of section 25 of the Courts of Justice Law, refers to “ every decision ”, this must be read “ subject to the provisions of the Criminal Procedure Law ”; and, therefore, it can only refer to “ decisions ” which are subject to an appeal under the Criminal Procedure Law. The ruling against which the present appeal is taken, is not, as far as we can see on the basis of the argument that we have heard, such a decision.

Therefore, we hold that this appeal does not lie. What other legal remedies may be available to the appellant, is a matter which is not for us to decide ; it is a matter for his legal adviser to consider.

*Appeal dismissed.*