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June 19

[TRIANTAFYLIDIS, P., A. LOIZOU, MALACHTOS, JJ.]

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DAVID PISHORN  
v.  
THE POLICE

DAVID PISHORN,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(Criminal Appeal No. 3327).

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*Trial in criminal cases—Costs—Public prosecution—Summary trial—Acquittal—Section 169 of the Criminal Procedure Law, Cap. 155—No order can be made thereunder for the payment out of public revenue of the costs of a person who is acquitted in a summary trial—Even if such power to award costs existed, trial Courts would have to exercise a discretion in this respect—And this was not a proper case to decide on appeal that the trial Judge should have awarded costs.*

*Costs in criminal cases—Whether there is power to award costs to a person who is acquitted etc.—See supra.*

The Appellant was prosecuted by the Police for a driving offence; at the close of the prosecution case he was not called upon to defend himself and was consequently, acquitted. At that stage counsel for the Appellant, relying on section 169 of the Criminal Procedure Law, Cap. 155 (*infra*) applied for an order for costs in favour of the Appellant. The trial Judge refused the application.

Section 169 of Cap. 155 (*supra*) reads as follows:—

“ If in a summary trial the accused is acquitted the Court may order any person by whom in its opinion the charge was preferred, or any person whom it may consider responsible for having procured the same, to ‘pay to the accused his costs’”.

*Held*, (1). In section 169 (*supra*) no mention is made about payment of costs out of public revenue; on the contrary, section 167 of the same Law (*supra*) provides that a Court before which any information is tried may direct that the costs of witnesses for the defence may be paid out of public revenue;

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and the next section 168 provides for payment into public revenue of any costs of the prosecution which a person convicted of an offence, in the case of a public prosecution, may be ordered to pay.

(2) We are, therefore, inclined to the view that as section 169 is worded it does not enable an order to be made for the payment out of public revenue of the costs of a person who is acquitted in a summary trial (*Rodosthenous v. The Republic*, 1961 C.L.R. 382, at p. 397, *distinguished*).

(3) Even if the trial Judge had power under section 169 to award costs payable out of public revenue, he would still have to exercise discretionary power (see *Berry v. British Transport Commission* [1961] 3 All E.R. 65, at p. 74). Bearing that in mind, it would not, in the light of the circumstances of the present case, have been proper for us to interfere with the decision of the trial Judge not to award costs.

*Appeal dismissed.*

Cases referred to:

*Rodosthenous v. The Republic*, 1961 C.L.R. 382, at p. 397;

*Berry v. British Transport Commission* [1961] 3 All E.R. 65,  
at p. 74.

**Appeal against refusal to grant costs.**

Appeal by David Pishorn against the decision of Kronides, Ag. D.J. in Limassol Criminal Case No. 14436/71, who after acquitting the Appellant of the charge of driving a motor vehicle without due care and attention contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332, refused to make an order for costs against the Police in Appellant's favour.

*S. McBride*, for the Appellant.

*A. Korfiotis*, for the Respondents.

The judgment of the Court was delivered by:—

TRIANTAFYLLIDES, P.: In this case the Appellant has appealed against the decision of a District Judge who, after acquitting the Appellant (then the accused) in a criminal case, refused to make in his favour, and against the Police (now

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the Respondents), an order regarding the costs of the said case.

The Appellant was prosecuted for driving a motor-car without due care and attention, contrary to section 6 of the Motor Vehicles and Road Traffic Law, Cap. 332; at the close of the prosecution case he was not called upon to defend himself and was, consequently, acquitted.

At that stage counsel for the Appellant, relying on section 169 of the Criminal Procedure Law, Cap. 155, applied for an order for costs in favour of the Appellant, stressing that the Appellant was not acquitted merely because there had arisen a doubt about his guilt but because the prosecution had failed to make out a *prima facie* case against him; the prosecuting officer objected to the application and the trial Judge said that “in this particular case I see no reasons to give costs in favour of the accused”.

It has been contended that the Judge’s decision as to the costs is not duly reasoned; but, in our view, this contention is not well-founded, because the decision as to the costs has to be read together with the previously delivered judgment of the Judge—acquitting the Appellant—in which all the circumstances of the case were set out; it was sufficient, therefore, for the judge to say that “in this particular case”, in other words in the light of what he had already stated in his judgment, he saw no reasons to give costs in favour of the Appellant.

An issue with which we have had to deal in this appeal is whether under the aforesaid section 169 the trial Judge had power to make an order for costs against the Respondents; the section reads as follows:—

“169. If in a summary trial the accused is acquitted the Court may order any person by whom in its opinion the charge was preferred, or any person whom it may consider responsible for having procured the same, to pay to the accused his costs”.

It has not been submitted, either before the Court below or before us, that this is a case in which the costs of the Appellant should be paid by any particular person by whom the charge has been preferred or who has procured the filing of such charge. As counsel for the Appellant has clearly

stated this is a case in which he expects payment out of public revenue.

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In section 169—quoted above—no mention is made about payment of costs out of public revenue; on the contrary, section 167 of the same Law provides that a Court before which any information is tried may direct that the costs of witnesses for the defence may be paid out of public revenue and the next section—168—provides for payment into public revenue of any costs of the prosecution which a person convicted of an offence, in the case of a public prosecution, may be ordered to pay. We are, therefore, inclined to the view that as section 169 is worded it does not enable an order to be made for the payment out of public revenue of the costs of a person who is acquitted in a summary trial: and the majority view in *Rodosthenous v. The Republic*, 1961 C.L.R. 382 (at p. 397), regarding the effect of section 25 of the Courts of Justice Law, 1960 (14/60) in relation to the power of the High Court (now the Supreme Court) to award costs in proceedings before it, does not, in our opinion affect the position under section 169, because in that case the *sub judice* issue was different.

We should proceed to add that, even if the trial Judge had power under section 169 to award costs payable out of public revenue, he would have to exercise a discretionary power.

In this respect useful reference may be made to *Berry v. British Transport Commission* [1961] 3 All E.R. p. 65, (in which Devlin, L.J. stated (at p. 74)):-

“ In criminal cases it is so generally accepted that a successful defendant has no *prima facie* entitlement to or expectation of an award of costs in his favour that there is little or no authority on the point. There must be innumerable defendants who have succeeded without costs, but I have never heard of one who has claimed that he is *prima facie* entitled to them. In *Becker v. Purchase* ([1950] 2 All E.R. 837) the Divisional Court emphasised that a defendant was not entitled, as of right, to costs whenever the justices allowed his appeal or dismissed an information against him; if they gave no reason, the Court could not interfere with the exercise of their discretion. A statement as to how the discretion should be exercised under the Act of 1952 if the accused was acquitted has been made by Lord Parker, C.J., in

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the Court of Criminal Appeal (Practice Direction, [1959] 3 All E.R. 471) which says substantially the same thing. In saying that the mere fact of an acquittal did not carry with it the 'expectation' that the discretion would be exercised in favour of the acquitted person, Lord Parker, C.J., doubtless had in mind the use of the word 'expectation' by Viscount Cave, L.C., in *Donald Campbell & Co., Ltd. v. Pollak* [1927] All E.R. Rep. at p. 41).

This difference is not simply a difference in practice. It is a difference in the substance of the law..... It is the intent of every statute which confers a discretionary power that the power should be used justly. It does not follow that a principle on which it is just to make an award of civil costs will be equally just when applied to an award of criminal costs; and that is how the distinction arises. I do not propose to examine all the relevant differences that may be made for this purpose between a civil action and a criminal proceeding. But in relation to an award of costs against the party who initiates the proceedings there is one difference that is obvious. A plaintiff brings an action for his own ends and to benefit himself; it is therefore just that if he loses he should pay the costs. A prosecutor brings proceedings in the public interest, and so should be treated more tenderly".

Bearing in mind the above approach we are of the opinion that even if the trial Judge was empowered to award costs payable out of public revenue, it would not in the light of the circumstances of the present case—(where the Appellant was charged before the District Court after being involved in a traffic collision and it was eventually held that it had not been established that he had acted negligently)—have been proper for us to interfere with the decision not to award costs.

This appeal, therefore, fails and is dismissed.

*Appeal dismissed.*