

1973  
July 23

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ALI  
HOUDAVERTI  
v.  
THE POLICE

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU, JJ.]

ALI HOUDAVERTI,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(*Criminal Appeal No. 3472*).

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*Criminal Procedure—Appeal—Disqualification order—Driving or using a motor vehicle without any insurance against third party risks—“Special reasons”—Which may lead the trial Court to impose a more lenient sentence than disqualification for six months etc.—Such “special reasons” should be placed before the Court of first instance—No such reasons can be placed for the first time before the Court of Appeal—The appeal has to be determined on the material appearing on the record of the proceedings before the trial Court (before which no “special reasons” were laid)—And as there is nothing on record justifying interference with the disqualification, the appeal against disqualification for six months has to be dismissed.*

*Road Traffic—Disqualification from holding or obtaining a driving licence—“Special reasons”—The Motor Vehicles (Third Party Insurance) Law, Cap. 333, section 3 etc. etc.—See supra.*

*“Special reasons”—Disqualification etc.—See supra.*

The Appellant was sentenced by the District Court of Kyrenia to pay a fine of £3 and be disqualified from holding or obtaining a driving licence for six months, having been convicted, on a plea of guilty, of the offence of using an omnibus without an insurance against third party risks, contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap. 333. He has taken this appeal against the order of disqualification, on the ground that, in the circumstances of the case, was a manifestly excessive sentence. Counsel appearing for the Appellant asked leave to plead for the first time on appeal “special reasons” which allegedly would have led the Court below to a more lenient sentence, had they been placed before it. The Supreme Court did not allow such course and:—

*Held* (1). In accordance with our case-law such as *Drakos v. The Police* (1969) 2 C.L.R. 16 and *Christodoulou v. The Police* (1969) 2 C.L.R. 32 any "special reasons" ought to have been placed before the Court of first instance; and we have to determine the appeal on the material appearing on the record of the proceedings.

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(2) There is no other course open to us except to dismiss this appeal on the ground that there does not exist anything on record to justify interfering with the disqualification order.

*Appeal dismissed.*

Cases referred to:

*Drakos v. The Police* (1969) 2 C.L.R. 16;

*Christodoulou v. The Police* (1969) 2 C.L.R. 32.

#### **Appeal against sentence.**

Appeal against sentence by Ali Houdaverti who was convicted on the 11th June, 1973 at the District Court of Kyrenia (Criminal Case No. 1865/72) on one count of the offence of using a motor vehicle on a road without a third party insurance contrary to section 3 (1),(2) (3) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 and was sentenced by Pitsillides, S.D.J. to pay a fine of £3.— and he was further disqualified from holding or obtaining a driving licence for a period of 6 months.

*V. Dervish*, for the Appellant.

*N. Charalambous*, Counsel of the Republic, for the Respondents.

The judgment of the Court was delivered by:—

TRIANAFYLLIDES, P.: The Appellant was sentenced by the District Court of Kyrenia to pay a fine of £3 and be disqualified from holding or obtaining a driving licence for six months, having been convicted, on a plea of guilty, of the offence of using an omnibus without an insurance against third party risks, contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap. 333. He has appealed against the order of disqualification on the ground that it is, in the circumstances of the case, a manifestly excessive sentence.

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Though before the Court below he was defended by counsel—other than counsel who appeared for him in the appeal—unfortunately special reasons which allegedly would have led the Court below to impose a more lenient sentence were not placed before it; in accordance with our case-law, such as *Dracos v. The Police* (1969) 2 C.L.R. 16, and *Christodoulou v. The Police* (1969) 2 C.L.R. 32, any special reasons ought to have been placed before the Court of first instance; and we have to determine the appeal on the material appearing on the record of the proceedings.

We sympathize with the Appellant who is a first offender, a professional driver, a man with a large family—he has five minor children—but there is no other course open to us except to dismiss his appeal on the ground that there does not exist anything on record to justify interfering with the disqualification order; it is quite clear that apart from the alleged special reasons, which as they are not on record we cannot take into account, there exists no reason for holding that the said order is a manifestly excessive sentence.

As stated by his counsel, the Appellant has already made an application under Article 53 of the Constitution, through the Attorney-General of the Republic, for a remission of sentence in so far as the disqualification order is concerned and in this application—copy of which has been shown to us—there have been set out the alleged facts which were not placed before the Court below as special reasons; it is up to the appropriate organs, under Article 53, to deal with this case as they may deem fit in the circumstances.

*Appeal dismissed.*