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COSTAS TSIRIDES

v.

THE POLICE

[TRIANTAFYLLIDES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

COSTAS TSIRIDES,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 3487).

Criminal Procedure—Remand order—Law applicable—Criminal Procedure Law, Cap. 155, section 24—Article 11, paragraphs 1, 2(c) and 6 of the Constitution—Further remand in custody for eight days on expiry of an earlier one for three days—No sufficient material placed before the Judge of the District Court to enable him to decide whether the suspicion that the Appellant had committed the offence under investigation was a reasonable one—Moreover period of three days of original remand (supra) not sufficiently utilised by the police in that they failed to take a statement from the Appellant, as repeatedly requested by him—Judge’s discretion not exercised judicially in granting further remand for eight days—Appeal under Article 11, paragraph 6 of the Constitution allowed and remand order appealed from set aside—See further herebelow.

Human rights—Remand order in police custody—Detention without conviction—A serious departure from the rules of respect for individual liberty and of the presumption of innocence is involved in every detention without a conviction—And District Courts, as well as the Supreme Court, have to approach with all possible care cases of this nature—Article 11.2(c) of the Constitution and Article 5 (1) (c) of the European Convention on Human Rights of 1950 (the said Convention being in force in Cyprus by virtue of the European Convention on Human Rights (Ratification) Law, 1962, Law 39/62)—What is “reasonable suspicion of having committed an offence” within the said Article 5 (1) (c)—Cf. supra.

Remand order in police custody—Detention without conviction—Approach of the Courts—See supra.

This is an appeal against an order of a Judge of the District Court of Nicosia whereby the Appellant, who is an advocate,

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was remanded in police custody for eight days in relation to the investigation into the commission by him of the offence of conspiracy to use armed force against the Government of the Republic of Cyprus. After reviewing the facts and referring to the relevant statutory and constitutional provisions, as well as to judicial pronouncements, the Supreme Court allowed the appeal and set aside the remand order appealed from on the broad ground that the Judge of the District Court failed to exercise judicially his discretion in the matter. The facts and the relevant texts are sufficiently set out in the judgment of the Supreme Court.

Cases referred to:

Hasip v. The Police, 1964 C.L.R. 48;

European Court of Human Rights: Stogmuller case (1969 Yearbook of the European Convention on Human Rights, 364, at p. 394);

European Commission of Human Rights, case 1936/63, (1964 Yearbook etc. 224, at p. 244).

Appeal against remand order.

Appeal by Costas Tsirides against the order of the District Court of Nicosia (A. Ioannides, Ag. D.J.) made on the 1st August, 1973, whereby Appellant was remanded in Police custody for eight days in relation to the investigation into the commission by him of the offence of conspiracy to use armed force against the Government of the Republic.

L. Papaphilippou with A. Drakos and P. Tsiridou (Mrs.),
for the Appellant.

C. Kypridemos, Counsel of the Republic, for the Respondent.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: The Appellant, who is an advocate, appeals against an order of the District Court of Nicosia whereby he was remanded in police custody for eight days as from the 1st August, 1973, in relation to the investigation into the commission by him of the offence of conspiracy to use armed force against the Government of the Republic of Cyprus. He had been previously similarly remanded for three days, on the 29th

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July, 1973, although on that occasion, too, the police had asked for a remand of eight days.

The relevant statutory provision is section 24 of the Criminal Procedure Law, Cap. 155, which reads as follows:-

“ 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.”

This provision has to be read subject to the relevant constitutional provisions, which are paragraphs 1, 2(c) and 6 of Article 11 and read as follows:-

“ 1. Every person has the right to liberty and security of person.

2. No person shall be deprived of his liberty save in the following cases when and as provided by law:-

.....
(c) the arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

.....
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:

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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.”

Article 11. 2 (c) of our Constitution is substantially the same as Article 5 (1) (c) of the European Convention on Human Rights, of 1950, which was ratified in Cyprus by the European Convention on Human Rights (Ratification) Law, 1962 (Law 39/62).

As was observed by the European Court of Human Rights in the *Stogmuller* case (1969 Yearbook of the European Convention on Human Rights 364, at p. 394) a serious departure from the rules of respect for individual liberty and of the presumption of innocence is involved in every detention without a conviction, such as in the present case; therefore, the District Courts, as well as the Supreme Court, have to approach with all possible care cases of this nature.

The Appellant has been remanded in custody on the ground that there was “reasonable suspicion” of his having committed the offence mentioned earlier on in this judgment.

As was held by the European Commission of Human Rights in, *inter alia*, case 1936/63 (1964 Yearbook of the European Convention on Human Rights 224, at p. 244) “in determining what is ‘a reasonable suspicion of having committed an offence’ permitting the arrest or detention of a person under Article 5, paragraph 1(c), regard must be had to the circumstances of the case as they appeared at the time of the arrest and detention.”

Paragraph 6 of Article 11 of our Constitution (which has no counterpart in the European Convention on Human Rights) requires the Judge, before whom a person arrested is brought, to “promptly proceed to inquire into the grounds of the arrest”; and it is to be noted that the Judge is given three days within which to decide regarding the release or detention of the person so brought before him; also, paragraph 6 introduces a right of appeal against the Judge’s decision.

Though, naturally, the police are not to be required to disclose at the remand stage information which might hamper or

otherwise prejudice their investigations, they are nevertheless expected to place before the Judge, from whom an order for remand in custody is being sought, sufficient material so as to enable him to perform his task under paragraph 6 of Article 11 and to make it possible for this Court to review on appeal the performance of such task. This appeal has been based on the contention that the District Judge who ordered the remand on the 1st August—and who was not the same Judge who ordered the earlier remand on the 29th July—has exercised his relevant powers erroneously.

As was laid down in, *inter alia*, *Hasip v. The Police*, 1964 C.L.R. 48, it is up to an Appellant to show that the discretion of the Judge who ordered a remand was not exercised judicially and that it should, therefore, be interfered with on appeal.

It is, further, relevant to note that in the *Hasip* case Josephides, J. made the following remarks (at p. 64):—

“ 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 present case the record before us shows that on the 1st August, 1973, a police officer testified, in support of the application for a further remand for eight days, that the investigation had not been completed within the three days' period of the original remand and that it was necessary to take statements from over two hundred persons all over Cyprus in connection with the Appellant and another twenty-three persons who were arrested on the same date as the Appellant; he stated that documents in the possession of, and statements which had been made to, the police, afforded grounds that raised reasonable suspicion that the Appellant was involved in the offence under investigation; he conceded that no statement

was taken from the Appellant and that his house was searched but nothing incriminating was found; he insisted that he could not disclose what "elements" existed against the Appellant.

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The Appellant gave evidence on oath, before the District Judge, denying the commission of the offence, and he stated that he had repeatedly asked to see another police officer, who had given evidence in relation to the original remand for three days, but up to the 1st August, 1973, nobody had asked him anything about the case; he added that he had cases pending before the District Court of Limassol and the Supreme Court and that his detention hampered him in his professional duties. He was not cross-examined.

The District Judge stated in his decision that from the evidence before him he was satisfied that the application for an eight days' remand was justified and that the police needed the period of eight days in order to take two hundred statements from all over Cyprus. He pointed out that the fact that the Appellant was a practising advocate, who had to appear in Court to assist in the administration of justice, was not enough to prevent him from making the remand order, but he gave instructions that the police should give the Appellant, while in custody, all possible assistance in the preparation and presentation of cases before the Courts.

In the light of the above particular features of this case we are of the view that the relevant discretion of the Judge was exercised erroneously, in a manner necessitating our interference therewith: What the police stated in support of the application for the remand fell short of what was, in the circumstances, necessary in order to enable the Judge to carry out his task under paragraph 6 of Article 11; the police should have disclosed—especially as the application for remand was being contested—material sufficient for justifying "reasonable suspicion" that the Appellant had committed the offence alleged against him, although they did not, of course, have to disclose the names of witnesses or any other means of information the disclosure of which might hamper or otherwise prejudice their investigations.

Further, the learned District Judge relied on the fact that two hundred persons had to be interviewed by the police in relation to this case, but lost sight of the fact that during the three days when the Appellant was in custody—under the

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earlier remand order—he had asked to see a police officer in order to make a statement to him, but the police did not respond at all; had they taken a statement from him during that time they might possibly have completed their investigations, as far as he was concerned, before the expiry of the first remand, or at least they might have thought it unnecessary to seek renewal of his detention until they had taken statements from as many as two hundred persons.

Although all are equal before the law, the fact is that the Appellant, being an advocate, was engaged in the function of assisting in the administration of justice, which is a vital service to the community as a whole, and therefore this was a case—and of course there may be others—in which a particular reason existed why the investigations should have been conducted with the utmost practicable speed.

We are of the opinion that in the absence of sufficient material before the District Judge enabling him to decide whether the suspicion of the police that the Appellant had committed the offence in question was reasonable, and in view of the conduct of the police in non-utilizing sufficiently the period of three days' remand granted originally, namely their failure to obtain a statement from the Appellant as requested by him, the Judge did not exercise judicially his relevant discretion in granting a further remand for eight more days.

For the above reasons this appeal is allowed and the remand order appealed from is hereby set aside.

Appeal allowed.