

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

VASILIOS LAZAROU MOUYIOS AND OTHERS,

Appellants,

v.

THE POLICE,

Respondents.

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(Criminal Appeals Nos. 3563–3565).

Territorial jurisdiction in criminal matters—Offences not committed within the District of the District Court which tried the case but within two other Districts—No jurisdiction to try the case vested in said District Court—Section 23 of the Courts of Justice Law, 1960 (Law No. 14 of 1960)—Issue of jurisdiction may be raised for the first time even before the Court of Appeal—Conviction (and sentence recorded) by said District Court is a nullity for lack of jurisdiction. Cf. immediately infra.

District Court—Jurisdiction—Territorial jurisdiction in criminal matters—See supra—See also infra.

Criminal Procedure—Practice—Jurisdiction in a criminal matter—Issue of—Can be raised for the first time on appeal even though it was not raised at all at the trial before the Court below—The expression “before pleading to the charge or information” in section 69 (1) (a) of the Criminal Procedure Law, Cap. 155 regulates procedure at the trial—And does not exclude the right to raise the issue of jurisdiction even before the Appellate Court for the first time.

Trial in criminal cases—Lack of jurisdiction—Verdict of guilty and sentence a nullity—Appeal on that ground even though the Appellants had been convicted by the trial Court on their own pleas of guilty—Court of Appeal held that Appellants could not be prevented from doing so—Appeal allowed—Conviction and sentence quashed—New trial ordered to be held before the appropriate District Court—Section 145 (1) (d) of the Criminal Procedure Law, Cap. 155 and section 25 (3) of the Courts of Justice Law, 1960 (Law No. 14 of 1960).

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New trial ordered by the Court of Appeal.

*Words and Phrases—“ ... before pleading to the charge or information”
in section 69 (1) (a) of the Criminal Procedure Law, Cap. 155.*

The three Appellants were found guilty, on their own pleas, by the District Court of Nicosia on counts 3 and 4 of the charge whereby they were charged with committing certain offences at Larnaca, in the District of Larnaca, and at Paphos, in the District of Paphos, contrary to sections, 2 and 12 (1) (5) and 19 (1) (h) of the Aliens and Immigration Law, Cap. 105, and sentenced to concurrent terms of imprisonment. More details regarding the said offences are set out *post* in the judgment of the Court. It is to be noted that the Appellants were charged on counts 1 and 2 of the said charge with conspiracy (at Nicosia) to commit a misdemeanour. But on those counts 1 and 2 the prosecution offered no evidence and the accused (Appellants) were acquitted and discharged in relation thereto.

There can be no doubt that under section 23 of the Courts of Justice Law, 1960 (Law No. 14 of 1960) the District Court of Nicosia has no jurisdiction to try the offences of which the accused (Appellants) were convicted; and that the Court having such jurisdiction is either the District Court of Larnaca or the District Court of Paphos (*supra*). On the other hand, as it may be seen from the above, the issue of jurisdiction was never raised before the trial Court; the issue was raised for the first time before the Supreme Court dealing with the instant appeal taken by the ex-accused against their said conviction by the District Court of Nicosia.

It has been contended by counsel for the Respondent that it was too late for the Appellants to raise on appeal before this Court the issue of jurisdiction, as they had not raised it before the trial Court at all. Counsel relied in this respect on section 69 (1) (a) of the Criminal Procedure Law, Cap. 155, which reads as follows:

“ 69.(1) The accused may, *before* pleading to the charge or information, plead –

(a) that the Court before which he is called upon to plead has not and some other Court has jurisdiction over him or over the offence with which he is charged, and, if the plea is sustained, the Court shall send the case to be

tried before the Court in the colony (now Republic) which has jurisdiction over the offender or over the offence.”

Counsel stressed in particular the expression “ before pleading to the charge or information”.

Allowing the appeal and, *inter alia*, quashing the conviction and sentence the Supreme Court –

Held, (1) We are of the view that we cannot prevent counsel for the Appellants from raising now the issue of jurisdiction, even though such issue was not raised at the trial at all. (Principle laid down in the *King v. Dennis* [1924] 1 K.B. 867, at 868, per Avory, J., *applied*).

(2) In our view the expression “ before pleading to the charge or information in section 69 (1) (a) of the Criminal Procedure Law, Cap. 155 (*supra*) regulates the procedure at the trial—apparently in the manner prescribed in the *Reis* case (*R. v. Reis and Others*, 12 C.L.R. 8 *infra*, in the judgment)—and does not necessarily exclude the raising of such an issue for the first time on appeal; and we are clearly of opinion that the District Court of Nicosia had no jurisdiction to deal with counts 3 and 4, *supra*.

(3) (a) The question that arises next is what order is to be made by us considering that the conviction of the Appellants is a nullity; as was stated by the Earl of Reading, C.J. in *R. v. Crane* [1920] 3 K.B. 236, at p. 239; “ ... the Court in this case treats the verdict of guilty and sentence which have been recorded against the Appellant as a nullity, and as if they had been expunged from the record.”

(b) In the exercise of our powers under section 145 (1) (d) of the Criminal Procedure Law, Cap. 155 and foremost under section 25 (3) of the Courts of Justice Law, 1960 (Law No. 14 of 1960)—which section 25 (3) gives us more powers than the said section 145 (1) (d) of Cap. 155 (see *Loizias v. The Republic* (1969) 2 C.L.R. 217, at p. 219)—we hereby order that the three Appellants should be tried afresh on counts 3 and 4 before either the District Court of Larnaca or the District Court of Paphos; and they should be let out on bail up to the date of their new trial on the same terms as before.

Appeal allowed. New trial ordered.

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Cases referred to:

R. v. Crane [1920] 3 K.B. 236, at p. 239, per Lord Reading, C.J.;

Crane v. D.P.P. [1921] 2 A.C. 299;

Loizias v. The Republic (1969) 2 C.L.R. 217, at p. 219;

The King v. Dennis [1924] 1 K.B. 867, at p. 868 per Avory, J.;

R. v. Reis and Others, 12 C.L.R. 8;

R. v. Kouloumbrides, 8 C.L.R. 65;

Latham and Others v. The Queen, 9 Cox C.C. 516.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Vasilios Lazarou Mouyios and Others who were convicted on the 9th April, 1974 at the District Court of Nicosia (Criminal Case No. 3481/74) on one count of the offence of knowingly harbouring a person whom they knew to have entered the Republic through a non-approved port, contrary to sections 2 and 19 (1) (h) of the Aliens and Immigration Law, Cap. 105 and on one count of the offence of aiding another person to leave the Republic through a non-approved port contrary to sections 2 and 12(1)(5) of the Aliens and Immigration Law, Cap. 105 and sections 20 and 21 of the Criminal Code Cap. 154 and were sentenced by Kourris, S.D.J. as follows:— Accused 1 and 2 to concurrent terms of three months' imprisonment and accused 3 to concurrent terms of one months' imprisonment on each count.

E. Efstathiou with *C. Adamides*, for Appellant in Appeal No. 3563.

C. Adamides, for Appellants in Appeals Nos. 3564 and 3565.

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

The judgment of the Court was delivered by:—

TRIANTAFYLIDIS, P.: The three Appellants were accused 1, 2 and 3 in criminal case No. 3481/74 before the District Court of Nicosia; they were found guilty, on their own pleas, of the offences of "knowingly harbouring a person whom they knew to have entered the Republic of Cyprus through a non-approved

port, contrary to sections 2 and 19 (1) (h) of the Aliens and Immigration Law, Cap. 105" and of "aiding" such "person to leave the Republic of Cyprus through a non-approved port, contrary to sections 20 and 21 of the Criminal Code, Cap. 154 and sections 2 and 12 (1) (5) of the Aliens and Immigration Law, Cap. 105"; Appellants (accused) 1 and 2 were sentenced to concurrent terms of three months' imprisonment in respect of each one of the above offences and Appellant (accused) 3 to concurrent terms of one month's imprisonment; they have all appealed against the said sentences.

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In the notice of appeal counsel for the Appellants raised the issue that the District Court of Nicosia, namely a Senior District Judge who dealt with the criminal case in question, by way of summary criminal proceedings, did not possess jurisdiction in relation to the said offences, which were charged by means of counts 3 and 4; counts 1 and 2, charged the Appellants with two offences of conspiracy to commit a misdemeanour.

It is not in dispute that in respect of the conspiracy charges the District Court did possess jurisdiction. The Appellants initially pleaded not guilty to all four counts, when they first appeared before the trial Court on the 13th March, 1974; then, on the 4th April, 1974, they were allowed to withdraw their pleas of not guilty on counts 3 and 4 and to plea guilty instead; on the 5th April, 1974, no evidence was offered by the prosecution against them as regards counts 1 and 2 and they were acquitted and discharged in relation thereto; they were sentenced, as aforesaid, on counts 3 and 4.

It is proper to examine first whether the trial Court was vested with jurisdiction to deal with counts 3 and 4: The relevant provision is section 23 of the Courts of Justice Law, 1960 (Law 14/60), which reads as follows:—

“ 23.—(1) Every District Court shall, subject to the provisions of section 19, have jurisdiction to try in accordance with the provisions of section 24 —

- (a) all offences committed within the district in which the Court is established;
- (b) all offences committed within the Sovereign Base Areas by a Cypriot against or in relation to a Cypriot.

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(2) *Where an offence is committed on the boundary of two or more districts or within a mile of the boundary or is committed partly in one district and partly in another or other districts such offence may be tried by the District Court of either or any such district as if it had been wholly committed in the district in which it is tried.*

For the purposes of this subsection 'district' includes the Sovereign Base Areas.

(3)

The particulars of counts 3 and 4 were as follows:-

Count 3

" The accused between the 19th and 28th day of February, 1974, both days inclusive, at Larnaca, in the District of Larnaca and at Paphos, in the District of Paphos, did knowingly harbour Georghios Karoussos of Greece, whom they knew to have entered the Republic of Cyprus through a non-approved port".

Count 4

" The accused at the time and place in count III hereof mentioned, did aid Georghios Karoussos of Greece to leave the Republic of Cyprus through a non-approved port".

It is, therefore, quite clear, on the basis of the foregoing, that the District Court of Nicosia did not possess at any material time jurisdiction to deal with the offences charged by counts 3 and 4, as they had both been, allegedly, committed in the districts of Larnaca and Paphos and not at all in the district of Nicosia.

It has been contended by learned counsel for the Respondents that it was too late for the Appellants to raise on appeal, before this Court, the issue of jurisdiction, as they had not raised it before the trial Court; counsel relied in this respect on section 69 (1) (a) of the Criminal Procedure Law, Cap. 155, which reads as follows:-

" 69. (1) The accused may, before pleading to the charge or information, plead -

(a) that the Court before which he is called upon to plead has not and that some other Court has

jurisdiction over him or over the offence with which he is charged, and, if the plea is sustained, the Court shall send the case to be tried before the Court in the Colony which has jurisdiction over the offender or over the offence”;

He stressed, in particular, the expression “before pleading to the charge or information”.

An earlier provision in Cyprus similar to section 69 (1) (a) was clause 153 of the Cyprus Courts of Justice Order, 1882, which reads as follows:-

“ 153. It shall be lawful for any person against whom an information is filed to plead that the Court has not, and that some other Court has, jurisdiction over the offence with which he is charged, or over him, and if judgment is given in favour of the accused upon such a plea, the Court shall send the information to be tried before the Court which has jurisdiction over the offence or over the offender”.

Two cases were cited to us as regards the time at which the issue of jurisdiction has to be raised but they are not very helpful for the purpose of dealing with the objection raised, as above, by counsel for the Respondents in this case.

In *R. v. Kouloumbrides*, 8 C.L.R. 65, the issue of the jurisdiction of the trial Court was raised for the first time on appeal; it was decided against the appellant (accused) and so the Supreme Court did not deal with the point raised by the Respondent that the appellant could not “take exception to the jurisdiction of the District Court for the first time on the hearing of the appeal”.

In *R. v. Reis and Others*, 12 C.L.R. 8, it was observed that the issue as to jurisdiction which had been raised at the trial after a plea of not guilty should not have been treated as triable concurrently with the question of guilt but that such issue should have been raised before plea and should have been tried before the trial.

In England—where the criminal procedure is very similar to ours—the matter of the jurisdiction of the trial Court was raised *ex proprio motu* by the Court of Criminal Appeal, in *The King v. Dennis* [1924] 1 K.B. 867, where Avory, J. said the following (at p. 868):-

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“ We cannot accede to the suggestion made by Mr. Clements, that because this is a test case we should overlook a manifest want of jurisdiction in the Court of trial. It is always the duty of this Court, even although objection is not put forward by counsel, or in the notice of appeal, to take note of a point which goes to the jurisdiction of the Court of trial”.

In view of the above view of Avory J. we are of the opinion that we cannot prevent counsel for the Appellants from raising the issue as to the jurisdiction of the trial Court, even though such issue was not raised at the trial; in our view the expression “before pleading to the charge or information” in section 69 (1) (a) regulates the procedure at the trial—apparently in the manner prescribed in the *Reis* case, *supra*—and does not necessarily exclude the raising of such an issue for the first time on appeal; and, as already stated in this judgment, such issue having been raised before us in this case, we are of the opinion that the District Court of Nicosia had no jurisdiction to deal with counts 3 and 4.

It has not even been suggested in argument—and it could not be the correct position—that because the District Court of Nicosia possessed jurisdiction in respect of counts 1 and 2 it, consequently, possessed also jurisdiction in respect of counts 3 and 4; there exists no provision in Cyprus, in respect of summary criminal proceedings, which could be relied on in support of this proposition, such as, for example, section 11(2) of the Criminal Justice Act, 1925, in England; and it is well established that each count is to be treated as a separate charge or information. (See, *inter alia*, *Latham & Others v. The Queen*, 9 Cox C.C. 516).

The question that arises next is what order is to be made by us, after we have found that the trial Court did not have jurisdiction to deal with counts 3 and 4: In our view the proceedings as regards such counts are a nullity; as was stated, by the Earl of Reading, C.J. in *R. v. Crane* [1920] 3 K.B. 236, at p. 239,—“..... the Court in this case treats the verdict of guilty and sentence which have been recorded against the Appellant as a nullity and as if they had been expunged from the record”. In the *Crane* case, *supra*, a new trial was ordered and this course was approved when that case was considered on appeal (see *Crane v. D.P.P.* [1921] 2 A.C. 299).

In the exercise of our powers under section 145 (1) (d) of Cap. 155, as well as those under section 25 (3) of Law 14/60—to which we can resort “notwithstanding anything contained in the Criminal Procedure Law or in any other Law or in any Rules of Court and in addition to any powers conferred thereby” and which are wider, as pointed out in *Loizias v. The Republic* (1969) 2 C.L.R. 217, at p. 219, than our powers under section 145 (1) (d) of Cap. 155—we hereby order that the three Appellants should be tried afresh on counts 3 and 4, before either the District Court of Larnaca or the District Court of Paphos. As they have been on bail pending their trial they should be let out on bail up to the date of their new trial, on the same terms as before.

It is, of course, entirely up to the District Court, which will deal with this case afresh, to decide as to what are the proper sentences to be imposed on the Appellants, but we have no doubt that it will be duly taken into account that the Appellants have already served in part their sentences and that Appellant 3, who was sent to prison for only a month, has served by now more than half of such sentence.

Appeal allowed. New trial ordered.

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