

1983 April 16

{TRIANTAFYLIDIS, P.}

IN THE MATTER OF AN APPLICATION BY ANDREAS  
CONSTANTINOU FOR LEAVE TO APPLY FOR AN ORDER  
OF CERTIORARI.

(Application No. 1/83)

*Certiorari—Leave to apply for—Principles applicable—Applicant has only to make out a prima facie case—Trial of criminal case—Ruling of trial Judge refusing to reserve a question of law for the opinion of the Supreme Court under section 148(1) of the Criminal Procedure Law, Cap. 155—No error of law or excess of jurisdiction or any other defect in such ruling which might have led, eventually, to its being quashed by means of an order of certiorari* 5  
*—No prima facie case made justifying the granting of the leave applied for especially as it is not the function of this Court to use a prerogative order, such as an order of certiorari in order to dictate to a trial Court how to exercise its discretionary powers under s.148(1) of Cap. 155.* 10

This was an application for leave to apply for an order of certiorari quashing a ruling given by the District Court of Nicosia in a criminal case in which the applicant was the accused whereby the Court refused to reserve for the opinion of the Supreme Court, under section 148(1) of the Criminal Procedure Law, Cap. 155, a question of law regarding the admissibility of certain evidence, apparently of a documentary nature, which the trial Judge had refused to receive in evidence by a previous ruling. 15 20

*Held*, that in order to obtain leave to apply for an order of certiorari an applicant has only to make out a prima facie case sufficient to justify the granting of such leave; that there cannot be found in the ruling in question any trace of an error of law or of excess of jurisdiction or of any other defect which might have led, eventually, to its being quashed by means of order of certiorari; and that, therefore, this is not a case in which it can be found that a prima facie case has been made out 25

justifying the granting of the leave applied for by the applicant, especially, as it is not the function of this Court to use a prerogative order, such as an order of certiorari, in order to dictate to a trial Court how to exercise its discretionary powers under section 148(1) of Cap. 155; accordingly the application must be dismissed.

*Application dismissed.*

Cases referred to:

- Ex parte Papadopoulos* (1968) 1 C.L.R. 496;
- 10 *Ex parte Marouletti* (1970) 1 C.L.R. 75;
- In re Panaretou* (1972) 1 C.L.R. 165;
- Zenios v. Disciplinary Board* (1978) 1 C.L.R. 382;
- In re Azinas* (1980) 1 C.L.R. 466;
- In re Malikides* (1980) 1 C.L.R. 472;
- 15 *Republic v. Assize Court of Kyrenia Ex parte the Attorney-General of the Republic* (1971) 2 C.L.R. 222;
- Attorney-General of the Republic (No.1) v. Savvides* (1979) 1 C.L.R. 323 at p. 325;
- Attorney-General v. Christou*, 1962 C.L.R. 129;
- 20 *HjiPapayiannis v. Registrar of Co-operative Credit Societies* (1965) 1 C.L.R. 263;
- Republic v. President District Court of Famagusta, Ex parte Marouletti* (1971) 1 C.L.R. 226;
- Marouletti v. Republic* (1972) 1 C.L.R. 195;
- 25 *In re Agroktimatiki Epihirisis Rousias Co. Ltd.* (1981) 1 C.L.R. 703;
- In re Droushiotis* (1981) 1 C.L.R. 708;
- Republic v. Kalli (No.1)*, 1961 C.L.R. 266;
- Kaouras v. Police* (1973) 2 C.L.R. 112;
- 30 *In re Charalambous* (1974) 2 C.L.R. 37;
- Republic v. Sampson* (1977) 2 C.L.R. 1;
- Police v. Ekdotiki Eteria "Inomeni Dimosiographi Dias Ltd."* (1982) 2 C.L.R. 63.

**Application.**

Application for leave to apply for an order of certiorari in connection with a ruling given on 21st December, 1982 by the District Court of Nicosia (Laoutas, S.D.J.) in Criminal Case No. 11971/82.

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*A. Panayiotou*, for the applicant.

*Cl. Theodoulou*, Counsel of the Republic. for the Republic.

*Cur. adv. vult.*

TRIANTAFYLIDES P. read the following judgment. By means of the present application the applicant seeks leave to apply for an order of certiorari quashing a ruling given on 21st December 1982 by the District Court of Nicosia in criminal case No. 11971/82 in which the applicant is the accused.

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By his aforesaid ruling the Senior District Judge trying the criminal case refused to reserve for the opinion of the Supreme Court, under section 148(1) of the Criminal Procedure Law, Cap. 155, a question of law regarding the admissibility of certain evidence, apparently of a documentary nature, which the trial Judge had refused to receive in evidence by a previous ruling given on 20th December 1982.

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Before deciding whether or not to grant the leave applied for I thought fit to direct that notice of this application should be given to the Attorney-General and, so, I have heard, too, in this connection, counsel appearing for the Republic.

It is well settled that in order to obtain leave to apply for an order of certiorari an applicant has only to make out a prima facie case sufficient to justify the granting of such leave (see, inter alia, *Ex Parte Papadopoulos*, (1968) 1 C.L.R. 496, *Ex Parte Maroulleti*, (1970) 1 C.L.R. 75, *In re Panaretou*, (1972) 1 C.L.R. 165, *Zenios v. Disciplinary Board*, (1978) 1 C.L.R. 382, *In re Azinas*, (1980) 1 C.L.R. 466, and *In re Malikides*, (1980) 1 C.L.R. 472).

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It is useful, at this stage, to point out the following:

First, that as it is to be derived from the case of *The Republic v. The Assize Court of Kyrenia, Ex Parte The Attorney-General of the Republic*, (1971) 2 C.L.R. 222, a refusal of a trial Court

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to reserve a question of law under section 148 of Cap. 155 may be challenged by means of an application for an order of certiorari.

5 Secondly, that, provided that the requisite grounds exist an order of certiorari may be made even though in respect of the same matter a right of appeal has been conferred (see, *The Attorney-General of the Republic (No. 1) v. Savvides*, (1979) 1 C.L.R. 323, 325).

10 Thirdly, that in granting or refusing an application for leave to apply for an order of certiorari this Court exercises a discretion (*In re Panaretou*, supra, at p. 166).

15 Fourthly, that a prerogative order, such as a certiorari, is not to be made for the purpose of dictating to another Court in what way it is to exercise its discretionary powers in deciding on a certain matter within its jurisdiction (see *In re Malikides*, supra, at p. 478).

I have examined the complained of ruling of the trial Court of 21st December 1982, by means of which the trial judge has refused to reserve a question of law for the opinion of the Supreme  
20 Court in accordance with the procedure prescribed by section 148 of Cap. 155, and I have not found in such ruling any trace of an error of law or of excess of jurisdiction or of any other defect which might have led, eventually, to its being quashed by means of an order of certiorari (and, as regards the grounds  
25 on which an order of certiorari may be made under Article 155.4 of the Constitution, see, inter alia, *The Attorney-General v. Christou*, 1962 C.L.R. 129, *Hji Panayiannis v. The Registrar of Co-operative Credit Societies of the Greek Communal Chamber*, (1965) 1 C.L.R. 263, *The Republic v. The President District Court of Famagusta, Ex Parte Marouletti*, (1971) 1 C.L.R. 226 -  
30 and on appeal see *Marouletti v. The Republic*, (1972) 1 C.L.R. 195 - *In re Agroktimatiki Epihirisis Rousias Co. Ltd.*, (1981) 1 C.L.R. 703 and *In re Droushiotis*, (1981) 1 C.L.R. 708).

35 I have, therefore, not been satisfied that this is a case in which it can be found by me that a prima facie case has been made out justifying the granting of the leave applied for by the applicant; especially, as it is not the function of this Court to use a prerogative order, such as an order of certiorari, in order to dictate

to a trial Court how to exercise its discretionary powers under section 148(1) of Cap. 155 (and as regards the proper application of the said section 148(1) see, inter alia, *The Republic v. Kalli* (No. 1) 1961 C.L.R. 266, *Kaouras v. The Police* (1973) 2 C.L.R. 112, *In re Charalambous*, (1974) 2 C.L.R. 37, 5  
*The Republic v. Sampson*, (1977) 2 C.L.R. 1, and *Police v. Ekdotiki Eteria "Inomeni Dimosiographi Dias Ltd."*, (1982) 2 C.L.R. 63.)

Before concluding I should observe that even though the fact that the applicant, if eventually convicted, might raise on appeal 10  
the complained of by him exclusion of evidence by means of the ruling of 20th December 1982 is not by itself a reason for which an order of certiorari could not be applied for by him in relation to such ruling, the present application is not for leave to apply 15  
for an order of certiorari in relation to the said ruling of 20th December 1982 but it is only an application for leave to apply for an order of certiorari in relation to the subsequent ruling of 21st December 1982, by means of which the trial Court refused to reserve for the opinion of the Supreme Court, under section 148(1) of Cap. 155, a question of law in respect of the 20  
validity of its earlier ruling of 20th December 1982.

For all the foregoing reasons this application fails and it is dismissed accordingly, but I will not make any order as to its costs.

*Application dismissed. No order as to costs.* 25