1983 April 26, 28

[A. LOIZOU, STYLIANIDES, PIKIS, JJ.]

1. PHAEDON G. ECONOMIDES,
2. PANTELIS GEORGHIOU,

Appellants,

v.

THE POLICE,

Respondents.

(*Criminal Appeals Nos.* 4405-4406).

Judge—Bias—Disqualification—Test applicable—Objection alleging bias—To be taken at the earliest moment in the proceedings and decided by the Judge concerned.

Remand orders—Appeal—Minutes of proceedings in previous remand orders—Cannot be referred to in the appeal.

Remand order—Making of—Successive remands—Review of discretion of trial Judge by Court of Appeal—Principles applicable—Court entertaining application for remand must examine only the reliability of the source but not the worth or probative value of the evidence.

These were appeals against the remand in custody of the appellants for eight days pending investigations into the commission of offences involving illegal importation of heroin in Cyprus and conspiracy to commit an offence. The evidence which had been adduced by the prosecution in support of the applications for remand was to the effect that one of the other 5 suspects already in custody, made a voluntary statement in which he incriminated the two suspects.

At the commencement of the proceedings for remand before the Judge in the Court below a preliminary objection was raised on behalf of appellant 1 to the effect that the Judge was disqualified from hearing the application for remand on the ground that he was biased as he had heard and determined two previous similar applications concerning the first appellant. The Judge,

after considering the objection, decided that he faced no impediment moral or legal to take up the application. In deciding as he did the Judge stated that the test to be applied in such cases revolves on the logical reactions of reasonably thinking members of the community to the possibility of bias in the context of lack of impartiality on the part of the Judge and that the Courts are not concerned with the reactions of a suspect or an accused person as to who is going to try the case.

Counsel for the appellant mainly contended.

(1) That the test used by the trial Judge was wrong in as much as there should be a mixed subjective and objective test.

(2) That upon the objection being raised on the ground of bias the trial Judge should not have embarked to determine it because by dealing with the application he became a judge in his own cause and determined his own position in the matter.

(3) That the Police failed to place before the Court any material or material sufficient to justify the inference of reasonable suspicion or giving rise to reasonable suspicion concerning the implication of the appellant in the offences order investigation.

In the course of the hearing of these appeals counsel for the appellants sought to make use of the minutes of previous remand applications; and to this course counsel for the respondents raised an objection.

Held, (1) (on the question of the use of the minutes of previous remand applications) that the contents of the minutes of the proceedings in previous remand applications cannot be referred to in the present proceedings and that any attempt to do so would indirectly amount to a review of the orders made, a course impermissible, as they were final and legally made according to the provisions of the Constitution and the Law.

(2) On the question of bias (a) that the test to be applied is whether a reasonable and fair-minded person sitting in Court and knowing all the relevant facts could have a reasonable suspicion that a fair trial for the appellant was not possible; that in the present case there were no circumstances suggesting that a reasonable and fair—minded person sitting in Court and

knowing all the relevant facts could have a reasonable suspicion that a fair trial for the appellant was not possible and that the trial Judge could be reasonably suspected of being biased by the mere fact that he had dealt with similar remand orders in the recent past in which the same appellant was remanded in custody or by the mere fact or combined thereto by the fact that the Judge had dealt also with similar applications in respect of other persons; accordingly contention (a) should fail.

(b) That an objection, where bias is alleged, has to be taken at the earliest moment in the proceedings and has to be decided by the Judge concerned whose decision is always subject to judicial review by appeal or by means of prerogative writs where no appeal lies from his final decision in the proceedings on which the question of bias was raised.

(3) *On the merits of the appeals* (*after dealing with the principles governing the making of remand orders, the length of the detention and the review by the Court of Appeal of the discretion of the trial Judge—vide pp.* 316–318 *post*) that the Court which entertains an application for remand in custody must examine only the reliability of the source but not the worth or probative value of the evidence; that there existed before the Judge evidence on the basis of which he could come to the conclusion that there was reasonable suspicion that the appellants were connected with the commission of the offence; accordingly the appeals must fail.

Appeals dismissed.

Cases referred to:

Vrakas v. *Republic* (1973) 2 C.L.R. 139;

R. v. *Colchester Magistrate* [1979] 2 All E.R. 1035;

Pilavakis v. *Queen*, 19 C.L.R. 163;

Tataris v. *Queen*, 24 C.L.R. 250;

Theodorou v. *Police* (1971) 2 C.L.R. 245;

Ex parte Rodosthenous, 1 R.S.C.C. 127;

R. v. *Liverpool City Justices, Ex parte Topping* [1983] 1 All E.R. 490 at pp. 493–494;

Allinson v. *General Council of Medical Education and Registration* [1894] 1 Q.B. 750 at p. 758;

Metropolitan Properties (F.G.C.) v. *Lannon* [1968] 1 All E.R. 304 at p. 310;

Vassiliades v. *Vassiliades*, 18 C.L.R. 10 at p. 21;

Hassip v. *Police*, 1964 C.L.R. 48;

Tsirides v. *Police* (1973) 2 C.L.R. 204;

Nicolettides v. *Police* (1973) 2 C.L.R. 222;

Stamataris and Another v. *Police* (1983) 2 C.L.R. 107 at p. 113;

Aquilar v. *Texas* 21, L. Ed 2d 723;

Spinelli v. *U.S.*, 21 L. Ed. 2d 637.

Appeals against remand orders.

Appeals by Phaedon G. Economides and Another against the orders of the District Court of Larnaca (Eliades, D.J.) made on the 21st April, 1983 whereby they were remanded in Police custody for 8 days in relation to the investigation into the commission by them of the offences of illegal possession and importation of narcotics in Cyprus.

G. Cacoyiannis, for appellant No. 1.

P. Polyviou, for appellant No.2.

A. M. Angelides, Senior Counsel of the Republic, of the respondents.

The following ruling of the Court was delivered on 26.4.1983 by:

A. LOIZOU J. In these appeals from a remand order, counsel for the appellant has sought to make use of the minutes of previous remand applications. To this counsel for the respondents raised an objection.

In our view the contents of the minutes of the proceedings in previous remand applications cannot be referred to in the present proceedings. Any attempt to do so would indirectly amount to a review of the orders made, a course impermissible, as they were final and as counsel acknowledged, legally made according to the provisions of the Constitution and the law. Certainly counsel is entitled to argue as he did before the Judge who took cognizance of this remand application that the issue by the same Judge of two remand orders in the recent past connected with the same case was apt to raise suspicion of bias on the part of the Judge in the mind of the appellant, in his effort to persuade us that the Judge wrongly assumed jurisdiction in the present proceedings

and that consequently he was disqualified from dealing with the application. We, therefore, uphold the objection.

Order accordingly.

The following judgment of the Court was delivered on 28.4.1983 by:

A. LOIZOU J. The two appellants were remanded in custody by a Judge of the District Court of Larnaca for eight days on the application of the Police-based on section 24 of the Criminal Procedure Law, Cap. 155-pending investigations into the commission of offences involving (a) illegal importation of heroin in Cyprus, and (b) conspiracy to commit an offence.

Before the Judge entertained the application on its merits a preliminary objection was raised on behalf of appellant No. 1 to the effect that the learned Judge was disqualified from hearing the application for remand on the ground that he was biased as he had heard and determined two previous similar applications concerning the first appellant, namely, an application dated the 20th March, 1983, for eight days when he remanded him in custody after a hearing and another application, what might be a renewal of the first one, dated the 28th March, 1983, which he granted for five days though eight days were applied for.

At the expiration of the second remand order the appellant was released by the Larnaca Police without being charged with the commission of any offence in connection with the importation and possession of heroin.

It has been urged that appellant No. 1 having been dissatisfied, felt gravely aggrieved that he had been detained in custody for thirteen days and therefore a suspect in his position would have had probable grounds or reasonable grounds to suspect that justice would not be properly administered in his case. It was in addition argued that as the same Judge had heard and determined the application of the Police for the remand in custody for most, if not all the other suspects concerning the case of heroin, which he renewed consecutively from the 5th March, 1983, onwards, there was a reasonable suspicion in the mind of the appellant that the learned Judge having heard evidence concerning the other suspects in a case so serious as this, might, well unwillingly, have been influenced by such other evidence in considering and determining the application of the appellant inasmuch as it might be difficult for the learned Judge to dif-

ferentiate the case of the other suspects from the case of the appellant. The pertinent question being not whether justice was being done, but whether justice should manifestly and undoubtedly be seen to be done.

The appellant, it was argued, felt aggrieved at the previous remand orders concerning himself and reasonably felt that the learned Judge was not likely to approach his case with the necessary impartiality, free of bias. He objected, therefore, to the learned Judge taking the application for his remand in custody and applied that the case should be dealt with by another Judge.

From the refusal of the appellant's application by the trial Judge, this first ground of appeal is taken.

The case of *Vrakas v. The Republic* (1973) 2 C.L.R. 139, was relied upon in support of this ground of appeal as in that case a question of bias had been raised and extensively dealt with, by Triantafyllides, P., who delivered the judgment of the Court, by reference to the leading English cases on the subject to which reference has also been made by learned counsel in the present appeal.

The learned Judge after referring to the case of *Vrakas* (supra) and to the case of *R. v. Colchester Magistrate* [1979] 2 All E.R. p.1035, and to the cases of *Pilavakis v. Queen*, 19 C.L.R., 163, *Tataris v. Queen*, 24 C.L.R., 250, *Theodorou v. Police* (1971) 2 C.L.R. 245, *Ex Parte Rodosthenous*, 1 R.S.C.C. 127, said that in proceedings for a remand in custody order "the Police must place before the Court material justifying the conclusion of a reasonable suspicion connecting the suspected person with the commission of the offence" and that in that respect "the Police should show that (1) an offence has been committed, (2) investigations into the offence are pending and that (3) the detention in custody of a person is justified for the purpose of completing the investigation". He then pointed out that if the suspect was dissatisfied with the previous decisions of the Court concerning his previous remand he could have challenged their reasoning by filing an appeal before the Supreme Court, something which he did not do and "to say the least he cannot argue now the validity of these decisions".

In fact at the outset of the hearing of this appeal we ruled that the contents of the record of the earlier two applications could

not be made use of here by counsel inasmuch as by allowing him to do so that would amount to an indirect review of the orders made, a course impermissible. The learned Judge then mentioned that several tests had been advanced as to what may constitute bias which results in a violation of the rules of natural justice and said:-

> "These revolve on the logical reactions of reasonably thinking members of the community to the possibility of bias in the context of lack of impartiality on the part of the Judge. The Courts are not concerned with the reactions of a suspect or an accused person as to who is going to try the case, as such an acknowledgment would tantamount to the right of a suspect or an accused person to choose his own Judge, something which would shake the foundation of justice. The Courts are concerned with the reactions of members of the community who may encounter doubts as to the impartiality of the Courts if these are sufficient to justify the arrival of such conclusion.
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> I have considered the submission raised and from an examination of the principles involved and the expected new evidence to be given, I do not entertain any doubts that I face no impediment, moral or legal, to take up this application. The proceedings to continue."

In arguing this first ground of appeal counsel for this appellant has urged that the test used by the learned trial Judge was wrong inasmuch as there should be a mixed subjective and objective test. The question to be asked should be "would a suspect in the position of this suspect have had probable grounds or reasonable grounds to suspect that justice would not be properly administered in his case?" Or putting it in another way, the Court should place itself in the position of the suspect and consider and determine whether objectively that particular suspect could reasonably have had cause to suspect that justice would not be properly administered in his case, and not to test it by the logical reactions of reasonably thinking members of the community at large.

In the case of *R. v. Liverpool City Justices, ex parte Topping* [1983] 1 All E.R. p. 490, a case that turned on the question of bias through knowledge of other charges against defendants and

the exercise of the Justices' discretion to hear or not the case Ackner L.J. reviewed the authorities as regards the appropriate test and referred to the case of (pp. 493-494) *Allinson v. General Council of Medical Education and Registration* [1894] 1 Q.B. 750, at p. 758, per Lord Esher Master of the Rolls, that the test of actual bias as distinct from the appearance of bias is inappropriate and also to what Lord Denning, Master of the Rolls, said, who preferred the test of appearance of bias to that of actual bias, when he dealt with the question in *Metropolitan Properties (F.G.C.) v. Lannon* [1968] 1 All E.R. 304, at 310, and concluded by saying the following:

> "In our view, therefore, the correct test to apply is whether there is the appearance of bias, rather than whether there is actual bias.
>
> In the past there has also been a conflict of view as to the way in which that test should be applied. Must there appear to be a real likelihood of bias? Or is it enough if there appears to be a reasonable suspicion of bias? (For a discussion on the cases, see de Smith's Judicial Review of Administrative Action (4th Ed. 1980) pp. 262-264 and H. W.R. Wade, Administrative Law (5th Ed. 1982) pp. 430-432)). We accept the view of Cross L.J., expressed in *Hannam v. Bradford City* Council [1970] 2 All E.R. 690 at 700, [1970] 1 W.L.R. 937 at 949, that there is really little, if any, difference between the two tests:
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> > 'If a reasonable person who has no knowledge of the matter beyond knowledge of the relationship which subsists between some members of the tribunal and one of the parties would think that there might well be bias, then there is in his opinion a real likelihood of bias. Of course, someone else with inside knowledge of the character of the members in question might say: 'Although things don't look very well, in fact there is no real likelihood of bias'. But that would be beside the point, because the question is not whether the tribunal will in fact be biased, but whether a reasonable man with no inside knowledge might well think that it might be biased.'
>
> We conclude that the test to be applied can conveniently

be expressed by slightly adapting the words of Lord Widgery C.J. in a test which he laid down in *R. v. Uxbridge Justices ex p. Burbridge* (1972) Times, 21 June and referred to by him in *R. v. McLean, ex p. Aikens* (1974) 139 JP 261 at 266: would a reasonable and fair-minded person sitting in Court and knowing all the relevant facts have a reasonable suspicion that a fair trial for the applicant was not possible?"

Needless to say that the *Allinson* case was referred to by the Privy Council in the case of *Aphrodite N. Vassiliades v. Atermis N. Vassiliades,* 18 C.L.R., p. 10, at p. 21, when considering an appeal to it from the judgment of the then Supreme Court of Cyprus and that both the *Allinson* case and the *Metropolitan Properties* case, as well as other cases, were also referred to and relevant passages quoted in the *Vrakas* case (supra).

The reactions of a reasonable and fair-minded person acquainted with the facts of a case as to the test of bias, approved above, offers it seems to us in most cases a reliable test to determine whether there is bias in a given case. But we must not be taken as adopting a hard and fast rule for all the cases. Nor should we overlook the realities of Cyprus, always relevant when it comes to applying the law in this country. In *Theodorou v. Police* (1971) 2 C.L.R. 245, 258, it was pointed out that Cyprus is a small place and many things are common knowledge. Judges with their training and impartiality can validly be expected to adjudicate in case solely by reference to the evidence. Only in the face of special circumstances can this position be doubted.

It should not be ignored, as pointed out in *Vassiliades* case (supra) p. 21, that "it is then a question of substance and fact whether the objection is good".

In the present case there are no circumstances suggesting that a reasonable and fair-minded person sitting in Court and knowing all the relevant facts could have a reasonable suspicion that a fair trial for the appellant was not possible and that the trial Judge could be reasonably suspected of being biased by the mere fact that he had dealt with similar remand orders in the recent past in which the same appellant was remanded in custody or by the mere fact or combined thereto by the fact that the Judge had dealt also with similar applications in respect of other persons.

We have come, therefore, to the conclusion that this ground should fail.

Before coming to the appeal on the merits we may say a word as to the second ground which is to the effect that upon the objection being raised on the ground of bias the learned trial Judge should not have embarked to determine it because by dealing with the application he became a judge in his own cause and determined his own position in the matter and with this he added to the reasonable doubts in the mind of the appellant as to the likelihood of justice being seen to be done in this case.

We do not subscribe to this point nor do we accept the suggestion that the Judge ought to have adjourned the case and let this appellant file the appropriate proceedings at the Supreme Court under Article 155 of the Constitution for the prerogative writs of Certiorary and Prohibition, an application, which in fact was turned down.

We are of the opinion that an objection which in accordance with authority, *Vrakas* case (supra) has to be taken at the earliest moment in the proceedings where bias is alleged, has to be decided by the Judge concerned. His decision always being subject to judicial review by appeal or by means of prerogative writs where no appeal lies from his final decision in the proceedings in which the question of bias was raised.

Had an application to adjourn the case been granted it would have been tantamount to at least, indirectly accepting the objection raised as to bias.

Having dealt with these points that were raised by appellant 1, we turn now to the rest of the grounds of appeal in respect of which both appellants have, through their respective counsel, advanced arguments. In effect this ground is that the Police failed to place before the Court any material, or material sufficient to justify the inference of reasonable suspicion or giving rise to reasonable suspicion concerning the implication of the appellant in the offences under investigation.

It has been urged by both counsel that the Court relied only on the allegation of a police officer, namely, Chief Inspector Prokopis Georghiou, that he had reasonable grounds to suspect

the appellant and on an allegation from another police officer, namely, Police Sergeant Kyriacos Pisioftas, that a person in custody had made a statement implicating the appellant without there being any further evidence, either regarding the alleged grounds of suspicion, or about the reliability or credibility of the person in custody allegedly implicating the appellant; furthermore, that on this witness being asked by counsel if he considered the suspect who gave the statement against the appellants as credible, his answer was "he cannot decide if the suspect is credible or not. In fact what he said was that he was not the appropriate organ 'o armodios' to answer".

The totality of the circumstances that were placed before learned Judge were the following: This was a case of illegal importation of heroin into Cyprus and conspiracy to commit an offence, committed on the 5th March, 1983. The crimes were under investigation. The two appellants were arrested by virtue of a judicial warrant on the 19th April, 1983. For the completion of the police inquiries Chief Inspector Prokopis Georghiou, asked for their remand in custody for eight days as there was pending a great volume of work for completion of the examinations, and that their release would interfere with the investigations, namely, that witnesses would be affected and evidence destroyed. That five persons were already in custody in respect of this case and that a number of other persons outside Cyprus were still wanted. That it was a very serious case, the culprits of which were operating throughout the world, and that against the appellants there existed evidence which created reasonable suspicion that they were implicated in the offence, and that statements would be taken from persons in Limassol, Larnaca and Nicosia and may be also from abroad.

Appellant No. 1 had been remanded in custody twice before. As already seen both such applications were opposed and on the second occasion five days instead of the eight applied for were granted by the Court. Appellant No. 1 was released on the 2nd April, 1983, on C£500.- bail to appear on the 12th April, 1983, regarding a charge of bribery which was one of the offences in respect of which his remands were ordered. On the 12th April, he appeared at Larnaca Police and a new date was given to him to appear, namely, the 30th April. With regard

to the importation of heroin he was neither charged nor was he released on bail in respect thereof. As for the Appellant No. 1, the first time a statement was obtained from him was the 5th March, 1983, and a search was carried out in his house the same night, but he was not charged with any offence.

In re-examination witness Prokopis Georghiou was asked why a charge was not brought against Appellant No. 1 on the 2nd April, when he was released. After an objection the Judge permitted the question as being relevant to the evidence which came from the cross-examination and the answer was that "on the 2nd April, 1983, when Appellant No. 1 was released, the facts in the hands of the Police were insufficient for this appellant to be charged on the question of heroin but on the 19th April, 1983 ..".

At that moment and before the witness completed his answer counsel of Appellant No. 1 objected once more and the objection was upheld by the Court. Attempts by the officer appearing on behalf of the Police to put further questions and after more objections were made and upheld by the Judge the second witness, Police Sergeant Pishioftas, was called. An objection then was made on the ground that that witness was sitting in Court next to the prosecutor during a great part of the hearing. Section 73 of the Criminal Procedure Law, Cap. 155 was invoked, which provides about witnesses leaving the Court during the hearing of a criminal case after a plea of not guilty is made when the Court directs that all witnesses should leave the Court. It should be pointed out, however, that under paragraph (b) of the proviso, failure to comply with the provisions of this section does not invalidate the proceedings. So even if we were to consider that section 73 of the Law applies as a matter of fairness to all other proceedings which though not strictly speaking criminal, yet they have a quasi criminal character, again the fact that the witness was in Court when the previous one was giving his testimony could not in law exclude him. As very rightly the Judge did, he warned himself of the danger of acting on his evidence, not losing sight of its vulnerability. He pointed the lack on the part of this witness of any personal interest in the proceedings, the nature of the evidence adduced by him and his willingness to forward

to the Court for the Court's perusal—the statement allegedly incriminating both suspects—constituted circumstances that made proper the admission of his evidence.

Police Sergeant Pishioftas who served at the C.I.D. Larnaca and took part in the investigations of the case as from the 5th March, 1983, testified that on the 19th April, 1983, one of the other suspects already in custody made a voluntary statement in which he incriminated the two suspects. He further stated that he knew that the first suspect was arrested on the 19th March, 1983, and released on the 2nd April, 1983, that one of those in custody was Kyriacos Panayiotou, the personal driver of the first suspect and that on the 5th March, 1983, on instructions or with the permission of Appellant No. 1, suspect Panayiotou asked Andreas Stamatari to take delivery of the suitcase with the narcotics from Larnaca Airport, that the first suspect bribed the policeman who was a guard of the suspects and was taking from him information. He also said that for the completion of the case they would take more than 50 statements from all over Cyprus.

With regard to the statement of the suspect he said that if a statement gives elements of reasonable suspicion then they would proceed with the arrest of a person. He further said that he was ready to produce to the Court this statement for examination by the Judge. Mr. Cacoyannis objected to the production of the statement for examination by the Judge. As regards Appellant No. 1, he said that the new elements against him came from the statement of the suspect of the 19th April, 1983.

On this evidence the learned Judge after referring to the arguments advanced and the legal position, both regarding the freedom of the citizen and his rights under the Constitution and the European Convention of Human Rights and after referring to the leading cases of *Hassip* v. *The Police*, 1964 C.L.R. 48; *Tsirides* v. *The Police* (1973) 2 C.L.R. 204; *Nicolettides* v. *Police* (1973) 2 C.L.R. 22, and *Stamataris and Another* v. *The Police* (1983) 2 C.L.R. 107, concluded as follows:-

"I have considered very carefully the evidence adduced

as to the grounds for the remand..... .....and I have come to the conclusion that within the contents of the totality of the material before me the suspicion of the Police is reasonable in character and genuinely entertained. Without disregarding the contents of sec. 63 of Law 7/76 concerning the status of the first suspect and bearing in mind the exceptional gravity of the offences, I consider the application as justified. Both suspects to remain in custody for 8 days pending investigations into the commission of the above-mentioned offences".

In this case we must say that we have had the advantage of very able arguments from all sides. The attention of this Court was drawn to authorities dealing with every aspect of the case, both English and American as well as to some Commonwealth cases where matters relevant to the issues raised in these appeals were discussed.

It appears that in the U.S. where similar constitutional safeguards exist the question of issue of search warrants and the circumstances under which that may be done came under judicial examination in a number of cases regarding their legality and constitutionality.

We shall ourselves refer here to two of them, namely, the *Aguilar* v. *Texas*, 12 L. Ed. 2nd 723, where a review of a number of authorities is made and *Spinelli* v. *U.S.*, 21 L. Ed. 2nd p. 637.

Under the 4th and 14th Amendments of the American Constitution for the issue of a search and seizure warrant by a magistrate, to put it briefly, probable cause has to be shown and we were invited to follow by analogy the same principles.

In the *Aguilar* v. *Texas*, case, it was held by reference to previous decisions that:

"Although the reviewing Court will pay substantial deference to judicial determinations of probable cause, the Court must still insist that the magistrate perform his 'neutral and detached' function and not serve merely as as a rubber stamp for the police".

And,

"_____ 'that the inferences from the facts which lead to

the complaint (must) be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferretting out crime' (*Johnson* v. *U.S.* 92 L ed 436)".

And that,

"The Commissioner must judge for himself the persuasiveness of the facts relied on by a complaining officer to show probable cause. He should not accept without question the complainant's mere conclusion (2 L ed 2d at 1509)".

And also that,

"Here the 'mere conclusion' that petitioner possessed narcotics was not even that of the affiant himself; it was that of an unidentified informant. The affidavit here not only 'contains no affirmative allegation that the affiant spoke with personal knowledge of the matters contained therein', it does not even contain an 'affirmative allegation' that the affiant's unidentified source 'spoke with personal knowledge'. For all that appears, the source here merely suspected, believed or concluded that there were narcotics in petitioner's possession".

And further,

"The magistrate here certainly could not 'judge for himself the persuasiveness of the facts relied on.....to show probable cause'. He necessarily accepted 'without question' the informant's 'suspicion', 'belief' or 'mere conclusion'.

Although an affidavit may be based on hearsay information and need not reflect the direct personal observations of the affiant, *Jones* v. *United States*, 362 US 257, 4 L ed. 2d 697,....., the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying from which the officer concluded that the informant, whose entity need not be disclosed, see *Rugendorf* v. *United States*, 376 US 528, 11 L ed 2d 887, was 'credible' or his information 'reliable'. Otherwise, 'the inferences from

the facts which lead to the complaint' will be drawn not 'by a neutral and detached magistrate', as the Constitution requires, but instead, by a police officer 'engaged in the often competitive enterprise of ferreting out crime', *Giordenello* v. *United States*, supra, 357 US at 486, 2 L ed 2d at 1509".

Article 11, paragraphs 2(c) and (6) of our Constitution must be read together and section 24 of Cap. 155 has to be construed as a procedural enactment regulating the procedure for detention.

In the judgment of the Court delivered by Pikis, J., in *Stamataris and Another* v. *The Police* (supra) at p. 113 the position was summed up as follows:

"The task of the Judge dealing with an application for remand is twofold:

(a) To ascertain whether the suspicion is genuinely entertained. This is essential in order to eliminate the possibility of the Police Authorities abusing their powers to seek the remand of a suspect in custody.

(b) To decide whether the suspicion is reasonable. It is reasonable if evidence, in the hands of the Police, reasonably connects the suspect with the commission of the crime under investigation. The judge in this case formed the view that the suspicion of the Police Authorities was reasonable".

The principles emerging from the precedent earlier referred to in this judgment which are compatible with the constitutional provisions are the following: (a) the Judge is the arbiter for the need for detention; (b) he must inquire into the lawfulness and necessity of detention; (c) as stated in *Stamataris* the need for reasonable suspicion which must be genuinely entertained must exist at every stage of the investigation "at the time of arrest and on every subsequent application for remand in custody", bearing in mind as pointed out further down in *Stamataris* the need "..... to maintain a healthy balance between individual liberty on the one hand and public interest in the investigation and suppression of crime in the other"; (d) such facts as possibly giving rise to reasonable suspicion

must be disclosed subject to what was said in the *Tsirides* case (supra) in a way not hampering the investigations; (e) the reasonableness of the suspicion must ultimately be determined by the Judge on the material placed before him; (f) the material before the Court cannot rest on the mere affirmation or conclusion of the deponent.

Moreover, with regard to the length of detention there are certain material considerations to be born in mind by the Judge which include—and the enumeration we are about to make should not be considered as exhaustive:

(1) The nature and magnitute of the contemplated inquiry.

(2) The relationship of the inquiry with the suspect, i.e. if he can interfere with the evidence, his own safety and how his release is likely to affect the inquiry.

(3) With every new application for further remand the burden on the Police becomes correspondingly higher (see *Stamataris* supra).

In our view in examining applications for remand in custody, the Judges must examine and adjudicate upon not only whether the suspicion of the Police is reasonable, as the Police organs consider it to be, but also whether it is objectively reasonable as a result of an examination of the elements which are placed before the Judge and which must refer not only to the existence of a reasonable suspicion but to facts which constitute such suspicion, as the Judge is the final arbiter of reasonable suspicion.

In the present case the evidence of Chief Inspector Prokopis would have been by itself insufficient as he did not disclose material to the Court to judge the reasonableness of the suspicion. These facts, however, were completed by adducing other evidence which tended to show that there was in the hands of the Police evidence which connected the suspects with the commission of the offences under investigation, that is the statement of another person who was already in custody for the case under investigation. Consequently there existed before the Judge evidence on the basis of which he could come to the conclusion that there existed reasonable suspicion that the

appellants were connected with the commission of the offence. It should be stressed, in particular, that the Court which entertains an application for remand in custody must examine only the reliability of the source, but not the worth or probative value of the evidence.

Finally, regarding the functions of this Court with regard to remand orders, we would like to say that this Court on appeal exercises ordinary judicial review and examines first whether there was before the Judge who dealt with them in the first instance sufficient evidence to justify the creation of reasonable suspicion and secondly whether he exercised his discretion judicially as detention is in essence a matter of judicial discretion and this Court will not interfere if same exercised judicially (*Hassip's* case (supra)). In fact, both these tasks were in our view duly performed by the Judge who entertained this application for remand (*Stamataris* case (supra) at p. 111).

For all the above reasons these appeals are dismissed.

Appeals dismissed.