

1984 February 14

[A. LOIZOU, MALACHTOS, SAVVIDES. JJ.]

MICHAEL P. DJIONIS.

Appellant.

v.

THE POLICE.

Respondents.

(*Criminal Appeals Nos. 4461-4462*).

5 *Shop Assistants Law, Cap. 185—Keeping shop open on a Sunday at Ayia Napa—Sections 6 and 12(a) of the Law and the Shop Assistants (Specification of Areas) Order, 1968 (Notification No. 332/68)—Whether Order 332/68 creates an offence in respect of the keeping of a shop open on Sundays in the area of Ayia Napa.*

10 *Criminal Law—Sentence—Keeping a shop open on a Sunday—Three months' imprisonment suspended for three years—Appellant acting on legal advice that Law as drafted did not create any offence—Even though he had six similar previous convictions sentence manifestly excessive—Appellant discharged absolutely because this case would, normally, have been taken into consideration by the Court in passing sentence in respect of another case, for a similar offence, to which he pleaded guilty but due to the objection of the prosecution it was not so taken.*

15 The appellant pleaded guilty to two charges of keeping on two different dates namely the 10th and the 17th April, 1983 at Ayia Napa, his shop open on a Sunday, contrary to sections 6 and 12(a) of the Shops Assistants Law, Cap. 185 and to the Shop Assistants (Specification of Areas) Order, 1968 (Notification
20 No. 332/68)*. He had six similar previous convictions. Before sentence was passed on him in respect of the offence committed on the 10th April, he asked that the offence of the 17th April be taken into consideration. The prosecuting officer objected to this course and the appellant was sentenced to three months'

* Not. No. 332/68 is quoted at pp. 62-63 post.

imprisonment which was suspended for three years. Regarding the offence of the 17th April the appellant was sentenced to £15 fine and the sum of £50, out of a recognizance of £100 given by him in respect of a previous conviction, was forfeited. He was further bound over in the sum of £250 for two years to keep the Laws and Regulations. 5

The appellant appealed both against his conviction* and sentence.** Counsel for the appellant mainly contended that Notification No. 332/68 did not create any offence in respect of the keeping of a shop open on Sundays in the area of Ayia Napa because the wording of paragraph (d) of the said Order was such as to extend only the application of section 6 of the Law to the area of Ayia Napa and not the remaining provisions of the Law. 10

Held, (1) that the wording of paragraph (d) should be read in conjunction with the rest of the order and in particular the opening words of section 3 thereof; that when these two provisions are put together they make the whole Law applicable but only in respect of offences which are created by section 6 of the Law, that is Sunday closing, and no other offence; accordingly the appeal against conviction must fail. 15 20

(2) That in the circumstances of this case and bearing in mind that the appellant was acting on legal advice to the effect that the Order as drafted did not make it an offence for a shop-keeper to open on a Sunday in the Ayia Napa area, the term of imprisonment imposed on the appellant even if it was suspended, is manifestly excessive and consequently this appeal against sentence must be allowed; that in the circumstances and in view of the sentence passed on the other offences he could be and he is discharged absolutely as this offence would normally have been taken into consideration by the Judge when passing sentence in respect of the other case to which the appellant had pleaded 25 30

* In spite of the plea of guilty the appellant appealed against conviction by virtue of s. 135(b) of the Criminal Procedure Law, Cap. 155 whereby upon a plea of guilty a person convicted and sentenced is only entitled to appeal against conviction on the ground that the facts alleged in the charge or information to which the accused person pleaded guilty did not disclose any offence.

** The appellant withdrew the appeal against the sentence of fine and pursued only the appeal against the suspended sentence of imprisonment.

guilty but, for the objection of the prosecuting officer, it was not done.

Appeals against conviction dismissed. Appeal No. 4461 against sentence dismissed. Appeal No. 4462 against sentence allowed.

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Cases referred to:

Athlitiki Efimeris "O Filathlos" and Another v. Police (1967) 2 C.L.R. 249.

Appeals against conviction and sentence.

- 10 Appeals against conviction and sentence by Michael P. Djionis who was convicted on the 23rd August, 1983 at the District Court of Famagusta (Criminal Cases Nos. 1399/83 and 1403/83) on two counts of the offence of keeping his shop open on a Sunday contrary to sections 6 and 12(a) of the Shop
15 Assistants Law, Cap. 185 and was sentenced by Eliades, D.J. to three months' suspended imprisonment for three years.

G. Pittadjis, for the appellant.

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

- 20 A. LOIZOU J.: The appellant in these two appeals pleaded guilty to two charges of keeping on two different dates, namely the 10th and the 17th of April 1983, at Ayia Napa, his shop open on a Sunday, contrary to the provisions of sections 6 and 12(a) of the Shop Assistants Law, Cap. 185, and P.Is.
25 254/67 and 332/68.

- The appellant had six similar previous convictions, one on the 9th September 1982, for which he was fined ten pounds and another on the 16th December 1982, when four other offences were taken into consideration and for which he was fined £25.-
30 and bound over in the sum of £250.- for a period of two years to keep the laws and regulations. Moreover before sentence was passed on him in respect of the offence committed on the 10th April, he asked that the other offence committed on the 17th April, and which is the subject of the first appeal be taken
35 into consideration. The prosecuting officer, however, for reasons that we do not understand and in fact none is recorded, objected to its being taken into consideration and the learned trial Judge after hearing a plea in mitigation sentenced the appellant to three months' imprisonment, suspended for three years

by virtue of the provisions of section 3(3) of the Sentence of Imprisonment (Conditional Suspension in Certain Cases) Law, 1972 (Law No. 75 of 1972). He was further ordered to pay three pounds costs of the prosecution

The learned trial Judge then dealt with the case in respect of the offence committed on the following Sunday, and taking into consideration his previous convictions and the fact that the Law provides for a maximum sentence of six months' imprisonment and £300.- fine, sentenced the appellant to £15.- fine and ordered the forfeiture of a sum of £50.- out of a recognizance of a hundred pounds given by the appellant in respect of an offence for which he was convicted on the 13th January 1982, which recognizance was for two years to keep the laws and regulations. He was further bound over in the sum of £250.- for two years to keep the laws and regulations.

The appeals against conviction have been filed by the appellant in spite of his plea of guilty by virtue of the provisions of section 135(b) and the Criminal Procedure Law, Cap. 155, whereby upon a plea of guilty a person convicted and sentenced is only entitled to appeal against conviction on the ground that the facts alleged in the charge or information to which the accused person pleaded guilty did not disclose any offence. (See *Atliuki EFIMERIS "O Titaidos" and another v. The Republic* (1967) 2 C.L.R. p. 249). He also appealed against the sentence imposed in both cases but in the course of the hearing he withdrew the appeal against sentence in respect of the offence of the 18th April 1983. (Criminal Appeal 4461).

The Shop Assistants Law, Cap. 185 was enacted on the 26th November 1942. It was a Law as its title reads to regulate shop hours and the hours of employment of shop assistants, and as provided by section 18, it is to apply to such towns, villages or other areas as the Governor in Council—now the Council of Ministers—may by Order appoint. The latest of the orders prescribing the areas to which the Law applies made under the provisions of section 18, is the one published in the Official Gazette of the Republic dated the 24th May, 1968, Supplement No. 3, under Notification 332, which to the extent that is relevant reads:

"(1) This order may be cited as the Shop Assistants (Appointment of Areas) Order of 1968.

(2) In this Order

'Law' means the Shop Assistants Law and any Law amending or substituting same.

(3) The Law shall apply

5 (d) to the areas of the remaining villages of the Republic, only as much as it refers to the provisions of section 6 of the Law.

(4) The Shop Assistants Appointment of Areas Order of 1967 is revoked".

10 The Order under Notification 254 of 1967 referred to in the charge-sheet is an Order made under the provisions of section 19 of the Law, by which the special provisions regarding shop assistants in trades and business set out in the schedules have been varied and we are not concerned with that Order in this
15 case.

Section 12 of the Law in so far as relevant provides that any shop-keeper who contravenes or fails to comply with any of the provisions of sections 4, 5, 6, 7, 8, 9, 10, 16 and 17 of the Law, shall be guilty of an offence and shall be liable on conviction
20 to imprisonment for a term not exceeding six months and/or to a fine not exceeding £300.- or to both etc.

It has been the case for the appellant that the Order under Notification 332 of 1968 does not create any offence in respect of the keeping of a shop open on Sundays in the area of Ayia
25 Napa. It has been argued that the wording of paragraph (d) of the said Order is such as to extend only the application of section 6 of the Law to the area of Ayia Napa and not the remaining provisions of the Law.

We do not subscribe to this view as the wording of this paragraph should be read in conjunction with the rest of the Order
30 and in particular the opening words of section 3 thereof. When these two provisions are put together they read as follows: "The Law shall apply . . . as much as it refers to the provisions of section 6 of the Law". In other words the whole Law
35 is made in this Order applicable but only in respect of offences which are created by section 6 of the Law, that is Sunday closing and no other offence.

Moreover section 12 of the Law refers expressly to section 6 and completes same by making provision for the penalties to be imposed to an offender.

For all the above reasons both appeals against conviction should fail. 5

As regards the appeals against sentence the appellant withdrew his appeal against the sentence imposed in Criminal Case 1403/83 which is the subject of Criminal Appeal 4461 but pursued his appeal against the sentence imposed in Criminal Case 1399/83 which is the subject of Criminal Appeal 4462 and which as already seen was a term of imprisonment of three months suspended for three years, plus the payment of the costs of the prosecution. 10

In the circumstances of this case and bearing in mind that the appellant was acting on legal advice to the effect that the Order as drafted did not make it an offence for a shopkeeper to open on a Sunday in the Ayia Napa area, we find that the term of imprisonment imposed on the appellant even if it was suspended, is manifestly excessive and consequently we allow this appeal against sentence. We feel that in the circumstances and in view of the sentence passed on the other offences he could be and we so do discharge him absolutely as this offence would normally have been taken into consideration by the learned Judge when passing sentence in respect of the other case to which the appellant had pleaded guilty but, for the objection of the prosecuting officer, it was not done. 15
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In the result, both appeals against conviction and the appeal against sentence (Criminal Appeal 4461) are dismissed. Appeal against sentence (Criminal Appeal 4462) allowed and order made accordingly. 30

*Both appeals against conviction dismissed.
Appeal against sentence allowed.*