

1986 December 15

[SAVVIDES, J.]

IN THE MATTER OF AN APPLICATION BY
CHARALAMBOS SAVVA "PAMBOS" FOR LEAVE
TO APPLY FOR ORDERS OF CERTIORARI AND
MANDAMUS

AND

IN THE MATTER OF A JUDGMENT OF THE DISTRICT
COURT OF LARNACA IN CRIMINAL CASE NO 6263/85
DATED THE 8TH JULY 1986.

(Application No. 70/86).

Criminal Procedure—The Criminal Procedure Law, Cap. 155
—Section 170—Conviction of accused, sentence of im-
prisonment and order for the forfeiture of £700 seized
and/or handed by him to the Police—Conviction quashed
on appeal—Application for the return of the said sum— 5
Application refused—In the circumstances applicant made
out a prima facie arguable case justifying the granting of
leave to apply for orders of certiorari and mandamus.

Prerogative orders—Certiorari and mandamus—Leave to apply
for—Principles applicable. 10

The applicant was charged before the District Court
of Larnaca in respect of offences under section 17 A (1)
(b) (aa) of the Cyprus Sports Organisation Law 41/69
as amended by Law 79/80. During the trial the prosecu-
tion produced to the Court the sum of £700 seized from 15
and/or handed by the applicant to the Police during the
investigation of the case. Applicant was acquitted on count
7, but he was convicted on the remaining counts 2 - 6
and was sentenced to one year's imprisonment on counts
2 and 4 to run concurrently, whilst no sentence was 20
passed on the remaining counts. The sum of £700 was
forfeited. On appeal the applicant's conviction was quashed
and he was acquitted accordingly.*

* See Savva «Pambos» v. The Police (1986) 2 C.L.R. 30.

After his said acquittal he applied under section 170 of Cap. 155 for the return to him of the £700. As the application was dismissed, he filed the present application for leave to apply for an order of certiorari quashing the judgment dismissing the said application and for leave to apply for an order of mandamus directing the District Court of Larnaca to return to applicant the said sum.

Counsel for the applicant argued, inter alia, that by so acting the Court closed its eyes to the binding force of the judgment of the appellate Court, thus acting in excess of its jurisdiction or power. He concluded that if the Court that tried the criminal case had followed the reasons given by the appellate Court, it would have been bound to acquit the applicant and in such a case no order for the forfeiture of the money could be made.

Held, granting the application, that as at this stage the issue is whether there is a "prima facie case" made out sufficiently to justify the granting of leave and as in the light of the material before the Court and the arguments of counsel for the applicant the Court is satisfied that such a case has been made out, the leave applied for would be granted.

Application granted.

Cases referred to:

- 25 *Ex-parte Costas Papadopoulos*, (1968) 1 C.L.R. 496;
Re HjiSoteriou and Another (1985) 1 C.L.R. 387;
Re Mobil Oil Cyprus Ltd. (1985) 1 C.L.R. 781;
Re L.P. Loucaides Ltd. (1986) 1 C.L.R. 154;
Re Georghiou (1986) 1 C.L.R. 167.

30 **Application.**

Application for leave to apply for an order of certiorari for the purpose of quashing the judgment of the District Court of Larnaca in Criminal Case No. 6263/85 dismissing applicant's application for the return to him of the sum of £700.- under section 170 of Cap. 155 and

for an order of mandamus directing the District Court of Larnaca to return to applicant the above sum.

K. C. Saveriades, for the applicant.

Cur. adv. vult.

SAVVIDES J. read the following judgment. This is an application for leave to apply - 5

(a) For an order of Certiorari for the purpose of quashing the judgment of the District Court of Larnaca in Criminal Case No. 6263/85 dated 8th July, 1986, dismissing the application dated 8th April, 1986 of the applicant, for the return to him of a sum of £700 under the provisions of section 170 of the Criminal Procedure Law, Cap. 155. 10

(b) An order of Mandamus directing the District Court of Larnaca to return to applicant the sum of £700 referred to in paragraph (a) hereinabove, as per the provisions of section 170 of the Criminal Procedure Law, Cap. 155. 15

The facts of the case as emanating from the affidavit sworn in support of the application and from the written address of counsel for applicant, are briefly as follows: 20

The applicant was charged before the District Court of Larnaca in Criminal Case No. 6263/85 in respect of offences under section 17A (1) (b) (aa) of the Cyprus Sports Organisation Law 41/69, as amended by Law 79/80. He was charged on a number of separate counts in some of them personally and in others jointly with other persons. Applicant was acquitted on count 1 but he was convicted on the remaining counts 2, 3, 4, 5 and 6 and was sentenced on the 15th October, 1985 to one year's imprisonment on counts 2 and 4 to run concurrently whilst no sentence was passed on him on counts 3, 5 and 6. 25 30

Counts 2 and 3 charged the applicant with promising to give on 16.5.1985 and 17.5.1985 at Larnaca and count 6 with having given £300 to a certain Demetris Christophides, a football player of "ETHNIKOS ASSIAS" with the intention of altering in favour of "ORFEAS ATHIENOU" 35

the result of a football match to be held between the aforesaid two clubs on 19.5.1985.

5 During the trial of the case the prosecution produced to the Court the sum of £700 seized from and/or handed by the applicant during the investigation of the case. After the close of the case for the prosecution defending counsel for the applicant submitted to the trial Court that no prima facie case had been made out because there was no evidence as to the legal constitution of the two clubs involved in the case as required by section 17(a) (3) of Law 10 79/80 and invited the Court to acquit the applicant.

15 The trial Judge instead of proceeding to give his ruling on the above submission allowed the prosecution to reopen its case and adduce further evidence in order to prove the legal constitution of the two clubs in question as required by law. As a result, evidence was produced and on the basis of the whole evidence the applicant was found guilty and was sentenced to one year's imprisonment and the sum of £700 handed over by the accused to the police 20 was forfeited.

The applicant filed an appeal against his conviction (Criminal Appeal 4690), as a result of which his conviction on all counts was quashed and he was acquitted accordingly.

25 In the light of the judgment of the Supreme Court in the appeal the applicant by an application dated the 8th of April, 1986, applied to the District Court of Larnaca for the return to him of the aforesaid sum of £700 under the provisions of section 170 of Cap. 155. His Honour 30 Judge G. Nicolaou after having heard arguments on behalf of the applicant on the one hand and the Police on the other hand, delivered his ruling on the 8th July, 1986 whereby applicant's application was dismissed as having no substance and refused to order the refund to him of 35 the sum of £700.

The grounds of law on which the application is based as argued by counsel for applicant in his written address, are briefly as follows:

(a) The Court disregarded the binding force of the

judgment of the Supreme Court in Criminal Appeal No. 4690 and therefore, acted in excess and/or outside the jurisdiction or powers with which it is vested.

(b) The reasons given by the Court in dismissing applicant's application for the delivery of the sum of £700 are wrong in law. 5

(c) The Court by ordering and/or weakening the effect of the judgment of the Supreme Court in Criminal Appeal 4690 indirectly refused to adjudicate according to its powers. 10

In dealing with the right of the applicant to claim the return of the sum of £700, learned counsel for applicant made reference to extracts from the judgment of the trial Judge on which he relied to refuse the application and submitted that the trial Judge wrongly interpreted the facts and applied the law in the circumstances of the case. The Court by so acting, counsel contended, closed its eyes to the binding force of the judgment of the appellate Court, thus acting in excess of its jurisdiction or power with which it is vested. Also, the interpretation or the evaluation of an acquittal is on the basis of its findings fallacious. He finally concluded that had the trial court followed the reasons given by the appellate court it was bound to acquit the accused and in such case the Court could not have proceeded to make an order for the forfeiture of the money seized from the appellant. 15
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The power of this Court to grant leave to apply for an order of Certiorari or Mandamus is a discretionary one. The question which I have to decide at this stage is not as to whether the orders applied for should be issued, but whether on the material before me there is a "prima facie case" made out sufficiently to justify the granting of leave to the applicant to move this Court to issue an order of Certiorari. (Per Josephides, J. in *Ex-parte Costas Papadopoulos* (1968) 1 C.L.R. 496. See, also Civil Application 36/86 in which a decision was given on the 20th May, 1986 and which has not yet been reported,* in which the decisions of this Court, on this question, are reviewed). 30
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The principles governing the granting of leave to apply

* Now reported as In Re Georghiou (1986) 1 C.L.R. 167.

for an order of Certiorari have also been expounded in the decisions of this Court in *Re HjiSoteriou and Another* (1985) 1 C.L.R. 387, in *Re Mobil Oil, Cyprus Ltd.* (1985) 1 C.L.R. 781 and in *Re L.P. Loucaides Ltd.* (1986) 1
5 C.L.R. 154).

In the light of the material before me and having taken into consideration the arguments advanced by counsel for applicant and the contents of the affidavit in support of the application, I am satisfied that a prima facie arguable
10 case has been made out for granting leave to the applicant to apply for Certiorari and Mandamus and I make the following order:

(a) The applicant is granted leave to apply in this case for an order of Certiorari and Mandamus within one month
15 from today. Any opposition to be filed within one month from service of such application.

(b) Copy of this order to be sent to the Registrar of the District Court of Larnaca and be communicated to the Judge concerned.

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Application granted.