

1986 December 2

[KOURRIS, J.]

IN THE MATTER OF AN APPLICATION BY OR ON BEHALF OF Mr. IOANNIS IOANNOU AGAINST WHOM A JUDGMENT OR ORDER WAS ISSUED DIRECTING THE DETENTION BY THE PERSON THEREIN NAMED OF HIS MOTOR VEHICLE REGISTRATION No. RT 940. B.M.W. 320 I BY THE DISTRICT COURT OF NICOSIA ON THE 8.11.1986 FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI.

(Application No. 96/86).

*Criminal Procedure—The Criminal Procedure Law, Cap. 155—Sections 27 and 32—Search warrant issued under s.27 authorising search of specified premises—Seizure of car not from such premises—Order for the detention of the*  
5 *car issued under s. 32—Argument that as the car had not been seized from such premises, it was not seized pursuant to the said warrant and, therefore, section 32 was not applicable—Prima facie arguable case that there was an error of Law apparent on the face of the record.*

10 *Natural Justice—Opportunity of being heard—Order for detention of applicant's car issued under s. 32 of the Criminal Procedure Law, Cap. 155—Prima facie arguable case that said rule of natural justice has been violated.*

15 *Prerogative orders—Certiorari—Leave to apply for—Principles applicable.*

In the course of criminal investigations for conspiracy to default, uttering forged documents and issuing a false certificate a police officer deposed on oath that there was evidence creating a reasonable suspicion against four  
20 persons that they were involved in the said offences and applied for a search warrant to seize applicant's car to assist the police in their investigations. The applicant was not among the said 4 persons.

25 The Court issued a search warrant in respect of a search of the applicant's house only. On 8.11.86 evidence

was adduced by a police inspector that the car was seized on 4.11.86 pursuant to the said search warrant given under s. 27 of Cap. 155, that the police were investigating into cases of forgery, conspiracy to defraud and avoidance of customs duty in connection with the said car and that the car was indispensable for the purpose of criminal proceedings which will be instituted against the said 4 persons. As a result the Court issued directions under s. 32 of Cap. 155 for the detention of the said car.

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As a result the present application for leave to apply for an order of certiorari to quash the said order was filed. Counsel for applicant submitted that: (a) There is an error of law apparent on the face of the record in that the car was not seized pursuant to the search warrant under s. 27 of Cap. 155, because it was not seized from the premises authorised to be searched and, therefore, section 32 of Cap. 155 did not come into play, and

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(b) There has been a violation of the rules of natural justice in that no opportunity was given to the applicant of being heard.

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*Held*, granting the application, that, as at this stage it would appear that the applicant has a prima facie arguable case that there was an error of law apparent on the face of the record and a violation of the rules of natural justice, the leave applied for would be granted.

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*Application granted.*

**Cases referred to:**

*R. v. Atkinson*, [1976] Cr. Law Review 307;

*R. v. District Judge at Morphou ex parte Loizos Theofanous and Others* (1969) 1 C.L.R. 607;

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*In re Nina Panaretou* (1972) 1 C.L.R. 165;

*Attorney-General v. Christou*, 1962 C.L.R. 129;

*Ex parte Costas Papadopoulos* (1968) 1 C.L.R. 466;

*In re Kakos* (1985) 1 C.L.R. 250.

**Application.**

Application for leave to apply for an order of certiorari for the purpose of quashing the decision of a Judge of the District Court of Nicosia in the exercise of  
5 Criminal Jurisdiction pursuant to section 32 of the Criminal Procedure Law, Cap. 155.

*Chr. Triantafyllides*, for the applicant.

*Cur. adv. vult.*

10 KOURRIS J. read the following ruling. This is an application for leave to apply for an order of certiorari for the purpose of quashing the decision of a Judge of the District Court of Nicosia in the exercise of Criminal Jurisdiction pursuant to s. 32 of the Criminal Procedure Law, Cap. 155.

15 The facts of the case as they appear from the affidavit sworn in support of the application and the judgment of the learned Judge briefly are as follows:

On the 4th November, 1986, a police officer deposed on oath that against four persons there was evidence  
20 creating reasonable suspicion that they were involved in a case of conspiracy to defraud, of uttering forged documents and of issuing of a false certificate which were committed at Limassol on the 2nd July, 1985, and they applied for a search warrant to seize the car of the applicant  
25 to assist them in their investigation. They applied to search and seize the car of the applicant under registration No. R T 940 at his premises at Metochiou Str., No. 10, Nicosia as well as other premises belonging or occupied by the said person.

30 The learned Judge, having heard the application, allowed the issue of a search warrant in respect of the search of the house of the applicant only in Metochiou Str., No. 10, Nicosia (see exhibit 'A').

35 On the 8th November, 1986, the police brought before the District Court the said car and evidence was adduced from a police inspector that the car was seized on 4th November, 1986 pursuant to a search warrant given under

s. 27 of Cap. 155; that they were investigating into cases of forgery, conspiracy to defraud and avoidance of customs duty in connection with the said car and that the car was indispensable for the purpose of the criminal proceedings which will be instituted against the said four persons and they applied for an order of the Court under s. 32 of Cap. 155, directing the detention of the car by the police until the conclusion of the criminal proceedings which may be had against those four persons. 5

It should be noted, at this stage, that the investigations into the offences committed were not against the applicant but against those four persons. 10

The learned Judge having considered the application made directions under s. 32 of Cap. 155 for the detention of the car in question by the police at Police Headquarters, Nicosia "reasonable care being always taken for its preservation and safe custody until the conclusion of any criminal proceedings which may be had in respect thereof." 15

Counsel for the applicant contended that the said judgment and/or order was issued in breach of the rules of natural justice in that the applicant was not given the opportunity to be heard and/or there was an error of law on the face of the record. 20

I propose to deal first with the point of error of law on the face of the record. 25

Counsel for the applicant argued that it is apparent from the affidavit sworn in support of this application that the car was not seized pursuant to the search warrant under s. 27 of Cap. 155 and, therefore, s. 32 of the law did not come into play and the learned Judge had no power to act under s. 32. Counsel for applicant submitted that the learned Judge thought and said so that the car was brought before him pursuant to the search warrant issued on the 4th November, 1986 on the basis of s. 27; because that search warrant did not authorize search of any other premises except the premises at Metochiou Str. No. 10 and as the car was seized not from the 30 35

premises authorized by the search warrant, therefore, it was an illegal execution of the search warrant and s. 32 of the law did not come into play.

5 With regard to the relevancy of this error of law he cited the cases of *R. v. Atkinson*, Cr. Law Review (1976) at pp. 307-308; Archbold, 41st ed., p. 814, para. 22-43; Search and Seizure by P. Polyviou, p. 282; European Human Rights Convention applied in Cyprus by Law 39/62 and the Digest of Strasbourg Case Law, vol. 3,  
10 p. 287.

The second point is that the learned Judge acted in contravention of the rules of natural justice. Counsel for applicant submitted that the applicant was not a person  
15 against whom investigations were carried out and by ordering the detention of applicant's car until the conclusion of any criminal proceedings which may be had in respect thereof, the applicant lost possession of his car and also his right of use of his property without being given the opportunity of being heard in as much as the  
20 order was not returnable. He relied on the cases of *R. v. District Judge at Morphou ex parte Loizos Theofanous and Others* (1969) 1 C.L.R. 607 at pp. 608-609; *In Re Nina Panaretou* (1972) 1 C.L.R. 165 at pp. 166-167; *Halsbury's Laws of England*. 3rd ed., vol. 11, p. 64,  
25 para. 122.

The question which falls for determination by me at this stage is whether there is a prima facie arguable case made out sufficiently to justify the granting of leave to the applicant to move this Court in due course to issue an  
30 order of certiorari. It is not necessary for me to go into the matter thoroughly, but it is sufficient if on the basis of the applicant's statement, and the affidavit in support, the Court is satisfied that such leave should be granted. See *A. G. v. Panayiotis Christou* (1962) C.L.R. 129 at  
35 pp. 133-134; *Ex Parte Costas Papadopoulos* (1968) 1 C.L.R. 466; *In Re Nina Panaretou* (1972) 1 C.L.R.: *In Re Kokos* (1985) 1 C.L.R. 250.

At this stage it would appear that the applicant has a prima facie arguable case that there was an error on the face of the record and a violation of the rules of natural justice and in these circumstances I grant leave to the applicant to file an application for an order of certiorari within one month from today.

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*Application granted.*