

1987 July 24

[A LOIZOU, DEMETRIADES, STYLIANIDES, JJ]

1 MICHALIS ANTONI AEROPOROS,
2 ANDROS ANTONI AEROPOROS,

Appellants,

v

THE POLICE,

Respondents.

Criminal Appeals Nos. 4888, 4889).

Remand in custody pending investigation into the commission of an offence — Reasonable suspicion that a person has committed an offence — A condition sine qua non for the validity of the order — The term «reasonable suspicion» cannot be extended to mean the commission of an offence — Judge should balance public interest in the detention of a crime with a person's constitutional right to his liberty. 5

Appeal — Remand in custody pending investigation into commission of an offence — Approach and powers of Appellate Court — Principles applicable

These appeals are directed against the order of a Judge, remanding the appellants in police custody for eight days, pending investigation into the commission of premeditated murder and conspiracy to commit murder 10

This was the second application for remand. For the same case another person was arrested who gave a statement to the police in which he confessed the commission of the offences. The two appellants and another suspect are brothers and they carry out the same occupation. They live in the same room. The fatal bomb used for the commission of the murders was made in the house of the suspects by the self-confessed suspect Kafkars and their brother. In the notes of Kafkars the telephone of the house of the appellants and their brother was found. Kafkars met the three brothers at their house 15

Furthermore there was evidence before the first instance Judge that both appellants, 15 days prior to the commission of the crimes under investigation, committed unlawful acts and acts of threatening in order to benefit the self-confessed suspect Kafkars. 20

Held, *dismissing the appeals*: (1) The matter is governed by paras. 2(c), 5

and 6 of Art 11* of the Constitution, Art 5(3) of the European Convention for the Protection of Human Rights and Section 24** of the Criminal Procedure Law, Cap 155

5 (2) The trial Judge has to determine whether there is a reasonable suspicion that a person has committed an offence permitting the detention of such person, regard being had to the circumstances of the case as they appear at the material time

10 It is clear that the persistence of such suspicion is a condition sine qua non for the validity of the continued detention of the person concerned. The notion of «reasonable suspicion» could not be extended to mean commission of the offence

15 (3) This Court does not substitute its discretion for that of the trial Judge. The evaluation of facts is a matter within the exclusive domain of the trial Judge. The task of this Court is only to determine whether or not the decision was reasonable and therefore justified

(4) In this case there existed reasonable suspicion. The grounds given by the Judge for his decision, though very brief, are satisfactory, it would be advisable that reasons should be given at more length

20 (5) In an application for remand order, the first question to be considered by the Judge is whether, balancing public interest in the detection of crime as presented to him at the time, against a person's constitutional right to his liberty, the Judge finds sufficient justification for the making of a remand order

Appeals dismissed

25 *Cases referred to*

Vedat Ahmet Hasip v The Police, 1964 C.L.R. 64,

Vassiliou v The Police, 1964 C.L.R. 89,

Drymoussis v The Police, 1964 C.L.R. 92,

Tsindes v The Police (1973) 2 C.L.R. 204,

30 *Papacleovoulou and Another v The Police* (1974) 2 C.L.R. 55,

Stamatans and Another v The Police (1983) 2 C.L.R. 107

Appeal against remand order.

Appeal by Michalis Aeroporos and Another against the order of a Judge of the District Court of Limassol (Fr. Nicolaidis, S.D.J.)

* Quoted at pp 234 - 235 post

** Quoted at p 235 post

made on the 20th July, 1987 whereby appellants were remanded in custody for eight days in relation to the investigation into the commission by them of the offence of premeditated murder or conspiracy to commit a murder.

Chr. Pourgourides, for the appellants. 5

Gl. HjiPetrou, for the respondents.

A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: These appeals are directed against the order of a Judge of the District Court of Limassol, dated 20th July, 1987, remanding the appellants in police custody for eight days. 10

The complaint of the appellants is that the remand orders were the result of a wrong exercise of the discretionary powers of the Judge who issued them.

This was the second application for remand as the investigation into the commission of the offences, namely premeditated murder and conspiracy to commit a murder, for which the appellants had been arrested, had not been completed. 15

The matter is governed by s. 24 of the Criminal Procedure Law, Cap. 155, which survived in virtue of Article 188 of the Constitution and paras. 2(c), 5 and 6 of Article 11 of the Constitution. 20

Paragraph 5 partly reproduces the provisions of Article 5, para. 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which, having been ratified by Law 39/62, is part of the legal order of this country. 25

Paragraphs 2(c), 5 and 6 of Article 11 of the Constitution read as follows:-

«2(c) the arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offences or fleeing after having done so. 30

5. The person arrested shall, as soon as is practicable after his arrest, and in any event not later than twenty-four hours after the arrest, be brought before a judge, if not earlier released. 35

6 The judge before whom the person arrested is brought shall promptly proceed to inquire into the grounds of the arrest in a language understandable by the person arrested and shall, as soon as possible and in any event not later than
5 three days from such appearance, either release the person arrested on such terms as he may deem fit or where the investigation into the commission of the offence for which he has been arrested has not been completed remand him in custody and may remand him in custody from time to time for
10 a period not exceeding eight days at any one time:

Provided that the total period of such remand in custody shall not exceed three months of the date of the arrest on the expiration of which every person or authority having the custody of the person arrested shall forthwith set him free

15 Any decision of the judge under this paragraph shall be subject to appeal».

Section 24 of the Criminal Procedure Law, 155 reads:-

«24. Where it shall be made to appear to a Judge that the investigation into the commission of an offence for which a
20 person has been arrested has not been completed, it shall be lawful for the Judge, whether or not he has jurisdiction to deal with the offence for which the investigation is made, upon application made by a police officer, not below the rank of an Inspector, to remand, from to time, such arrested person in
25 the custody of the police for such time not exceeding eight days at any one time as the Court shall think fit, the day following the remand being counted as the first day.»

These Constitutional and statutory provisions were considered by this Court in a number of cases, including *Vedat Ahmet Hasip v. The Police*, 1964 C.L.R. 64; *Kyriakos Vassiliou v. The Police*, 1964 C.L.R. 89; *Costas Demetriou Drymouisis v. The Police*, 1964 C.L.R. 92; *Costas Tsirides v. The Police* (1973) 2 C.L.R. 204; *Papacleovoulou and Another v. The Police* (1974) 2 C.L.R. 55; *Stamataris and Another v. The Police* (1983) 2 C.L.R. 107.

35 The first instance Judge, on the evidence produced before him by the police, has to exercise his own discretion in order to determine whether there is a reasonable suspicion that a person has committed an offence permitting the detention of such person,

regard being had to the circumstances of the case as they appear at the material time.

It is clear that the persistence of such suspicion is a condition sine qua non for the validity of the continued detention of the person concerned. The notion of «reasonable suspicion» could not be extended to mean commission of the offence, as it would be illogical to require for the purpose of remand proceedings that the offence was finally defined and proved, since that is the purpose of the investigation, and trial to ensure the normal conduct of which is the very reason why the detention on remand is necessary. Reasonable suspicion means that there were reasons to suspect. 5 10

The object of the constitutional provision and Article 5 of the Convention is to ensure that no one should be dispossessed of his liberty in an arbitrary fashion. 15

The Judge had to examine only whether there existed grounds for reasonable suspicion.

The approach of this Court in these cases is to determine whether the exercise of discretionary powers in granting an order for remand in custody was exercised judicially on the particular case. The task of this Court is only to determine whether or not these decisions were reasonable and therefore justified. We are not required on appeal to evaluate the facts relevant to the exercise of the Judge's discretion, a function exclusively within the domain of the Judge determining the issue of the remand order and we are not substituting our discretion for that of the trial Judge. 20 25

The offences under investigation in the present cases were treble premeditated murder and conspiracy to commit murder. They are offences of the utmost gravity.

Learned counsel for the appellants submitted that the material placed before the Judge was not sufficient to justify reasonable suspicion. 30

Having taken into consideration the material on the record, which the Judge had before him, we are of the view that he could reasonably and justifiably, in the exercise of his discretion, reach the conclusion that there existed reasonable suspicion and his discretion was exercised judicially. 35

Without repeating the whole evidence, suffices to say that, according to the record, this was the second application for remand. For the same case another person was arrested who gave a statement to the police in which he confessed the commission of
5 the offences. The two appellants and another suspect are brothers and they carry out the same occupation. They live in the same room. The fatal bomb used for the commission of the murders was made in the house of the suspects by the self-confessed suspect Kafkaris and their brother. In the notes of Kafkaris the telephone of
10 the house of the appellants and their brother was found. Kafkaris met the three brothers at their house.

Furthermore there was evidence before the first instance Judge that both appellants 15 days prior to the commission of the crimes under investigation committed unlawful acts and acts of
15 threatening in order to benefit the self-confessed suspect Kafkaris.

The grounds given by the Judge for his decision, though very brief, are satisfactory; it would be advisable that reasons should be given at more length.

It should be born further in mind that in an application for
20 remand order, the first question to be considered by the Judge is whether, balancing public interest in the detection of crime as presented to him at the time, against a person's constitutional right to his liberty, the Judge finds sufficient justification for the making of a remand order. (Per *Kyriakos Vassiliou v. The Police* (supra)
25 and *Stamataris and Another v. The Police* (supra).)

In the result these appeals against a second remand order of the appellants are hereby dismissed.

Appeals dismissed.