

1987 February 27

[TRIANTAFYLLOIDES P LORIS AND STYLIANIDES JJ]

CHRISTODOULOS MICHAEL AND OTHERS,

Applicants,

v

THE POLICE

Respondent

(Criminal Applications No 3-27/86)

Criminal Procedure—Appeal—Extension of time within which to lodge it—Powers of Court—«Good cause»—What constitutes a «good cause» depends on the circumstances of each case—Section 134 of the Criminal Procedure Law, Cap 155

Criminal Procedure—Summary trial—Failure of accused to appear at—Discretion of trial Court in cases, where the appearance has not been dispensed with under s 45(1) of the Criminal Procedure Law, Cap 155—Section 89(1) of the said Law—The Court may either proceed and determine the case in the absence of the accused or adjourn the trial and issue a warrant for his arrest—Principles governing the exercise of such discretion

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The applicants pray that the time within which to lodge an appeal against their conviction for using a public carrier contrary to the conditions of its transport licence in force be extended. The applications are based on section 134 of Cap 155. The applicants alleged that they did not appear before the trial Court on the day when they were summoned to appear because they had the impression that their employers would make the necessary arrangements for their representation and that they came to know of their conviction, when, in consequence, they were informed that their licences were revoked by the Licensing Authority.

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Held, dismissing the applications (1) Section 134 of Cap 155 empowers the Court, as a matter of discretion, to extend the time prescribed for filing an appeal. The discretion must be exercised in the interests of justice but shall only be exercised where «good cause» for extension has been shown. What is a «good cause» depends on the facts of each particular case.

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(2) If at any summary trial an accused, whose personal attendance has not been dispensed with under s 45(1) of Cap 155, fails to appear, the Court may proceed to hear and determine the case in his absence or, if it thinks fit, adjourn the case and issue a warrant for his arrest (Section 89(1) of Cap 155).

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2 C.L.R. Michael and Others v. Police

(3) In this case the trial Court exercised its discretion and determined the case in the absence of the applicants. The charge did not involve the stigma of dishonesty and the sentence imposed was only a fine.

(4) The circumstances on which the applicants relied in support of these application do not constitute a good cause.

5 *Applications dismissed*

Cases referred to

Attorney-General v HjiConstanti (1968) 2 C L R 113,

Peter v The Police (1963) 1 C L R 42,

Djeredjian v The Republic (1967) 2 C L R 136,

10 *Pullen and Another v The Republic* (1969) 2 C L R 199,

Andreou v The Republic (1972) 2 C L R 4,

Papadopoulos v The Police (1982) 2 C L R 217,

Michaelides v District Office, Lamaca (1984) 2 C L R 1,

Ahmet v The Police, 19 C L R 127,

15 *Kapodistria v Petrides*, 22 C L R 181,

Socrats alias «Kokkalos» v The Police (1967) 2 C L R 26.

Applications.

20 Applications for the extension of the time for lodging an appeal against the conviction of the accused by the District Court of Limassol

C Hji Nicolaou with M. Kypranou, for the applicants.

Gl. Hji Petrou, for the respondents

TRIANTAFYLLIDES P The judgment of the Court will be delivered by Mr Justice Stylianides.

25 STYLIANIDES J.. In these applications the Court is prayed to extend the time for lodging an appeal against the conviction by the District Court of Limassol on 18.8.86

30 The applications are based on Section 134 of the Criminal Procedure Law, Cap. 155. Together with the applications for extension of time the intended notices of appeal are found.

Section 134, dealing with the extension of time of notice of appeal, reads:

«134. Except in the case of a conviction involving sentence of death, the time within which notice of appeal or application for leave to appeal may be given may, on good cause shown, be extended at any time by the Supreme Court.» 5

The legislator made a provision as to the time within which such an appeal can be taken. It further empowered the Supreme Court to extend the prescribed time; extending the time for appeal is obviously a matter of discretion and the power must be exercised in the interests of justice but shall only be exercised where «good cause» for extension has been shown. 10

In *The Attorney-General of the Republic v. Petros Demetriou HjiConstanti*, (1968) 2 C.L.R. 113, it was said:

«Generally speaking, where the legislator sets a period of time for the taking of a step in proceedings of a judicial character, such provision must be strictly enforced. It is connected with the public interest in the finality of litigation; and it affects directly the parties' rights therein.» 15

The question of extension of time has been dealt with by this Court in a number of cases and useful reference may be made, inter alia, to *Finch Frederick Peter v. The Police*, (1963) 1 C.L.R. 42; *Djeredjian v. The Republic*, (1967) 2 C.L.R. 136; *R. Pullen and Another v. The Republic*, (1969) 2 C.L.R. 199; *Niki Andreou v. The Republic*, (1972) 2 C.L.R. 4; *Papadopoulos v. The Police*, (1982) 2 C.L.R. 217; *Michaelides v. District Officer of Larnaca*, (1984) 2 C.L.R. 1. 20 25

What is a «good cause», as pointed out in *Papadopoulos v. The Police* (supra), depends on the facts and circumstances of the particular case. 30

In the present case the applicants were served with summons of accused J.9 to appear before the Court sitting at Limassol on the hearing of a charge preferred against each one of them for using public carrier against the conditions of its transport licence in force.

5 The facts on which the applicants rely are that their employers, K. & M. Transport Co. Ltd., made arrangements to handle their case; they did not appear before the Court being with the impression that their employers would make the necessary arrangements for their representation in Court; by some oversight or otherwise for reasons unknown to them they were not represented in these cases.

10 The Court, though they failed to respond to the summons, did not issue a warrant for their arrest to compel the attendance of the accused before the Court but, having heard evidence in their absence, convicted and sentenced them to £15.- fine.

The applicants came to know about the said conviction in October, 1986, when they were informed that the Licensing Authority due to the said conviction suspended their licences.

15 It is well established principle that the accused in a criminal case is entitled to be present and be heard. The applicants were served with summonses requiring them to appear before the Court.

20 If at any summary trial at the time appointed for his appearance an accused whose personal attendance has not been dispensed with under Sub-Section 1 of Section 45 of the Law fails to appear, then on proof of service of the summons upon him, the Court may proceed to hear and determine the case in his absence or, if it thinks fit adjourn the case and issue a warrant for his arrest under the provisions of the Law - (Section 89(1) of the Criminal
25 Procedure Law, Cap.155).

In *Niazi Ahmed, v. The Police*, 19 C.L.R. 127, at p.128, it was said:

30 «Courts of Summary Jurisdiction in exercising their power under section 87 (now 89(1)) of the Criminal Procedure Law to convict a person in his absence should not exercise that power where the charge involves the stigma of dishonesty and would be normally punishable by imprisonment rather than fine.»

In *Christos Kapodistria v. Petrakis A. Petrides*, 22 C.L.R. 181, at p.183, after citing the above, it was said:

«We would now go further and say that in any case of a serious nature which would be normally punishable by imprisonment rather than fine, Courts should not exercise a power to try the accused in his absence but should issue a warrant for his arrest in accordance with law to bring up the accused before determining the case.»

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See, also, *Ioannis Socratis alias «Kokkalos» v. The Police*, (1967) 2 C.L.R. 26.

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In the present case the District Court of Limassol exercised its discretion under Section 89(1). The charge the accused were facing did not involve the stigma of dishonesty and the sentence met out to them was only a fine.

The failure of the accused to appear and the failure of their employers to make the necessary arrangements for the representation of the accused and the circumstances on which the accused rely cannot be considered as constituting a good cause for granting the extension applied for.

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The applications are, therefore, refused.

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Applications refused.