

1949
March 24

CHARALAM-
BOS PHY-
LAKTOU
v.
THE POLICE.

[JACKSON, C.J., AND GRIFFITH WILLIAMS, J.]
(March 24, 1949)

CHARALAMBOS PHYLAKTU, *Applicant,*

v.

THE POLICE, *Respondents.*
(Case Stated No. 56.)

Shop—Closing day—Afternoon—“Retail trade or business”—Purchase of goods—Large and small quantities—Shop Assistants Laws, 1942 and 1945, sections 2 and 5—Shop Assistants (Afternoon Week-day) Closing Order, 1947.

The points of law raised by this case were: (1) that the words “retail trade or business” in section 2 of the Shop Assistants Law, 1942, did not include the purchase of goods even in small quantities by an exporting merchant, and (2) that the premises where the business of wholesale export of goods was carried on and purchases of large and small quantities of such goods made—but no retail sales of any kind—were not a “shop” within the meaning of the same section.

Held, that there was nothing in the Shop Assistants Law, 1942, to suggest that where no sale took place to any member of the public, either of goods or services, the business was a retail trade or business within the meaning of that particular Law. The sale of goods or services to members of the public was an essential characteristic of a business falling within the ambit of the aforesaid Law.

Conviction quashed.

Case stated by the Magistrate of the District Court of Limassol (Case No. 9783/48) on the application of the accused. The charge against the accused was that he kept his shop open on an afternoon which had been appointed as closing day, contrary to section 5 of the Shop Assistants Laws, 1942 and 1945, and the Shop Assistants (Afternoon Week-day) Closing Order, 1947. The Magistrate found (1) that the accused was a merchant who purchased locally raisins, almonds, etc., and exported them by wholesale; (2) that for the purpose of his export business the accused purchased these goods in his shop in any quantity offered to him, varying between 5 okes and 10,000 okes; (3) that the accused did not sell any of the said goods locally; and (4) that on the day in question, which was a Saturday, he had his shop, situate in Limassol town, open at 1.40 p.m. On these facts the Magistrate held (i) that the words “retail trade or business” in the definition of “shop” in section 2 of the Shop Assistants Law, 1942, were “wide enough and not restricted to sales only”, and (ii) that the purchases made by the accused locally of even small quantities of goods “were ancillary to his export business as a wholeseller”, and found the accused guilty.

Zenon Rossides for the applicant.

P. N. Paschalis, Crown Counsel, for the respondents.

The judgment of the Court was delivered by the Chief Justice.

JACKSON, C.J.: We feel no doubt whatever that the conviction was wrong and ought to be quashed. We can find nothing in the Shop Assistants Law of 1942 either in the definitions in section 2 or in the Schedules upon which the trial Court seems to have relied, to suggest that where no sale takes place to any member of the public, either of goods or services, the business is a retail trade or business within the meaning of that particular Law. None of the authorities which have been cited to us deal with cases in which neither goods nor services are sold to members of the public, and in our view that is an essential characteristic of a business falling within the ambit of this particular Law.
Conviction quashed.

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CHARALAM-
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[JACKSON, C.J., AND GRIFFITH WILLIAMS. J.]
(March 22 and April 13, 1949)

ANDREAS PANAYIDES, *Applicant,*
v.
THE POLICE, *Respondents.*
(Case Stated No. 55.)

1949
April 13
ANDREAS
PANAYIDES
v.
THE POLICE.

Criminal Law—Extortion by public officer—Receipt of reward after performance of duty—Cyprus Criminal Code, section 98.

The accused was employed in the Public Service as a clerk in the Passports Office in Nicosia. At the request of P., a fellow villager, the accused helped him fill up the necessary forms for the issue of a passport, and took it to him at the village when it was ready. There was no suggestion of any promise of payment by P. or of any expectation of payment on the accused's part. After the accused had delivered the passport, P. pressed him on three occasions to take some payment for his trouble. The accused refused any payment on the first two occasions but he eventually accepted £1, and that payment was the subject of the charge, under section 98 of the Cyprus Criminal Code. The accused was convicted and he applied to the trial Judge to state a Case. One of the points raised on behalf of the accused was that even if the receipt of the money was in any way connected with the performance of the accused's official duties, it was received after those duties had been performed and was consequently outside section 98.

Held, that the section penalised the receipt of a reward by a public officer "for the performance of his duty as such officer" and there was nothing in the wording of the section which limited its scope to the receipt of rewards before a duty was performed or completed and as an inducement or motive for the performance of that duty. The section imposed an absolute prohibition on the receipt of rewards by public servants, beyond their proper pay and emoluments, for the performance of their official duties, whether the reward was paid before or after the duties had been performed.

Conviction affirmed.