

[HALLINAN, C.J., AND ZEKIA, J.]

(July 25, 1952)

GEORGHIOS A. KOUZARIS, *Appellant,*

v.

THE POLICE, *Respondents.*

(*Criminal Appeal No. 1916.*)

Police powers to search the person—The Firearms Law, section 21 (Chapter 86)—The Criminal Procedure Law, section 25 (Chapter 14) —Section 25 of Chapter 14 intended to enlarge powers under section 20 of Chapter 86.

The appellant was convicted for obstructing a police officer who was attempting to search appellant's friend suspected of carrying a revolver. Under section 20 of the Firearms Law only a police officer of any rank not lower than a sergeant may arrest without warrant a person suspected of carrying a revolver ; but under section 25 of the Criminal Procedure Law a constable may arrest without a warrant a person suspected of carrying an article in respect of which an offence is about to be committed or is being committed or has recently been committed.

Held : Section 25 of the Criminal Procedure Law was intended to enlarge the powers of search given under section 20 of the Firearms Law and the police constable in attempting to search a man for a revolver was acting in the execution of his duty.

Appeal against conviction dismissed.

Appeal by the accused from the judgment of the District Court of Larnaca (Case No. 1752/52).

G. Achilles with *L. Santamas*, for the appellant.

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

The facts of the case are set out in the judgment of the Court which was delivered by :

HALLINAN, C.J. : This case has been argued on one ground of appeal only.

The appellant was convicted for obstructing a police officer in the execution of his duty and the evidence shows that the police officer was endeavouring to arrest a man called Adamos Elia because the police officer had information that Adamos Elia was carrying a revolver. The appellant undoubtedly obstructed the police officer when endeavouring to arrest the appellant's friend, Adamos. The sole point for decision is whether the police officer had power in these circumstances to search Elia without a warrant.

1952
July 25
GEORGHIOS
A.
KOUZARIS
v.
POLICE.

Section 20 of the Firearms Law, Chapter 86, gives power of search in these circumstances to a police sergeant but not to a constable. On the other hand section 25 (9) of the Criminal Procedure Law gives a power of search to a police officer who has reasonable ground to suspect that a person is carrying an article in respect of an offence which is being committed.

It has been submitted for the appellant that since the Firearms Law was enacted in 1933 and the Criminal Procedure Law was enacted in 1948 the provisions of the latter law should not affect the older law because the older law dealt with a special power of search whereas the Criminal Procedure Law contains general provisions with regard to powers of search. In this submission counsel relied on the rule of interpretation discussed in Craie on the Interpretation of Statutes (3rd Ed. p. 316).

Counsel for the respondent has pointed out that if this interpretation is allowed, an incongruous position would arise: for whereas a police sergeant alone could search without a warrant for a revolver and a police constable could not, a police constable could search without a warrant for a shot gun which he reasonably suspected was held without a licence. In other words a constable could search for an article which might be the subject of a lesser offence such as a shot gun but could not search for an article the subject of a greater offence such as a revolver.

We cannot believe that the legislative authority in enacting section 25 of the Criminal Procedure Law intended such a result.

For this reason we consider that section 25 of the Criminal Procedure Law was enacted to enlarge the powers of search given under the Firearms Law, and that the police constable in this case had power under section 25 to search Adamos Elia under the circumstances.

For these reasons we consider that the appeal against the conviction in this case must fail.

We, however, consider that the sentence of nine months imposed upon a first offender in this case is too heavy and we substitute for that sentence a term of imprisonment of three months from the day of conviction.