

MINAS LAZAROU,

*Appellant,*

v.

THE DISTRICT LABOUR OFFICER NICOSIA,

*Respondent.*

MINAS  
LAZAROU  
v.  
THE DISTRICT  
LABOUR  
OFFICER  
NICOSIA

(*Criminal Appeal No. 3124*).

*Social Insurance—Failing to pay contributions in respect of a person in the employment of the appellant under a contract of service—The Social Insurance Laws 1964 to 1969, sections 5(1), 9(6)(e), 73(1)(2)(4) and 77—Hawker selling baker's wares on latter's barrow and sharing proceeds—Hawker not an employee—No contract of service within para. 1, of Part I of the Schedule to the Law—Conviction quashed.*

In this case the appellant who is a baker, appeals against his conviction by the District Court of Nicosia of the offence of failing to pay contributions for a person in his employment contrary to the relevant provisions of the Social Insurance Laws 1964 to 1969 (*supra*). The point involved in this case is whether or not the person in respect of which the appellant was charged and convicted was in the appellant's employment under a contract of service.

Quashing the conviction the Court :—

*Held*, (1). The person in respect of whom the appellant was charged was, at the material time, selling the appellant's wares and other goods, as a hawker, using the appellant's barrow and receiving 25% of the daily proceeds from the sales.

(2) Counsel for the respondent, after referring us to the application of similar legislation in England (see Halsbury's Laws of England, 3rd ed. vol. 27, p. 710, para. 1294) has very fairly conceded that on the whole he did not think that this was a case in which the person in question was in the appellant's employment under a contract of service. We agree ; the appellant, therefore, should not have been convicted.

*Appeal allowed. Conviction quashed.*

1969  
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## Appeal against conviction and sentence.

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MINAS  
LAZAROU  
v.  
THE DISTRICT  
LABOUR  
OFFICER  
NICOSIA

Appeal against conviction and sentence by Minas Lazarou who was convicted on the 6th September, 1969, at the District Court of Nicosia (Criminal Case No. 13143/69) on one count of the offence of failing to pay contributions contrary to sections 5(1), 9(6)(e), 73(1)(2)(4) and 77 of the Social Insurance Law, 1964 (Law 2 of 1964) and was sentenced by Stavrinakis, D.J., to pay a fine of £5 and £8.160 mils to the Social Insurance fund.

*Appellant*, in person.

*A. Frangos*, Senior Counsel of the Republic, for the respondent.

VASSILIADES, P. : Mr. Justice Triantafyllides will deliver the judgment of the Court.

TRIANTAFYLLIDES, J. : In this case the appellant who is a baker, appeals against his conviction by the District Court Nicosia, on the 6th September, 1969, of the offence of failing to pay contributions for a person in his employment, contrary to the relevant provisions of the Social Insurance Laws 1964 to 1969.

In convicting the appellant the learned trial Judge found that the person in respect of whom the appellant was charged was, at the material time, selling the appellant's wares and other goods, as a hawker, using the appellant's barrow, and receiving 25% of the daily proceeds from the sale of the appellant's wares.

As the appellant is not represented by counsel and as it appeared that what had to be decided upon by us is the issue of mixed law and fact as to whether or not, on the facts as found by the trial Judge, there did exist a contract of service, in the sense of paragraph 1, of Part I, of the First Schedule to the legislation in question, we called, first, upon counsel for the respondent, who, unlike the appellant, was in a position to assist the Court in this respect.

Counsel for the respondent, after referring us to the application of similar legislation in England (see *Halsbury's Laws of England*, 3rd ed., vol. 27, p. 710, para. 1294) has very fairly conceded that on the whole he did not think that this was a case in which the person in respect of whom the appellant was charged and convicted was in the appellant's employment under a contract of service, in such a manner as to warrant the conviction of the appellant.

Even the trial Court in its judgment seemed to have faced quite some difficulty on this point ; and it decided in the end that the method of remuneration of the said person by the appellant was " more consistent with being in the nature of a salary than in the nature of a commission " ; and on this basis it proceeded to convict the appellant, which, with respect, we think was not a safe thing to do in a criminal proceeding.

In the light of all that has been placed, or stated, before us for the purposes of this appeal we have reached the view that the appellant should not have been convicted of the offence in question and we, therefore, allow this appeal and quash his conviction.

*Appeal allowed.*

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