

1971
Nov. 4
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POLICE
v.
ANDREAS THOMA
AND ANOTHER

[PIKIS D.J.]

POLICE,

v.

ANDREAS THOMA AND ANOTHER,

Accused.

(District Court Famagusta—Case No. 7637/71).

Criminal Procedure—Practice—Jurisdiction—Competence—A District Court, in passing sentence, has power to take into consideration outstanding offences pending against the accused before another District Court provided it has competence to do so—Section 81 of the Criminal Procedure Law, Cap. 155 and sections 23 and 24 of the Courts of Justice Law, 1960 (Law 14 of 1960).

Cases referred to:

R. v. Warm, 26 Cr. App. R. 115;

R. v. Simons [1953] 2 All E.R. 599.

Police Sergeant *Ioannides*, for the Prosecution.

Chr. Solomis, for Accused No. 1.

K. Saveriades, for Accused No. 2.

The following ruling was delivered by:—

PIKIS, D.J.: I have to resolve the following question.

Does a District Court have jurisdiction to take into consideration, in passing sentence, outstanding offences pending before another District Court?

I have been asked by the accused to take, *inter alia*, into consideration charges pending before the District Courts of Nicosia and Larnaca. The police consents to this course.

Counsel for the accused submitted that I have jurisdiction to take such cases into consideration. I was not, however, referred to any Cyprus decision and to my knowledge there is no direct authority on the matter.

In Archbold 37th edition paragraphs 615 and 616 reference is made to the practice of English Courts to take into consideration outstanding offences and the principles applicable. I found this passage in paragraph 615: "A Court should not purport to take into consideration outstanding offences which it would itself have no jurisdiction to try". This statement if accepted on its face value would preclude me from taking into consideration offences pending before the District Courts of Larnaca and Nicosia. The above position in Archbold is adopted relying on two decisions of the Court of Criminal Appeal *R. v. Warm*, 26 Cr. App. R. 115 and *R. v. Simons* [1953] 2 All E.R. 599. I have studied carefully these decisions but their tenor is not as absolute as the statement in Archbold unless we read the word "jurisdiction" as referring to the competence of the Court and not its territorial jurisdiction within the State. In the case of *Warm* wherefrom the statement in Archbold is taken the sentence in question is followed and explained in this way: "Therefore a Court of quarter sessions should not purport to take into consideration cases which are triable only at Assizes, and likewise no English Court should purport to take into consideration cases triable only in some other country".

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The distinction between the competence or substantive jurisdiction of the Court to try cases and the territorial jurisdiction of a given District Court to try cases within the Republic is made in the Courts of Justice Law, 1960 (Law 14/60). Section 24 deals with the jurisdiction of the Court in the wider sense of competence whereas section 23 of the same law deals with the territorial jurisdiction of the different District Courts. The jurisdiction of the Court referred to in section 24 is a matter of substance and the Court can under no circumstances assume jurisdiction to take cognizance of matters beyond its powers as defined in section 24 of Law 14/60. On the other hand a single Judge of a district has competence to deal with crimes committed in Cyprus but not territorial jurisdiction to do so unless the provisions of section 23 of the Courts of Justice Law, 1960 (Law 14/60) are relaxed. This position is illustrated on a consideration of section 174 of the Criminal Procedure Law, Cap. 155 where in certain circumstances the Supreme Court may direct that a case be tried in a district other than the one where the crime was committed. Another example is section 25(3) of Law 14/60 where the Supreme Court may order the re-trial of a case

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before a Court other than a Court having territorial jurisdiction on the matter. Lastly, section 5(d) of the Criminal Code (Amendment) Law, 1962 (Law 3/62) confers in certain defined circumstances power on a Cyprus Court to try cases committed abroad. In accordance with section 6 of the same law the Supreme Court may determine the trial Court. In such a case no question of territorial jurisdiction arises.

In paragraph 615 of Archbold reference is made to cases pending before other *inter-state* jurisdictions being taken into consideration "But if in fact there has been a committal in another jurisdiction the Judge should first be satisfied that the prosecution consents, and such consent should not be withheld except on good grounds".

In England the practice of taking into consideration outstanding offences is based on convention whereas in Cyprus it is regulated by section 81 of the Criminal Procedure Law, Cap. 155. Section 81 lays down that provided certain conditions are satisfied the Court may "take into consideration any other outstanding offence or offences which the accused admits to have committed". The word "any" is wide enough to confer power on a District Court to take *inter alia* into consideration offences pending against the accused before another District Court provided it has competence to do so. A District Court would not therefore take into consideration cases beyond its substantive jurisdiction e.g. cases triable only at Assizes but short of that provided the remaining conditions of section 81 are fulfilled the trial Court may take into consideration offences pending against the same accused before other District Courts. The above interpretation is not only warranted by the wording of section 81, but is also justified on a consideration of the object of the legislator in enacting section 81. To my comprehension the aim of the law is to provide a compendious procedure whereby the Court deals in a summary form with the sum-total of accused's past misdeeds and entitles him thereafter subject to sentence to make a fresh start. This purpose would hardly be achieved if any one District Court was fettered from taking into consideration offences committed in another district or pending before another district Court.

Order accordingly.