

[TRIANTAFYLLIDES, P.; STAVRINIDES, MALACHTOS, JJ.]

COSTAS ARISTOCLEOUS, ALIAS KOKKINOS,

Appellant,

v.

THE POLICE,

Respondents.

1973
Jan. '30
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COSTAS
ARISTOCLEOUS
ALIAS KOKKINOS
v.
THE POLICE

(Criminal Appeal No. 3387).

Sentence—Two years' imprisonment and order for compensation—Housebreaking—Compensation in the sum of £262 payable within one year after release from prison with two years' imprisonment in default—Undesirable that Appellant should be under threat of going to prison for two more years for failure to pay compensation—Terms of payment altered on appeal—Cf. section 120 of the Criminal Procedure Law, Cap. 155—Cf. also Part IV of Cap. 155.

Compensation—Order for compensation—Terms of payment altered on appeal—See supra.

Housebreaking—Sentence—Compensation—Imprisonment and order for compensation—Terms of payment—See supra.

The Appellant was convicted by the District Court of Famagusta of the offence of housebreaking contrary to section 292 (a) of the Criminal Code, Cap. 154; he was sentenced to two years' imprisonment and, in addition, was ordered to pay by way of compensation, the amount of £262 within one year after his release from prison, or, in default, to go to prison for a further period of two years. By his present appeal the Appellant complains against both the making of the said order for compensation as well as the terms of payment.

Allowing partly the appeal, the Court:

Held, (1). In the particular circumstances of this case it seems to us that the better course would be to allow the compensation order to remain in force in so far as the amount of compensation is concerned, but to set aside the part of the order relating to the time for the payment of the compensation as well as the period of imprisonment which the Appellant would have to undergo in case of default.

1973
Jan. 30
—
COSTAS
ARISTOCLEOUS
ALIAS KOKKINOS
v.
THE POLICE

(2) It is of course the usual and correct practice, as a rule, to specify, under section 120 of the Criminal Procedure Law, Cap. 155, the period of imprisonment which a person shall undergo in default of payment of a penalty (whether it is a fine or compensation); but in the present case we think that the interests of justice would be served better if no such period is specified.

(3) Thus, it is up to the Appellant to apply, in due course, for time in which to pay the compensation; and then his application will be dealt with under the provisions, for this purpose, in Part IV of Cap. 155 (*supra*), in the light of the then existing circumstances.

*Appeal partly allowed.
Order accordingly.*

The facts sufficiently appear in the judgment whereby the Court, allowing partly this appeal, ordered that the terms of payment of the compensation in the sum of £262 awarded to the complainant by the trial Court be altered.

Cases referred to:

R. v. Hewitt [1971] Crim. L. R. 492.

Appeal against sentence.

Appeal against sentence by Costas Aristocleous alias Kokkinos who was convicted on the 18th November, 1972 at the District Court of Famagusta (Criminal Case No. 6427/72) on one count of the offence of housebreaking and theft contrary to section 292 (a) of the Criminal Code, Cap. 154 and was sentenced by S. Demetriou, D. J. to two years' imprisonment and he was further ordered to pay by way of compensation the sum of £262.475 mils within a year after his release from prison.

K. Saveriades, for the Appellant.

V. Aristodemou, Counsel of the Republic, for the Respondents.

The judgment of the Court was delivered by:—

TRIANAFYLLIDES, P.: The Appellant was convicted by the District Court of Famagusta, on his own plea, of the offence of housebreaking, contrary to section 292 (a) of the Criminal

Code, Cap. 154; he was sentenced to two years' imprisonment and, in addition, was ordered to pay, by way of compensation, the amount of £262.475 mils, within one year after his release from prison, or, in default, to go to prison for a further period of two years.

1973
Jan. 30

—
COSTAS
ARISTOCLEOUS
ALIAS KOKKINOS
v.
THE POLICE

He has appealed against the above sentence as regards the compensation order; he complains against both the making of such order as well as the terms on which it has been made.

When he was sentenced twelve other offences of housebreaking and one of escaping from lawful custody were taken into consideration; and the aforementioned amount of compensation has been arrived at, as it appears from the record before us, on the basis of what he stole when he committed the offence of housebreaking of which he was convicted in the present case, as well as of what he stole when he committed some of the offences taken into consideration.

There is no doubt that the Appellant is a person with a very bad record; he was sent to prison in 1968 for three years for housebreaking; and, again in 1968, in respect of another offence of breaking into and stealing from a club, he was imprisoned for ten months.

From a social investigation report concerning the Appellant and from a report about his psychological condition there appears clearly that he is an anti-social type. All efforts of the State to reform him, ever since he was young, have failed.

He is married and has a daughter; his wife is, fortunately for him, prepared to help him in any way possible.

We have not been persuaded that it was not the right course for the trial Court to make the compensation order complained of; but, in the light of the facts that the Appellant is a twenty-four years old married man with family obligations who can earn as a mason only about £11 weekly and is, also, a psychologically disturbed person, we think that the terms on which the compensation order was made bear no proper relation to the realities of the case: It will be impossible for him, even if he can find employment immediately after his release from prison, to pay the compensation within a year—as required by the order made in this respect by the trial Court—and so he is now under the threat of going to prison for two more years for failing to pay the compensation as ordered. This threat will most

1973
Jan. 30
—
COSTAS
ARISTOCLEOUS
ALIAS KOKKINOS
v.
THE POLICE

probably result in making the Appellant commit a similar offence, after his release from prison, in order to secure the amount he needs for the payment of the compensation and thus avoid going to prison for another two years.

It is useful to note that in *R. v. Hewitt* [1971] Crim. L.R. 492, where an Appellant was sentenced to pay a fine of £1,000, payable at £20 per month, or, in default, to be imprisoned for six months, it was decided by the Court of Appeal in England that it was undesirable that he should be under the threat, for a period of over four years, of going to prison, and, consequently, the fine was reduced to £500, payable again at £20 per month.

In the particular circumstances of the case before us it seems that the better course would be to allow the compensation order to remain in force in so far as the amount of compensation is concerned—(such compensation being due to other persons, and not payable to the State, as was the fine in the *Hewitt* case, *supra*)—but to set aside the part of the order relating to the time for the payment of the compensation as well as the period of imprisonment which the Appellant would have to undergo in case of default. It is, of course, the usual and the correct practice, as a rule, to specify, under section 120 of the Criminal Procedure Law, Cap. 155, the period of imprisonment which a person affected shall undergo in default of payment of a penalty—(whether it is a fine or compensation)—but in the present case we think that the interests of justice would be served better if no such period is specified. Thus, it is up to the Appellant to apply, in due course, for time in which to pay the compensation, and then his application will be dealt with under the provisions, for this purpose, in Part IV of Cap. 155, in the light of the *then* existing relevant circumstances.

The appeal is, therefore, allowed, to the extent that the sentence is varied accordingly as aforesaid.

Appeal allowed.