

1987 November 4

[TRIANTAFYLIDIS P., DEMETRIADES, LORIS, JJ.]

ABDEL NASER AHMED EL YIAMANI ABO AMIRA,

*Appellant,*

v

THE REPUBLIC,

*Respondent*

*(Criminal Appeal No 4877)*

*Sentence — Uttering false travellers' cheques — Three years' imprisonment — After the sentence was passed it was discovered that appellant was in danger of losing his eyesight, unless he received treatment abroad — Such fact justifies the exceptional course of showing Court's mercy to the appellant*

*Constitutional Law — Constitution Art 53 4 — Prerogative of mercy — The power of the Supreme Court to reduce sentence on appeal and the President's prerogative of mercy are not always mutually exclusive* 5

The appellant who comes from Egypt, was sentenced to 3 years' imprisonment for uttering three false travellers' cheques

After the imposition of the said sentence it was discovered that appellant was in danger of losing his eyesight. The eye specialist, who examined the appellant, recommended an operation which, however, could not be performed in Cyprus 10

Counsel for the respondent submitted that the matter of treatment can only be dealt with by the President of the Republic under Art 53 4 of the Constitution 15

Held, allowing the appeal (1) The power of the Court in dealing with an appeal against sentence and those of the President of the Republic under the said Article 53 4 are not always and inevitably mutually exclusive

(2) The exceptional course of showing the Court's mercy to the appellant is in this case justified 20

*Appeal allowed*

*Cases referred to*

*Barhouch v Republic* (1987) 2 C.L.R. 245

**Appeal against sentence.**

5 Appeal against sentence by Abdel Naser Ahmed El Yiamani Abo Amira who was convicted on the 12th May, 1987 at the Assize Court of Limassol (Criminal Case No. 7827/87) on three counts of the offence of uttering false traveller's cheques contrary to sections 339, 336 and 20 of the Criminal Code, Cap. 154 and was sentenced by Hadjitsangaris, P.D.C., Artemis, S.D.J. and Stravnnides, D.J. to three years' imprisonment on each count to run concurrently.

10 Appellant appeared in person.

*A. Vassiliades*, for the respondent.

15 TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellant, who came from Egypt, was sentenced, on 12 May 1987, to three years' imprisonment after he had pleaded guilty to uttering three false traveller's cheques for 100 U.S.A. dollars each.

Having in mind all the circumstances of his case, to which we need not refer in detail, we do not consider the said sentence as being wrong in principle or manifestly excessive.

20 While, however, the appellant was in prison he was examined by a Government eye-specialist, Dr. A. Solomonides, and was found to have a serious affliction of his right eye, with nearly complete loss of the sight of that eye; and it appears that his left eye has also been afflicted and though the sight of that eye is for the  
25 time being normal it may deteriorate, too.

According to the report of the said eye-specialist it is not possible to treat the eyes of the appellant here but it is possible that they will improve after an operation which can be performed abroad.

30 The appellant who has appeared without the assistance of counsel has asked us to reduce his sentence so as to enable him to return to his country in order to be operated there with a view to saving his eyesight.

35 Counsel for the respondent has submitted that we cannot intervene in favour of the appellant for the purpose of helping him to receive treatment abroad which is not available in Cyprus and that this is a matter to be dealt with by the President of the

Republic, on the recommendation of the Attorney-General of the Republic, under Article 53 4 of the Constitution

We do not think that our powers as a Court of Appeal in dealing with an appeal against sentence and those of the President of the Republic under the said Article 53 4 are always and inevitably mutually exclusive, and this is one of those cases in which either our powers may be resorted to or those of the President of the Republic might be exercised 5

We are of the view that even though the crimes which were committed by the appellant are quite serious there is no justification at all in law or in justice and morality for saying that the appellant because of having been sentenced in respect of such crimes has to lose his eyesight by remaining in prison here whilst he can possibly save his eyesight by being treated without delay abroad by means of surgery which cannot be performed in Cyprus 10 15

We have decided to adopt the exceptional course of showing the Court's mercy to the appellant (and see, in this respect, too, *Barhouch v The Republic*, Criminal Appeal No 4759 determined on 24 April 1987\*, and not reported yet) by reducing his sentence so that he can be released immediately in order to be enabled to leave Cyprus and return to his country where his eye affliction may be treated in a manner not possible as yet in Cyprus 20

We, therefore, allow this appeal accordingly

*Appeal allowed* 25

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\* Reported in (1987) 2 C L R 245