

1989 January 13

(MALACHTOS, KOURRIS, BOYADJIS, JJ.)

ATTORNEY-GENERAL OF THE REPUBLIC,

Appellant,

v.

YIANNAKIS DAMIANOU KARAKOULAS,

Respondent.

(Criminal Appeal No. 5027).

Sentence — Obtaining money (£4,500.-) by false pretences contrary to sections 297 and 298 of the Criminal Code, Cap. 154 — £150 fine — Manifestly low — Substituted by six months' imprisonment.

Sentence — Mitigating factors — Obtaining money by false pretences — Repayment is a mitigating factor, but unsuccessful efforts to secure a loan in order to effect repayment are not.

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The facts of this case appear sufficiently in the hereinabove notes.

Appeal allowed.

Appeal against inadequacy of sentence.

Appeal by the Attorney-General of the Republic against the inadequacy of the sentence passed on the accused in Criminal Case No. 30401/87 of the District Court of Limassol (Papas, D.J.) whereby he was sentenced to pay £150.- fine and £68.- costs for the offence of obtaining money by false pretences contrary to sections 297 and 298 of the Criminal Code, Cap. 154.

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A. M. Angelides, Senior Counsel of the Republic, for the appellant.

G. Savvides, for the respondent.

MALACHTOS J. gave the following judgment of the Court. The respondent in this appeal pleaded guilty before the District Court of Limassol to a charge under sections 297 and 298 of the Criminal Code, Cap. 154, that during the month of March, 1987 at Limassol

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in the District of Limassol, by false pretences and with intent to defraud, did obtain from one Yiannakis Stavrou of Nicosia the sum of £4,500.- in cash, the false pretences being in substance and to the effect that the accused sold to the said Yiannakis Stavrou of
5 Nicosia motor car Reg. No. SF 884, registered in the name of L/ Cpl. Alan Winkler of Episkopi and the Cyprus Popular Bank (Finance) Ltd., pretending to the said Yiannakis Stavrou that the said motor car had no problem to the transfer and that the registered owner would bring to him the Certificate of Registration
10 and other documents of the said motor car within 6 days for the purpose of transferring same in the name of his daughter Stella, whereas in fact and truth the said motor car was a duty free one financed by and pledged to the Cyprus Popular Bank (Finance) Ltd., for the sum of £3,721.32 cents.

15 The facts of the case appear in the charge sheet and have been related today in full detail by both counsel for the Republic and counsel for the respondent.

The trial judge in his judgment very rightly stated that accused pleaded guilty to a very serious charge and in passing sentence on
20 him took into consideration, as he stated,

(a) that the accused had no previous convictions;

(b) the special circumstances under which the offence was committed and, more important,

(c) that the accused made unsuccessful efforts to secure a loan in
25 order to pay back the money to the complainant.

For these reasons he decided that he would not send him to prison and sentenced him to £150.- fine and also to pay £68.- costs of the prosecution. As against this sentence this appeal was
30 filed by the Attorney-General of the Republic under section 137(1)(b) of the Criminal Procedure Law, Cap. 155, that the sentence imposed is insufficient.

After hearing the arguments of counsel, we must say that we have been persuaded that the sentence imposed by the trial Judge in the circumstances of the present case is insufficient and
35 manifestly low. No doubt repayment of the money involved in cases of this nature is a factor which should always be taken into consideration in passing sentence, but certainly not unsuccessful efforts to secure a loan for such repayment. So, we allow the

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appeal, quash the sentence of fine as well as the payment of costs, and we substitute it with six months' imprisonment from today.

Appeal allowed. Accused sentenced to six months' imprisonment.