

[NETTLETON, C J AND GRIMSHAW, P.J.]

NETTLE-  
TON,  
C.J.  
&  
GRIM-  
SHAW,  
P.J.  
1925

## POLICE

v.

NISSIFOROS SAVAS.

March 24

KNIVES LAW, 1920, SEC 4—NOMINAL PUNISHMENT—CRIMINAL LAW AND PRO-  
CEDURE LAW 1, 1886, SEC 6 (7) (1)—SEC. 6 (5), SEC. 47—DISCRETIONARY POWERS  
OF MAGISTRATE—ORDER IN COUNCIL, 1882, CLAUSE 48 (c)—OTTOMAN PENAL  
CODE, ART. 40

Case stated by a Magisterial Court

The questions of law submitted by the Magisterial Court and the facts are fully set out in the judgment of the Chief Justice.

For Police the *Assistant King's Advocate*.

For Accused *Pavhdes*.

This is a case stated under section 47 of the Criminal Law and Procedure Amendment Law, 1886, by the President of the District Court of Paphos sitting as a Magistrate

The questions of law reserved for this Court are:—

1. Whether the Court, thinking that the offence in this particular case was of so trifling a nature, and deeming it inexpedient to inflict any punishment other than a nominal one, may by virtue of the latter part of clause 48 (c) of the Order in Council, 1882, discharge the accused conditionally.
2. In the event of the Court being bound to sentence the accused, whether in view of the facts of the case the Court shall sentence the accused to only two months imprisonment under the last paragraph of article 40 of the Ottoman Penal Code.

The accused was charged with carrying a pointed knife contrary to section 4 of the Knives Law, 1920. He pleaded guilty after consenting to be tried summarily. According to the Police he was found by a Rural Constable in the fields carrying the knife in question and he stated he had it with him in order to cut a piece of wood to make a shaft for his plough. He was under seventeen years of age, of good character, and with no previous convictions.

On appeal the Assistant King's Advocate (Mr. Sertsios) appeared for the Crown and Mr. Pavhdes for the accused.

*Judgment:* THE CHIEF JUSTICE: On the first question reserved for the consideration of this Court I am satisfied that on the facts of the case as set out above it is open to the Magistrate in his discretion under clause 48 (c) of the Cyprus Courts of Justice Order, 1882, as amended by the Courts of Justice Order, 1908, clause 3, and the Courts of Justice Order, 1921, clause 4, to discharge the accused conditionally on his giving security, with or without sureties to appear for sentence when called upon. Alternatively he could be bound over to be of good behaviour, but this would hardly appear applicable to the present case.

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Clause 48 (c) runs as follows:—

“ If, upon the hearing of a charge for an offence punishable on summary conviction under this Order or under any other Order or Law whether past or future before a Magisterial Court constituted as aforesaid, the Court thinks that, though the charge is proved, the offence was in the particular case of so trifling a nature that it is inexpedient to inflict any punishment or any other than a nominal punishment, the Court without proceeding to conviction, may dismiss the information and, if the Court thinks fit, may order the person charged to pay such damages, not exceeding 40s. and such costs of the proceedings, or either of them, as the Court think reasonable; or, the Court, upon convicting the person charged, may discharge him conditionally on his giving security, with or without sureties, to appear for sentence when called upon or to be of good behaviour and either without payment of damages and costs or subject to the payment of such damages and costs or either of them as the Court thinks reasonable.”

The words “ under this Order or under any other Order or Law whether past or future ” are to be noted.

Section 4 of the Knives Law, 1920, provides that any person carrying a pointed knife, as defined in the law, outside his own premises, save for some lawful purpose for which a pointed knife is necessary “ shall be liable to imprisonment for a term of not less than six months or more than one year.” The words “ shall be liable to imprisonment ” are significant and are to be distinguished from “ shall be imprisoned.”

But the section must be read and applied as subject to or in conjunction with the provisions of sub-clause (c) of clause 48 cited above, which substantially correspond with the discretionary powers conferred on Courts of Summary Jurisdiction in England by section 1 of the Probation of Offenders Act, 1907. When the Court thinks that, though the charge be proved, the offence in the particular case (the words

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“ particular case ” are of the first importance) is of so trifling a nature that it is inexpedient to inflict any punishment or any other than a nominal punishment, it can, in its discretion, either (a) dismiss the charge, or information, as it is styled in the Order, without proceeding to conviction, or (b) convict and discharge conditionally.

In the view of the legislature the carrying of a prohibited knife is a serious offence, as the imposition of a minimum sentence clearly indicates, but it is hardly necessary to point out that in certain circumstances it might be an entirely negligible one, *e.g.*, when a person who happened to be using a pointed knife in his house on a sudden alarm of earthquake or fire, ran out into the street without noticing he still had it with him and was charged before the Court under the Knives Act. To hold that in such a case a minimum sentence of six months imprisonment must be imposed would be absurd. The case calls for special treatment.

It is to be observed that minimum punishments were a feature of the Ottoman Penal Code in 1908, when the amending clause 48 (c) was added to the Courts Order and became a substantive part of the Criminal Law of this Island, and it was not till 1914 that these minimum punishments were swept away by section 3 of Law 12 of 1914, which is incorporated in the *Criminal Law and Procedure Amendment Law, 1886*, as section 6 (5). In other words, during this interval of eight years, clause 48 (c) over-rode the rigorous provisions of the Code as to minimum sentences and gave the Magistracy a merciful discretion when the offence in the particular case was of a trifling character. This discretion is a fundamental feature not only of Magisterial jurisdiction in connection with offences punishable on summary conviction but also of the whole system of the administration of justice in criminal matters in this Island.

It is extended to the convicting Court by section 6 (7) (i), of the *Criminal Law and Procedure Amendment Law, 1886*, in the case of youthful offenders and other circumstances of extenuation where the offence is punishable with imprisonment for not more than three years. Discretionary power, such as exists at Common Law in England, is also given to the Court on trial on information by clause 131 of the *Courts of Justice Order, 1882*, to discharge on recognizances to appear and receive judgment when called upon. As I have already indicated, the provision in the *Knives Law, 1920*, for a minimum punishment did not operate to deprive the Magisterial Court of the exercise of the discretionary powers conferred on it by clause 48 (c) of the Order in Council in particular cases falling within the clause.

In cases under that law which do not fall within the clause it is incumbent on the Court on conviction to pass a sentence of not less than six months' imprisonment.

The only difficulty I have had in this case arises from a judgment of this Court on the 27th February, 1924, in the case of *Police v. Hussein Ahmed Barout*, in the course of which it expressed the view that "the fact that the legislature has fixed a minimum penalty of six months for an offence, precludes the offence from being treated as a trivial one and prohibits such case from being brought within the discretion of any Court to inflict a less punishment than that laid down by the law creating the offence." Happily I am relieved from this by the fact that the learned Judge who presided over the Court informs me that on re-consideration he does not support the Court's finding on this point, and that the other learned Judge who sat with him is of the same opinion.

I would observe that I am in agreement with the Court in its finding on the main point in this case relating to clasp knives. As to the second question of law submitted to the Court it is not, in the circumstances, necessary to discuss it, but I would observe that a youth of nearly seventeen years of age must be presumed to understand the nature and quality of his act in taking with him a pointed knife contrary to the law, and would not be entitled to claim special consideration under article 40 of the Ottoman Penal Code.

**THE PUISNE JUDGE:** The case of *Police v. Hussein Ahmed Barout* is, up to the present time, the ruling case under the Knives Law of 1923.

In that case this Court held that a Magisterial Court constituted under the Order in Council of 1882, clause 48 (c), could not deal with a case under the Knives Law, 1923, except by imprisonment, as there was a minimum sentence fixed by that Law.

When that case was argued the fact, that when clause 48 (c) was introduced into the Cyprus Courts of Justice Order of 1882 by the Order in Council of 1908, minimum sentences were still in force under the Ottoman Penal Code, and such sentences were not abolished until 1914, was not brought to the notice of the Court, and such fact was overlooked by the then existing Court in considering their judgment on that case.

Now under clause 48 (c), the Magisterial Court dealing with a case under the Knives Law, 1923, in which it did not consider a sentence of six months necessary or advisable, could avoid asking the accused person, or advise him not, to submit to jurisdiction, and send the case

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to the District Court to be dealt with on information, and that Court could, under clause 131 of the Order in Council, exercise its powers as has been done on trials on information.

See *Rex v. Christoforo Yanni* (sodomy), Nicosia Assizes in 1909; O.P.C., 198.

See *Rex v. Costa Styliano and others* : (wounding with intent to kill), O.P.C., 180.

See *Rex v. Hassan Emir Hussein* (Limassol Assizes, 1908), O.P.C., 220.

And it is not to be thought that any accused person, who was really aware of the provisions of the law would voluntarily submit to the jurisdiction of the Magisterial Court if he was aware that by so doing he rendered himself liable to a minimum of six months imprisonment when, by refusing to submit to it, he might possibly only be bound over by a District Court.

The only real effect of clause 48 (c) is to confer on the Magisterial Court similar powers to those given by clause 131 to trial on information, and not to deprive a person who voluntarily submits to it, of rights he would have on trial by a District Court.

Having taken all these matters into consideration and having conferred with my learned brother who was associated with me in that case and who agrees with me, I concur in the judgment of the Chief Justice, which he has delivered.