

1960  
June 7, 10

IN RE COSTAS  
DEMETRI KEPSIS  
A MENTAL  
PATIENT

[BOURKE, C.J., and EDWARDS S.P.J.]

In re COSTAS DEMETRI KEPSIS, a Mental Patient.

*Appeal against the order of the District Court of Kyrenia, confining him at the Mental Hospital dated 21st May, 1960.*

*(Criminal Appeal No. 2278).*

*Mental Patients—Order of confinement to the Mental Hospital—The Mental Patients Law, Cap. 252 (1959 Edn.), sections 6 and 7—Necessary prerequisites—Examination of the suspected person to be carried out and the certificate to be signed, by the medical practitioner appointed ad hoc by the Court—Section 4—The Mental Patients Rules, r. 5 (1), Forms 3 and 4 of the Rules—The medical practitioner examining the suspected person must attend the Court and answer questions unless the Court otherwise direct—The Mental Patients Rules, r. 5 (4).*

*Information—Desirable that the informant should be questioned by the Court—Section 3 and the Mental Patients Rules, r. 2—Remand—Powers of the Court—No power to order confinement to Mental Hospital pending proceedings—Section 3—The Mental Patients Rules, r. 3—Proceedings at the inquiry—The Mental Patients Rules, r. 7 (1).*

In this case the lower Court adjudged the appellant to be a mental patient and a proper subject of confinement under section 6 of the Mental Patients Law, Cap. 252 (1959 Edn.) and ordered him, under section 7 to be confined in the Mental Hospital. Contrary to section 4 and the Mental Patients Rules, r. 5 (1) the examination of the appellant was carried out and the necessary certificate was signed, by a person other than the person appointed *ad hoc* by the Court. Contrary to the Mental Patients Rules, r. 5 (4), the medical practitioner who examined the appellant did not attend the Court at the inquiry, although the record discloses no direction by the Court dispensing with such attendance. There have been several other infringements of the Law and the Rules upon which the Court made observations for the guidance of Judges dealing with cases under the Mental Patients Law, Cap. 252 (1959 edn.).

On appeal, reversing the order.—

*Held:* (1) Contrary to the Mental Patients Law, Cap. 252 (1959 Edn.) section 4, the examination of the appellant was not carried out and the certificate was not signed, by the Medical practitioner appointed by the Court under that section and the Mental Patients' Rules, r. 5 (1); Consequently the certificate filed was bad.

(2) Contrary to the Mental Patients Rules, r. 5 (4) this medical practitioner examining the appellant did not attend

the Court at the inquiry though the record discloses no direction by the Court dispensing with such attendance under that rule.

(3) In the result the order made under section 7 confining the appellant as a mental patient to the Mental Hospital should be set aside.

*Appeal allowed.*

*Order of confinement set aside.*

*Per curiam:* (1) It is for obvious reasons extremely desirable that a Court should question an informant as to the grounds of his suspicion and belief. Rule 2 of the Mental Patients Rules provides for such a procedure. There was no such examination in the present case.

(2) The learned Judge on the 7th May 1960 fixed the inquiry for the 14th May, ordered the appellant to be confined in the meantime at the Mental Hospital and issued a warrant addressed to the Superintendent of the Mental Hospital, Nicosia, commanding him to detain the appellant until the 14th May for medical observation. While under section 3 for the purpose of an inquiry, the Court has the same powers as if the suspected person were a person against whom a complaint for an offence had been made, it is difficult to appreciate why a remand in custody should have been ordered at such a stage. In any event there is no power to make an order of confinement at a mental hospital except under section 7 of the Mental Patients Law, where a person has been duly adjudged a mental patient as a result of the full inquiry under section 6. The normal procedure which should have been followed is provided by rule 3 of the Mental Patients Rules.

(3) On the 11th May an application was made by letter on behalf of the mental specialist at the Nicosia Mental Hospital for an adjournment of the inquiry until the 21st May to enable investigations to be completed. The request was acceded to and the inquiry was fixed for the 21st May. The appellant remained in custody until that day. Whatever may be said as to the legality of the appellant's detention from the 7th May to the 14th May—the period covered by the warrant purporting to be issued under section 48 of the Criminal Procedure Law, Cap. 155 (1959 edn),—his retention in custody up to the 21st May was evidently unlawful because no further legal step of any kind was taken to remand him in custody from the 14th May.

(4) We cannot impress too strongly upon Courts the need for meticulous care in the holding of these inquiries—the same care as would be observed in the trial of criminal cases. That is the effect of Rule 7 (1) of the Mental Patients Rules.

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### Appeal.

Appeal against an order confining the appellant to the Mental Hospital, made by the D.C. of Kyrenia (St. Evangelides, D.J.) on the 21st May 1960 in Application No. 5/60.

*The appellant in person.*

*Sir James Henry, - Q.C., Attorney-General* for the respondent.

The appeal was allowed on the 7th June 1960, the Court intimating that reasons would be given later.

The facts sufficiently appear in the reasons which were given on the 10th June 1960, by :

BOURKE, C.J. : This was an appeal brought under section 9 of the Mental Patients Law, Cap. 252 (1959 Edn.). The appeal was allowed and the order of the lower Court adjudging the appellant to be a mental patient and a proper subject of confinement in a mental hospital was set aside. Because of the great care that falls to be exercised by a Court engaged upon an inquiry as provided for by the Mental Patients Law and because of the grave irregularities as disclosed upon the record, we undertook to give our reasons fully for guidance in the future.

Section 3 of the Mental Patients Law reads as follows:

“ Any Court, upon the information on oath of any informant to the effect that the informant has good cause to suspect and believe and does suspect and believe some person to be mentally afflicted and a proper subject of confinement, may, in any place which such Court deems convenient, examine such suspected person, and, in the same place or elsewhere, may hold an inquiry as to the state of mind of such suspected person. For the purposes of such inquiry, the Court shall have the same powers as if the suspected person were a person against whom a complaint for an offence had been made:

Provided that such Court may, if it thinks fit, proceed with such inquiry in the absence of the suspected person, and without proof of the service of a summons upon him ”.

On the 7th May, 1960, Police Sergeant Demetris Ioannou informed the District Court of Kyrenia in writing and on oath that he had good cause to suspect and believe the appellant to be mentally afflicted and a proper subject of confinement. It is for obvious reasons extremely desirable that a Court should question an informant as to the grounds of his suspicion and belief and Rule 2 of the Mental Patients Rules provides for such a procedure:

“ The information prescribed by section 3 of the Law shall be in writing and be sworn by the informant before the Court.

The Court may examine the informant on oath as to the grounds of his suspicion and belief and also ask him for the names of any medical practitioners who have attended or treated the person suspected of being mentally afflicted ”.

There was no such examination in the present case but the following entry was made upon the record:

“ Inquiry fixed for the 14.5.60. Mental Specialist to examine the respondent (appellant).

In the meantime respondent to be confined at the Mental Hospital ”.

A warrant was then issued by the learned Judge addressed to the Superintendent of the Mental Hospital, Nicosia, commanding him to detain the appellant in the Hospital until the 14th May, 1960, for medical observation.

While under section 3 for the purposes of an inquiry the Court had the same powers as if the suspected person were a person against whom a complaint for an offence had been made, it is difficult to appreciate why a remand in custody should have been ordered at such a stage ; our attention has been directed to no provision of law enabling an order for confinement to be made to a mental hospital except under section 7 of the Mental Patients Law where a person has been duly adjudged a mental patient as a result of the full inquiry. The normal procedure which should have been followed is provided for by Rule 3 of the Mental Patients Rules:

“3—(1). Upon receipt of any such information as aforesaid the Court may, if it so thinks fit, direct the issue of a summons calling on the suspected person to appear before the Court on a specified day for the purpose of an inquiry as to his state of mind.

(2) The summons shall also direct the suspected person to submit to an examination by the medical practitioner named therein upon production of his notice of appointment.

(3). Subject to the provisions of rule 17, the summons shall be served on the suspected person as early as possible ”.

On the same date, that is, the 7th May, the Judge issued a notice of appointment under section 4 (1) of the Law and Rule 5 (1) of the Mental Patients’ Rules addressed to “Supt. (sic) of Mental Hospital of Nicosia, a medical practitioner ” directing him to examine the appellant and to file the necessarily completed form of certificate in Court at least three days before the 14th May, 1960. Form 3 under the Rules provides for the insertion of the name of the medical practitioner ap-

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pointed but we do not think that it is strictly necessary to comply where the appointment is made of the officer, being a medical practitioner, in charge of a Government Mental Hospital and we make no point about the omission to insert a name. On the 11th May an application was made by letter on behalf of the mental specialist at the Nicosia Mental Hospital for an adjournment until the 21st May to enable investigations to be completed. This request was acceded to and the inquiry was fixed for the 21st May. On the 18th May a certificate was filed and on the 21st May the appellant was brought before the Court for the holding of the inquiry, which consisted of the reading of the certificate, informing the appellant of its contents and asking him if he had any witnesses to call. He had no witnesses to call and thereupon an order was made under section 7 confining the appellant as a mental patient to the Mental Hospital.

Now whatever may be said as to the legality of the appellant's detention from the 7th May to the 14th May—the period covered by the warrant purporting to be issued under section 48 of the Criminal Procedure Law, Cap. 155 (1959 edn.) his retention in custody up to the 21st May was evidently unlawful because no further legal step of any kind was taken to remand him in custody from the 14th May.

It is again obviously very desirable that a medical practitioner appointed who has examined a suspected person should attend the inquiry for questioning. Rule 5 (4) provides:

“ The medical practitioner examining the suspected person shall, unless the Court otherwise directs, attend the Court on the day fixed for the inquiry as to the suspected person's state of mind and answer such questions as the Court may see fit to allow ”.

In this case the record discloses no direction by the Court dispensing with the attendance of the medical practitioner and no medical practitioner attended the inquiry. But there is worse, because the certificate that was acted upon does not, taking it on its face, purport to be given by a medical practitioner and was not filled in and signed by the medical practitioner appointed by the Court, that is, the Superintendent of the Mental Hospital of Nicosia. The certificate purports to be filled in by a “ Dr. P. Papanicolaou of Nicosia and being in actual practice at Nicosia ” ; and it is signed “ P. Papanicolaou for Specialist Mental ”. The Form of medical certificate required under the Rules provides that the signatory should be described as “ a medical practitioner ” and this has been omitted from the form of certificate supplied by the Court under Rule 5 (1) and returned to the Court on the 18th May. But assuming that Dr. Papanicolaou is a medical practitioner within the meaning of section 2 of the Mental Patients Law, he was not appointed by the Court and he signed the certificate for a person described as a “ Spe-

cialist Mental ” who may or may not be the Superintendent of the Mental Hospital at Nicosia who was appointed and who was under obligation to carry out the examination himself and to sign the certificate himself. The requirements are to be observed from section 4 of the Mental Patients Law which reads:—

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“4.—(1) The Court shall also appoint a medical practitioner to examine the suspected person. Such medical practitioner if he considers that the facts warrant him so doing shall sign a certificate (in this Law referred to as the certificate) certifying that in his opinion the suspected person is in fact mentally afflicted and a proper subject of confinement as a mental patient.

(2) The medical practitioner before giving the certificate shall inquire of any person able to give him information as to the previous history of the suspected person and shall state in the certificate all matters known to him which he deems likely to be of service with reference to the medical treatment of such person.

(3) The certificate shall specify in full detail the facts upon which the medical practitioner founds his opinion and shall distinguish facts which he has himself observed from facts communicated to him by others ”.

Since the certificate filed was bad as not being in compliance with the notice of appointment issued by the Court, we do not propose to examine its contents further than to say that it seems reasonable and indeed necessary to have a fuller and more detailed statement of the “ facts communicated by others ” than appears in the document under consideration.

We only add that it is difficult to see anything that has been done right in this serious matter and we cannot impress too strongly upon Courts the need for meticulous care in the holding of these inquiries—the same care as would be observed in the trial of a criminal case. for as is provided by Rule 7 (1):—

“7.—(1) The procedure to be followed at the inquiry shall, as nearly as possible, be the same as the procedure followed in criminal proceedings upon summary trial ”.

*Appeal allowed. Order of  
confinement set aside.*