

1967
April 14

HAGOP
MICHAEL
DJEREDJIAN
AND ANOTHER
v.
THE REPUBLIC

[VASSILIADES, P., JOSEPHIDES AND HADJIANASTASSIOU, JJ.]

HAGOP MICHAEL DJEREDJIAN AND ANOTHER,

Appellants.

v.

THE REPUBLIC,

Respondent.

(Criminal Application Nos. 1/67 - 2/67).

Criminal Procedure—Appeal—Time—Extension of time to file appeal—Section 134 of the Criminal Procedure Law, Cap. 155—Discretion of the Court—Test applicable—“Good cause” must be shown—Section 134—The grounds on which the present applications to this Court are based, do not amount to such “good cause” as required under section 134 of Cap. 155, supra—Bearing in mind that the procedure laid down for the lodging of an appeal in criminal cases is different from that laid down in civil proceedings—Criminal Procedure Rules, rule 24—Civil Procedure Rules, Order 35, rule 4—Application for extension of time to file appeal against conviction under section 134 of Cap. 155, refused by the Supreme Court.

Appeal—Criminal appeal—Time—Application for extension of time to file appeal—See above.

Time—Extension of time to file appeal in a criminal case—Application for such extension—Refused—See above.

These are two applications whereby the Court is prayed to extend the time for lodging an appeal against conviction by the Assize Court of Famagusta on the 11th March, 1967. The applications were filed on the 28th March, 1967, that is to say seven days after the expiry of the time limit laid down for the lodging of the appeals.

The Court in dismissing both applications

Held, (1) the applications are based on section 134 of the Criminal Procedure Law, Cap. 155, and the test which will have to be applied is that “good cause” must be shown by the applicants to the satisfaction of the Court.

(2)—(a) The grounds on which the present applications are based are two: (a) That the notes of the proceedings were not ready to enable counsel to draft the grounds of

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appeal, and (b) that there were irregularities at the trial, viz. that the prosecution gave very short notice for the calling of witnesses who had not been called at the preliminary inquiry.

(b) In considering this matter this Court has to bear in mind that, whereas in civil proceedings the grounds of appeal have to be stated in the notice of appeal and no new ground may be filed nor the original grounds amended without prior leave of the Court (see Civil Procedure Rules, Order 35, rule 4), in criminal proceedings, however, there is express provision in rule 24 of the Criminal Procedure Rules, which enables an appellant to file amended grounds of appeal after the filing of his original notice of appeal without leave of the Court.

(c) We are of the opinion that in the present cases there was nothing to prevent learned counsel for the applicants from filing in time their appeals with one or two main grounds, with the additional ground of the alleged irregularities referred to above. If, after obtaining a copy of the notes of the proceedings, he came to the conclusion that additional grounds should be added, then under rule 24 (*supra*) he could have amended his grounds before the date of the hearing of the appeal, without leave of the Court.

(3) In these circumstances we are of the view that no "good cause" has been shown for extending the time within which to file an appeal, and both applications should be refused.

Applications dismissed.

Applications for extension of time.

Applications for an order extending the time within which the applicants may give notice of appeal against their conviction by the Assize Court of Famagusta, dated the 11th March, 1967, in Criminal Case No. 8271/66 of offences under sections 122, 116 (p) and (s) of the Bankruptcy Law, Cap. 5.

Chr. Mitsides, for the applicants.

A. Frangos, Counsel of the Republic, for the respondent.

VASSILIADES, P.: The judgment of the Court will be delivered by my brother Josephides, J.

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JOSEPHIDES, J.: In these two applications the Court is prayed to extend the time for lodging an appeal against conviction by the Assize Court of Famagusta pronounced on the 11th March, 1967. The application is based on section 134 of the Criminal Procedure Law, Cap. 155, and the test which has to be applied is that "good cause" must be shown by the applicant to the satisfaction of this Court.

As already stated, the judgment of the Assize Court, after a long trial, was delivered on the 11th March, 1967, and the charges involved in this case were charges under the Bankruptcy Law, Cap. 5, sections 122, 116 (*p*) and (*s*). The two accused were convicted and sentenced to terms of imprisonment, ranging from 3 to 18 months, but all terms are to run concurrently.

The present applications for extension of time to lodge an appeal were filed on the 28th March, 1967, that is to say, 17 days after the delivery of the judgment and seven days after the expiry of the time limit laid down for the lodging of the appeal. In the meantime, and five days prior to the lodging of the present application, that is, on the 23rd March, 1967, the Attorney-General of the Republic lodged an appeal on the ground of the insufficiency of the sentence of 18 months' imprisonment.

The grounds on which the present applications are based are two: (*a*) that the notes of the proceedings were not ready to enable counsel to draft the grounds of appeal, and (*b*) that there were irregularities at the trial, that is to say, that the prosecution gave very short notice for the calling of witnesses who had not been called at the preliminary inquiry.

In considering this matter the Court has to bear in mind that the procedure laid down for the lodging of an appeal in criminal cases is different from that laid down in civil proceedings. In the case of civil proceedings, when an appeal is lodged the grounds of appeal have to be stated in the notice of appeal and no new ground may be filed nor the original grounds amended without prior leave of the Court (Civil Procedure Rules, Order 35, rule 4). In the case of criminal proceedings, however, there is express provision in rule 24 of the Criminal Procedure Rules, which enables an appellant to file amended grounds of appeal after the filing of his original notice of appeal without any leave of the Court.

We are of the view that in the present case there was nothing to prevent learned counsel for the applicants from filing an appeal with one or two main grounds, with the additional ground of the alleged irregularities at the trial, referred to above. The fact that counsel did not have a copy of the notes of the proceedings would not prevent him from drafting these grounds of appeal, considering that he was defending counsel at the trial. If, after obtaining a copy of the notes of the proceedings, he came to the conclusion that additional grounds should be added, then under the provisions of rule 24 he could have amended his grounds before the date of hearing of the appeal, without leave of the Court.

In these circumstances we are of the view that no good cause has been shown for extending the time within which to file an appeal, and both applications should be refused.

Applications dismissed.

Orders accordingly.

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