ATHLITIKI EFIMERIS "O FILATHLOS" AND ANOTHER,
Appellants,

v.

THE POLICE,
Respondents.

(*Criminal Appeal Nos.* 2938 *and* 2939)
(*Consolidated*)

Criminal Law—Contempt of Court—Publishing article capable of prejudicing the fair trial of a pending judicial proceeding or calculated to lower the authority of any person before whom such proceeding is being had or taken—The Courts of Justice Law, 1960 (*Law of the Republic No.* 14 *of* 1960), *section* 44 (1) (*c*) *and the Press Law, Cap.* 79, *section* 3*A—Charge partly amended by the Court of Appeal by deleting therefrom the sentence "or calculated to lower the authority . . ."* (supra)*—Conviction otherwise affirmed—Sentences reduced.*

Contempt of Court—Press publications—See above.

Criminal Procedure—Plea of guilty—Appeal against conviction after a plea of guilty—When permissible—In addition to the provisions of section 135 (*b*) *of the Criminal Procedure Law, Cap.* 155, *the Court of Appeal can also entertain an appeal against conviction after such plea if it appeared* (*a*) *that the appellant did not appreciate the nature of the charge, or did not intend to admit that he was guilty of it; or* (*b*) *that upon the admitted facts he could not in law have been convicted of the offence charged—Criminal Procedure Law, Cap.* 155, *section* 135 (*b*) *as amended by section* 25 (2) *of the Courts of Justice Law*, 1960 (supra).

Criminal Procedure—Duplicity of charge—Point withdrawn by counsel in view of the provisions of sections 39 (*d*) *and* 153 *of the Criminal Procedure Law, Cap.* 155.

Appeal—Appeal against conviction after a plea of guilty—See above.

Section 135 (*b*) of the Criminal Procedure Law, Cap. 155 (read as amended under the provisions of section 25 (2) of the Courts of Justice Law, 1960, *supra*, provides that after

a plea of guilty a person shall only be entitled to appeal against conviction " on the ground that the facts alleged in the charge or information to which he pleaded guilty did not disclose any offence ".

The facts sufficiently appear in the judgment of the Court.

Cases referred to :

Attorney-General v. *Sidki Mahmout* 1962 C.L.R. 181 ;

Polykarpou v. *The Police* (reported in this part at p. 152 *ante*) ;

Ioannis Stylianou Klonarou v. *The District Officer etc.* (1963) 1 C.L.R. 47 ;

R. v. *Forde* (1923) 17 Cr. App. R. 99, at pp. 102–103, per Avory J.

Appeal against conviction and sentence.

Appeal against conviction and sentence by appellants who were convicted on the 26th June, 1967, at the District Court of Nicosia (Stylianides, D.J.) (Criminal Case No. 12327/67) on one count of the offence of contempt of Court, contrary to section 44 (1) (*c*) of the Courts of Justice Law, 1960, and section 3A of the Press Law Cap. 79 and appellant No. 1 was sentenced to pay a fine of £70 and appellant No. 2 was bound over in the sum of £200 for three years.

L. Clerides, for the appellants.

S. Georghiades, Counsel of the Republic, for the respondents.

VASSILIADES, P.: The judgment of the Court will be delivered by Mr. Justice Josephides.

JOSEPHIDES, J.: These are two appeals against conviction and sentence. The appellants are the publishing company and editor of a sports newspaper named " O Filathlos " which is published weekly. On their own plea they were convicted of contempt of Court under the provisions of section 44 (1) (*c*) of the Courts of Justice Law, 1960, and section 3A of the Press Law, Cap. 79. The first appellant, that is, the publishing company, were fined £70 and the second appellant, the editor, was bound over in the sum of £200 for three years " to keep the laws ".

The particulars of the charge were that the accused on the 10th April, 1967, while a criminal case was pending before the District Court of Nicosia, published in their newspaper an article which was capable of prejudicing the fair trial of such proceeding or calculated to lower the authority of any person before whom such proceeding was being had or taken.

The article in question is a short one and it reads as follows :

«ΑΝΤΙ ΝΑ ΕΛΘΗ ΑΡΩΓΟΣ

Ο ΔΗΜΟΣ ΛΕΥΚΩΣΙΑΣ ΕΝΗΓΑΓΕ ΤΗΝ ΚΟΠ

«Μὲ δικαιολογημένην ἀγανάκτησιν ἐπληροφορήθη ὁ φίλαθλος κόσμος ὅτι ὁ Δῆμος Λευκωσίας ἐκίνησεν ἀγωγὴν ἐναντίον τῆς ΚΟΠ, ἀπαιτῶν ἀπὸ αὐτὴν τὰ ποσοστὰ τοῦ ἀγῶνος Κύπρου-Ἰταλίας, ἀνερχόμενα εἰς £500.

Ἀθλητικοὶ παράγοντες παρετήρουν ὅτι ἡ Κυβέρνησις καὶ τὰ Δημαρχεῖα ὀφείλουν νὰ συμπαρίστανται εἰς τὰς ἀθλητικὰς ὁμοσπονδίας αἱ ὁποῖαι προσπαθοῦν νὰ προβάλλουν τὴν Κύπρον διεθνῶς καὶ οὐχὶ νὰ φορολογοῦν τοὺς ποδοσφαιρικοὺς ἀγῶνας ἀπὸ τοὺς ὁποίους προκύπτει πάντοτε ζημία.»

The accused were legally represented before the trial Judge and they both pleaded guilty. The prosecuting officer stated :

> " The facts are set out in the charge sheet and the copy of the publication appended to it. Accused No. 2 is the person responsible for the paper accused 1." ;

and he added that none of the accused had any previous convictions.

Learned counsel for the accused, in mitigation, stated that the first accused was " a partnership who for a long time are rendering services to the sports in this country " ; that both accused were first offenders, that the second accused was a clerk who in his leisure time edited the paper and counsel concluded as follows :

> " It is a fair comment. Only lack of experience led accused to the commission of this offence. The accused don't have any profit or benefit."

After hearing the plea in mitigation, the trial Judge proceeded to deliver judgment. He said :-

> " This offence is an offence which touches the proper administration of justice and the constitutional right of the citizen to have recourse freely to the Courts of the Republic. I take however into consideration the publication itself."

Mr. Clerides, on behalf of the appellants today, took three points in the appeal against conviction and he later addressed us also in support of the appeal against sentence.

The first point taken by learned counsel, in his able argument, was that the facts as stated before the trial Court in support of the charge did not disclose part of the offence to which the accused pleaded guilty. He conceded that the facts as stated by the prosecuting officer disclosed only the offence of publishing an article "capable of prejudicing the fair trial" of a pending judicial proceeding, but he contended that those facts did not support the charge of publishing an article "calculated to lower the authority of any person before whom such proceeding is being had or taken". In addressing us he relied on the provisions of section 135 (*b*) of the Criminal Procedure Law, Cap. 155, which (read as amended under the provisions of section 25 (2) of the Courts of Justice Law, 1960) provides that after a plea of guilty a person shall only be entitled to appeal against conviction "on the ground that the facts alleged in the charge or information to which he pleaded guilty did not disclose any offence"; and he cited the cases of the *Attorney-General* v. *Sidki Mahmout* 1962 C.L.R. 181 and *Polykarpou* v. *The Police* (reported in this vol. at p. 152 *ante*).

It appears, however, that this question was considered by the High Court of Justice in 1963 in the case of *Ioannis Stylianou Klonarou* v. *The District Officer*, (1963) 1 C.L.R. 47. In that case it was held by the High Court that, in addition to the provisions of section 135 (*b*) of the Criminal Procedure Law, where a plea of guilty had been recorded the Court could also entertain an appeal against conviction if it appeared—

(*a*) that the appellant did not appreciate the nature of the charge, or did not intend to admit that he was guilty of it; or

(*b*) that upon the admitted facts he could not in law have been convicted of the offence charged (per Avory J. in *R.* v. *Forde* (1923) 17 Cr. App. R. 99 at pp. 102–3; Archbold, 36th edition, para. 926, page 337).

Applying these principles to the facts of the case, considering the record of the proceedings before the trial Judge, as well as the charge and the particulars of the offence and the full article which formed the subject-matter of the charge and having heard counsel for the appellant,

we are of the view that upon the admitted facts the appellants could not in law have been convicted of the offence of publishing an article calculated to lower the authority of a judge, which was the act stated in the alternative in the particulars charging the offence. For this reason we hold that the charge of which the appellants were convicted should be amended by having those words deleted, but otherwise the conviction on the amended charge is affirmed.

The second point taken by counsel for the appellants was that the plea in mitigation, as put forward before the trial Judge, amounted to a defence of not guilty, which was inconsistent with a plea of guilty. In support of that submission, counsel referred to the plea in mitigation where it was stated that the article in question was "a fair comment". Having considered the record of the proceedings, we are satisfied that counsel's address in mitigation taken as a whole was not inconsistent with a plea of guilty.

The final point taken was that the charge was bad for duplicity but in the course of the argument, when the Court invited counsel's attention to the provisions of sections 39 (*d*) and 153 of the Criminal Procedure Law, Cap. 155, this point was very properly abandoned by the appellants.

Coming now to the question of sentence, this Court will have to approach this matter on the basis that the appellants were convicted of the offence of publishing an article capable of prejudicing the fair trial of a pending judicial proceeding, but not calculated to lower the authority of a judge. In considering the question of sentence, we take into account also the limited circulation of the weekly newspaper in question, as well as the fact that the editor is a man who does the editing in his spare time and that both the publishing company and the editor are first offenders.

Having taken all these matters into consideration, we are of the view that we would be justified in reducing the fine imposed on the first appellant, (the publishing company), from £70 to £50 and, in the case of the second appellant (the editor), in reducing the period of his binding over from three years to one year, but the other conditions of the binding over shall remain the same.

It should, however, be stressed that the reduced sentences in this case are not to be taken as the measure of punishment

to be imposed in cases of contempt of court arising out of publications in the press or elsewhere, and that the sentences now imposed on the appellants apply strictly to the special facts of the case.

In the result, the appeals against convictions are dismissed and the convictions affirmed on the charge as amended. Appeals against sentence allowed ; sentences reduced as above.

Order accordingly.

Appeals against convictions dismissed ; convictions affirmed on the charge as amended. Appeals against sentence allowed. Sentences reduced accordingly.