

“ MACHI ” LTD., NICOSIA AND ANOTHER,
Appellants,
v.
SENIOR SOCIAL INSURANCE OFFICER,
Respondent.

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“ MACHI ” LTD.,
NICOSIA
AND ANOTHER
v.
SENIOR SOCIAL
INSURANCE
OFFICER

(Criminal Appeal Nos. 2930 and 2931)
(Consolidated)

Criminal Law—Social Insurance—Failing to pay social insurance contributions, to exchange expired cards and refusing to produce a social insurance card—Sentence—Recovery of the arrears—Appeal against sentence as being manifestly excessive—Dismissed on the ground that in the circumstances the sentences imposed were not manifestly excessive—The Social Insurance Law, 1964 (Law No. 2 of 1964), sections 5 (1), 9 (6) (d) (e), 57 (1), 58 (3) (b), 73 (1) (2) (4) (9), and 77—See, also, herebelow.

Social Insurance—Contributions—Recovery of arrears—Punishment—Prosecutions—Delay in prosecuting in respect of the aforesaid offences (supra) deprecated—Undue delay in instituting the appropriate criminal proceedings is unfair to the accused and more so for the employees who may be, thus, deprived of one or several of the social insurance benefits provided under the said Law No. 2 of 1964 (supra), section 13, including sickness and unemployment benefits—Employers in default should, therefore, be prosecuted promptly—See, also, above.

Prosecution—Delay in prosecuting deprecated—See above.

The two appellants in this case are sister companies. They were jointly charged under 121 counts with failing to pay social insurance contributions in respect of 66 employees contrary to sections 5 (1), 9 (6) (e), 73 (1) (2) (4) and 77 of the Social Insurance Law, 1964 ; with failing to exchange expired cards in respect of 54 employees contrary to sections 9 (6) (d), 73 (9) and 77 of the Law ; and with refusing to produce a social insurance card contrary to sections 58(3)(b), 57 (1) and 77 of the same Law. Both appellants pleaded guilty and they were sentenced to pay fines totalling £283.250 mils and ordered to pay the arrears of the contributions amounting to £688.080 mils.

1967

June 27, 29,
Dec. 12

—
"MACHI" LTD.,
NICOŠIA
AND ANOTHER
v.
SENIOR SOCIAL
INSURANCE
OFFICER

They appeal against sentence. In dismissing the appeal the Court made the following observations regarding the delay in prosecuting in this case :—

" Before concluding we desire to comment on the delay of the prosecuting authority in instituting the present proceedings before the District Court (a period of over 13 months' arrears of contributions and another 4 months after the end of the period charged), and the resulting number of counts in one charge-sheet (121 counts). This delay is unfair for the accused and more so for the employees for whose benefit the Social Insurance Fund has been set up. Employers who fail to pay weekly the statutory contributions and to comply with the provisions of the Law should be prosecuted promptly "

Appeals dismissed.

Appeals against sentence.

Appeals against sentence imposed on the appellants who were convicted on the 15th May, 1967, at the District Court of Nicosia (Criminal Case No. 3597/67) on 121 counts of the offences of failing to pay social insurance contributions in respect of 66 employees, contrary to sections 5 (1), 9 (6) (e), 73 (1) (2) (4) and 77 of the Social Insurance Law, No. 2 of 1964 ; failing to exchange expired cards in respect of 54 employees contrary to sections 9 (6) (d), 73 (9) and 77 ; and with refusing to produce a social insurance card contrary to sections 58 (3) (b), 57 (1) and 77 of the same Law and were both sentenced by Stylianides, D.J., to pay a fine of £283.250 mils and were further ordered to pay the arrears of contributions amounting to £688.080 mils.

L. Cleridis, for the appellants.

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

Cur. adv. vult.

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

JOSEPHIDES, J.: The two appellants in this case are sister companies, the first appellant being the owner of a daily and a weekly newspaper and the second appellant the printer and publisher of the said papers. The latter also carries out other printing work. The two companies were jointly charged under 121 counts with failing to pay social insurance contributions in respect of 66 employees,

contrary to sections 5 (1), 9 (6) (e), 73 (1) (2) (4) and 77 of the Social Insurance Law, No. 2 of 1964 ; with failing to exchange expired cards in respect of 54 employees contrary to sections 9 (6) (d), 73 (9) and 77 ; and with refusing to produce a social insurance card contrary to sections 58 (3) (b), 57 (1) and 77 of the same Law.

Both appellants pleaded guilty to all counts and the learned trial Judge, after hearing the statement of facts presented by the prosecution and a plea in mitigation on behalf of the appellants, imposed fines on both appellants totalling £283.250 mils and ordered them to pay the arrears of the contributions amounting to £688.080 mils.

They now appeal against sentence only. Their main complaints are that, while the maximum punishment provided by law in respect of each offence is £50, a fine of £283.250 mils was imposed on them, that the 66 employees are not employed by both appellants as some are employed by the one appellant and the rest by the other appellant, and that the Court imposed a penalty on each appellant in respect of each employee.

After the two appellants pleaded guilty before the trial Judge, the prosecution in outlining the facts, in addition to the facts mentioned earlier in this judgment, stated that the appellants were repeatedly asked to pay the contributions due and exchange the social insurance cards but they failed or refused to do so. A number of their employees were dismissed but the appellants still failed to pay the social insurance contributions due under the law. The arrears of contributions set out in the charge-sheet were for a period exceeding 13 months, that is to say, from the 4th October, 1965 to the 23rd November, 1966. A notice under the provisions of section 73 (3) of the Law, in respect of one employee for 40 weeks' arrears in 1963-4, was issued and served on the appellants and a copy attached to the charge-sheet (count 121).

The plea in mitigation of counsel for the defence before the trial Judge was only 1 1/2 lines and nothing else. It reads as follows :

“ The accused apologise. They intend to pay the contributions due ”.

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In the course of the hearing of this appeal, and after it had been adjourned for further hearing, the appellants

1967
June 27, 29,
Dec. 12
—
“ MACHI ” LTD.,
NICOSIA
AND ANOTHER
v.
SENIOR SOCIAL
INSURANCE
OFFICER

1967
June 27, 29,
Dec. 12

—
"MACHI" LTD.,
NICOSIA
AND ANOTHER
v.
SENIOR SOCIAL
INSURANCE
OFFICER

paid off the arrears of the social insurance contributions ordered by the trial Court, namely, they paid the sum of £688.080 mils on the 28th June, 1967.

The substance of the argument before us of Mr. L. Clerides (who did not appear in the Court below) was that one or the other of the appellant companies was the employer, and not both, in respect of the same employees; that consequently one of the two companies (as the case may be) was punished for an offence which it had not committed; that in effect the two companies were one employer and that, therefore, the sentences imposed were, having regard to the realities of the case, manifestly excessive. Pausing there, we would observe that, if there was material to substantiate the appellants' allegations, they should not have both pleaded guilty to all counts. But as they both pleaded guilty and they did not raise this matter at all before the trial Court, they cannot at this stage be heard to put forward that defence. We are only concerned here with their appeals against sentence.

Considering the facts of this case as stated by the prosecution and the material placed before the trial Court on behalf of the defence, we are unable to say that the sentences are manifestly excessive. As already stated, the appellants, who were legally represented, pleaded guilty and through their counsel they apologised and stated that they intended to pay the contributions due, but they failed to put forward the grounds now argued on appeal and, what is more, although repeatedly asked by the responsible social insurance officer to pay the arrears in respect of the 66 employees before the filing of the charges, they failed to give particulars as to who of those employees were employed by the one company and who by the other; nor did they raise the question that one of the two appellant companies was the employer and not both. Consequently, they have themselves to blame for the situation they now find themselves.

It should also be borne in mind that the result of the failure of the appellant companies to pay their own contributions to the Social Insurance Fund was that many of their employees (including some who had left their service) were deprived of one or several of the social insurance benefits provided under the Law (section 13), including sickness and unemployment benefits.

For these reasons we hold that on the material before the trial Court the sentences were not manifestly excessive.

Before concluding, however, we desire to comment on the delay of the prosecuting authority in instituting the present proceedings before the District Court (a period of over 13 months' arrears of contributions and another four months after the end of the period charged), and the resulting number of counts in one charge-sheet (121 counts). This delay is unfair for the accused and more so for the employees for whose benefit the Social Insurance Fund has been set up. Employers who fail to pay weekly the statutory contributions and to comply with the provisions of the law should be prosecuted promptly.

In the result, the appeals are dismissed.

Appeals dismissed.

1967
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