[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

ATTORNEY-GENERAL OF THE REPUBLIC,
*Appellant,*

*v.*

PETROS DEMETRIOU HJICONSTANTI,
*Respondent.*

(*Criminal Appeal No.* 3043).

*Criminal Procedure—Charge—Framing of—Charge quashed as being bad for duplicity—Appeal by the Attorney-General—Criminal Procedure Law, Cap.* 155, *section* 39(*d*) (*and proviso thereto*) *applicable—Charge not bad for duplicity—In any case said proviso applicable, the accused having not been misled in any way—Moreover, accused was entitled to apply for further particulars of the charge if it was not sufficiently detailed—Appeal allowed.*

*The Citrus Groves* (*Survey and Registration*) *Law,* 1966 (*Law* 45/66) *sections* 7(2) *and* 8(1)(*a*) *and* (2)(*a*)(*b*)—*Charge for* " *Establishing or commencing to establish or suffering or permitting the establishment of a citrus grove without a permit* "—*Charge not bad for duplicity—See above.*

*Duplicity—Charge—See above under Criminal Procedure* ; *The Citrus Groves etc. etc. Law* 1966.

*Charge—Duplicity—See above.*

*Particulars—Better particulars of a charge to be supplied—See above.*

*Charge—Particulars—See above.*

In this case the accused (respondent) was charged under the provisions of section 7(2) and 8(1)(*a*) and 2(*a*)(*b*) of the Citrus Groves (Survey and Registration) Law 1966 (Law 45/66) " for establishing or commencing to establish or suffering or permitting the establishment of a citrus grove without permit ". The learned trial Judge having heard argument before plea, quashed the charge for two reasons :

(1) The charge as framed was bad for duplicity ; (2) the way the period assigned as the date of the commission of the offence as described in the particulars of the offence (viz. in Greek «ὁ κατηγορούμενος κατὰ ἤ περὶ τοὺς μῆνας

Μάρτιον ἕως Αὔγουστον τοῦ 1968» i.e. "The accused on or about the months of March to August 1968"), is such that it placed the accused in a very disadvantageous position.

Section 39(*d*) of the Criminal Procedure Law, Cap. 155, reads as follows :

"39 where an enactment constituting an offence states the offence to be the doing or the omission to do any one of different acts in the alternative or the doing or the omission to do any act in any one of different capacities, or with any one of different intentions, or states any part of the offence in the alternative the acts, omissions, capacities or intentions or other matters constituting the alternative in the enactment may be stated in the alternative in the count charging the offence :

.. .... .

Provided that no error in stating the offence or the particulars required to be stated in the charge shall be regarded at any stage of the case as non-compliance with the provisions of this Law unless, in the opinion of the Court, the accused was in fact misled by such error".

On appeal by the Attorney-General, the Court allowing the appeal,—

*Held*, (*per* JOSEPHIDES, J., VASSILIADES, P. *and* TRIANTAFYLLIDES, J., *concurring*) :

(1)—(*a*) Section 39(*d*) of the Criminal Procedure Law, Cap. 155 (*supra*) covers this case and it cannot be said that, having regard to the way the count was drafted it was bad for duplicity. In reading section 39(d), one should not lose sight of the proviso at the end of that section (*supra*) ; and we have not been persuaded that the accused (respondent herein) has been misled in any way.

(*b*) Moreover, it should be borne in mind that the accused was entitled to apply for further particulars of the charge if it was not sufficiently detailed : *Kannas* (*alias Pombas*) v. *The Police* (1968) 2 C.L.R. 29 at p. 38.

(2) With regard to the second reason for which the learned trial Judge quashed the charge (*supra*) he stated in his Judgment that he would have arrived at a different conclusion had the word «μεταξὺ» ("between") and not the word «κατὰ ἤ περὶ τοὺς μῆνας Μάρτιον ἕως Αὔγουστον τοῦ 1968»

(" on or about the months of March to August 1968 ") (*supra*) been inserted. But the count is clear enough as we are of the view that it gives notice to the accused that the charge which he has to face is *that between* the months of March and August, 1968 he either established or commenced to establish etc. etc. a citrus grove.

(3) For these reasons I would allow the appeal and set aside the order quashing the charge. The case would have to go back to the District Court for trial under the law.

*Appeal allowed. Order quashing the charge set aside; case remitted to the District Court for trial under the law.*

Cases referred to :

*Kannas (alias Pombas)* v. *The Police* (1968) 2 C.L.R. 29 at p. 38.

**Appeal against acquittal.**

Appeal by the Attorney-General of the Republic against the acquittal of the respondent by the District Court of Kyrenia, (Demetriades, D.J.) of a charge contrary to sections 7 (2), 8 (1) (*a*) and 2 (*a*) (*b*) of the Citrus Groves (Survey and Registration) Law, 1966 (Law No. 45 of 1966) for establishing or commencing to establish or suffering or permitting the establishment of a citrus grove without a permit.

*K. Talarides*, Senior Counsel of the Republic, for the appellant.

*A. S. Christofides*, for the respondent.

VASSILIADES, P.: I shall ask Mr. Justice Josephides to deliver the first judgement.

JOSEPHIDES, J.: This is an appeal by the Attorney-General of the Republic against the order of the District Court of Kyrenia quashing the charge and discharging the accused before plea, on the ground that the charge was bad for duplicity and defective.

In this case the accused was charged before the District Court of Kyrenia under the provisions of sections 7 (2) and 8 (1) (*a*) and (2) (*a*) (*b*) of the Citrus Groves (Survey and Registration) Law, 1966 (No. 45 of 1966), " for establishing or commencing to establish or suffering or permitting the establishment of a citrus grove without a permit ".

Before the plea was taken learned counsel for the accused took the objection that this count was bad for duplicity, that it was defective in that the accused was charged with having committed the offence over an unreasonably long period and that he was thus put in a disadvantageous position in preparing his defence, and that the said charge was oppressive.

The learned trial Judge after hearing both counsel address the court, accepted the submission on behalf of the defence and he quashed the charge and discharged the accused. The reasons given in his judgment were that by the words " suffering or permitting " to be established it was meant that " the accused could prevent or might have prevented the Commission of the offence and that he concurred in the commission of the act over which he had control ". In the learned Judge's opinion " they constitute an entirely different offence as they bear an ambiguous meaning in relation to ' establishing or commencing to establish ' " such grove. For these reasons the Judge found that the count was bad for duplicity.

With great respect to the Judge, we think that section 39 (*d*) of the Criminal Procedure Law, Cap. 155, covers this case and that it cannot be said that, having regard to the way the count was drafted, it was bad for duplicity. In reading section 39 (*d*) of the Criminal Procedure Law, one should not lose sight of the proviso at the end of that section, which lays down that no error in stating the offence or the particulars required to be stated in the charge shall be regarded at any stage of the case as non-compliance with the provisions of this Law unless, in the opinion of the Court, the accused was in fact misled by such error ; and we have not been persuaded that the accused has been misled in any way. Moreover, it should be borne in mind that the accused was entitled to apply for further particulars of the charge if it was not sufficiently detailed : *Kannas* (alias *Pombas*) v. *The Police* (1968) 2 C.L.R. 29 at p. 38.

The second reason for which the learned Judge quashed the charge was that he was of opinion that " the way the period assigned as the date of the commission of the offence as described in the particulars of offence is such that it placed the accused in a very disadvantageous position in that he will have to give an account for every month between March and August, 1968 ".

The actual words used in the original charge in Greek were « Ὁ κατηγορούμενος κατὰ ἤ περὶ τοὺς μῆνας Μάρτιον ἕως

Αὔγουστον τοῦ 1968». The learned Judge stated in his judgment that he would have arrived at a different conclusion had the word «μεταξὺ» and not the words, «κατὰ ἢ περὶ» been inserted in the charge. There, again, with great respect to the Judge, we do not think that we are prepared to agree with his approach of the matter. The count with regard to the period charged is clear enough as we are of the view that it gives notice to the accused that the charge which he has to face is that between the months of March and August, 1968, he either established or commenced to establish etc. a citrus grove.

For these reasons I would allow the appeal of the Attorney-General of the Republic and set aside the order of the trial Judge quashing the charge. The case would have to go back to the District Court for trial under the law.

VASSILIADES, P.: I agree ; and I would only add that the Criminal Procedure Law, Cap. 155, contains sufficient provisions to ensure the fair trial aimed at under the law. If at the opening of a trial the Judge is of the opinion, either on his own motion, or on the application of a party to the proceeding, that the charge as framed, is capable of creating embarassment to the defence or to the proper conduct of the trial, he has sufficient powers under the statute, to see that the embarrassment is removed ; and that the charge is framed in such a way as to form the foundation required for the criminal proceeding before him. I agree with the judgment just delivered by Mr. Justice Josephides and the order for trial suggested at the end.

TRIANTAFYLLIDES, J.: I agree too ; there is nothing much I would like to add.

I would summarize my reasoning by saying that as, in my view, in the charge there are set out alternative ways of committing the, really, *one* offence which has been created by section 8 (1) (*a*) of the Citrus Groves (Survey and Registration) Law (Law 45/66), this is a case to which para. (*d*) of section 39 of the Criminal Procedure Law (Cap. 155) is applicable ; such provision seems, indeed, designed to cover a situation of this nature.

VASSILIADES, P.: In the result this appeal is allowed, the order of the trial Judge quashing the charge is set aside and the case goes back to the District Court for trial under the Law.

*Appeal allowed ; case remitted to District Court for trial under the Law.*