

ANDREAS MILTIADOUS,

Appellant,

v.

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v.
THE POLICE

THE POLICE,

Respondents.

(*Criminal Appeal No. 3170*).

Road Traffic—Driving motor vehicle (tractor) without a licence—Regulation 27 (1) and 66 of the Motor Vehicles Regulations, 1959 to 1969—And using motor vehicle without a third-party insurance policy in force—Section 3 (1) (2) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333, as amended by Law No. 7 of 1960—Sentence of £40 fine and six months' disqualification from holding or obtaining a driving licence—Appeal against sentence—Allowed in part in that the disqualification order was discharged—See also infra.

Disqualification order—Section 3 (1) (2) of Cap. 333 (supra)—Such order for disqualification from obtaining or holding a driving licence is part of the sentence—It should, therefore, be justified on the principles governing sentence—The statutory provisions about minimum disqualification period unless there are "special reasons" must be read subject to the provisions of Article 12.3 of the Constitution which require that punishment must be proportionate to the offence—See also supra.

Constitutional Law—Article 12.3 of the Constitution—Requiring that the punishment must be proportionate to the offence—Effect of such constitutional provisions about "special reasons" and minimum disqualification period—See also supra.

Cases referred to :

- Stylianou v. The Police*, 1962 C.L.R. 152 ;
- Pyrilli and Another v. The Police* (1963) 1 C.L.R. 96 ;
- Dracos v. The Police* (1969) 2 C.L.R. 16 ;
- Spiritos v. The Police* (1969) 2 C.L.R. 36 ;
- Mirachis v. The Police* (1965) 2 C.L.R. 28.

The facts sufficiently appear in the judgment of the Court allowing in part the appeal against sentence of £40 fine and a disqualification order for six months, by discharging only the disqualification order.

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Appeal against conviction and sentence.

Appeal against conviction and sentence by Andreas Miltiadous who was convicted on the 11th May, 1970, at the District Court of Nicosia (Criminal Case No. 6862/70) on two counts of the offences of driving a motor vehicle without a driving licence, contrary to regulations 27 (1) and 66 of the Motor Vehicles Regulations, 1959 to 1969, and of using a motor vehicle on a road without having in force a policy in respect of third-party risks, contrary to section 3 (1) (2) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333, and Law 7 of 1960, and was sentenced by Pandelides, Ag. D.J. to pay a fine of £10 on the first count, a fine of £30 on the second count and he was further disqualified from holding or obtaining a driving licence for a period of six months.

Ch. Velaris, for the appellant.

A. Frangos, Senior Counsel of the Republic, for the respondents.

The following judgment was delivered by :

VASSILIADES, P. : The appellant, a young farmer in his early 30's from the village of Palechori, was convicted on May 11, 1970, in the District Court of Nicosia on a charge containing two counts : (a) Driving a motor vehicle without a licence contrary to regulations 27 (1) and 66 of the Motor Vehicles Regulations, 1959 to 1969 ; and (b) Using a motor vehicle on a road without a third-party insurance policy in force, contrary to section 3 (1) (2) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 and Law 7/60.

He appeared in Court with an advocate and pleaded guilty to both counts. He was sentenced to £10 fine on the first count and £30 fine on the second ; in addition, he was disqualified from holding or obtaining a driving licence for six months. He then replaced his advocate and took the present appeal against both conviction and sentence ; on the ground (according to the notice) that the sentence imposed by the trial Judge, is manifestly excessive, in the circumstances.

In the course of the hearing before us, it appeared that appellant's new advocate was now facing difficulties arising from a plea of guilty on facts which, in counsel's view, were hardly consistent with the plea. However, as some

of such facts were brought to light after the filing of the notice of appeal, counsel considered that in the circumstances, he could not press the appeal against conviction ; and he, therefore, had to abandon that part of the appeal. What now remains is to deal with the appeal against sentence.

As already stated, the sentence consists of £40 fine (£10 on the first count plus £30 on the second) and a disqualification order for six months. During the argument counsel conceded that, heavy as the fine may appear to be, it cannot be said that that part of the sentence was measured on wrong principle ; or that the fine is so manifestly excessive as to make it necessary for this Court to intervene. Counsel, therefore, confined his client's appeal to the disqualification order, apparently realizing that the heavy fine rather strengthened his position in attacking the disqualification order.

In *Solomos Stylianou v. The Police*, 1962 C.L.R. 152, the Court discussed on appeal, the effect of Article 12.3 of the Constitution on the provisions regarding disqualification in the Motor Vehicles (Third Party Insurance) Law, Cap. 333, under which the disqualification order was made. It was held in that case that disqualification is part of the sentence and as such, is part of the punishment prescribed for certain motoring offences. As no Law in the Republic can provide for a punishment disproportionate to the gravity of the offence, statutory provisions for a minimum period of disqualification and " special reasons " must be read and applied subject to the Constitution which requires that punishment must be proportionate to the offence.

Here the appellant, a holder of a driving licence in force under which he could drive his car and other ordinary motor vehicles classified in class " D ", was found driving his small tractor which is classified as vehicle in class " E ", which was not included in appellant's driving licence. He was driving his tractor in connection with his business ; and when reported by the police, he had his driving licence adjusted. Appellant's tractor was covered at the time of the offence by a third party policy in force ; and at that time he erroneously believed that he could drive his tractor with his ordinary driving licence for vehicles in class " D ". He is a first offender.

The effect of a defective driving licence on the third party policy of a vehicle was considered in *Anastassis Pyrilli and Another v. The Police* (1963) 1 C.L.R. p. 96, where it was held that a learner's permit, if it does not

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strictly come within the word “licence”, it is sufficient to bring the case within the words “other permit required by the licencing laws or regulations”; and the conviction under section 3 (1) and (2) of Cap. 333 was quashed. Mr. Velaris for the appellant, referred us also to *Dracos v. The Police* (1969) 2 C.L.R. 16 ; and to *Spiritos v. The Police* (1969) 2 C.L.R. 36, where these matters were again considered. A statement in the *Dracos* case (*supra*) by Mr. Justice Josephides would seem to fit well in the case in hand. After referring to *Stylianou v. The Police* (*supra*) he said (at p. 20) :

“ as I see it, the burden was on the accused to put before the Court the ‘special reasons’ which would justify the Judge to impose a disqualification less than six months. He put no material whatsoever before the trial Court and today his learned counsel in his address sought to put before us facts which did not appear on record.”

We find it unnecessary to deal with each of these cases here. Their effect is that a disqualification order is part of the sentence ; that the statutory provisions about “special reasons” and minimum disqualification period must be read subject to the Constitution ; that all relevant facts must be put before the trial Court ; and that a disqualification order being part of the sentence should be justified on the principles governing sentences and the objects which the sentence must serve. We must, therefore, now consider whether the disqualification order made in this case, on a first offender who needs his driving licence in order to use his small tractor for his farming business, is justified on principle as part of the sentence in addition to £40 fine, in the circumstances in which the offence was committed in this case.

In *Panayiotis Mirachis v. The Police* (1965) 2 C.L.R. 28 this Court discharged a disqualification order made on a garage mechanic taking the view that a disqualification order being part of the punishment must be justified on the principles governing sentence ; or else it should be discharged.

Without going further into the matter, we reach the conclusion without any difficulty or hesitation, that in the circumstances of the case in hand, the disqualification order should be discharged.

In the result, the appeal against conviction is dismissed; and the conviction stands. The appeal against sentence is partly allowed by affirming the sentences for the payment of fine and discharging the disqualification order.

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*Appeal against conviction
dismissed; appeal against
sentence partly allowed.*