

IOANNIS PAPAKYRIACOU,

*Appellant.*

v.

THE POLICE,

*Respondents.*

—  
IOANNIS  
PAPAKYRIACOU  
v.  
THE POLICE

(*Criminal Appeal No. 3586*).

---

*Remand order—Order remanding the suspect (Appellant) in police custody for eight days pending relevant police inquiries—Discretion of the Judge—Allegation of ill-treatment by the police—Not duly taken into account by the Judge—Consequently, the Judge did not exercise properly his discretion—Appeal under Articles 11.6 of the Constitution—Appeal allowed—Remand order set aside.*

*Criminal Procedure—Remand order—Article 11.6 of the Constitution—Ill-treatment by the police—Allegation—How such allegation should be dealt with by the Judge at that stage—Allegation of ill-treatment not duly taken into account—Appeal allowed—See further supra.*

*Constitutional Law—Order of remand—Appeal—Article 11.6 of the Constitution.*

*Ill-treatment—Allegations of the suspect arrested that he had been ill-treated by the police whilst in custody—How such allegations should be dealt with by the Judge when asked by the police to issue an order remanding in police custody the suspect—Cf. supra.*

This is an appeal under Article 11.6 of the Constitution against an order remanding the Appellant in police custody for eight days in connection with investigations by the police concerning the commission of offences in respect of which he has been arrested as a suspect.

It was alleged on behalf of the suspect (Appellant) that he had been ill-treated by the police during his custody. The Supreme Court held that the Judge failed to take properly into account the aforesaid allegation on the lines set out in *Nicolettides*

1974  
June 26  
—  
IOANNIS  
PAPAKYRIACOU  
v.  
THE POLICE

*and Another v. The Police* (1973) 2 C.L.R. 222, and allowing the appeal set aside the order of remand appealed from. The facts sufficiently appear in the judgment of the Court.

Cases referred to:

*Nicolettides and Another v. The Police* (1973) 2 C.L.R. 222.

**Appeal against remand order.**

Appeal by Ioannis Papakyriacou against the order of the District Court of Nicosia (Nikitas, D.J.) made on the 18th June, 1974 whereby Appellant was remanded in Police custody for eight days in connection with investigation by the Police concerning the commission of offences in respect of which he has been arrested as a suspect.

*C. Adamides*, for the Appellant.

*S. Nicolaidis*, Counsel of the Republic, for the Respondent.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: This is an appeal against an order remanding the Appellant in custody for eight days in connection with investigations by the police concerning the commission of offences in respect of which he has been arrested as a suspect.

The history of the present proceedings is as follows:

The remand order was made on June 18, 1974. This appeal was filed on June 19, and it came up for hearing before us on June 24. On that date counsel for the Appellant stated that though his client had complained to the Judge who issued the remand order that he had been ill-treated by the police prior to June 18, counsel had not been allowed to communicate, in this respect, with the Appellant until June 24, and that, as a result, it had not become possible to arrange for the Appellant to be examined by a doctor of his own choice; however, the Appellant was examined, on June 21, by a Government medical officer, as had been directed by the Judge on June 18.

As when the Appellant was brought before us on June 24 his counsel complained that he had been further ill-treated on June 23, we directed that there should be a further examination on June 24 by a Government medical officer and by another doctor to be chosen by the Appellant. The Government medical officer did examine the Appellant as directed by us,

but it did not become possible to arrange for an examination, at the same time, by a doctor chosen by the Appellant.

1974  
June 26

—  
IOANNIS  
PAPAKYRIACOU  
v.  
THE POLICE

The hearing of this appeal was resumed yesterday, June 25, and counsel for Respondents made available the medical reports in relation to both the aforementioned occasions on which the Appellant was examined by a Government medical officer. We need not refer, at length, to their contents; it suffices to say that they are such that it cannot be ruled out that during the period when the Appellant was in custody he may, somehow, have suffered some injuries on two occasions.

Though we cannot accept the submission of counsel for the Appellant that there was not placed before the Court below material sufficient to warrant the conclusion that there existed reasonable suspicion justifying the remanding in custody of the Appellant, we have reached the conclusion, after studying the text of the decision appealed from, that, indeed, the Judge, in deciding whether or not, and on what conditions, to issue the remand order, did not take duly into account, as a material factor, the Appellant's complaint that he had been ill-treated by the police while in custody (see, in this respect, *Nicolettides and Another v. The Police*, Cr. Apps. Nos. 3476-7, not reported yet\*); it is correct that the Judge directed that the complaint of the Appellant about ill-treatment should be investigated and that he should be medically examined in this connection, but, at the same time, the Judge expressed himself in terms which clearly indicate that he did not regard such complaint as a factor relating to the exercise of his relevant discretionary powers; and it is to be noted that the Appellant gave evidence before the Judge in support of his said complaint, and that his counsel drew the attention of the Judge to the relation between this complaint and the exercise of the Judge's powers in the matter.

In any event, the proper course, in the circumstances, was, in our opinion, for the Judge not to remand the Appellant in custody for longer than was reasonably necessary—(two or three days)—in order to enable a medical report to be produced about the condition of the Appellant and any other relevant investigation to be carried out, and then to have the Appellant brought once again before him so that he could decide, in the light of all available material, whether to grant a further remand

---

\* Now reported in (1973) 2 C.L.R. 222.

1974  
June 26

—  
IOANNIS  
PAPAKYRIACOU  
v.  
THE POLICE

order, and, if so, subject to what conditions, if any were to be deemed by him necessary in the circumstances.

In the light of all the foregoing we are of the view that this appeal should be allowed because a remand in custody for the longest permissible period of eight days was wrongly granted on June 18, 1974.

But, as pending the determination of this appeal, the Appellant was released from custody and as, in any case, the appealed from remand order would have expired today, we see no reason to make any further order in the matter.

*Appeal allowed.*