

1980 June 23

[TRIANTAFYLIDIS, P., L. LOIZOU, DEMETRIADES, JJ.]

HELEN ANASTASSATOU KAY,

Appellant.

v.

THE MUNICIPALITY OF LARNACA,

Respondent.

(*Criminal Appeal No. 4149*).

Criminal Law—Sentence—Disobedience to Court order—Appropriate sentence that of imprisonment—Fine should only be exceptionally imposed—Disobeying order to suspend building operations—Unlawful structures legalized by the consent for covering permit given by appropriate authority—Undue weight given to appellant’s failure to demolish structures concerned—Sentence of three months’ imprisonment excessive—Reduced.

5

The appellant was charged in Case No. 1/80 of the District Court of Larnaca for building without a permit contrary to the relevant provisions of the Streets and Buildings Regulation Law, Cap. 96. Such proceedings were preferred by the Municipality of Larnaca and the charge was filed on the 3rd January, 1980. On the same day on the application of the prosecution under s. 20(3A) of Cap. 96 an order was made by the Court commanding the appellant to suspend any further building operations until the final determination of the proceedings in the case (1/80), unless she appeared before the Court on the 18th January, 1980, to show cause why such order should not become absolute. The order in question was served on the appellant on the 7th January, 1980, and made absolute on the 22nd January, 1980. The appellant was, on the 23rd April, 1980, on her own plea, found guilty of the offence in Criminal Case No. 1/80 and was fined £20.— and was, also, ordered to demolish the building in respect of which the offence had been committed unless within two months a permit was obtained in respect thereof from the appropriate authority.

10

15

20

25

5 On the 6th February, 1980, Criminal Case No. 1055/80 was filed against the appellant charging her under s.137 of the Criminal Code, Cap. 154, with disobedience of the order made by the Court on the 3rd January, 1980, in that she, between the 7th day of January, 1980, (the date the Interim Order was served on her) and the 16th January, 1980, in disobedience to the order of the Court continued the unlawful building operations. This charge also was preferred by the Municipality of Larnaca. The appellant pleaded not guilty to the charge and after a full hearing 10 she was found guilty of the charge on the 10th May, 1980 but the case was adjourned for sentence to the 5th June, 1980 in order to enable the accused to comply with the order.

15 On June 5, 1980 counsel for the appellant informed the trial Court that the appellant had obtained a "covering permit" for what had been unlawfully constructed. That "permit" which was contained in a letter* from the appropriate authority dated the 27th May, 1980, was in substance but not in strict form a covering permit and the trial judge in passing sentence 20 rightly described it as an approval for the issue of such a permit, which aimed at legalizing the construction of what had been erected contrary to the order made on January 3, 1980, in case 1/80.

Upon appeal against a sentence of three months' imprisonment:

25 *Held, (L. Loizou J. dissenting)* that though by applying section 137 of Cap. 154 in conjunction with section 29 of the same Law it might be possible in law to impose a sentence of a fine, the imposition of a sentence of imprisonment was fully warranted in this case; therefore, such sentence was not wrong in principle; that a sentence of a fine should only, exceptionally, be imposed 30 in cases of disobedience to court orders, and such disobedience should be punished, as a rule, by a sentence of imprisonment of appropriate length; that the trial judge has erred in the sense that it was no longer open to him on June 6, 1980, when he passed the sentence of imprisonment for three months on the appellant, to attach such great importance, as he seems to have 35 attached, to the fact that the appellant had failed to demolish what she had constructed unlawfully in disobedience to the order of January 3, 1980, because prior to June 6, 1980, the

* The letter is quoted at pp. 248-249 post.

unlawful structures in question had in substance been legalized by the consent for a covering permit which had been given by the respondent Municipality; that the appellant could not be called upon, in order to expiate her disobedience to the aforesaid order, to demolish what she had by then been allowed by the Municipality to leave intact; that, so, undue weight was given to her failure to demolish the structures concerned; and that, therefore, the sentence of three months' imprisonment is manifestly excessive, and that a sentence of one month's imprisonment commencing as from June 5, 1980, when the appellant was placed in custody, is sufficient to teach her, what nobody should ever forget, that Court orders cannot be disobeyed with impunity.

Appeal partly allowed.

Cases referred to:

District Officer Nicosia v. Pittordi (1967) 2 C.L.R. 131 at pp. 131-132, 134-135;

Demosthenous v. District Officer Limassol (1967) 2 C.L.R. 171;

Ioannides v. Republic and Others (1971) 3 C.L.R. 8 at pp. 34, 62.

Appeal against sentence.

Appeal against sentence by Helen Anastassatou Kay who was convicted on the 6th June, 1980 at the District Court of Larnaca (Criminal Case No. 1055/80) on one count of the offence of disobedience of a lawful Court order contrary to section 137 of the Criminal Code, Cap. 154 and was sentenced by Pikis, P.D.C. to three months' imprisonment.

A. Koukounis, for the appellant.

Chr. Theodoulou, for the respondent.

Cur. adv. vult.

The following judgments were read:

TRIANAFYLLIDES P. The appellant was sentenced by the District Court of Larnaca, in criminal case 1055/80, to three months' imprisonment for disobedience of a lawful Court order, contrary to section 137 of the Criminal Code, Cap. 154; she had been placed in custody as from June 5, 1980, prior to the pronouncement of the sentence.

She appealed against the said sentence on June 7, 1980. On June 9, 1980, she applied by means of Criminal Application

4/80 to be released on bail pending the hearing of the present appeal, but this was refused on June 13, 1980, and this appeal was fixed for hearing on June 20, 1980, when judgment was reserved until today.

5 The appellant was found guilty on May 10, 1980, of the offence for which she was sentenced to three months' imprisonment. The salient facts of the case are as follows:

10 The respondent Municipality of Larnaca instituted, on January 3, 1980, criminal proceedings, namely case 1/80, against the appellant for building without a permit, contrary to the relevant provisions of the Streets and Buildings Regulation Law, Cap. 96. On the application of the Municipality there was made on January 3, 1980, under section 20(3)(a) of Cap.96, as amended by the Streets and Buildings Regulation (Amendment) Law, 1963 (Law 67/63), the Streets and Buildings Regulation (Amendment) Law, 1964 (Law 6/64), and the Streets and Buildings Regulation (Amendment) Law, 1974 (Law 13/74), an order commanding the appellant to refrain from carrying out any further building works at the site in question in Larnaca until the determination of criminal case 1/80. The said order was served on the appellant on January 7, 1980, and it remained in force until the determination of case 1/80, on April 23, 1980.

25 As was found by the trial court in convicting the appellant in case 1055/80, the appellant failed between January 7, 1980, and January 16, 1980, to comply with the aforementioned order which was made on January 3, 1980, and in disobedience of it continued building at the site concerned.

30 On February 6, 1980, the appellant was prosecuted for having acted in disobedience of the order of January 3, 1980, by means of the said case 1055/80, but the hearing of this case did not commence until May 2, 1980.

35 It is not in dispute that, in the meantime, on April 23, 1980, the appellant was convicted, by another judge of the District Court of Larnaca, in case 1/80, and was sentenced to pay a fine of £12. She was, also, ordered to demolish what had been unlawfully constructed, including obviously what had been constructed contrary to the order of January 3, 1980, unless she obtained, within two months, from the appropriate authority, a permit in respect thereof.

As was already stated above the appellant was found, on May 10, 1980, guilty of the offence of disobedience to the order made in case 1/80 on January 3, 1980, and on that date, counsel appearing for her stated that efforts were being made to obtain a building permit in respect of the premises which had been constructed unlawfully. 5

The same statement was repeated on her behalf on May 12, 1980, when it was added that she was, also, ready to demolish the unlawful structures within twenty to thirty days. As a result the passing of sentence in relation to the conviction of the appellant in case 1055/80 was adjourned to June 5, 1980; and when adjourning the case the trial judge stated the following:- 10

“I must impress upon the accused and everyone who may choose to act as the accused did that she can claim no mercy from the Court. I don't feel that I am deviating from my duty if I tell the accused that I plan to send her to prison if she fails to demolish that part of the building that was erected contrary to the order of the Court. If she does pull down that part of the building that was erected in contravention of the order of the Court, that is everything other than the basement floor and supporting walls, then certainly the Court will have good reasons for showing leniency and the Court may refrain in the end from sending the accused to prison. In order to enable the accused to comply with the order of the Court I shall adjourn this case for sentence to 5th June 1980.” 15 20 25

On June 5, 1980, counsel for the appellant informed the trial court that despite her unqualified respect for the courts and their orders it was technically impossible to carry out the demolition which would reinstate the position of the building in question to that which existed on January 7, 1980, and that in the meantime, the appellant had obtained a “covering permit” for what had been unlawfully constructed. That “permit”, which is contained in a letter of the chairman of the Municipal Committee of Larnaca, dated May 27, 1980, is in substance, but not, also, in strict form, a covering permit; and the trial judge in passing sentence rightly described it as an approval for the issue of such a permit, which aimed at legalizing the construction of what had been erected contrary to the order made on January 3, 1980, in case 1/80. 30 35 40

On June 5, 1980, after counsel for the appellant had informed the court, as aforesaid, the case was adjourned for the passing of sentence until June 6, 1980, and it was ordered that the appellant should remain in custody.

5 On June 6, 1980, in passing sentence the trial judge reiterated what he said earlier on May 12, 1980 (and which has already been quoted in this judgment) about the possibility of not sending the appellant to prison had she shown remorse by demolishing what she had unlawfully constructed in disobedience to the order of January 3, 1980; and, after finding that the respondent Municipality of Larnaca had encouraged the appellant, by means of the approval of the issue of the covering permit, not to show such remorse, proceeded to sentence the appellant to three months' imprisonment.

15 It is clear that the appellant obtained what has been described as a "covering permit" in an effort to comply with the order of April 23, 1980, whereby she was ordered in case 1/80 to demolish what had been unlawfully constructed unless she obtained, in the meantime, in respect thereof, a covering building permit.

20 ing permit.
It is, in my opinion, unfortunate that the disobedience by the appellant to the order made on January 3, 1980, in case 1/80, was not dealt with on April 23, 1980, when case 1/80 was determined and that the hearing of case 1055/80, by means of which the appellant was convicted of such disobedience and in which she was, eventually, sentenced to three months' imprisonment, was not completed before the determination of case 1/80. If either in determining case 1/80 or case 1055/80 before the determination of case 1/80 (when the appellant was given two months within which to obtain a covering building permit) the appellant was sentenced to three months' imprisonment for disobedience to the order made on January 3, 1980, I might not have been prepared to interfere in her favour on the ground that the said sentence of three months' imprisonment is excessive. But, today, I am faced with the situation that the appellant was sentenced to three months' imprisonment in case 1055/80 after she had been given the opportunity in case 1/80 to obtain a covering permit and after she had in essence, actually, obtained the approval for the issue of such a permit.

Before proceeding any further it is convenient to refer to some cases decided by the Supreme Court and to which reference was made by the trial judge in passing sentence on the appellant:

The first is that of *The District Officer, Nicosia v. Pittordi*, (1967) 2 C.L.R. 131, where a sentence of a fine of £2 was substituted by the Supreme Court by a sentence of three months' imprisonment in the following circumstances, which are set out in the headnote of the report of that case (at pp. 131-132):-

"The respondent was prosecuted in 1962 for constructing a building without the required permit under Cap. 96 (supra); she was convicted and ordered on the 31st December, 1962, by the Court to demolish the said building within two months. The respondent failed to comply with the said demolition order; and about two years later, was prosecuted again in a fresh case for the disobedience of the order under section 20(5) of the statute, Cap. 96 (supra). She was now bound over on June 24, 1964, in the sum of £50 to come up for judgment within a year, if called upon, for the offence of disobeying the demolition order made in December, 1962. Apparently, however, no steps for the demolition of the building were taken; and the respondent was prosecuted afresh by the public authority concerned, in 1966, for disobeying the said demolition order contrary to section 20(5) of the statute and for using the said building without the required certificate of approval contrary to section 10(1) of the same statute (i.e. Cap. 96, supra). On her plea she was convicted and sentenced to a fine totalling £2. It is against that sentence that the prosecuting authority now appeals, with the sanction of the Attorney-General under section 137(1)(b) of the Criminal Procedure Law, Cap. 155, on the ground that the sentence imposed is manifestly inadequate".

In his judgment in the *Pittordi* case, supra, Vassiliades P. stated the following (at pp. 134-135):-

"This Court, in the circumstances, has no difficulty or hesitation in reaching the conclusion that the appeal must be allowed; and the law be adequately enforced. The human element in a case must always be taken into consider-

5 ation by the Court; especially where it is as strong as in
the case in hand. Law and justice lose all their substance
if divorced from the human element. But the human ele-
ment is presumably taken into account by the legislature
as well, when they make the law. It is for the legislature
to consider the effect of proposed legislation upon people,
at the time of its enactment. When it becomes a law,
the Courts must apply it as it comes to them. Their
function is to apply the law. They have to do it upon
10 human beings, it is true; but they must apply it with due
regard to the purpose for which the law was made. Consi-
derations of hardships, or consequences on the feelings
of the persons concerned, must always be given due weight,
but they cannot be allowed to override proper enforcement
15 of the law.

We fully appreciate the desire of the Judge—reflected
in his sentence—to be kind to this woman; but such desire
should never have been allowed to interfere with his public
duty to enforce adequately the law”.

20 In *Demosthenous v. The District Officer, Limassol*, (1967)
2 C.L.R. 171, the Supreme Court upheld a sentence of one
month’s imprisonment for disobedience to a demolition order
made under section 20 of Cap. 96; and, apparently, it did not
proceed to increase the sentence of one month’s imprisonment
25 to three months, so as to bring the *Demosthenous* case, *supra*,
in line with the *Pittordi* case, *supra*, because in the meantime
the husband of appellant Demosthenous had carried out the
demolition directed by the order concerned.

30 In *Ioannides v. The Republic and others*, (1971) 3 C.L.R. 8,
in which sentences of fines were imposed, by majority, for diso-
bedience to an order of a Judge of the Supreme Court relating
to fundamental human rights of an applicant in a recourse
under Article 146, Vassiliades P. said (at p. 34):—

35 “After considerable difficulty and discussion, the majority
of the Court found it possible to agree in the end that taking
all circumstances into account, a sentence of imprisonment
can be avoided; and that an appropriate fine would meet
the case. I shall proceed to state my views; and shall
ask the other members of the Court to state theirs.

“I hold the view that a sentence of imprisonment should be avoided whenever such a course is possible (see *Panayiotis Mirachis v. The Police* (1965) 2 C.L.R. 28; *Polykarpou v. The Police* (1970) 2 C.L.R. 111 at p. 116); especially when imprisonment is likely to have such grave and far reaching consequences as in this case. It would here, inevitably, ruin the careers of senior officers of good character and long public service. Why such officers allowed themselves to fall into such a grave error, I am at a loss to understand. But the fact remains that they have fallen; and their conduct must be met with the punishment which will stop others from falling into the same pit.

In view of applicant’s return, I found it possible to bring myself to agree that imprisonment can be avoided for all the six respondents in this case. But the fines to be imposed must reflect the gravity of the offence”.

Also, as it appears from the judgment of Josephides J. in the same case (at p. 58) a consideration leading to the imposition of fines instead of sentences of imprisonment was the unblemished character and the personal circumstances of the respondents. Josephides J. stated, too, the following (at p. 62):-

“As already stated, superior orders constitute no defence and the respondents have all filed apologies for their conduct in obstructing the course of justice and they have unreservedly declared their respect to the Court and obedience to its orders.

Normally, in a case of contempt of this nature the appropriate punishment should be a term of imprisonment. But having given the matter most anxious consideration, after taking into account all mitigating circumstances, I would rather lean to the side of mercy and impose a fine instead of imprisonment.

Before concluding I would emphasize that I have decided to take this lenient course because this is the first time that anything of this kind has occurred and its seriousness may not have been realized by the persons concerned. After this warning, however, I do not think that it would be possible for me to show such lenience again”.

In the present case, though by applying section 137 of Cap.

154 in conjunction with section 29 of the same Law it might be possible in law to impose a sentence of a fine, I am of the opinion that the imposition of a sentence of imprisonment was fully warranted; therefore, I cannot agree with counsel for the
5 appellant that such sentence is wrong in principle.

In my view, a sentence of a fine should only, exceptionally, be imposed in cases of disobedience to court orders, and such disobedience should be punished, as a rule, by a sentence of imprisonment of appropriate length. As Chief Justice McKean
10 of the United States of America said (see, Borrie and Lowe on The Law of Contempt, 1973. p. 2):-

“ ‘Since, however, the question seems to resolve itself into this, whether you shall bend to the law, or the law shall bend to you, it is our duty to determine that the former
15 shall be the case’ ”.

What has given me cause for anxious consideration was whether the length of the sentence of imprisonment passed upon the appellant, namely three months, does not render such sentence manifestly excessive and wrong in principle in
20 the context of the present case:

It is not disputed that the appellant is a person of unblemished character, that she has rendered valuable services to our country by helping to cope with the consequences of the Turkish invasion of Cyprus, and that, as was stated in mitigation before the trial
25 court, she embarked upon the project, which involved the unlawful building works, with the intention of establishing a business which would support persons displaced by the said invasion.

Furthermore, I am of the opinion that the trial judge has erred in the sense that it was no longer open to him on June
30 6, 1980, when he passed the sentence of imprisonment for three months on the appellant, to attach such great importance, as he seems to have attached, to the fact that the appellant had failed to demolish what she had constructed unlawfully in disobedience to the order of January 3, 1980, because prior to June
35 6, 1980, the unlawful structures in question had in substance been legalized by the consent for a covering permit which had been given by the respondent Municipality. The appellant could not be called upon, in order to expiate her disobedience

to the aforementioned order, to demolish what she had by then been allowed by the Municipality to leave intact. So, undue weight was given, on June 6, 1980, to her failure to demolish the structures concerned; and it appears, from what the trial judge has stated in giving his reasons for passing the sentence in question on the appellant, that had she demolished the said structures he might have refrained from sending her to prison. 5

In the light of all the foregoing I have reached the conclusion that, in the circumstances, the sentence of three months' imprisonment is manifestly excessive, and that a sentence of one month's imprisonment commencing as from June 5, 1980, when the appellant was placed in custody, is sufficient to teach her, what nobody should ever forget, that Court orders cannot be disobeyed with impunity. I, therefore, have decided that this appeal should be allowed accordingly, and that the sentence passed on the appellant should be reduced to one month's imprisonment as from June 5, 1980. 10 15

L. LOIZOU J.: This is an appeal against a sentence of three months' imprisonment passed on the appellant by the District Court of Larnaca in Criminal Case No. 1055/80. 20

The facts, in so far as they are relevant for the purposes of this appeal, are as follows:

The appellant was charged in Case No. 1/80 of the District Court of Larnaca for building without a permit contrary to the relevant provisions of the Streets and Buildings Regulation Law, Cap. 96. Such proceedings were preferred by the Municipality of Larnaca and the charge was filed on the 3rd January, 1980. On the same day on the application of the prosecution under s.20 (3A) of Cap. 96 (as set out in s.2 of Law 67 of 1963 and as amended by s.4 of Law 13 of 1974) an order was made by the Court commanding the appellant to suspend any further building operations until the final determination of the proceedings in the case (1/80), unless she appeared before the Court on the 18th January, 1980, to show cause why such order should not become absolute. The order in question was served on the appellant on the 7th January, 1980. It was made absolute on the 22nd January, 1980 without the appellant appearing before the Court on the date it was made returnable to show cause for its discharge and it did remain in force until the deter- 25 30 35

mination of those proceedings on the 23rd April, 1980. It is
common ground that the appellant was, on her own plea, found
guilty of the offence in Criminal Case No. 1/80 and was fined
£20 and in addition a demolition order was made in the terms
5 of s.20(3)(a) of the Law i.e. she was ordered to demolish the
building in respect of which the offence had been committed
unless within two months a permit was obtained in respect
thereof from the appropriate authority

On the 6th February, 1980, Criminal Case No. 1055/80 was
10 filed against the appellant charging her under s.137 of the
Criminal Code, Cap. 154, with disobedience of the order made
by the Court on the 3rd January, 1980, in that she, between the
7th day of January, 1980, (the date the Interim Order was served
on her) and the 16th January, 1980, in disobedience to the order
15 of the Court continued the unlawful building operations. This
charge also was preferred by the Municipality of Larnaca. The
appellant pleaded not guilty to the charge and after a full hearing
in the course of which four prosecution and three defence wit-
nesses (including the appellant) were heard she was found guilty
20 of the charge.

The verdict of the Court is not challenged by this appeal.

The judgment of the Court was delivered on the 10th May,
1980. After hearing the final addresses of counsel the learned
trial Judge who heard the case thought it fair instead of passing
25 sentence forthwith to stress the seriousness of the offence and
the kind of punishment it would entail and to enquire whether
the accused was prepared, even at that late stage, to submit
to the dictates of the Court order by demolishing that part of
the building that was erected in disobedience to the order and
30 thus thereby restore, to a degree, the authority of the Court,
a fact that would be taken seriously into consideration as a
mitigating circumstance. Having received an affirmative answer
the Court granted a request for an adjournment to enable the
accused to carry out the demolition. The case was adjourned
35 to the 5th June, 1980, for sentence.

On that day the Court was informed by counsel that the
accused had not demolished the part of the building she under-
took to demolish but that she had, during the period that had
elapsed from the last adjournment, obtained a covering permit

from the Larnaca Municipality in respect of the whole structure; they produced to the Court what was described as a covering permit. This document is dated 27th May, 1980, and is addressed by the Chairman of the Municipal Committee of Larnaca to the Deputy Minister of the Interior. It has been marked in this Court as exhibit 'A'. It reads as follows: 5

“ Έντιμε Κύριε,

Αίτησις δι' άνέγερσιν ύπογείου Δισκοθήκης εις τά τεμάχ. ύπ' άρ. 438, Φ/Σχ.ΛΒ:3:II, Μπλόκ G-Σκάλα

‘Αναφερόμενος εις την ώς άνω αίτησιν την όποίαν υπέγραψε δια και εκ μέρους τής Κεντρικής Έπιτροπής Διαχειρίσεως Τουρκοκυπριακής περιουσίας ό Δικηγόρος του ‘Υπουργείου σας κ. Μάκης Παπάς δια την άνέγερσιν ύπογείου Δισκοθήκης στο άνωτέρω τεμάχιον, επιθυμώ νά σās πληροφορήσω ότι ό Δήμος Λάρνακος δέν έχει οίανδήποτε ένστασιν νά άναγερθή ή έν λόγω οίκοδομή ύπό τούς κάτωθι όρους: 10 15

1. Θα παραχωρηθῆ ή ρυμοτομία που επηρεάζει τὸ τεμάχιον εις τὸ όποϊον θα άνεγερθῆ ή οίκοδομή.
2. Θα εξασφαλισθῆ ή συγκατάθεσις τής Πυροσβεστικής ‘Υπηρεσίας. 20
3. Θα εξασφαλισθῆ ή συγκατάθεσις του ‘Επαρχιακου Μηχανικού του Τμήματος Δημοσίων Έργων.
4. Θα εξασφαλισθῆ πιστοποιητικόν Καταλληλότητας και άδεια λειτουργίας προτου τεθῆ σε λειτουργίαν ή Δισκοθήκη”. 25

(“Hon. Sir.

*Application for the erection of an
underground discoteque on plot
No. 438, Sh/Plan LB:3:II, Block G. Scala.*

With reference to the above application, which has been signed for and on behalf of the Central Committee for the Management of Turkish Cypriot Properties by the advocate of your Ministry Mr. Makis Papas, for the erection of an underground discoteque on the above plot, I wish to inform you that the Municipality of Larnaca has no 30 35

objection for the erection of the said building on the following conditions:

1. The street alignment which affects the plot on which the building is to be erected will be ceded.
- 5 2. The consent of the Fire Service will be obtained.
3. The consent of the District Engineer of Public Works Department will be obtained.
4. A certificate of suitability and an operation licence are secured before the discoteque starts functioning”).

10 It was explained to this Court that the application on behalf of the Central Committee for the Management of Turkish Cypriot Properties to which reference is made in the above document was made to the Municipality on the 15th May, 1980.

15 On the 6th June, 1980, the Court sentenced the appellant to three months' imprisonment and this appeal is against this sentence.

20 The ground of appeal is that the sentence imposed by the trial Court was not appropriate and/or that it was manifestly excessive and/or was not warranted by the circumstances and all the facts of the case particularly for the reason that a covering building permit had already been issued and had been produced to the Court before sentence.

25 The gist of the argument of learned counsel for the appellant in support of the appeal before this Court was that on the 23rd April, 1980, when the appellant was convicted in case No. 1/80 the Interim Order ceased to be in force and that although that judgment did not altogether remove the illegality committed as a result of the disobedience of the order it nevertheless mater-
30 rially diminished the seriousness of the offence. But the main force of his argument was based on the issue of the "covering permit" by the Municipality which in his submission restored the legality with regard to the unlawful erection of the whole structure.

35 At the conclusion of the hearing of this appeal I have not been satisfied that there is any ground on the basis of which this Court would be justified in interfering with the sentence

imposed on the appellant and I feel compelled to dissent from the conclusion reached by my brother Judges.

In my view the judgment under appeal is not open to any criticism and the sentence imposed is neither manifestly excessive nor is it wrong in principle. It is, of course, self-evident that the force of the Interim order given on the 3rd January, 1980, came to an end on the determination of the proceedings in Case No. 1/80; and although I have grave doubts as to the nature and, indeed, the validity of the document exhibit 'A' which has been described as a covering permit I do not propose to dwell on this matter as, in my view, it has no bearing on the case under consideration because even assuming that it is in fact a covering permit it could only have a bearing on the demolition order made by the Court in Case No. 1/80.

In so far as the present case is concerned the appellant was not punished either for building without a permit or for failing to demolish such structure. She was punished solely on the ground that in disobedience and in disregard to a lawful order made by a Court of competent jurisdiction commanding her to suspend the unlawful building works she deliberately continued the building operations for some nine or ten days after the said order was served on her personally. The learned trial Judge, if anything, went out of his way in order to give the appellant every opportunity to purge her contempt and at the same time restore the authority of the Court. For reasons of her own she chose not to avail herself of this opportunity.

This being the position I fail to see how the issue of a covering permit could either purge her contempt to any degree or at all or restore legality or be considered a mitigating circumstance; and it is, in my view, inconceivable and quite unacceptable that punishment for an offence of this nature could ever depend on the whim or on the discretion of an appropriate authority or, for that matter, of any authority other than the authority of the Rule of Law.

In the light of the above I would dismiss the appeal and affirm the sentence imposed by the trial Court.

DEMETRIADES J.: I agree with the judgment delivered by the President. I would like, however, to state that had the

5 appellant not been tried in this case after 'case No. 1/80, in which she was charged with building without a permit contrary to the provisions of the Streets and Buildings Regulation Law Cap. 96 and was convicted and given time to legalize her illegal act, I would have no hesitation not only to agree with the term of imprisonment imposed by the President of the District Court of Larnaca, but even to go further and increase the sentence to one of six months, because I consider that people that disobey orders of court should be severely punished.

10 TRIANTAFYLIDIS P.: In the result this appeal is allowed by majority; the sentence passed on appellant is reduced from three months to one month, to run from June 5, 1980.

15 *Appeal allowed by majority.
Sentence reduced from three months to one month.*