

1984 February 14

[A LOIZOU, MALACHTOS, SAVVIDES, JJ]

ANTONIS CHARALAMBOUS YERAKAS AND ANOTHER,
Appellants,

1

THE POLICE,

Respondents

(*Criminal Appeals Nos 4451 and 4452*)

5 *Criminal Procedure—Preliminary inquiry—Dispensing with—Consent of the Attorney-General under section 3(a) of the Criminal Procedure (Temporary Provisions) Law, 1974 (Law 42/74)—No particular form prescribed therefor—Sufficient if from the circumstances it can be inferred that it was given in respect of the offences appearing in the charge-sheet*

10 *Criminal Procedure—Preliminary inquiry—Committal for trial—Provisions of section 93(i) of the Criminal Procedure Law Cap 155 come into play only where a preliminary inquiry is held and not when the holding of a preliminary inquiry is dispensed with under section 3(a) of the Criminal Procedure (Temporary Provisions) Law, 1974 (Law 42/74)*

15 *Jurisdiction—Territorial jurisdiction—Question of—Whether it can be raised and dealt with after the commencement of the trial—Offences committed in the Districts of Nicosia-Larnaca—They may be tried by the District Court of Larnaca—Section 23(2) of the Courts of Justice Law, 1960 (Law 14/60) and section 3 of the Courts of Justice (Temporary Provisions) Law, 1974 (Law 43/74)*

20 By means of a charge-sheet which was filed on the 31st May, 1983, at the District Court of Larnaca the two appellants were charged on two counts for abduction, two for rape and one for attempt to commit rape. On the same date the prosecuting officer filed the consent* of the Attorney-General of the Republic,
25 under section 3(a) of the Criminal Procedure (Temporary Pro-

* The consent is quoted at pp 9-10 post.

visions) Law, 1974 (Law 42/74) for dispensing with the holding of a preliminary inquiry. Subsequently this case was dealt with by a District Judge the Attorney-General having filed a consent under section 155(b) of Cap. 155, and both appellants were convicted on the counts of abduction and rape and appellant 2 on a count of indecent assault. 5

Upon appeal against conviction counsel for the appellants contended:

- (a) That there did not exist the consent of the Attorney-General which is required to be given under section 3(a) of Law 42/74 for the purpose of dispensing with the holding of a preliminary inquiry because the consent was given on a date prior to the filing of the criminal case and of the framing of the relevant charges and because the case number, the date and the district in which the case was to be filed, as well as the space for the description of the charges were left blank and that there was only a mere reference that he consented to the non holding of a preliminary inquiry in respect of the case filed against the two appellants. 10 15 20
- (b) That the two appellants were committed by the Judge to the Assize Court sitting in the District Court of Larnaca at the time which, in fact, had been sitting in that district since the 23rd May and that this was in violation of section 93(i)* of the Criminal Procedure Law, Cap. 155. 25
- (c) That the trial Court failed to try the question of its jurisdiction to deal with the case.

Regarding (c) above the trial Court dealt with the question of jurisdiction though raised after the commencement of the hearing and concluded that he could examine same at that stage. On the substance of the objection the trial Judge held that 30

* Section 93(i) provides as follows:

“Where a Judge holds a preliminary inquiry, the following provisions shall apply:

_____the Judge shall commit him for trial by the Assize Court next sitting in the district in which the offence is alleged to have been committed, or with the consent of the accused and the Attorney-General to an Assize Court then in session in such district_____”.

5 having in mind the provisions of section 23(2) of the Courts of Justice Law, 1960 (Law No. 14 of 1960) and the provisions of section 3 of the Courts of Justice (Temporary Provisions) Law 1974, (Law No. 43 of 1974), as well as the contents of the relevant charges of abduction and rape, where for the offence of rape it was expressly mentioned that it took place in the area of Tzionia near the holy Monastery of Macheras, in the Districts of Larnaca-Nicosia, he had jurisdiction to proceed with the trial of the case.

10 *Held*, (1) that no particular form is prescribed for the consent given under the provisions of s.3(a) of Law 42/74; that it can be sufficient if from the circumstances it can be inferred that such consent was given in respect of the offences appearing on the charge-sheet of the criminal case in which same is filed; and that the fact that it bore a date prior to the signing of the charge-sheet and its filing does not change the position as there is nothing on record to suggest that this consent was not given in respect of the charges which appear on the charge-sheet in question; accordingly contention (a) must fail.

20 (2) That the provisions of section 93(i) of Cap. 155 come into play only where a preliminary inquiry is "held" and in the present case no preliminary inquiry was held, as the consent of the Attorney-General was given for the purpose of dispensing with holding one; accordingly contention (b) must fail.

25 (3) That the trial Court had jurisdiction to try the case (see section 23(2) of the Courts of Justice Law, 1960 (Law 14/60) and section 3 of the Courts of Justice (Temporary Provisions) Law, 1974 (Law 43/1974)); that further the trial Judge rightly concluded that he could examine the question of jurisdiction even though it was raised after the commencement of the trial.

Appeals dismissed.

Cases referred to:

- 35 *In re Economides* (1983) 1 C.L.R. 933;
R. v. Kouloumbrides, 8 C.L.R. 65;
R. v. Reis and Others, 12 C.L.R. 8;
Mouyios and Others v. Police (1974) 2 C.L.R. 23.

Appeal against conviction.

Appeal against conviction by Antonis Charalambous Yerakas and Another who were convicted on the 25th July, 1983 at the

District Court of Larnaca (Criminal Case No 4592/83) on two counts of the offence of abduction contrary to sections 148 and 20 of the Criminal Code, Cap. 154, on one count each of the offence of rape contrary to sections 144 and 145 of the Criminal Code, Cap. 154 and accused 2 on one count of the offence of indecent assault contrary to sections 151 and 35 of the Criminal Code, Cap. 154 and were sentenced by Eliades DJ as follows: Accused 1 to one year's imprisonment on counts 1 and 2 and to three years' imprisonment on count 3, accused 2 to one year's imprisonment on counts 1 and 2, to two years' imprisonment on count 4 and nine months' imprisonment on count 5, the sentences to run concurrently

A Mathikolomis, for the appellants.

Cf Antoniadis, Senior Counsel of the Republic, for the respondents

A LOIZOU J. gave the following judgment of the Court. These two appeals which have been heard together are against the conviction of the two appellants in respect of a number of offences which were, one of abduction of Anne Kristine Badsvic, another for abduction of Agnes Kristine Wik, both of Norway contrary to sections 148 and 20 of the Criminal Code, Cap. 154, the third for the rape of the first complainant, contrary to sections 144 and 145 of the Code, and the fourth, one of indecent assault in respect of which only appellant 2 was convicted

Their appeals against the sentence imposed on them in respect of these two offences were withdrawn at the outset of the proceedings and their counsel has confined his argument to three grounds of Law only with which we shall deal in due course

The first ground is that there did not exist the consent of the Attorney-General which is required to be given under the provisions of the Criminal Procedure (Temporary Provisions) Law, 1974 (Law No 42 of 1974), for the purpose of dispensing with the holding of a preliminary inquiry regarding the offences in question and/or the consent filed was invalid and/or nonexisting as it was given on a date prior to the filing of the Criminal Case No 4592/83 in the District Court of Larnaca and of the framing of the relevant charges against the two appellants

The facts relevant to this issue are these. The two appellants who had been remanded in custody for police investigations into a number of offences in respect of which they ultimately

stood for trial, were brought up before a Judge of the District Court of Larnaca and the aforesaid case was filed on the 31st May, 1983 having been signed on behalf of the Divisional Police Commander of Larnaca and with the approval of a Judge.
 5 both done on the same date. The charge-sheet contained five counts, two for abduction, two for rape and one for attempt to commit rape against appellant 2.

The charges were read over and explained to them by the Judge who also explained to them the nature of the proceedings.
 10 As the record of the Court goes in respect of that date the prosecuting officer filed then the written consent of the Attorney-General (exhibit A), for dispensing with the holding of preliminary inquiry. Thereafter the prosecuting officer filed the summary of the statements of the witnesses for the prosecution
 15 (exhibit B) and informed the Judge that copies of same had been given to the counsel of the two appellants who was at the time appearing for them. There was a short break and the Judge ruled that the holding of a preliminary inquiry was not necessary in that case having in mind the consent of the Attorney-
 20 General filed and also the contents of the statements. He went on to say that in the circumstances as disclosed by those statements there were sufficient reasons for the committal of the two appellants for trial before the Assize Court, at that time sitting in Larnaca, and directed that the two appellants should appear
 25 before it on the following day, that is the 1st June, 1983. There followed an application on behalf of the two appellants that they should be released on bail, which was opposed by the prosecuting officer. The Judge after hearing arguments from both sides released the two appellants on bail but imposed certain conditions with which we are not concerned here.
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The said consent which was in cyclostyled form with empty spaces, some duly filled in and some not, reads:

“CRIMINAL PROCEDURE

(TEMPORARY PROVISIONS LAW OF 1974)

35 **CONSENT OF THE ATTORNEY-
 GENERAL OF THE REPUBLIC BY VIRTUE
 OF THE PROVISIONS OF SECTION 3(a)**

—

In the exercise of the powers given to me by virtue of the provisions of Section 3(a) of the Criminal Procedure

(Temporary Provisions) Law 1974, hereby give my consent that it is not necessary to hold a preliminary inquiry in Criminal Case Number _____ filed in the District Court _____ against Antoni Charalambous Yeraka of Panayia, Paphou and Charalambous Andreou Keveze from Milikouri, now at Ypsona _____ Accused. 5

Nicosia, the 30th May, 1983.

(Sgd.) Attorney-General of the Republic.

District: Larnaca 10
Station: Larnaca
Register of Crimes: 162/83."

Subsequently, the Attorney-General of the Republic filed, under section 115(b) of the Criminal Procedure Law, Cap. 155, his consent with a direction that the said case "be tried and determined by a District Judge or a Senior District Judge, or the President of the District Court of Larnaca, notwithstanding that the offences aforesaid could not otherwise be triable by a District Judge." 15

As a result of this second consent, the case was heard and determined by a District Judge of the District Court of Larnaca. 20

Counsel for the appellant has pointed out that in the consent of the Attorney-General hereinabove set out, given under section 3(a) of Law No. 42/74, the case number, the date and the district in which the case was to be filed, as well as the space for the description of the charges were left blank and that there was only a mere reference that he consented to the non holding of a preliminary inquiry in respect of the case filed against the two appellants. 25

Section 3 of Law 42/74, as it then was before its amendment by Law 44/83, reads as follows:- 30

"During the continuance in force of the Courts of Justice (Temporary Provisions) Law, 1974, and notwithstanding the provisions of section 92 of the Criminal Procedure Law, in cases of offences created by the Criminal Code or any other Law in force, with the exception of offences punishable with the death penalty, if - 35

- (a) the Attorney-General of the Republic gives his written consent to the effect that it is not necessary to hold a preliminary inquiry; and
- 5 (b) the 'substance' (now 'copy' by virtue of Law 44/83) of the statement of each prosecution witness, whom the prosecution intends to call, is served in advance on the accused or his advocate,

the Court has power to commit for trial, without a preliminary inquiry, any accused person".

10 As clearly seen from the text, no particular form is prescribed for the consent given under these provisions and to our mind it can be sufficient if from the circumstances it can be inferred that such consent was given in respect of the offences appearing on the charge-sheet of the criminal case in which same is filed.

15 We have considered the arguments of counsel and we have come to the conclusion that in the light of the circumstances under which this consent was filed, same could not but have been given in respect of the charges set out in the charge-sheet and it was in that sense that it was filed and accepted by the
 20 Judge, hence the non holding of a preliminary inquiry and the committal of the two appellants for trial without it. The fact that it bore a date prior to the signing of the charge-sheet and its filing does not change the position as there is nothing on record to suggest that this consent was not given in respect of the
 25 charges which appear on the charge-sheet in question. On the contrary it would only be material to be given prior to the filing of the charge and when the Attorney-General's advice is normally sought.

We find, therefore, no merit in this ground.

30 The second ground is that the two appellants were committed by the Judge to the Assize Court sitting in the District Court of Larnaca at the time which, in fact, had been sitting in that district since the 23rd May and that this was in violation of section 93(i) of the Criminal Procedure Law, Cap. 155, which
 35 provides:-

"..... the Judge shall commit him for trial by the Assize Court next sitting in the district in which the offence is alleged to have been committed, or with the consent of the

accused and the Attorney-General to an Assize Court then in session in such district".

As it has been rightly pointed out this provision is a paragraph of section 93 which in its opening part reads: "Where a Judge holds a preliminary inquiry, the following provisions shall apply". The question, therefore, is whether all the provisions or any of them, apply in the case where no preliminary inquiry is held. 5

Giving to the said words "where a Judge holds a preliminary inquiry" their ordinary and literary meaning, one cannot escape from the fact that the various provisions of this section, including para. (i), come into play only where a preliminary inquiry is "held" and in the present case no preliminary inquiry was held, as the consent of the Attorney-General was given for the purpose of dispensing with holding one. Such approach is also to be found in the Applications by *Phaedon G. Economides & Others*, for an Order of Certiorari delivered by Triantafyllides, P., on 21st June 1983,* not yet reported, likewise concluded that the provisions of sections 93(h) and 94 of Cap. 155 are only applicable if there is held a preliminary inquiry under section 92 of Cap. 155. 10 15 20

This ground, therefore, also fails.

The last ground turns on the question of the jurisdiction of the trial Court. This was an issue which was raised in the course of the trial and not by way of special plea under section 69(1) of the Criminal Procedure Law. The learned trial Judge dealt with the issue having first examined whether an objection to the jurisdiction ought to have been raised before the commencement of the hearing or not and referred in that respect to the case of *R. v. Kouloumbides*, 8 C.L.R. p. 65; *R. v. Reis and others*, 12 C.L.R. p. 8 and on the basis of these authorities concluded that he could examine same at that stage. On the substance of the objection he said that having in mind the provisions of section 23(2) of the Courts of Justice Law, 1960 (Law No. 14 of 1960) and the provisions of section 3 of the Courts of Justice (Temporary Provisions) Law 1974, (Law No. 42 of 1974), as well as the contents of the relevant charges of abduction and rape, where for the offence of rape it is expressly mentioned that it took place in the area of Tzonia near the holy Monastery of Macheras, in 25 30 35

* Reported in (1983) 1 C.L.R. 933.

the District of Nicosia, he concluded that he had jurisdiction to proceed with the trial of the case.

Section 23(2) of Law 14 of 1960 provides that, where an offence is committed on the boundary of two or more districts or within
5 a mile of the boundary or is committed partly in one district and partly in another or other districts, such offence may be tried by the District Court of either or any such district as if it had been wholly committed in the district in which it is tried. For the purposes of this subsection 'district' includes the Sovereign
10 Base Areas.

Section 3 of Law 43 of 1974, provides that during the abnormal situation and irrespective of the provisions of section 23(2) of the Courts of Justice Laws, 1960-1972, every District Court
15 has jurisdiction to try, in accordance with the provisions of section 24 any offence committed in any district of Cyprus.

We endorse the approach of the learned trial Judge and we feel that the position is aptly summed up in the Criminal Procedure in Cyprus, by A. N. Loizou and G. M. Pikiş at p. 91, where it is stated:

20 "A plea to jurisdiction must be made before the accused pleads to the charge. (*R. v. Ali Ahmet Reis and Others*, 12 C.L.R. 8). If the accused pleads to the charge and it subsequently appears that the jurisdiction of the Court is questioned, then the proper course to follow is for the Judge to allow the
25 plea to be withdrawn, enter a special plea and proceed to try the question of jurisdiction preliminary to the main issue.

Failure on the part of an interested party to object to
30 jurisdiction, where none is possessed by the Court of trial, does not validate the proceedings and objection to jurisdiction may be taken for the first time on appeal. The question of jurisdiction is a matter of substance going to the root of the proceedings and may be raised *ex proprio motu* by the Court. Where jurisdiction is wrongly assumed by

the Court, the proceedings are a nullity. (*Mouyios and Others v. The Police* (1974) 2 C.L.R. p. 23”).

This ground therefore also fails.

For all the above reasons these appeals are dismissed.

Appeals dismissed. 5