

1985 November 14

[A: LOIZOU, DEMETRIADES, STYLIANIDES, JJ.]

RENOS CHRISTODOULIDES,

Appellant,

v.

THE POLICE,

*Respondents.**(Criminal Appeal No. 4660).*

Criminal Law—Sentence—Disobedience to lawful orders contrary to s. 137 of the Criminal Code, Cap. 154—Appellant disobeyed an order of the D. C. Nicosia to file statements of assets and liabilities and income tax returns with the Income Tax Office—3 months' imprisonment suspended for 3 years and a fine of £100—Sustained. 5

Criminal Procedure Law, Cap. 155—S. 135—Appeal against conviction upon a plea of guilty.

The appellant was charged before the District Court of Nicosia with the offence of disobedience of lawful orders contrary to s. 137 of the Criminal Code, Cap. 154. The particulars of the offence set out in the charge sheet were that the appellant did omit to comply with the order of the District Court of Nicosia in Criminal Case 20422/83, whereby the appellant had been ordered to furnish to the Income-Tax Office a statement of assets and liabilities as on the 31.12.75 and 31.12.82 with returns of taxable income showing his profits for the years 1976-1982. 10 15

The appellant, who was duly represented by counsel at his trial, pleaded guilty to the said charge. In his address in mitigation appellant's counsel said that several of the appellant's books of account were in the possession of accountant P. and several others in the possession of accountant S. The death of one of his accountants prevented 20

the other from taking the books in the possession of the deceased. Finally counsel assured the Court that the appellant had prepared the statement in question which he had handed to the appropriate authority and requested the trial Court to take into consideration the appellant's efforts to comply with the order, the fact that there was no real intention for any disobedience of the Order and that the appellant was a first offender and a very active business man.

The trial Judge sentenced the appellant to three months' imprisonment suspended for three years and ordered him to pay a fine of £100.-

As a result the appellant filed the present appeal both against conviction and sentence.

Held, dismissing the appeal against conviction: (1) Section 135 of the Criminal Procedure Law, Cap. 155 regulates the question of appeals after a plea of guilty*. In determining the present appeal this Court cannot go beyond the record of the trial Court and question the legality of the proceedings that led to the order in criminal case 20422/83. (2) The ingredients of the offence under s.137 of Cap. 154 are (a) The existence of an order given by any Court and (b) disobedience to it. (3) As the charge to which the appellant had pleaded guilty disclosed the essential ingredients of the offence, the appeal against conviction has to be dismissed.

Held, further, dismissing the appeal against sentence, that the trial Judge rightly took a serious view of two aspects of the case, i.e. the need to discourage disobedience of orders of the Courts and the need of compliance to Revenue Laws for the purpose of discharging ones duty and paying as every citizen must what he is assessed to owe under their provisions to the state. Due compliance with Revenue Laws brings all citizens to an equal footing in bearing the burdens towards the state.

Appeal dismissed.

* The relevant part of the section is quoted at p. 265 post.

Cases referred to:

Pirikis v. The Republic (1982) 2 C.L.R. 232.

Appeals against conviction and sentence.

Appeal against conviction and sentence by Renos Christodoulides who was convicted on the 21st June, 1985 at the District Court of Nicosia (Criminal Case No. 1067/85) on one count of the offence of disobedience of lawful orders contrary to section 137 of the Criminal Code Cap. 154 and was sentenced by Kronides, S.D.J. to three months' imprisonment suspended for three years and was also ordered to pay £100.- fine.

L. Papaphilippou, for the appellant.

A. M. Angelides, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult. 15

A. LOIZOU J. read the following judgment of the Court. The appellant was charged before the District Court of Nicosia with the offence of disobedience of lawful orders contrary to section 137 of the Criminal Code Cap. 154.

The particulars of the offence set out in the charge-sheet were that "the accused between the 7th May, 1984 and the 9th October 1984, in Nicosia did omit to comply with the order of the District Court of Nicosia in Criminal Case No. 20422/83, namely he failed to furnish to the Income-Tax Office a Statement of Assets and Liabilities as on the 31st December, 1975 and 31st December, 1982 with returns of taxable income showing his profits for the years 1976-1982.

The appellant was duly represented by counsel at the first appearance before the Court on the 18th February 1985, but on account of his being abroad an adjournment was requested and granted. On the 14th March, 1985, he appeared with his counsel and he entered a plea of not guilty when the case was adjourned to the 21st June, 1985 for hearing. On that date the appellant was present and

represented again by counsel who applied to the Court for leave to change his plea to one of guilty. Leave was granted, the appellant was charged afresh and he pleaded guilty to the charge. The prosecuting officer then related the facts
5 relied upon in support of the charge which were these:

“On the 7th March, 1984 in Case No. 20422/83 the accused was prosecuted before the District Court of Nicosia and sentenced that within two months from the 7th March, 1984 he should submit to the Income-Tax Office returns, namely a Statement of his Assets
10 and Liabilities as on the 31st December 1975 and 31st December 1982 with returns of taxable income, which would show the profits for the years 1976-1982. In this case the accused was sentenced to £50 fine in
15 addition to the Order. Until the 18th February, 1985, the accused had not complied with the order of the Court and when on the 9th November 1984, he was charged in writing, he said in reply ‘I do not wish to say anything at present’. There are no costs for to-day
20 nor for the past.”

Counsel appearing on his behalf stated that the accused had realised the seriousness of this offence. What he wished, however, to stress was that he had no intention whatsoever to disobey the Order of the Court. It was difficult beyond
25 his wish to file within that period with the appropriate department that which the Order of the Court ordered him to do. More specifically, several of his personal books of account were in the possession of accountant Pissarides and other books in the possession of accountant Syrimis.
30 Unfortunately at that time two events occurred. One was his accountant’s admission to a clinic for an operation and after his discharge from it his death which prevented his other accountant from taking those books. He then assured the Court that the accused had prepared the statement in
35 question which he had handed to the appropriate Income-Tax Department for check. The Court was requested after taking into consideration the efforts that the accused made as well as that there was no real intention for any disobe-

dience of the Order and as the accused was a first offender and a very active businessman in Cyprus to treat him with every possible lenience.

The learned trial Judge then sentenced the appellant to three months' imprisonment suspended for three years and ordered him to pay also £100 fine. Lengthy reasons were given for the sentence that was about to be imposed, but we shall be dealing with this aspect of the case later in this judgment. At this stage, it may be mentioned that the learned trial Judge started by saying that the accused was found guilty on the basis of his own plea and of the statement of facts, to a charge of disobedience of a lawful order, an offence for which the Law provides a sentence of imprisonment up to two years.

The appellant appealed against both his conviction and the sentence imposed. The grounds of appeal are the following:

"(1) The facts of the case do not constitute the offence for which the accused was charged and convicted.

(2) The supposed Order for which the accused was charged and convicted for having disobeyed, did not bind the accused as it was not communicated to him or it was not explained and in any event it was vague and issued in excess of power.

(3) The trial Court acted in excess of power and or its jurisdiction.

(4) There is no offence and/or no offence is constituted nor is there disobedience to a vague and/or non-served order.

(5) The said order is vague as it does not specify what the accused ought to have done and,

(6) The sentence is manifestly excessive.”

Section 135 of our Criminal Procedure Law, Cap. 155 regulates the question of appeals after a plea of guilty. It reads:-

5 “A person who has been convicted and sentenced by any Court upon a plea of guilty shall only be entitled.... to appeal to the Supreme Court -

·(a) against sentence unless the sentence is one fixed by Law;

10 (b) against conviction on the ground that the facts alleged in the charge or information to which he pleaded guilty did not disclose any offence.”

This provision and in particular its paragraph (b) came under judicial consideration and interpretation in a number
15 of cases which we had the opportunity to review and re-affirm in the case of *Christoforos Nicolaou Pirikkis v. The Republic*, Criminal Appeal No. 4607, delivered on the 13th February, 1985, as yet unreported*, but we need not refer to them at length as regards the powers of this Court under
20 the said provision as in the circumstances of the present case and as eventually argued by counsel before us the issue is whether the facts alleged in the charge or information to which the appellant pleaded guilty did not disclose any offence.

25 We would like to stress here and now that in such instance there is no room for us to go beyond the record of

* Reported in (1985) 2 C.L.R. 232.

the Court and question the legality of the proceedings leading to the order of the Court made in that case and which order is a constituent element of the charge of the present offence.

The facts as set out in the particulars of the charge and the facts as related by the prosecution in support thereof after the appellant, having been duly advised by counsel and represented by him in Court throughout the proceedings constitute the offences to which he pleaded guilty and in respect of which the learned trial Judge having convicted him on his own plea imposed the sentence complained of. Section 137 of the Criminal Code reads as follows:

“Everyone who disobeys any order, warrant or command duly made, issued or given by any Court, officer or person acting in any public capacity and duly authorised in that behalf is guilty of a misdemeanour and is liable, unless any other penalty or mode of proceeding is expressly prescribed in respect of such disobedience, to imprisonment for two years.”

The ingredients of the offence in relation to the present case are (a) the existence of an order given by any Court and (b) disobedience to it.

In the present case there was alleged to exist the Order of the Court set out in detail as to what the appellant was ordered to do and by which date and the allegation that he failed to obey or comply with the said order as stated in the particulars of the offence. By his plea of guilty the appellant was admitting the very facts which constituted the essential ingredients of the offence and therefore he

could be found guilty on his own plea of having committed an offence contrary to section 137 of the Criminal Code. For this reason the appeal against conviction should be dismissed. Though not constituting a ground of appeal we might as well say here that the plea in mitigation by his counsel which started by admitting the commission of the offence amounted to nothing more than an effort to exonerate the appellant of bad faith than alleging anything inconsistent with a plea of guilty.

10 Turning now to the appeal against sentence we would like to comment favourably for the well thought of reasons given by the learned trial Judge in passing sentence on the appellant. He referred to the appellant's plea, to the seriousness of offences involving disobedience to orders of the
15 Courts to the facts constituting the offence, to the plea in mitigation and to the duty of law-abiding citizens that they are bound to submit their income-tax returns in time to the Income-Tax Authorities. He then said that he felt, after taking into consideration all relevant facts and mitigating
20 circumstances, that the sentence of imprisonment to be imposed which was appropriate in the case, be suspended exercising in that respect his discretionary power under the relevant Law about suspension of sentences of imprisonment. It is obvious that the learned trial Judge took a serious
25 view, and rightly so in our view, of two aspects of the case. The first is the discouragement of disobedience of the Orders of Courts which disobedience if tolerated and treated lightly can only undermine the very Administration of Justice and the enforcement of Law and Order. The
30 second one is that there must be compliance to Revenue Laws for the purpose of discharging ones duty and paying as every citizen must what he is assessed to owe under their provisions to the State revenue.

35 In this respect we would like to stress that the Courts should not overlook the gravity of offences involving violations of the Revenue Laws as due compliance with their

provisions brings all citizens to an equal footing in bearing the burdens towards the State for the general good. For these reasons the appeal against sentence also fails.

The appeal as against both conviction and sentence is consequently dismissed.

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Appeal dismissed.