

1985 July 31

[TRIANTAFYLLIDES, P., LORIS, AND KOURRIS, JJ.]

SAVVAS CHRISTODOULOU,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4659).

Criminal Law—Sentence—Obtaining goods by false pretences contrary to sections 297 and 298 of the Criminal Code, Cap. 154—Mitigating factors—Full compensation of the complainant by the appellant before trial is a material mitigating factor.

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The appellant pleaded guilty to a single count of obtaining goods by false pretences contrary to sections 297 and 298 of the Criminal Code, Cap. 154.

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The appellant, a 54 year old family man with two daughters - 14 and 12 years respectively, having obtained goods from the complainant valued at £837.-, paid same by means of two cheques while knowing at the time that the aforesaid cheques could not be met at the respective Banks due to lack of funds on the accounts to which they were drawn. As a result thereof both cheques were dishonoured by the Banks. Before the holding of his trial at the Larnaca Court the appellant fully compensated the complainant.

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The appellant was sentenced by the trial Court to 6 months' imprisonment. Hence the present appeal.

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Held, allowing the appeal and reducing the sentence to four months' imprisonment, that the trial Judge failed to take into consideration the fact that the accused has fully compensated the complainant. It is abundantly clear that the question of compensation is a serious factor to be taken

into consideration in passing sentence in offences of this nature.

Appeal allowed.

Cases referred to:

Gordon Charles Wheeler and Others v. The Police, 1964 5
C.L.R. 83;

Savva v. Director of Social Insurance (1980) 2 C.L.R. 126.

Appeal against sentence.

Appeal against sentence by Savvas Christodoulou who was convicted on the 18th June, 1985 at the District Court of Larnaca (Criminal Case No. 3792/85) on one count of the offence of obtaining goods by false pretences contrary to sections 297 and 298 of the Criminal Code, Cap. 154 and was sentenced by G. Nicolaou, D.J. to six months' imprisonment.

D. Lambides, for the appellant.

A. Vladimirov, for the respondents.

TRIANAFYLLIDES P.: The judgment of the Court will be delivered by Loris, J.

LORIS J.: The present appeal is directed against the sentence of 6 months' imprisonment passed on the appellant on 18.6.1985 by the District Court of Larnaca upon his plea of guilty on a single count of obtaining goods by false pretences contrary to ss. 297 and 298 of our Criminal Code, Cap. 154.

The appellant, a 54 year old family man with two daughters - 14 and 12 years respectively, having obtained goods from the complainant valued at £837, paid same by means of two cheques while knowing at the time that the aforesaid cheques could not be met at the respective banks due to lack of funds on the accounts to which they were drawn. As a result thereof both cheques were dishonoured by the banks. Before the holding of his trial at the Larnaca Court the appellant fully compensated the complainant.

The learned trial Judge in passing sentence, took into

consideration the facts and circumstances of the case as well as the personal circumstances of the accused. He rightly emphasized the gravity of the offence of obtaining goods by false pretences, with particular reference to cheques, and stressed the ill-effects that ensue, in connection with dishonoured cheques in dealings between members of the public.

In considering mitigating circumstances, though, he failed to take into consideration the fact that the accused has fully compensated the complainant. Dealing with this latter point, the trial Judge took the view that the payment of compensation has no "decisive importance" on the nature of the punishment to be imposed. With respect, we are unable to agree with the trial Judge on this latter point. It is abundantly clear that the question of compensation is a serious factor to be taken into consideration in passing sentence in offences of this nature.

In the case of *Gordon Charles Wheeler and Others, v. The Police*, 1964 C.L.R. 83, a case of shopbreaking and theft, the amount of compensation awarded by the Court was taken into consideration as one of the mitigating factors, and in the case of *Savva v. Director of Social Insurance*, (1980) 2 C.L.R. 126, the payment of contributions in arrear, was emphasized as a mitigating factor by the learned President of this Court as follows:-

"... we are of the opinion that the trial Judge has failed to attribute due weight to the fact that the appellant on the same day on which he was taken before the Court, and before the commencing of this trial, paid off all the amounts in respect of which he was being charged by means of count 1—in relation to which he was sentenced to imprisonment—and by means of the other four similar counts. This was indeed a very strong mitigating factor indicating that the institution of criminal proceedings against the appellant had served well its purpose of securing the payment of the contributions due by him to the Social Insurance Fund and other similar Funds....".

We have indicated earlier on in the present judgment our agreement to the emphasis laid by the learned trial Judge

on the gravity of offences of this nature, in particular where connected with dishonoured cheques and their disastrous repercussions on daily economic life; but at the same time we cannot overlook the failure of the trial Court to take into consideration a material factor, notably the payment by the appellant of full compensation to the complainant in this case. Such a failure constitutes a ground for our interference with the sentence under appeal. 5

Having given to the matter our best consideration we have decided that the appropriate sentence should be in the circumstances four months' imprisonment to run from the date of sentence, i.e. the 16.6.85; and we allow the appeal accordingly. 10

Appeal allowed.