

1986 November 26

[A. LOIZOU. DEMETRIADES. LORIS. JJ.]

CHRISTOFOROS IOANNOU KARASAMANIS.

Appellant.

v.

THE POLICE.

Respondents.

(Criminal Appeal No. 4523).

Criminal Procedure—Double charge—Effect—The Criminal Procedure Law, Cap. 155—Section 39(a).

5 The appellant was charged on a single count with offering for sale 3 cases of tomatoes, 2 cases of cucumbers and 17 cases of apples without any tags on the cases aforesaid indicating (a) the name and address of the producer and (b) the classification envisaged by the Orders hereafter referred to, contrary to the Commodities and Services (Regulation and Control) Law 32/62, 10 as amended, and the relevant Orders issued thereunder on 18.8.83 (57/83, for tomatoes, 58/83 for cucumbers and 59/83 for apples).

The appellant was convicted. Hence the present appeal.

15 *Held, allowing the appeal:* (1) The rule against double charge is a fundamental rule of Criminal Procedure requiring that no more than one offence be made the subject of one count (section 39(a) of Cap. 155).

20 (2) The count in this case was bad for duplicity. In the first place the name of the producer is an altogether different matter from the quality of the goods. In the second place the classification of the quality of the goods in question in respect of their quality is provided by three distinct Orders, which envisaged different criteria for the classification of the equality of each produce 25 separately.

(3) The inclusion of all the aforesaid matters affected irreparably the certainty of the charge, which is required with a view to enabling the accused to defend himself.

Appeal allowed.

Cases referred to:

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Panteli v. District Labour Officer Famagusta (1985)
2 C.L.R. 205.

Appeal against conviction.

Appeal against conviction by Christoforos Ioannou Karasamanis who was convicted on the 29th February, 1984 at the District Court of Limassol (Criminal Case No. 13412/83) on one count of the offence of offering for sale various goods without any tags on the cases indicating the name and address of the producer and the classification in respect of their quality contrary to the provisions of the Commodities and Services (Regulation and Control) Law, 1962 (Law No. 32/62 as amended) and the relevant orders issued thereunder and was sentenced by Fr. Nicolaidis, S.D.J. to pay £20.- fine.

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Chr. Pourgourides, for the appellant.

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G. Erotocritou (Mrs.), Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

A. LOIZOU J.: The judgment of this Court will be delivered by Loris, J.

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LORIS J.: The present appeal is directed against the judgment in Limassol Criminal Case No. 13412/83 (Fr. Nicolaidis S.D.J.) whereby the appellant was convicted on a single count for offences contrary to the Commodities and Services (Regulation and Control) Law, 1962, (Law 32/62) as amended and the relevant Orders issued thereunder on 18.3.83 (Κ.Δ.Π. 57/83, 58/83, & 59/83).

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The appellant was charged on a single count with offering for sale:

(a) 3 cases of tomatoes

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(b) 2 cases of cucumbers

(c) 17 cases of apples

without any tags on the cases aforesaid indicating:

(A) The name and address of the producer,

- 5 (B) The classification envisaged by the Orders as aforesaid in respect of their quality.

The appellant pleaded not guilty to the charge and the case was mainly contested on the validity of the relevant orders issued on 18.3.83 (Κ.Δ.Π. 57/83, 58/83 & 59/83) by the Minister of Commerce and Industry in virtue of section 6A of the Commodities and Services (Regulation and Control) Law, 1962, (Law 32/62 as amended).

The learned Trial Judge after balancing prosecution and defence evidence and dismissing submission advanced on behalf of the appellant to the effect that the Orders aforesaid were ultra vires, as unreasonable, at least in so far as the classification envisaged therein, in respect of the quality of the perishable goods, hereinabove mentioned is concerned, found the appellant guilty as charged on the single count of the charge-sheet and sentenced him to a fine of £20.-

The present appeal is directed against the conviction only; the conviction which is challenged, on the grounds:

25 (a) that the aforesaid Orders of the Minister are ultra vires being unreasonable—as it was submitted—at least in so far as the classification of the quality of the perishable goods in question is concerned and

(b) that the charge is bad for duplicity.

30 We must, however, say that the main force of the argument of learned Counsel was directed against the validity of the Orders as aforesaid.

The rule against double charges is a fundamental rule of Criminal Procedure, requiring that no more than one offence be made the subject of any one count—(Vide s. 39(a) of the Criminal Procedure Law, Cap. 155).

As stated by this Court in *Panteli v. District Labour Officer Famagusta*, (1985) 2 C.L.R. 205, at p. 209:-

“A double charge is one setting forth in the same count more than one offence. It matters not that the offences are similar in nature committed in succession or that they conform to the same pattern. The test is whether the charge encompasses two or more offences. If so, it is bad for duplicity...” 5

In the case under consideration the accused is charged with offering for sale tomatoes, cucumbers and apples in cases without any tags thereon indicating (a) the name and address of the producer and (b) the classification envisaged by the Orders as aforesaid in respect of their quality. 10

In the first place the name of the producer is an altogether different thing from the quality of the perishable goods.

As regards the perishable goods, subject-matter of the charge under consideration, it must be borne in mind as well, that the classification in respect of their quality is provided by three distinct Orders (tomatoes K.Δ.Π. 57/83, cucumbers 58/83 and apples 59/83), which envisage different criteria for the classification of the quality of each produce separately. 15 20

We hold the view that the inclusion of all the aforesaid matters into a single count affected irreparably the certainty of the charge which is required with a view to enabling the accused to defend himself effectively; this is a fortiori so, if we take into consideration that the appellant was impugning the three distinct Orders as ultra vires on the ground of unreasonableness of the criteria envisaged by each one separately. 25

Having held that the extent of the irregularity vitiated the proceedings, we have decided that we should not pronounce on the complaint that the Orders in question are ultra vires as unreasonable—as submitted; we wish to make it abundantly clear that we leave the issue of the validity of the Orders aforesaid entirely open. 30 35

In the result the appeal is allowed; the verdict is quashed and the appellant is discharged.

*Appeal allowed.
Conviction quashed.*