

1988 June 15

(A. LOIZOU, P.)

IN THE MATTER OF AN APPLICATION BY YIANNAKIS P. ELLINAS  
FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI  
AND/OR PROHIBITION.

and

IN THE MATTER OF AN ORDER OF THE DISTRICT COURT OF  
LIMASSOL DATED 5.2.88 IN CRIMINAL CASE NO. 22446/87.

(Application No. 100/88).

---

*Prerogative orders — Certiorari/Prohibition — Leave to apply for —  
Applicant should make out a prima facie arguable case.*

*Prerogative orders — Certiorari — Leave to apply for — Delay — If  
inexcusable, a ground for refusing review.*

5           On 5.2.88 the applicant was committed to trial before the Assize  
Court of Limassol for various offences. The Information was filed by  
the Attorney-General, but when, on 25.5.88, the applicant was to be  
arraigned before the Assize Court he raised certain preliminary  
10           objections. The Assize Court dismissed them. The applicant applied  
for a question of law to be reserved for the opinion of the Supreme  
Court. This application was, also, dismissed. The applicant filed  
application 99/88 for leave to apply for orders of certiorari,  
mandamus and prohibition as against the aforesaid rulings of the  
15           Assize Court. He, also, filed the present application for leave to apply  
for an order of certiorari quashing his committal to trial and for an  
order of prohibition prohibiting the Assize Court from trying him in  
respect of the Information filed as a result of the committal order.

          In support of the present application the applicant alleged that  
20           there is an error of law apparent on the face of the record, i.e. the  
statement of the witnesses did not disclose the offences for which he  
was committed to trial or they did not disclose evidence justifying his  
committal.

          Held, dismissing the application: (1) The question is whether the  
applicant succeeded in making out a prima facie arguable case.

25           (2) The statements of the witnesses disclosed sufficient evidence  
for applicant's committal.

(3) In any event, certiorari is a discretionary remedy. Delay in applying, if inexcusable, is a valid reason for refusing review. The delay in this case is clearly inexcusable

*Application dismissed.*

*Cases referred to:*

5

*Re Nina Panaretou* (1972) 1 C.L.R. 165;

*Re Kakos* (1985) 1 C.L.R. 250;

*Re Aeroporos and Others* (1988) 1 C.L.R. 302.

**Application.**

Application for leave to apply for an order of certiorari to remove into the Supreme Court and quash the committal of the applicant for trial by the Assize Court of Limassol and for an order of prohibition prohibiting the Assize Court of Limassol from proceeding to arraign and/or try the applicant in Criminal Case No. 22466/87 on the basis of the above committal.

10

15

*G. Cacoyannis with P. Mouaimis and M. Koukkidou (Miss), for the applicant.*

*Cur. adv. vult*

A. LOIZOU P. read the following judgment. The applicant was on the 5th February 1988 committed by the District Court of Limassol (Stavrinides D.J.) for trial by the Limassol Assize Court in Criminal Case No. 22446/87 for twenty-eight offences relating to stealing allegedly committed on various dates during the period between February 1981 and July 1983.

20

The Attorney-General of the Republic filed an information in the Assize Court of Limassol charging the applicant with thirty-one offences allegedly committed between the 12th February, 1982 and 28th July 1983. When on the 25th May 1988 he was about to be arraigned before the Limassol Assize Court, but prior to it, the applicant raised certain preliminary objections on which the Assize Court gave its ruling on the 1st June 1988. Following the said ruling applicant's counsel on the 3rd June 1988 applied to the Assize Court of Limassol for four Questions of Law arising out of the said ruling to be reserved for the opinion of the Supreme Court pursuant to section 148 of the Criminal Procedure Law, Cap. 155.

25

30

35

The Assize Court of Limassol, however, on the 7th June 1988, reject the applicant's application and refused to reserve any such Question of Law.

5 The applicant thereupon filed Application No. 99/88 for leave to apply for Orders of Certiorari, Mandamus and Prohibition, as against the aforesaid rulings of the Assize Court and in addition, filed the present application for leave to apply for an Order of Certiorari and/or Prohibition against the order of committal of the applicant for trial before the Assize Court of Limassol dated the 5th  
10 February, 1988.

The reliefs sought are set out in the present application and they are briefly these:

(A) An order of certiorari to remove into the Supreme Court for the purpose of its being quashed the committal of the applicant by  
15 the District Court of Limassol, for trial before the Assize Court of Limassol for the offences charged in the relevant charge-sheet.

(B) An order of prohibition, prohibiting the Assize Court of Limassol from proceeding to arraign and/or to try the applicant in Criminal Case No. 22466/87 on the basis of the said committal  
20 made by the District Court of Limassol on the 5th February 1988, and/or on the information filed by the Attorney-General on the basis and/or in consequence of the said committal.

Furthermore that all proceedings in the said Criminal Case be stayed until after the hearing of the motion or further order and  
25 that all necessary and consequential directions be given.

The grounds upon which the said reliefs are sought are the following:

«(a) The said committal was invalid in law and of no effect the said invalidity being an error of law apparent on the face  
30 of the record and/or was made in excess of the Court's jurisdiction or power in that the offences charged in the said Charge Sheet of Criminal Case No. 22446/87 (Exhibit 1) were not disclosed in the statements produced and/or examined by the Court (Exhibit 3); and/or

35 (b) The said committal was invalid in law and of no effect the said invalidity being an error of law apparent on the face of the record in that there was no evidence and/or sufficient evidence in law (as disclosed in the said statements produced to

the Committing Judge - Exhibit 3) to justify the committal of the Applicant to trial before the Assize Court of Limassol and/or in that the said statements did not disclose the offences for which the Applicant was so committed; and/or

(c) All steps and/or proceedings flowing from and/or consequent upon the said committal are null and void and of no legal effect since they flow from and/or are dependent on the said invalid committal and are vitiated by the invalidity thereof; and/or 5

(d) The Assize Court of Limassol will proceed to try the Applicant on the basis of the said committal and the said subsequent steps and/or proceedings (filing of Information, rejection of preliminary objections etc.) unless prohibited from doing so by an Order of Prohibition.» 10

In an application for leave the question for determination is whether there has been made out a prima facie arguable case sufficiently to justify the granting of leave to the applicant to move this Court in due course to issue an Order of Certiorari. It is, however, sufficient if on the basis of the application and the affidavit in support, the Court is satisfied that such leave should be granted 15  
20  
(see inter alia *In Re Nina Panaretou* (1972) 1 C.L.R. 165; *In Re Kakos* (1985) 1 C.L.R. 250.

A perusal of the material placed before me and in particular the record of the Committal Proceedings i.e. the statements of the witnesses, I have come to the conclusion that there was sufficient evidence to commit the accused for trial and therefore leave is refused there being no error of Law apparent on the face of the record. 25

Before concluding I would like to observe that an Order of Certiorari is a discretionary remedy. Delay to apply is a valid reason for refusing review of the legality of the order challenged, if inexcusable. (See *In Re Charalambos Aeroporos and Others* Application No. 9/88, judgment delivered by Piki, J., on the 25th May 1988, as yet unreported.\*) 30

In the present case the delay to apply is clearly inexcusable as after the committal of the applicant no steps were taken for 35

---

\* Reported in (1988) 1 C.L.R. 302.

quashing the order in question except after the Ruling of the Assize Court given on the 1st June, 1988, dismissing the preliminary objections of the defence regarding the validity of the order of committal of the applicant and their refusal to reserve four

5 Questions of Law for the opinion of the Supreme Court. I would have dismissed therefore this application on that ground too.

For all the above reasons the leave applied for is refused.

*Application refused.*