

1988 January 23

[MALACHTOS, J.]

IN THE MATTER OF AN APPLICATION BY OR ON BEHALF OF  
KYRIACOS KYPRIANOU FOR LEAVE TO APPLY FOR AN  
ORDER OF CERTIORARI,

and

IN THE MATTER OF A RULING OF THE DISTRICT COURT OF  
LIMASSOL IN CRIMINAL CASE NO. 31904/86,

(Application No. 4/88).

*Prerogative Orders — Certiorari — When it lies — It cannot be used as a  
cloak of an appeal in disguise.*

*Criminal Procedure — Charge sheet containing large number of counts  
— Undesirability of such a course — The authorities, however, do  
not establish any rigid rule.*

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The applicant faces charges on 18 counts for obtaining money by  
false pretences. The trial Court dismissed his application for separate  
trials on each count. As a result the applicant filed this application for  
leave to apply for an Order of certiorari, quashing the aforesaid  
ruling.

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Held, refusing leave and dismissing the application:

(1) Certiorari lies where it appears on the face of the record that the  
decision of the inferior tribunal was erroneous in point of law. It is  
plain that certiorari will not issue as the cloak of an appeal in disguise.

(2) In the present application two points fall for consideration:

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(a) Whether the decision of the Court below is erroneous in point  
of law on the face of the record, and

(b) Whether by the inclusion of so many counts in one charge  
sheet the applicant is prejudiced in his defence.

(3) As regards the first point, the answer is in the negative. The  
charge sheet has been framed in conformity with section 39 of the  
Criminal Procedure Law, Cap. 155 and it cannot be opened to  
objection in respect of its form or contents.

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(4) As regards the second point, it is clear from the authorities that  
it is undesirable for a large number of counts to be joined in one

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charge sheet. The relevant observations in the authorities (*Akritas v. Regina*, 20 C.L.R. 110 and *Mantis v. The Police* (1981) 2 C.L.R. 234) do not create a rigid rule. Obviously, in this case the counts were included in one charge sheet in order to show the extent of the criminality and the system under which the alleged offences were committed.

*Application dismissed.*

*Cases referred to:*

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

10 *R. v. Northumberland Compensation Appeal Tribunal* [1951] 1 K.B. 711;

*Akritas v. Regina*, 20 C.L.R. 110;

*Mantis v. The Police* (1981) 2 C.L.R. 234.

**Application.**

15 Application for leave to apply for an order of certiorari to remove into the Supreme Court of Cyprus and quash the ruling of the District Court of Limassol in Criminal Case No. 31904/86 whereby applicant's application for separate trials of the eighteen counts he was charged in the above case was dismissed.

20 *L. Clerides*, for the applicant.

*Cur. adv. vult.*

MALACHTOS J.: gave the following judgment. The applicant, who was the accused in Criminal Case No. 31904/86, before the District Court of Limassol, charged under eighteen counts for obtaining money by false pretences contrary to section 298 of the Criminal Code, Cap. 154, pleaded not guilty on all counts.

25 On the 31st October, 1987 counsel for applicant applied for separate trials of the eighteen counts on the ground that a trial with so many counts contained in one charge sheet would seriously prejudice the accused in his defence.

30 On the 18th November, 1987 the court delivered its reserved ruling by which the application on behalf of the accused was dismissed.

It has been submitted by counsel for applicant that the ruling of the District Court of Limassol is erroneous in law on its face and, consequently, should be removed to the Supreme Court for the

purpose of being quashed. In support of his argument counsel for applicant made reference to the case of *Akritas v. The Police*, 20 C.L.R. 110 and *Constantinides v. The Republic* (1978) 2 C.L.R. 337.

It has also been submitted that the applicant has a prima facie arguable case in view of the fact that the counts relate to different complainants, different sums of money, different dates and there is no nexus between the various counts and the period of time during which the alleged offences were committed is of a duration of more than two years. 5 10

The Prerogative Order of Certiorari is one of the Orders vested exclusively within the jurisdiction of the Supreme Court by virtue of Article 155.4 of the Constitution and is addressed to inferior courts or tribunals to keep within their jurisdiction and observe the law. Certiorari lies where it appears on the face of the record that the decision of the inferior tribunal was erroneous in point of law. It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issue raised in the proceedings. It exists to correct error of law where revealed on the face of an order or decision or irregularity, or absence of, or excess of, jurisdiction where shown. The control is exercised by removing an order or decision, and then by quashing it. (See *In Re Kakos* (1985) 1 C.L.R. 250, following *R. v. Northumberland Compensation Appeal Tribunal* [1951] 1 K.B. 711). 15 20 25

In the present application two points fall for consideration:

1. Whether the decision of the court below is erroneous in point of law on the face of the record, and

2. Whether by the inclusion of so many counts in one charge sheet the applicant is prejudiced in his defence. 30

As regards the first point, the answer is in the negative. The charge sheet has been framed in conformity with section 39 of the Criminal Procedure Law, Cap. 155 and it cannot be opened to objection in respect of its form or contents.

As regards the second point, it is clear from the authorities that it is undesirable for a large number of counts to be joined in one charge sheet. In the case of *Akritas v. Regina*, 20 C.L.R. 110, cited by counsel for applicant, at page 112, the following is stated: 35

«There is one further observation we would make regarding the information. In this case, the information in substance charged the appellant with falsifying accounts on 20 different occasions. We doubt whether it was necessary to make the information so long, or, if it was necessary, the trial might have proceeded on a certain number only.

In the case of *Hudson* (36 Cr. App. R. 94) the accused was charged on 33 counts most of which related to breaking and entering and larceny, with an alternative count for receiving in each case. The learned Lord Chief Justice at p. 95-96 stated:

‘The Court has on many occasions pointed out how undesirable it is that a large number of counts should be contained in one indictment. Where prisoners are on trial and have a variety of offences alleged against them, the prosecution ought to be put on their election and compelled to proceed on a certain number only. Quite a reasonable number of counts can be proceeded on, say, three, four, five or six, and then, if there is no conviction on any of those, counsel for the prosecution can consider whether he will proceed with any other counts in the indictment. If there is a conviction, the other counts can remain on the file and need not necessarily be dealt with unless this court should for any reason quash the conviction and order the others to be tried. But it is undesirable that as many counts as were tried together in this case should be tried together’.

Also in the case of *Mantis v. The Police* (1981) 2 C.L.R. 234, the above observations have been reiterated by this court in its appellate jurisdiction, where at page 236 we read:

«We would like to add, further, that we have noted, particularly, the following observations in the judgment of the trial Judge:

‘Before concluding this judgment, I feel bound to stress that the procedure followed by the Prosecution in framing the charge sheet, by adding 19 counts relating to serious offences and committed on various dates and within a long period of time is not only inadvisable but also unorthodox as it deprives the accused of the opportunity to defend his case properly and the Prosecution to present its case and generally it is not for the interests of justice and in the future it should be avoided’.

We highlight the views expressed by the trial Judge in the above passage and we hope that, in future, the joinder of too many counts, such as those in the present case, will not take place without adequate reasons justifying such a course».

The above observations, however, do not create any rigid rule as it appears from the case of *Mantis*, supra, where adequate reasons justify such a course. Obviously, in the case in hand the eighteen counts were included in one charge sheet to disclose the extent of criminality and the system under which the alleged offences have been committed.

For the above reasons, the application is dismissed.

*Application dismissed.*