

1988 November 8

(A. LOIZOU, P., MALACHTOS, STYLIANIDES, PAPADOPOULLOS,
HADJITSANGARIS & BOYADJIS, JJ.)

POLICE,

v.

GEORGHIOS KYRIAKIDES.

Accused.

(Question of Law Reserved No. 259).

Disobedience to order of a Court, contrary to section 137 of the Criminal Code, Cap. 154 — Order made in the presence of accused — Whether service of the order an ingredient of the offence — Question determined in the negative — That is why, in cases where criminal courts are empowered to issue orders against an accused, the latter's presence should be insisted upon. 5

The facts of this case appear from the judgment of the Court.

Opinion accordingly.

Cases referred to:

Mouzouris v. Xylophagou Plantations Ltd. (1977) 1 C.L.R. 287. 10

Question of Law Reserved.

Question of Law reserved by the District Court of Famagusta for the opinion of the Supreme Court under section 148 of the Criminal Procedure Law, Cap. 155 as to whether in cases of disobedience of an order of the Court it is essential for the proof of the case under section 137 of the Criminal Code, Cap. 154, to have served the order issued by the Court upon the accused when an accused was present when the said order was made. 15

A. Evangelou, Senior Counsel of the Republic, for the Police.

G. Pittadjis, for the accused. 20

A. LOIZOU P. gave the following judgment of the Court. The District Court of Famagusta has under section 148 of the Criminal Procedure Law, Cap. 155 reserved for the opinion of the Supreme

Court a Question of Law which arose during the trial of the accused in the present case.

The question so reserved is the following:-

5 «Whether in cases of disobedience of an order of the Court it is essential for the proof of the case under section 137 of the Criminal Code, to have served the order issued by the Court upon the accused when an accused was present when the said order was made.»

10 The accused had been ordered by the District Court of Famagusta in a criminal prosecution under section 50(2) of the Assessment and Collection of Taxes Laws 1978 to 1987 to furnish within two months as from the 26th June 1986, the necessary particulars regarding his assets and liabilities. The accused failed to do so and he was prosecuted under section 137 of the Criminal
15 Code which 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.»

25 Learned counsel on both sides agree that service of such order on the accused person who was present in Court when same was made is not required not being one of the ingredients of the offence.

30 We have considered the position and unlike the case of disobedience of orders made in Civil cases, in which under the express provision of the relevant Rule, namely Order 42(a), rule 2 of the Civil Procedure Rules, an order so made has to be indorsed and served on the person against whom the order is made. (See *Mouzouris v. Xylofagou Plantations Ltd* (1977) 1 C.L.R. 287). In criminal proceedings there is no general provision
35 either in the Criminal Procedure Law or the Rules made thereunder making the service of the order, upon the person against whom it is made a prerequisite to proceedings for disobedience under section 137 of the Criminal Code, Cap. 154.

An examination of the wording of section 137 and in particular of the words «an Order....issued or given by any Court», to be

found therein shows that no service is required and our answer to the question posed is in the negative, that is that no service of an order upon the person against whom same is made in his presence is required as an essential prerequisite to the offence under section 137 of the Code.

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It is for this reason, in our view, that Courts have, as a rule, required the presence of accused persons who are charged with the commission of offences under laws which empower them to make orders against the accused in addition to any other sentence that they may impose, and we trust that the presence of accused persons will be insisted upon, to avoid any problems.

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With the above answer of this Court to the question reserved by it, the case is remitted to the trial Court.

Order accordingly.