



QORTI TAL-APPELL KRIMINALI

JUDGE

H.H. CHIEF JUSTICE SILVIO CAMILLERI

Sitting of the 15th of July 2016

Appeal No: 503/2015

The Police

(Inspector Frank A. Tabone)

vs

David Anthony Pollina

The Court:

1. Having seen the charges brought on behalf of the Commissioner of Value Added Tax against David Anthony Pollina, holder of Maltese Identity Card Number 31801A, before the Court of Magistrates (Gozo) of having:

On behalf and in representation of MIQNA SYSTYEMS LIMITED (C38184) and/or as a registered person with the Commissioner of Value Added Tax as per Act of 1998 regarding Value Added Tax (Act No. XXIII fo 1998) and Regulations made thereuner, failed to conform with sentence delivered by the

Court of Magistrate's (Malta) dated 24th January, 2012, given in his regard for failing to conform with the afore mentioned sentence, whereby he was duly obliged to submit the said returns within a three month period, and in the absence of such be subject to a further fine of €15 for every day that he remains in default.

The prosecution requested that he is subjected to pay a further fine in terms of the cited sentence for the period commencing on the 25th April, 2012 up to and including 30th January, 2013, which fine is to be recalculated in terms of the newly introduced provisions (Act XIV of 2013), at the rate of €5 per day.

2. Having seen the judgement of the Court of Magistrates (Gozo) as a Court of Criminal Judicature of the 20th October, 2015, whereby the Court, after having seen article 76 of Chapter 406 and article 637 of Chapter 9 of the Laws of Malta, found the accused guilty of the charges brought against him and condemned him to pay a fine of €1405.00 (one thousand, four hundred and five Euro) for the period from the 25th April, 2012 till the 30th January, 2013.
3. Having seen the appeal application of David Anthony Pollina, filed in the registry of this Court on the 4th November, 2015, whereby this Court was requested to revoke in its entirety the appealed judgement and consequently to acquit him from the same charges and to waive off the fine of one thousand four hundred and five euro (€1,405) which was imposed for the period from the 25th April, 2012 till the 30th January, 2013.
4. Having seen all the acts and documents of the proceedings, having heard the witnesses produced before it and having heard the parties make their oral submissions.

5. The facts of the case may be summed up as follows:

The appellant is a director of Miqna Systems Limited and is registered with VAT number 17921715. He failed to submit VAT returns for the periods ending August 2007 till August 2009, covering a two year period. After the institution of criminal proceedings, on the 24th January 2012 the appellant was found guilty by the competent Court and was sentenced to a fine of €900 for having failed to file the returns in question and ordered to conform with the law within three months subject to the payment of a daily fine of €15 for every day of default. The appellant complied with the law on the 31st January 2013 and the present proceedings were instituted in order that the appellant be sentenced to pay the total fine which accrued till the 31st January 2013. The said fine in terms of of Act XIV of 2013 has to be re-calculated at the rate of €5 daily.

6. The appellants' grievances substantially consist in the following:

1. the facts of this particular case do not fit in within the parameters of the charge as drafted since the charge states that the judgement of the 24th January 2012 was given by the Court of Magistrates (Malta) when in reality the judgement imposing the fine was given by the Court of Magistrates (Gozo) as a Court of Criminal Judicature;
2. in view of the conflicting evidence submitted the necessary degree of proof beyond reasonable was not met.

Considers

7. In so far as the first grievance is concerned, it has long been established in our case law that the summons proffered before the Courts of Magistrates is merely a notice for the person charged to

appear before the Court (*avviso a comparire*) on the date and at the time indicated in the summons as an alternative to his being brought before the Court under arrest. The summons is not the basis of the charge since this is proffered when it is read out in Court by the prosecution and the contest between the prosecution and the person charged does not ensue on the basis of the summons but on the basis of the exposition of the facts by the prosecution before the Court. As a result when the person summoned appears before the Court the main function of the summons is achieved¹.

8. Another aim of the summons is for the sake of practicality and to avoid waste of time by putting the person charged beforehand in a position to know what he is being charged with in order that he may prepare his defence. The charge in question is simply meant to liquidate and judicially determine the total sum of the fine due by the appellant on account of his non compliance with the law as ordered in the previous judgment. Certainly the error in the designation of the Court which delivered the original judgment did not in any way prejudice the appellant in his defence before the first Court since he must have been aware that the only judgment which had previously sentenced him to a fine of €900 for failure to supply the tax returns and which had ordered him to comply with the law subject to an additional fine of €15 for every day he remains in default had been delivered by the Court of Magistrates (Gozo). This is also evident from the fact that after a copy of the relevant judgment written in the Magistrate's own hand on the summons which clearly indicated the Gozo Law Courts as the venue of the proceedings (fol. 4), the appellant did not raise any plea on the matter, did not request that the case be put off to another date in order for him to prepare his defence. In other words the error in the designation of the Court

¹ See among others P v Arthur S. Mortimer A&CE, XXXIII.iv.758.

which delivered the original judgment did not put the appellant in any disadvantage to the extent that he voluntarily testified before the first Court. Indeed whether the original judgement was delivered by a Court in Malta or by a Court in Gozo was an irrelevant detail and did not affect the substance of the charge which could have simply referred to the Court of Magistrates without specifying Malta or Gozo². Nor did the appellant, when he testified before this Court (fol. 53), show any hesitation or uncertainty as to the nature of the charge he faced or as to the fact that the Court which had sentenced him was the Court in Gozo.

9. This first grievance is therefore rejected.
10. The appellant's **second grievance** essentially concerns the evaluation of the evidence on the part of the Court of first instance. It is well established in the case law of this Court in respect of such a grievance that this Court will not disturb the evaluation made by the first Court of the evidence brought before it except for grievous reasons so that this Court will only depart from the first Court's evaluation if it is shown that that Court could not reasonably arrive at the conclusions reached by it on the basis of the evidence produced before it in such a way that manifest injustice would ensue if that evaluation and those conclusions were allowed to stand.
11. In his second grievance the appellant argues that the evidence on the charge is contradictory because while Paul Scicluna, the VAT prosecuting officer, states that the appellant failed to submit the VAT returns in question within 3 months according to the original judgment of the Court and that these were only filed on the 30th January 2013, the appellant claims that he had given the returns by

² See also Appeal The Police v Morgan Eriksson, 4th June 2002

hand to the VAT prosecuting officer in Court on the 24th January 2012 prior to the commencement of the VAT sitting.

12. From a careful examination of the oral evidence given before this Court by the appellant, however, it results that according to the appellant, on the date of the sitting of the 24th January 2012, he had presented the returns to the the VAT prosecuting officer, viz. Paul Scicluna who pointed out, however, that the returns had not been stamped by the department. The appellant, rather arrogantly, replied that “But you are the Legal Representative for the Department. You want the return so here is the return”. It appears that the appellant expected to dictate to the VAT prosecuting officer to whom, where and how the returns in question were to be filed with the department concerned. According to the appellant, Paul Scicluna suggested to him that since the office was just a few blocks down the road, and since there was still some time before the Court starts, the appellant could go and file the returns at the office. Once again the appellant refused to take the suggestion of the prosecuting officer and again insisted there was no reason why he should go round all the way to the office to get a stamp and that he was giving the returns to Mr. Scicluna as legal representative on the spot. Mr. Scicluna again warned the appellant that if he did not get the stamp then “we have to proceed” to which the appellant replied “So proceed” and Mr. Scicluna did so proceed³.

13. It therefore results from the appellant’s own testimony that on the 24th January 2012 the returns had not been submitted to the VAT department in compliance with the requirements of the same department. It was made absolutely clear to the appellant that the returns were not considered as having been submitted since they

³ Fol 53-54

had not been submitted in accordance with the formalities expected by the department. The appellant cannot expect to make up his own rules and determine himself to whom, where and how the returns were to be submitted but he had to submit the returns in question in accordance with the formalities laid down by the department. The appellant knew that the department did not consider the returns to have been submitted on the date of the Court sitting since he himself declared on oath that the returns he wanted to present had not been accepted because he was told to get the rubber stamp⁴. Moreover, if the returns had been regularly submitted to the department, as was the usual practice, would not have proceeded with the case⁵. This means that on the 24th January 2012 the returns had never been submitted at all for the purposes of law, and this in the appellant's own words.

- 14.** Moreover, Paul Scicluna, when testifying in confrontation with the appellant before this Court, categorically denied that he had been presented with the returns by the appellant on the date of the sitting of the 24th January 2012, added that if these had been presented then the case would have been withdrawn there and then, that the returns would have been accepted even if they did not bear the department's stamp, that the appellant could never have been told to go down the road and have the returns stamped since the VAT department in Gozo is in the Ministry in Rabat, that moreover any returns received in Court would be filed by the VAT officer himself in Malta and would not send the taxpayer anywhere with the returns.⁶
- 15.** Taking all the above, and other aspects of the evidence before the Court, into consideration the Court in the circumstances does not find the conclusions reached by the first Court unreasonable nor

⁴ Fol 62

⁵ Paul Scicluna's testimony, fol. 46

⁶ Fol. 59-60

does it find that there are sufficiently serious reasons for it to disturb the evaluation made by the first Court of the evidence before it or to depart from the conclusions drawn by the first Court.

- 16.** This Court therefore also finds the second grievance unfounded and rejects it.

For these reasons the appeal is dismissed and the judgement of the first Court is confirmed.

(ft) Silvio Camilleri
Chief Justice

(ft) Silvana Grech
D/Registrar

True copy

For Registrar