

**QORTI TAL-MAGISTRATI (MALTA)  
BHALA QORTI TA' GUDIKATURA KRIMINALI**

**MAGISTRAT DR. JOSETTE DEMICOLI LL.D**

**Il-Pulizija  
(Supretendent Stephen Mallia)**

**Vs**

**Mario Fenech**

Kaz Numru 177/2010

Illum 26 ta' Settembru 2016

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat Mario Fenech, ta' 48 sena, iben Joseph u Carmen nee' Birffa, imwieled l-Marsa, fil-15 ta' Awwissu, 1961 u residenti 77, Triq Guzeppi Balzano, Rabat, Malta detentur ta' karta tal-identita' 536961(M)

Talli, f'dawn il-Gzejjer u cioe' nhar id-29 ta' Ottubru 2008 u fil-granet u xhur ta' qabel b'diversi atti maghmulin minnu wkoll jekk fi zminijiet differenti, izda li kienu jiksru l-istess dispozzizioni tal-ligi u gew maghmula b'rizuluzzjoni wahda huwa xjentement laqa' ghandu jew xtara hwejjeg misruqa, mehuda b'qerq, jew akkwistati b'reat u cioe' l-vettura GBB 199 ta' ghamla Mitsubishi RVR.

Rat in-nota ta' rinviju ghall-gudizzju mibghuta mill-Avukat Generali li permezz taghha baghat lill-imputat biex jigi gudikat minn din il-Qorti bhala Qorti ta' Gudikatura Kriminali kif mahsub taht:

- a. Fl-artikolu 334 tal-Kapitolu 9 tal-Ligijiet ta' Malta;
- b. Fl-artikoli 31 u 533 tal-Kapitolu 9 tal-Ligijiet ta' Malta

Rat li l-imputat iddikjara li m'ghandux oggezzjoni li l-kaz jigi trattat bi procedura sommarja.

Semghet ix-xhieda.

Semghet is-sottomissjonijiet.

Rat l-atti u d-dokumenti kollha.

Ikkunsidrat

Illi l-imputat jinsab akkuzat bir-reat ta' ricettazzjoni.

Il-fatti li wasslu ghall-proceduri odjerni huma s-segwenti:

- Fit-23 ta' Ottubru 2008 inhareg ordni mill-Kummissarju tal-Artijiet sabiex l-okkupant ta' sit li jinsab f'Targa Gap, Mosta jigi zgumbrat komunement maghruf bhala *eviction orde*<sup>1r</sup>.
- Fid-29 ta' Ottubru 2008 il-pulizija tal-Mosta kienet qeghda tassisti lid-dipartiment tal-Artijiet sabiex jezegwixxi l-eviction order. Mix-xhieda ta' Manwel Martin<sup>2</sup> jirrizulta li x'hin marru fuq il-post li huwa ghalqa kbira mdwara b'cint kien hemm xatba li giet sgassata. Kif dahlu sabu zewgt ikmamar zghar li kien fihom diversi affarijiet u imbaghad kien hemm zewgt imhazen kbar li kienu mimlijin bil-karozzi u anke xi annimali.
- Kif il-pulizija li kienu qeghdin jakkumpanjaw lill-ufficjali tad-dipartiment indunaw li kien hemm kwantita' kbira ta' karozzi u b'hekk intalbet l-ghajnuna tal-iskwadra fis-CID.
- Il-fond kien qieghed jigi wzat mill-imputat li meta kellem lil Manwel Martin qallu li l-affarijiet fis-sit kienu tieghu.
- Is-Supretendent Stephen Mallia<sup>3</sup> xehed li fil-maggior parti tal-vetturi misjuba fuq is-sit l-imputat kellu l-log book hlief ghal vettura wahda li kienet zarmata u din kienet tal-marka Mitsubishi RVR. Din il-karozza kienet bla numri ta' registrazzjoni u hlief ghall-qafas u ghar-roti kienet zarmata totalment. L-istess ufficjal prosekutur kompli li l-indikazzjonijiet ta' kif instabet kienu jindikaw li ma kinitx ilha zmien

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<sup>1</sup> Dok MM1 a fol 80 tal-process

<sup>2</sup> 9 ta' Novembru 2011 – Head tal-Enforcement fid-dipartiment tal-Artijiet

<sup>3</sup> 23 ta' Gunju 2010

twil zarmata ghar-raguni li kien hemm xi zjut taghha kif ukoll xi boltijiet u għodda. Kien gie nnutat ukoll li fil-parti fejn ikun hemm solitament in-numru tac-chassis stampat gol-panel fil-compartment tal-magna kien maqtugh barra. Il-pulizija kompliet tinvestiga izda l-imputat ma tax spjegazzjoni dwar il-provenjenza taghha.

- Mill-investigazzjoni li wettqet il-pulizija dwar vetturi misruqin tal-istess marka Mitsubishi rrizultathom li kien hemm wahda li nsterqet fis-27 ta' Ottubru 2007 minn San Giljan li kellha registrazzjoni numru GBB 119 u kienet registrata fuq Martin Buhagiar. Dan infatti gie wkoll ikkonfermat minn PS 891 Oscar Baldacchino<sup>4</sup>.

Fis-sentenza fl-ismijiet **Il-Pulizija vs Peter Carabott**<sup>5</sup> inghad li l-principji regolaturi in tema ta' ricettazzjoni huma ben stabbiliti fil-gurisprudenza taghna. Skond il-Qorti ta' l-Appell Kriminali fis-sentenza moghtija fil-15 ta' Jannar 2009 fil-kawza **Il-Pulizija vs Darren Debono** ntqal hekk:

*Illi skond il-gurisprudenza sabiex persuna tinstab hatja ta' ricettazzjoni hu mehtieg li jikkonkorru is-segweni flitt rekwiżiti u cioe':*

- 1. il-provenjenza lilegittima tal-oggett in kwistjoni ossia li jkun insteraq, jew gie mehud b' qerq jew akkwistat b' reat iehor;*
- 2. l-akkuzat irid ikun laqa' għandu jew xtara tali oggett li għandu provenjenza lilegittima; w*
- 3. fil-mument tal-akkwist, l-akkuzat kien jaf bil-provenjenza lilegittima tal-oggett in kwistjoni (ara App. Krim "Il-Pulizija vs. Bugelli" [24.1.1942]; "Il-Pulizija vs. Giovanni Grima" [25.10.2002])*

*L-element formali ta' dar-reat hu li l-akkuzat kien konsapevoli tal-provenjenza illecita tal-oggett suggett tar-ricettazzjoni. Dan ir-rekwizit jista' jigi pruvat kemm minn provi diretti kif ukoll minn provi indizjarji. Hekk fl-Appell Kriminali "Il-Pulizija vs. John Briguglio" [24.6.1961] (per Harding J.) kien gie ritenut li :-*

*"Min jakkwista oggett taht cirkostanzi li fihom imissu jissuspetta li dak l-oggett kellu provenjenza illegittima, u ntant ma jagħmel xejn biex jikkontrolla dik il-provenjenza, u jagħalaq għajnejh, huwa hati ta' din in-negligenza u kwindi ta' ricettazzjoni."*

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<sup>4</sup> 15 ta' Settembru 2010

<sup>5</sup> Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali deciza fil-11 ta' Settembru, 2010

Gie ukoll ritenut li dan l-element formali tar-reat in dizamina ikun jissussisti anki jekk l-akkuzat ikun irceva jew xtara l-oggett fil-waqt li jkollu jew inkella imissu kellu suspett li l-persuna li taghtu dak l-oggett setghet giet f'pussess ta' dak l-oggett b' mod illecitu w b' dana kollu xorta jilqa' ghandu jew jixtri tali oggett minghajr ma jaghmel xejn biex ji-verifika u jaccerta ruhu li l-pussess ta' dik il-persuna l-ohra kien wiehed legittimu u mhux kif kien qed jissusspetta hu. (ara App. Krim. "**Il-Pulizija vs. J. Briguglio**" [24.6.1961]; "**Il-Pulizija vs. John Dimech**" [24.6.1961]; "**Il-Pulizija vs. George Tabone**" [24.6.1961] u "**Il-Pulizija vs. Tancred Borg**" [26.10.1998]).

S' intendi ix-xjenza mehtiega fir-ricettatur tirrigwarda l-provenjenza kriminuza generika u ma tirreferix ghad-dettalji specifici tar-reat principali. (Ara App. Krim. "**Il-Pulizija vs. Joseph Piscopo**" [21.3.1953]; "**Il-Pulizija vs. Nazzareno Zarb**" [16.12.1998] u ohrajn)

Kif jghid il-KENNY:

"The knowledge: The prisoner must have received the stolen goods with knowledge then of their having been stolen. Such knowledge may be presumed prima facie if he knew of circumstances so suspicious as to convince any reasonable man that the goods had been stolen - e.g. when an unlikely vendor offers them for an unlikely price. His subsequent conduct may be evidence of such knowledge - e.g. .. selling them surreptitiously or making no written entry of having bought them."

Illi kif qalet din il-Qorti diversament preseduta (per V. DeGaetano J., fl-Appell Kriminali : "**Il-Pulizija vs. Emanuel Seisun et.**"[26.8.1998]); it-teorija Ingliza "of unlawful possession of recently stolen goods" issib ukoll applikazzjoni fis-sistema legali taghna, ghax in tema ta' "law of evidence" il-gurisprudenza taghna ssegwi hafna dik Ingliza. Din it-teorija ma hi xejn hlief l-applikazzjoni tal-buon sens ghal cirkostanzi partikolari li jkunu jirrizultaw pruvati, fis-sens li meta jigu ppruvati certi fatti, dawn jistghu wahedhom iwasslu ragjonevolment ghall-konkluzzjoni li persuna partikolari tkun hatja tar-reat ta' serq tal-oggetti misjuba ghandha jew, skond ic-cirkostanzi, tar-reat ta' ricettazzjoni ta' dawk l-oggetti. F'dik is-sentenza din il-Qorti ccitat mill-Archbold: *Criminal Pleading, Evidence and Practice*, 1997, paras. 21-125, 21-126):-

"In *R. v. Smythe*, 72 Cr. App. R. & C.A., the court stressed that it is a misconception to think that recent possession is a material consideration only in cases of handling: it adopted the following passage from *Cross on Evidence*, 5th.

*ed., p.49 (now 8th. ed., p.35): "if someone is found in possession of goods soon after they have been missed, and he fails to give a credible explanation of the manner in which he came by them, the jury are justified in inferring that he was either the thief or else guilty of dishonestly handling the goods, knowing or believing them to have been stolen. The absence of an explanation is equally significant whether the case is being considered as one of theft or handling, but it has come into particular prominence in connection with the latter because persons found in possession of stolen goods are apt to say that they acquired them innocently from someone else. Where the only evidence is that the defendant on a charge of handling was in possession of stolen goods, a jury may infer guilty knowledge or belief (a) if he offers no explanation to account for his possession, or (b) if the jury is satisfied that the explanation he does offer is untrue."*

*"Every case depends on its own facts. It would be impossible to compile a definitive list of circumstances which might be relevant. They will include, however, the time and place of the theft, the type of property stolen, the likelihood of it being sold on quickly, the circumstances of the defendant, whether he has any connection with the victim or with the place where the theft occurred, anything said by the defendant and how that fits in or does not fit in with the other available evidence." (ara ukoll f' dan is-sens :"**Il-Pulizija vs. Carmel Debono**" [1.11.1996], "**Il-Pulizija vs Richard Spiteri**" [31.8.2006] u ohrajn)."*

Illi f' sentenza moghtija mill-Qorti tal-Appelli Kriminali<sup>6</sup>, il-Qorti studjat fil-fond din it-teorija fejn gew ikkwotati diversi awturi inglizi u saret referenza ghal guriprudenza ingliza:

*"Din il-Qorti wkoll ser tikkwota mill-ahhar edizzjoni ta' Archbold peress li hi tal-fehma li l-bran li gej jitratta bl-iktar mod konciz u preciz il-kwistjoni kollha marbuta ma' din it-teorija:*

*There appears to have been widespread misunderstanding of the so-called doctrine of recent possession. The rule (for it is no more than the application of common sense) is, it is submitted, that where it is proved that premises have been entered and property stolen therefrom and that very soon after the entry the defendant was found in possession of the stolen property, it is open to the jury to convict him of burglary, and the jury should be so directed:(see R. v. Loughlin, 35 Cr.App.; R. v. Seymour, 38 Cr. App. R.68.) This of course applies*

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<sup>6</sup> Deciza fis-26 ta' Awwissu, 1998

*equally to thefts other than in the course of a burglary, whether a pickpocketing or an armed robbery.*

*In R.V.Symthe, 72 Cr.App R 8 C.A., the court stressed that it is a misconception to think that recent possession is a material consideration only in cases of handling: it adopted the following passage from Cross on Evidence 5th ed. (now 8th ed.p.35): "If someone is found in possession of goods soon after they have been missed,(sottolinjar tal-Qorti), and he fails to give a credible explanation of the manner in which he came by them, the jury are justified in inferring that he was either the thief or else guilty of dishonestly handling the goods, knowing or believing them to be stolen ... The absence of an explanation is equally significant whether the case is being considered as one of theft or handling, but it has come into particular prominence in connection with the latter because persons found in possession of stolen goods are apt to say they acquired them innocently from someone else. Where the only evidence is that the defendant on a charge of handling was in possession of stolen goods, a jury may infer guilty knowledge or belief (a) if he offers no explanation to account for his possession, or (b) if the jury are satisfied that the explanation he does offer is untrue."*

*Every case depends on its own facts, there is no magic in any given length of time. However, it is submitted that in many cases where the only evidence is that of recent possession, it will be impossible to exclude the possibility that the defendant was merely a receiver of the stolen property: in such cases a count of burglary ought not to be left to the jury. However, that applies where recent possession is literally the only evidence. The reality, is that in the great majority of cases there are other pieces of evidence which tend to point the case one way or the other. It would be impossible to compile a definitive list of circumstances which might be relevant. They will include, however, the time and place of the theft, the type of property stolen, the likelihood of it being sold on quickly, the circumstances of the defendant, whether he has any connection with the victim or with the place where the theft occurred, anything said by the defendant and how it fits in or does not fit in with the other available evidence." (Archbold: Criminal Pleading, Evidence and Practice, 1997 paras.21-125, 21-126)."*

F'dawn il-proceduri xehed Martin Buhagiar<sup>7</sup> li kkonferma li fis-sena 2007 kienet insterqitlu l-karozza tieghu li kienet ipparkjata lejn Pembroke. Il-vettura tieghu kienet RVR Mitsubishi ta' kulur ahdar u b'registrazzjoni numru GBB 119. Huwa kien ghamel rapport fl-ghassa

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<sup>7</sup> 7 ta' Frar 2011

ta' San Giljan. Ix-xhud kien thallas mill-assikurazzjoni tieghu l-ammont ta' erbat elef liri Maltin. Ix-xhud kien gharaf il-karozza minn daqqa li kellha qabel li ddeskriva ezatt kif kienet. Emanuel Farrugia, panelbeater, xehed<sup>8</sup> li l-karozza li hadem fuqha kellha daqqa fil-genb, qata' bicca mill-pjanca u rega' wahhal lilha u lanqas spray m'ghamillha. Meta mar biex jidentifika jekk il-vettura li kienet instabet zarmata kinitx l-istess li kien wettaq ix-xoghol fuqha huwa kkonferma li kienet l-istess. Abbazi ta' dawn il-provi l-Qorti hija sodisfatta li l-vettura li nstabet zarmata fis-sit okkupat mill-imputat hija l-istess karozza li kienet tappartjeni lil Martin Buhagiar u li kienet insterqet.

Jonqos ghalhekk jigi determinat jekk fil-mument tal-akkwist l-imputat kienx jaf bil-provenjenza llecita ta' din il-vettura. Mill-provi ma jirrizultax meta u kif din il-vettura giet fil-pussess tal-imputat. Li jirrizulta huwa li meta fid-29 ta' Ottubru 2008 kienet qeghda ssir l-operazzjoni tal-izgumbrament instabet fis-sit li kien qiegħed jigi okkupat mill-istess imputat. Din il-karozza instabet zarmata u n-numru tac-chassis kien maqtugh barra. Il-karozza kienet ilha li nsterqet madwar sena. L-imputat mhux qiegħed jigi akkuzat li b'xi mod bagħbas ic-chassis. B'danakollu dan huwa fattur importanti - vettura mingħajr il-pjanca tac-chassis ma tistax ma tqajjimx suspett li l-provenjenza tagħha hija wahda llecita. Anki l-fatt li nstabet zarmata b'tali mod li kien diffiċli hafna biex tingħaraf ukoll jinduci lill-Qorti li ma jkollhix dubju li l-imputat fil-mument li l-karozza giet f'idejh kien jaf bil-provenjenza llecita billi ipprova jbidel anki d-dehra tagħha. Il-fatt li fil-garaxx instabu vetturi oħra li kienu kollha in konformita' mal-ligi u li l-imputat innifsu għadda l-pulizija l-log books rispettivi tagħhom mentri ta' din il-vettura ma kellux ikompli wkoll jirrinforza l-konvinzjoni tal-Qorti.

Kwindi l-imputazzjoni giet ippruvata. Inkwantu għall-valur Martin Buhagiar xehed li thallas erbat elef liri Maltin mill-assikurazzjoni u dan qiegħed jigi rilevat inkwantu għall-kunsiderazzjonijiet li din il-Qorti triq tagħmel għal dak li jirrigwarda piena.

Inkwantu għall-piena li għandha tigi inflitta din il-Qorti qegħda tiehu in kunsiderazzjoni n-natura tar-reat, ic-cirkostanzi tal-kaz u l-fedina penali li mhix wahda allarmanti.

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<sup>8</sup> 28 ta' Meju 2012

Ghal dawn il-motivi din il-Qorti wara li rat l-artikolu 18, 279(b) u 334 tal-Kapitolu 9 tal-Ligijiet ta' Malta issib lill-imputat hati tal-imputazzjoni migjuba fil-konfront tieghu u tikkundannah ghal hmistax-il xahar (15) prigunerija li bl-applikazzjoni tal-artikolu 28A tal-Kapitolu 9 tal-Ligijiet ta' Malta qeghdin jigu sospizi ghal zmien sentejn (2) millum.

Il-Qorti wissiet lill-hati bil-konsegwenzi jekk jikkommetti reat waqt il-perjodu operattiv ta' din is-sentenza.

Dr Josette Demicoli LL.D  
Magistrat