



THE COURT OF MAGISTRATES (MALTA)

As a Court of Criminal Judicature

MAGISTRATE

DR. CAROLINE FARRUGIA FREUDO

*B.A. (Legal and Humanistic Studies), LL.D.,
M.Juris (International Law), Dip. Trib. Eccl. Melit.*

Case number 313/2016 CFF

The Police

Inspector Jonathan Ferris

vs

Stanislav Zaistev

Today Thursday 20th October, 2016

The Court:

Having seen the charges brought against Stanislav Zaistev, holder of Maltese identity card number 47012A.

Charged with having in the month of August 2013 and the previous months and years, in these Islands, by means of several acts committed at different times, which constitute violation of the same provision of the Law and which were committed in pursuance of the same design,

1. By means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation of apprehension of any chimerical event, made any gain in excess of

five thousand euro (€5000) to the detriment of NRR Entertainment and/or the directors of same company;

2. Misapplied, converting to his own benefit or to the benefit of any other person, the sum of money which is in excess five thousand euro (€5000), which has been entrusted or delivered to him under a title which implies an obligation to return such thing or to make use thereof for a specific purpose, which money was entrusted or delivered to him by reason of his profession, trade, business, management, office or service or in consequence of a necessary deposit, to the detriment of NRR Entertainment and/or the directors of same company;
3. For committing forgery of any authentic and public instrument or of any commercial document or private bank document, by counterfeiting or altering the writing or signature, by feigning and fictitious agreement, disposition, obligation or discharge, or by the insertion of any such agreement, disposition, obligation or discharge in any of the said instruments or documents after the formation thereof, or by any addition to or alteration of any clause, declaration or fact which such instruments or documents were intended to contain or prove;
4. For knowingly made use of any false acts, writings, instruments or documents.

The Court was also hereby kindly requested to apply the dispositions of article 23A of Chapter 9 of the Laws of Malta, and upon conviction also applies the provisions of article 23B of Chapter 9 of the Laws of Malta.

The Court was also hereby kindly requested that, in pronouncing judgment or in any subsequent order, sentence the person convicted to the payment, wholly or in part, to the Registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee, within such period and in such amount as shall be determined in the judgment or order, as per Section 533 of Chapter 9 of the Laws of Malta.

Having seen the Prosecuting Officer read out and confirm on oath the charges brought against the accused during the sitting of the 6th October, 2016.

Having seen all the documents exhibited in this case which are; the police's report, the accused's conduct sheet, a receipt marked as Doc JF1, a document stating that the accused was arrested for more than six (6) hours marked as Doc JF2, a photocopy of the accused's passport which is marked as Doc JF3, a set of text messages which are marked as Doc JF4, a receipt which is marked as Doc JF5, a declaration where the accused refused legal consultation before being interrogated which is marked as Doc JF6, a declaration where the accused refused legal assistance before being interrogated which is marked as Doc JF7, a statement which is marked as Doc JF8, another declaration where the accused refused legal assistance before being interrogated which is marked as Doc JF9, another statement which is marked as Doc JF10, a set of documents which are being marked as Doc JF11 and another set of documents which are being marked as Doc JF12.

Having seen Articles 18, 183, 184, 293, 294, 308, 309 and 310(1)(a) of Chapter 9 of the Laws of Malta.

Having heard the accused during the sitting dated 6th of October 2016 register a guilty plea to the second (2), third (3) and fourth (4) charges brought against him, after he was duly examined.

The Court warned the accused about the legal consequences of such a guilty plea registered by him and after allowing him a period of time to withdraw his guilty plea, the accused once again confirmed his guilty plea.

Having heard Inspector Jonathan Ferris give his testimony on oath on the 6th October, 2016 where he informed the Court that he got involved in this case after Inspector Silvio Magro informed him of an accident at the Malta International Airport between the accused and Mr. Igor Samagisky, where both parties were involved in some blows just outside the terminal, next to the parking area. Afterwards, the Malta International Airport Police investigated and found out that the accident took place because of an alleged fraud or misappropriation by the accused with regards to the company that they were both running. Inspector Ferris informed the Court that a Magisterial Inquiry was

opened where the duty Magistrate Dr. Gabriella Vella focused mainly on the computer and IT equipment. Furthermore, the Court was informed that the accused co-operated fully with the police and although he was not on police bail, the accused still informed the police when he was going to travel together with the details of his accommodation, dates and flight numbers. The case was eventually brought before the Court because there was a series of mishaps between the shareholders and the Managing Director. The funds were not forwarded or transmitted as much as requested and the accused decided to help the company in his own way by taking the money and playing online with the intention to refund the money together with the winnings. It also resulted from Bank statements that when the accused did win, he did actually place the money together with the winnings he won back into the account.

Having heard the prosecuting officer declare that the first (1) charge was given as an alternative to the second (2) charge¹.

The Court, after seeing Article 392A(1)(2) of Chapter 9 of the Laws of Malta, and in the light of the accused's voluntary and unconditional guilty plea, converted itself to a Court of Criminal Judicature and proceeded to pass judgement on the accused .

After hearing oral submissions regarding punishment.

Considered:

That from the gathered evidence together with the accused's guilty plea, the Court finds the accused guilty of the second (2), third (3) and fourth (4) charges, brought against him.

Since the first (1) charge was given as an alternative to the second (2) charge which has been admitted to, the Court is abstaining from taking further cognisance of the first (1) charge.

¹ Vide fol 48 of the process

Regarding punishment, the Court took into consideration the guilty plea at such an early stage of the proceedings, in thus the court did not have to waste time in gathering further evidence, the accused's clear conviction sheet produced by the prosecution and the fact that the accused has collaborated fully with the police pending their investigation². The Court also heard the defence lawyer and the prosecuting officer suggest to the Court that it should give a suspended sentence of imprisonment.

Decide:-

Therefore, after having considered Articles 18, 183, 184, 293, 294, 308, 309 and 310(1)(a) of Chapter 9 of the Laws of Malta, the Court is finding the accused guilty of the second (2), third (3) and fourth (4) charge brought against him and condemns him to two (2) years imprisonment, however, since the Court is of the opinion that there are sufficient reasons which warrant that the said term of imprisonment be suspended, in terms of Section 28A of Chapter 9 of the Laws of Malta, the said term of two (2) years imprisonment shall not take effect unless during a period of four (4) years from the date of this order, the offender commits another offence punishable with imprisonment and thereafter, the competent court so orders under Article 28B of Chapter 9 of the Laws of Malta, that the original sentence shall take effect.

In terms, of Section 28A(4) of Chapter 9 of the Laws of Malta, the Court explained to the accused in plain language his liability under Section 28B of Chapter 9 of the Laws of Malta if during the operational period of this suspended sentence he commits an offence punishable with imprisonment.

In terms of Article 392A(2) of the Criminal Code the Court orders that this judgment together with the record of the proceedings be transmitted to the Attorney General in terms of Law.

² Vide fol 15 of the process

Dr. Caroline Farrugia Frendo LL.D.

Magistrate

Nadia Ciappara

Deputy Registrar