



**COURT OF CRIMINAL APPEAL**

**H.H. CHIEF JUSTICE SILVIO CAMILLERI LL.D.**

**Sitting of Friday 13th October, 2017**

**Appeal No. 302/16**

**The Police**

**(Inspector Bernard C. Spiteri)**

**vs**

**David Anthony Pollina**

**The Court:**

1. Having seen the charges against David Anthony Pollina, in possession of Identity Card No. 31801A born in the United States of America on the 29th September 1966 and residing at Refidim, Wileg Street, Qala for having failed to give Faith Ellen Pollina the monthly allowance for the months of July 2015, August 2015, September 2015, October 2015, November 2015 and December 2015 which is €900 and amount to €5400 as ordered by the Court Decree Number 40/2014 JVC issued on the 6th June 2014 by Magistrate Dr. Joanne Vella LL.D.

2. Having seen the judgement of the Court of Magistrates (Gozo) as a Court of Criminal Judicature of the 24th May 2016 whereby that court having seen article 338(z) of Chapter 9 of the Laws of Malta, found the accused guilty as charged and condemned him to three months detention and ordered the accused to effect payment in the amount of two thousand Euro (€2000) being maintenance due to Faith Ellen Pollina for the months of August 2015, September 2015, October 2015, November 2015 and December 2015 within three (3) months from the date of the judgement, in accordance with the provisions of Article 24 Chapter 446 of the Laws of Malta. The Court also explained in clear words the terms of the judgement to the accused.

3. Having seen the application of appeal entered by David Anthony Pollina whereby the appellant prayed that this court:

(a) Reconfirms that part of the judgement pronounced by the Court of Magistrates (Gozo) as a Court of Criminal Judicature on Tuesday, 24th May 2016 wherein the charge relating to the payment of maintenance for the month of July 2015 was declared time-barred; and to

(b) Cancel and revoke in its entirety that part of the judgement pronounced by the Court of Magistrates (Gozo) as a Court of Criminal Judicature on Tuesday, 24th May 2016 wherein it found appellant guilty of having failed to pay maintenance to Faith Ellen Pollina for her own needs for the months of August 2015, September 2015, October 2015, November 2015 and December 2015 and consequently to acquit him from these same charges and

Alternatively and should this Court still confirm the finding of guilt in relation to the charges relating to the non-payment of maintenance to Faith Ellen Pollina for the months August 2015, September 2015, October 2015, November 2015 and December 2015 to reform that part of the judgement relating to the punishment which was imposed and this by having the three month term detention punishment substituted with an order or orders issued in terms of article 7 and/or

article 22 of Chapter 446 of the Laws of Malta or with a fine (ammenda) or with a reprimand or admonition and this taking into consideration the facts relative to this particular case as expounded upon in the appeal.

4. Having seen the acts of the proceedings and all the documents exhibited, having heard the oral submissions of the parties.

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

By a court decree dated 6th June 2014 delivered by Magistrate Joanne Vella LL.D. sitting in the Court of Magistrates (Gozo) Superior Jurisdiction Family Section David Pollina was ordered to pay pendente lite monthly the sum of five hundred Euro (€500) to his wife Faith Pollina as maintenance for the needs of their disabled son Caleb, with the first payment becoming due on the day of the decree and every month thereafter and to pay the same Faith Pollina as maintenance for herself, with the first payment becoming due on the day of the decree and every month thereafter. The accused allegedly failed to pay Faith Pollina the maintenance payments due for the months of August 2015, September 2015, October 2015, November 2015 and December 2015.

6. The appellant's grievances consist in that the prosecution did not manage to prove its case beyond reasonable doubt since Faith Ellen Pollina did not testify in the course of the proceedings and therefore no proof had been produced that maintenance had not been paid. The second grievance relates to the sentence imposed by the first Court which the appellant considers excessive taking into account the circumstances of the case.

7. Early on in the proceedings, on the 14th October 2016 (fol 42) defence counsel for the appellant requested this Court to suspend these

proceedings pending the outcome of appeal proceedings before the competent civil court in an effort to impugn the decree of the Court of Magistrates of the 6th June 2014 which is the decree on which the charge is based. By a decision of the 16th December 2016 (fol. 51) this Court ordered the appellant to file a number of documents to establish the nature and scope of the civil proceedings in question. It eventually resulted that the civil proceedings had stalled because Faith Pollina had not been successfully served with the appeal proceedings until eventually a channel of communications was established between Faith Pollina, who in the meantime had left Malta, and the appellant. On the 21st July 2017 (fol 159) a note was filed in these proceedings by the court appointed curator for Faith Pollina whereby this court was informed that the appellant and Faith Pollina had reached an amicable settlement. As a consequence these proceedings could continue to take their course after they had been interrupted by defence counsel's request for the suspension of the proceedings on account of the civil proceedings to impugn the court decree which lies at the basis of the present criminal proceedings.

8. As it will immediately be evident the accused's request for the suspension of these appellate proceedings has been the cause of considerable unnecessary delay. It transpires that the only evidence produced by the prosecution in this case consisted of a copy of the decree of the 6th June 2014 and an affidavit by P.S. 1061 J. Zammit reporting Faith Pollina's complaint. Faith Pollina was never produced as a witness to confirm on oath that she had not been paid maintenance and what P.S. Zammit reported is clearly and manifestly hearsay and as such inadmissible. The charges against the appellant have therefore not been proved according to law and must be dismissed.

Therefore the appellant's appeal is allowed, the judgement appealed from is revoked and the appellant is acquitted of the charge against him and freed from all sanctions and punishment.

(sgn) Silvio Camilleri  
Chief Justice

(sgn) Silvana Grech  
D/Registrar

True copy

f/Registrar