



**COURT OF MAGISTRATES (MALTA)  
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE NATASHA GALEA SCIBERRAS B.A., LL.D.**

**Case Number: 16/2018**

**Today, 25<sup>th</sup> April 2018**

**The Police  
(Inspector Jeffrey Scicluna)**

**vs**

**Abdulahi Hassan Ali  
(ID 106739(A))**

The Court,

After having seen the charges brought against the accused Abdulahi Hassan Ali, s/o Mohamed and Acepo Adu, born in Somalia on the 21<sup>st</sup> October 1994, without a fixed address and holder of identity card number 106739(A);

Charged with having on 8<sup>th</sup> February 2018 between 6pm and 7pm, in Xatt il-Mollijiet, Marsa and/or in other places in these Islands:

1. Had in his possession the resin obtained from the plant cannabis or any preparations of which such resin formed the base, and this in breach of article 8 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use.

Having heard the evidence adduced and having seen the records of the case, including the order of the Attorney General in virtue of subsection two (2) of Section 22 of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), for this case to heard by this Court as a Court of Criminal Judicature;

Having heard final oral submissions by the parties.

**Considered that:**

From the evidence adduced, it results that on 8<sup>th</sup> February 2018, at about 6.20 p.m., PC 1406 Kurt Rizzo and PC 868 Russell Psaila were conducting a patrol in Xatt il-Mollijiet, Marsa. According to PC 1406 Kurt Rizzo<sup>1</sup>, they were observing movements outside Tavern Bar in Marsa, when they noticed the accused throwing away a packet of cigarettes outside the said bar, at which point accused started to walk away from the two police officers. Accordingly, they alighted from their vehicle and approached the accused, asking him why he had thrown away the said packet. PC 1406 states that they then retrieved the packet of cigarettes and found that it contained nine brown sticks suspected to be illegal substance. Subsequently, they carried out a search on accused's person and found him to be in possession of another two sticks of the said substance, which were retrieved from the right pocket of his jacket. The sum of €250 was also found in accused's possession. Said witness states that he saw the packet of cigarettes in accused's hand and that he had taken it out from his right pocket. At that moment, he was only "*a couple of metres*" away from accused.

In his cross-examination, the witness states that PC 868 and himself were in the police vehicle and that accused was in the company of two other persons. Together with his colleague, he got out of the vehicle and immediately approached accused in order to stop him, after having seen him throwing away the packet of cigarettes and walking away. The witness states that he walked some four or five metres towards the accused and confirmed that they first approached the accused and subsequently retrieved the packet of cigarettes. Upon being questioned as to whether he was certain that they had retrieved the same packet of cigarettes which he had seen the accused throwing away, he replied in the affirmative. He further states that although the accused was in the company of another two persons, these had also walked with the accused and that there were no other people in that area.

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<sup>1</sup> A fol. 16 to 22 of the records of the case.

PC 868 Russell Psaila states that on 8<sup>th</sup> February 2018, whilst patrolling the area of Xatt il-Mollijiet, Marsa and conducting observations near Tavern Bar, they noticed the accused throwing away a packet of cigarettes. Accordingly, they got out of their vehicle and approached the accused, whilst telling him “*to come back*”.<sup>2</sup> They retrieved the packet of cigarettes in which they found nine brown sticks of suspected illegal substance was found. They then searched the accused and found two other small sticks of the said substance and they cautioned him in terms of law. They also found €250 in his possession. According to the witness, when they first noticed the accused, he was walking towards them in the company of another male. He then threw away the packet of cigarettes and started to retrace his steps (“*walked back*”<sup>3</sup>), whilst the other male continued to walk towards them. Upon a search carried out on the latter, nothing illegal was found.

During his cross-examination, PC 868 confirms that both his colleague and himself got out of the police vehicle and approached the accused. When it was suggested to him that they had not recovered the packet of cigarettes before approaching the accused, witness replied that he walked behind his partner, whilst watching the packet of cigarettes. In his words, “*We have to preserve the packet and watch my partner’s back as well*”.<sup>4</sup> He also states that the accused was very cooperative and did not attempt to run away. He confirmed again that they approached the accused prior to retrieving the packet, but also stressed that he never lost sight of the packet of cigarettes, whilst stating that the distance to the packet of cigarettes was merely a short one. They cautioned the accused in terms of law after they opened the said packet.<sup>5</sup>

In his statement to the police, accused denies having thrown away a packet of cigarettes containing cannabis resin. He states that he was not near the packet and that there were many other people close to where the packet was found. He further states that he had obtained the sum of money found in his possession from his employment. He did not know to whom the resin belonged as there were many people.<sup>6</sup>

During his testimony, accused states that when the police arrived in Marsa, there were five persons. He had gone home from work, then went to Marsa and bought a coffee and cigarettes. When he walked outside the bar, there was a police car.

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<sup>2</sup> A fol. 25 of the records.

<sup>3</sup> A fol. 26 of the records.

<sup>4</sup> A fol. 28 of the records.

<sup>5</sup> A fol. 24 to 31 of the records.

<sup>6</sup> This statement is exhibited a fol. 4 and 5 of the records.

He lit a cigarette and was speaking to another four persons. The police approached them, saying 'search, search' and found a packet of hashish near the group, a couple of metres away from him. Before the police approached him, they were standing outside of their car, which was parked. They were only some metres away from him. The police approached them and then searched all the area, when the packet was found, at which point they told him that the packet was his. He then states that only one of the police officers spoke to them, whilst the other continued to search the area and found the hashish.

During his cross-examination, he denies throwing anything away and states that after having found the packet of cigarettes, the police officers asked them to whom the packet belonged. He states that the officers did not merely approach him, but they searched all those present. They then commented about the fact that he had too much money in his possession. He states that this was what remained of his salary after he had gone to Marsa to buy some clothes. According to accused, the officers told him that the hashish belonged to him, since he had money in his possession, whilst no money was found on the others.<sup>7</sup>

From the report drawn up by expert Scientist Godwin Sammut, it results that said expert was handed, for his analysis, a document consisting of a brown envelope marked as S/B/75/2018, which contained a brown envelope containing a Rothmans cigarette packet with brown substances. In terms of the said report, *Tetrahydrocannabinol* was found in the extracts taken from the brown substances in the mentioned exhibit and the total weight of the said substances is 11.50 grams, with a purity of THC of approximately 6%.<sup>8</sup>

**Considers further that:**

The accused is being charged with possession of cannabis resin found in circumstances denoting that this was not intended for his personal use. Whereas the Prosecution sustains that accused was observed throwing away a packet of cigarettes by PC 1406 Kurt Rizzo and PC 868 Russell Psaila, which packet was found to contain nine sticks of cannabis resin, in addition to being found in possession of another two cannabis resin sticks, the accused denies having thrown away the said packet of cigarettes.

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<sup>7</sup> A fol. 54 to 63 of the records.

<sup>8</sup> This report is exhibited a fol. 43 of the records.

During final oral submissions, whilst the Prosecution put forward its arguments in favour of a finding of guilt, the defence stated that it has not been proved to the degree required by law that the accused had thrown away the said packet of cigarettes. According to the defence, there were discrepancies between the respective versions provided by PC 1406 and PC 868 in material aspects of importance and that the evidence adduced does not point directly to the accused. The defence pointed out that the accused was not alone in the area, but there were others present too at the time and that therefore he should be acquitted of the charge adduced against him. In any case, according to the defence, the amount of resin found in the packet of cigarettes falls within the parameters of personal use.

The Court notes that although there were some discrepancies between the versions provided by the two police officers present on site, yet these are not such as to lead the Court to reasonably doubt that the packet of cigarettes containing the cannabis resin had been thrown away by the accused. Indeed whereas PC 1406 states that the accused was in the presence of another two persons, who both walked away with the accused after he had been observed throwing away the packet of cigarettes, PC 868 states that the accused was accompanied by another male and whilst the latter continued to walk towards the police after the accused had thrown away the packet of cigarettes, only the accused retraced his steps. Yet, the Court also notes that both PC 1406 and PC 868 state to have observed the accused throwing away the said packet whilst they were observing movements outside the Tavern Bar, with PC 1406 stating that he was only a couple of metres away from the accused when he saw him disposing of the said packet. This short distance is indeed attested to by the accused, who states that before the police approached him, they were standing merely some metres away from him.

Furthermore, although during its cross examination of the two police officers, the defence attempts to shed doubt as to whether the packet retrieved was the same packet thrown away by the accused, the Court notes that notwithstanding the fact that the two police officers state to have approached the accused first prior to recovering the said packet as he had started walking away from them, yet it results that after apprehending the accused, who according to PC 868 cooperated with them, they immediately retrieved the packet of cigarettes. According to PC 1406, they only had to walk some four or five metres towards the accused and PC 868 states that the distance to the packet of cigarettes was likewise small, in such a way that he did not lose sight of the said packet, whilst watching out for his colleague, who had approached the accused before him. Indeed, although the accused states that he was in the company of another four persons at the time (whilst PC 1406 mentions another two persons and PC 868 states that there was only another male),

thereby implying that the packet of cigarettes could have been thrown away by or could have easily belonged to any of the others, yet PC 1406 and PC 868 were so certain of their observation of the accused's movements, that they immediately singled him out and approached him (and not any of the others), contrary to the version provided by the accused, who implies that the police were so uncertain of the provenance of the packet that they approached all those present and searched them too prior to declaring that the packet had been in his possession. Considering the short distances involved and that the retrieval of the packet took place within a short period of time, immediately upon apprehending the accused, the Court does not doubt that the accused had indeed thrown away the said packet and that the packet recovered by the police was the same packet thrown away by the accused. It is also clear from the deposition of both PC 1406 and PC 868 that the search on the person of the accused took place after the packet had already been recovered, thus further limiting the period of time that passed between the police officers' observation of accused's movements and the retrieval of the packet. The Court further notes that although as already stated the defence's questioning of the two police officers during their cross-examination attempts to shed doubt as to whether the packet retrieved was the packet that had actually been thrown away, yet the accused states that he had not thrown anything away, in clear contrast to the observation of the two police officers. The Court also finds the accused's testimony to the effect that the police officers reached the conclusion that the resin found belonged to him due to the amount of money found in his possession, as a poor attempt at undermining the police officers' version, which is certainly more credible and plausible than that offered by the accused. At one point the accused also states as follows: "*So when they searched everybody, I have nothing and they tell me: "This money and you bring it here"*"<sup>9</sup>, when on the other hand, it results clearly that he was found to be in possession of two cannabis resin sticks in the pocket of his jacket.

Having thus established that the cannabis resin found in the packet of cigarettes had been in accused's possession, the Court must also determine whether the resin in accused's possession was intended for his personal use or otherwise.

In its judgement dated 17<sup>th</sup> February 1997, in the names **Il-Pulizija vs Mohammed Ben Hassan Trabelsi**, the Court of Criminal Appeal stated as follows:

*" ... l-ewwel nett wiehed ghandu jara jekk l-ammont ta' droga huwiex ammont li normalment wiehed jassocja ma' uzu personali, u sa hawn il-piz tal-prova (u cioe`*

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<sup>9</sup> A fol. 61 of the records.

*il-prova tal-ammont u tal-pussess) qieghed fuq il-prosekuzzjoni; jekk, pero`, dak l-ammont ikun tali li normalment wiehed ma jassocjahx mal-uzu esklussiv da parti tal-pussessur, ikun jispetta lill-imputat li jipprova, imqar fuq bazi ta' probabbilita`, li dak l-ammont kien ghall-uzu esklussiv tieghu, u dan b'applikazzjoni tal-Artikolu 26(1) tal-Kap. 101.”*

According to PC 1406 and PC 868, the packet of cigarettes contained nine sticks of cannabis resin and another two small sticks were found in accused's jacket. It also results from the report drawn up by Scientist expert Godwin Sammut that, in total, the cannabis resin weighed 11.5 grams. The Court does not deem such an amount of cannabis to be insignificant and is such that is not normally associated with personal use. Indeed if one takes into consideration that a typical dose of cannabis in a joint is 0.2 grams<sup>10</sup>, the amount of cannabis found in accused's possession could potentially produce circa 57 joints.

On his part, the accused merely denies that the cannabis resin found in the packet of cigarettes had been in his possession and thus does not even claim that this was for his personal use. Except for his criminal record which indicates cannabis use by the accused in 2016, there is no evidence in the records that accused consumed cannabis at the time of the offence. Yet, even if accused did indeed make use of cannabis, the amount of cannabis resin in his possession and the number of cannabis sticks found, coupled with the fact that accused was out and about with the said resin in his possession, when as he states in his deposition, he had just gone home to shower after work, and given also the area in which accused was found to be in possession of such cannabis which is renowned for drug related activity, lead the Court to conclude beyond any reasonable doubt that said cannabis was not merely intended for his personal use.

For these reasons, the Court finds that the Prosecution has proved the charge adduced against the accused to the degree required by law.

As regards the sum of two hundred and fifty euro (€250), the Court notes that both in his statement and in his deposition during these proceedings, the accused states that he had obtained this sum of money from his employment. Although the Court is finding him guilty of the offence with which he is charged, yet there is no proof to the contrary that this was the case. Thus the Court is ordering the release of the said sum in favour of accused.

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<sup>10</sup> World Drug Report 2006 Volume I. Analysis, pg. 96 *et seq*; <http://www.emcdda.europa.eu/publications/drug-profiles/cannabis>.

## **Considerations on Punishment**

As regards the punishment to be inflicted, the Court is taking into consideration the criminal record of the accused as well as the serious nature of the offence of which he is being found guilty, the circumstances of the case and the amount of cannabis found in accused's possession.

## **Conclusion**

For these reasons, the Court after having seen Sections 8(a), 22(1)(a) and 22(2)(b)(i) of Chapter 101 of the Laws of Malta and Regulation 9 of Subsidiary Legislation 101.02, finds the accused Abdulahi Hassan Ali guilty of the charge brought against him and condemns him to eleven (11) months effective imprisonment – from which term there must be deducted the period of time, prior to this judgement, during which the person sentenced has been kept in preventive custody merely in connection with the offence of which he is being found guilty by means of this judgement – and a fine (*multa*) of one thousand euro (€1,000).

In terms of Section 533 of Chapter 9 of the Laws of Malta, it condemns Abdulahi Hassan Ali to the payment of the costs incurred in the appointment of Scientist expert Godwin Sammut, which costs amount to the sum of one hundred, eighty eight euro and seven cents (€188.07).

The Court orders the destruction of the drugs forming part of Document JS, once this judgement becomes final and definitive, under the supervision of the Registrar, who shall draw up a *proces verbal* documenting the destruction procedure. The said process verbal shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

Finally, the Court orders the release of the sum of two hundred and fifty euro (€250), forming part of Document JS, in favour of Abdulahi Hassan Ali.



Magistrate