



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

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

Case Number: 144/2016

Today, 16th May 2018

**The Police
(Inspector Maurice Curmi)**

vs

**Awal Mohammed
(ID 45323(A))**

The Court,

After having seen the charges brought against the accused Awal Mohammed, of 37 years, son of Mohammed and Rakeja nee` Al Hassan, born in Sierra Leone, on 8th May 1979 and resides at 'St. Mary Flats', Flat 6B, Triq il-Gifen, St. Paul's Bay and holder of ID card number 45323(A);

Charged with having on 11th May 2016, at about quarter past seven in the evening (19.15 hrs) in St. Paul's Bay, had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant *cannabis*, which drug was found under circumstances denoting that it was not intended for his personal use, in terms of Article 8(d) of Chapter 101 of the Laws of Malta;

For being a recidivist after being sentenced for an offence by the Court of Magistrates (Malta) dated 27 January 2011, which judgement has become absolute, in terms of Sections 49 and 50 of Chapter 9 of the Laws of Malta.

The Court was requested, in pronouncing judgement or in any subsequent order, to 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, in terms of Sections 532A, 532B and 533 of Chapter 9 of the Laws of Malta.

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 the accused plead guilty to the charges brought against him during the sitting held on 9th May 2018, which guilty plea he confirmed even after the Court, in terms of Section 453(1) of Chapter 9 of the Laws of Malta, warned him of the legal consequences thereof and allowed him sufficient time to reconsider his plea and to retract it;

Having heard final oral submissions by the parties about the punishment to be inflicted.

Considered that:

Despite the guilty plea filed by accused, the Court cannot find the accused guilty of the charges brought against him and this for the following reasons:

The Court notes that whereas the charge sheet exhibited in the Maltese language refers to the offence of possession of cannabis resin in circumstances denoting that this was not intended for the exclusive use of accused, on the other hand the charges in the English language refer instead to the offence of possession of the whole or any portion of the cannabis plant in circumstances denoting that this was not intended for his personal use.

From the evidence adduced, it is clear that the facts which led to this case refer to the accused having been noticed throwing away a packet of cigarettes containing several pieces of a brown substance, which has been exhibited in these proceedings as Document IM. During his deposition PS 914 Ivan Mifsud states that as soon as accused saw the police approaching him *“he threw a packet of cigarettes, Rothmans red on the table ... and tried to put it inside the billiard pockets ... after I checked the*

packet of cigarettes, it contained 17 pieces of brown substance”¹. Similarly, the police report drawn up by said PS 914 states that “A search was carried out in the cigarette packet and a number of brown sticks suspected to be cannabis resin were found”². PC 1054 Manuel Zahra also states that accused threw a packet of cigarettes on the billiard table, in which “we found some resin cannabis sticks”³ and he refers to Document IM as “the packet of cigarettes and the resin sticks that were found on the billiard table that the person threw”⁴ with reference to accused. Furthermore, in his deposition, PS 914 Ivan Mifsud states that during a search carried out at accused’s residence, he found a small bag containing a small quantity of dried leaves inside a bowl on a coffee table and several small bags inside a chest of drawers. Said witness refers to these dried leaves as traces.

From the report drawn up by expert Scientist Godwin Sammut⁵, it results that upon analysing an evidence bag with ID S00921904 containing (i) brown substances and (ii) a packet of cigarettes that contains a piece of plastic containing green grass, he concluded that:

- a) Tetrahydrocannabinol was found in the extract taken from the brown substance in the exhibit labelled as S/B/395/2016. The total weight of the brown substance is 16.63 grams and the purity of THC was approximately 6%. Cannabis resin is controlled under Part III of Chapter 101 of the Laws of Malta.
- b) Tetrahydrocannabinol was found in the extract taken from the green grass that is in the same exhibit. The amount was only traces.

During his deposition, expert Godwin Sammut confirmed that the substance weighing 16.63 grams was cannabis resin.⁶

It is therefore clear from the above that the substance contained in the packet of cigarettes which accused was observed throwing away on the day and time indicated in the charge sheet, was cannabis resin and not cannabis plant.

The Court further considers that the minute of the sitting held on 13th May 2016, during which the accused was arraigned before the Court under arrest, indicates that said Court acceded to the accused’s request that the proceedings be heard in the English language, since he declared that he did not understand the Maltese language. Indeed, the proceedings were conducted in the English language and the charges that were read out and confirmed on oath by the Prosecuting Officer were also in the

¹ A fol. 18 of the records of the case.

² A fol. 27 of the records.

³ A fol. 30 of the records.

⁴ A fol. 31 of the records.

⁵ Exhibited a fol. 55 of the records.

⁶ A fol. 52 of the records.

English language.⁷ It is therefore clear to the Court that the accused was answering to the charges as served upon him and as exhibited in the English language.

In its judgement of 18th December 2017 in the case **The Police (Inspector Trevor Micallef) vs Mohammed Hussein Abdi**, where the charges in the Maltese language referred to the correct date on which the offence was allegedly committed, whilst the charges in the English language referred to another date, the Court of Criminal Appeal confirmed the judgement of the court of first instance, whereby accused was acquitted on the ground that once the alleged facts leading to the charges occurred on a date that was not the date indicated in the charges proffered in the English language, the accused could not be found guilty as charged, since the proceedings were conducted in the English language. In that case, the Court of Criminal Appeal held:

“1. That from the records of this case respondent was acquitted from all charges relating to drug trafficking on the basis that whereas the charge sheet proffered that the alleged crime was committed on the 16 of July 2016, all the witnesses and documents pointed to an event which took place on the 14 of July. It is to be noted that the prosecution initially presented a charge sheet in the Maltese language alleging that the offence took place on the 14 July. However, since respondent does not speak or understand the Maltese Language, the first Court ordered that the proceedings be held in the English Language, which language is spoken by respondent;

...

3. In the first reasoning brought forward, the Attorney General notes that the alleged offence took place on the 14 July 2016 and respondent was brought under arrest before the first Court the day after and the date of the 14 July was correctly indicated on the charge sheet in the Maltese language (folio 1 of these proceedings). The conclusion of this premise by the Attorney General is that the error appeared in the translated charge sheet into the English Language and that this amounts to a lapsus computetri. The Attorney General is not correct in his argument in that from the records of the case it is evident that the charge was not read in the Maltese language and translated in the English language. The charge was read by the Prosecuting Officer under oath in the language which is understood by respondent. It is those facts which were available to the accused in order for him to be in a position to prepare his defence and this Court cannot therefore accept the reasoning of the Attorney General as a ground to reverse the judgement of the first Court”.

Section 360(2) of Chapter 9 of the Laws of Malta states that:

⁷ Vide a fol. 2 and 3 of the records.

“The summons shall contain a clear designation of the person summoned and a brief statement of the facts of the charge together with such particulars as to time and place as it may be necessary or practicable to give ...”. [emphasis of the Court]

In its judgement of 19th November 2015 in the case **Pulizija vs Andre` Falzon**, the Court of Criminal Appeal referred to another judgement given by the said Court, as differently presided, on 18th October 2005 in the case **Pulizija vs John Mary Briffa**, where the appellant had been charged with offences that allegedly took place at around 7.30 p.m., whereas the evidence brought referred to an incident that had occurred at around 7.30 a.m.. In that case, it was held that:

“L-imputazzjoni ghalhekk kif impostata qed tirreferi ghal xi haga li allegatament grat tnax-il siegha wara u l-ewwel Qorti hekk sabet lill-appellant hati. Mill-provi ma jirrizultax li gara xi incident fil-hin indikat fl-imputazzjoni u ghalhekk l-appellant ma setax jinsab hati kif fil-fatt insab. Il-frazi “ghall-habta ta” tindika hin approssimattiv u tinkludi hin vicin dak imsemmi fl-imputazzjoni izda zgur mhux tnax-il siegha wara. Il-prosekuzzjoni qalet li huwa ovvju li dan kien zball dattilografu. Jekk inhuwa hekk, il-prosekuzzjoni kellha tiehu hsieb taghmel jew titlob il-korrezzjoni opportuna tempestivament.”

After referring also to other judgements which confirmed this same principle⁸, the Court continued as follows:

“Stabbiliti dawn il-principji dottrinali u applikati ghall-kaz in ezami huwa car allura illi l-appellanti kellu jigi illiberat mill-akkuzi kif dedotti kontra tieghu billi dawn jirreferu ghal perijodu ta’ zmien differenti minn dak li fih sehew l-allegati fatti li wasslu ghall-imputazzjoni odjerna. Illi allura billi l-Prosekuzzjoni naqqset milli tinduna b’dan l-izball u tirrettifikah fil-hin opportun, u billi l-Avukat Generali huwa issa fi stadju ta’ appell prekluz milli jitlob il-korrezzjoni mehtiega biex tigi sanata l-akkuzi, ma hemmx dubbju illi l-imputazzjonijiet kif dedotti kontra l-appellanti ma jistghux jissussistu billi fid-data indikata fl-akkuzi l-appellanti ma ikkommettiex ir-reati lilu addebitati.”

Although the present charge sheet does not provide a wrong indication of date or time as in the cases above cited, yet the Court deems that the same principle applies in this case. In the present case, accused is being charged with an offence which finds no basis in the alleged facts which led to his arrest and in the evidence adduced by the Prosecution. It is amply clear from such evidence that accused was not found in possession of the whole or any portion of the cannabis plant in circumstances denoting that this was not intended for his personal use, but allegedly of cannabis resin in such circumstances. Despite his guilty plea therefore, the Court cannot find accused guilty of an offence that clearly does not result from the evidence produced,

⁸ **Pulizija vs Warren Piscopo** and **Pulizija vs Rita Theuma**, both decided by the Court of Criminal Appeal on 19th October 2011.

but which on the contrary, points towards another offence. From the records of the case, it is perfectly clear to the Court that Prosecution intended to charge accused with possession of cannabis resin in circumstances denoting that this was not intended for his exclusive use and the evidence adduced by Prosecution points solely and incontrovertibly to this charge. Indeed, although PS 914 states to have found traces of suspected cannabis grass in accused's residence, the original charges in the Maltese language do not even reflect this finding, as they merely include the resin charge. Therefore, accused's guilty plea is in direct conflict with the rest of the evidence brought forward and thus, accused pleaded guilty to facts – namely possession of cannabis plant in circumstances denoting that this was not for his personal use – that he did not commit, at least on the day and time to which the charge refers.

In its judgement in the case **Pulizija vs Andre` Falzon**, above cited, the Court of Criminal Appeal referred to another judgement in the names **Il-Pulizija vs Martin Camilleri**⁹ on the probatory value of a guilty plea:

“Dwar l-effett ta' ammissjoni fuq l-appell tal-persuna misjuba hatja din il-Qorti (jew ahjar, il-Qorti Kriminali li allura kienet tisma' l-appelli mid-decizjonijiet tal-Qorti tal-Magistrati tal-Pulizija Gudizzjarja) diga` kellha l-opportunita` li tippronunzja ruhha fis-sentenza tagha tas-27 ta' Ottubru, 1962 fil-kawza fl-ismijiet Il-Pulizija vs George Cassar Desain (Kollez. Deciz. XLVI.IV.911). F'dik is-sentenza gie ritenut, mill-kompjant Imhallelf William Harding, fuq l-iskorta ta' guriprudenza kemm Ingliza kif ukoll lokali, li fuq ammissjoni ta' l-imputat Qorti ma tistax hlief tghaddi ghall-kundanna tieghu ammenokke` ma jirrizultax li l-imputat ma jkunx fehem in-natura ta' l-imputazzjoni jew li ma kinitx l-intenzjoni tieghu li jammetti li hu hati ta' dik l-imputazzjoni jew li fuq il-fatti minnu ammessi l-Qorti ma setghetx skond il-ligi, tikkundannah, cjoe` ssibu hati ta' reat.” [sottolinjar ta' dik il-Qorti]

In the present case, on the basis of the evidence produced, the Court cannot find the accused guilty of the charge brought against him, as it does not result. The Court further adds that although the illegal substance underlying both cannabis resin and the plant cannabis is Tetrahydrocannabinol, yet the provisions of Chapter 101 of the Laws of Malta make a distinction between the two and indeed whereas possession of cannabis resin is referred to in Section 8(a) of Chapter 101, it is Section 8(d) of said Chapter which refers to the cannabis plant. The Court therefore cannot find accused guilty of being in possession of the cannabis plant in circumstances denoting that it was not intended for his exclusive use, as charged, when the evidence indicates possession of cannabis resin allegedly in such circumstances.

For these reasons, as regards the first charge, the Court cannot find accused guilty as charged.

⁹ Deciza fl-20 ta' Jannar 1995, Vol. LXXIX.v.1538.

To this the Court must add that it has also taken into consideration the deposition of PS 916, wherein he states that a small quantity of dried leaves, which he describes as traces, were found in accused's residence. Yet, during his deposition, PS 916 exhibited the packet of cigarettes containing the resin as Document IM, a number of plastic bags found in accused's residence as Document IM3 and three mobile phones as Documents IM1, IM2 and IM5. It also results from the transcript of said deposition, that during the same, PS 916 could not find the bag containing the dried leaves, and consequently there is no record that these were exhibited. Indeed during said deposition, the Court pointed out with reference to this part of his testimony *"You cannot find them in that bag which you are holding at the moment"*.¹⁰ The report drawn up by expert Godwin Sammut, appointed by the Court to examine Document IM, indicates that this document contained brown substances and a packet of cigarettes containing a piece of plastic containing green grass. The latter is described by expert Sammut in his report as consisting of traces, in which the substance Tetrahyrdocannabinol was found.

In this respect, the Court considers that although the traces of green grass analysed by expert Godwin Sammut were probably the traces of dried leaves to which PS 916 refers in his deposition, yet at no point during these proceedings, were these traces exhibited as the traces of dried leaves found in accused's residence to which PS 916 refers in said deposition. Indeed, as stated above, there is no record at all that these were exhibited. Accordingly it may only be assumed that these were indeed such and assumptions certainly find no place in criminal proceedings and clearly do not lead to the degree of proof required in criminal law for a finding of guilt.

On the basis of said considerations, the Court cannot even find accused guilty of the offence of possession of the cannabis plant for personal use, which is deemed to be comprised in the offence with which accused is charged.

Consequently, once accused is not being found guilty of the offence contemplated in the first charge, neither can he be considered as a recidivist in terms of law.

Conclusion

For these reasons, the Court is finding the accused not guilty of the charges brought against him and acquits him thereof.

Orders that Documents IM and IM3 are destroyed, 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 proces-verbal shall be

¹⁰ A fol. 20 of the records.

inserted in the records of these proceedings not later than fifteen days from the said destruction.

Orders the release of the mobile phones exhibited as Documents IM1, IM2 and IM 5 in favour of Awal Mohammed.

Natasha Galea Sciberras
Magistrate