COURT OF CRIMINAL APPEAL

JUDGE

The Hon. Dr. Antonio Mizzi LL.D., Mag. Juris (Eu Law)

Appeal no. 267/2015

The Police
Vs

Luca Ferrera

born in Italy on 25th July, 1983, holder of identity card number 79053(A)

This, 16th October, 2018

The Court,

Having seen the charges brought against the appellant Luca Ferrera before the Court of Magistrates (Malta) :

Having on the 25th April 2014, at about 11:30 pm, in St. Lucy Street, Valletta, as the person responsible from the establishment "Wild Honey",

(1) Failed to remove the tables and chairs, at the expiry of the authorisation (Local Council permit), and to leave the area in its original state.

(2) And moreover breached the terms and conditions of the authorisation issued by the Local Council, which were applicable for that particular activity.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 18th May, 2015, the Court after having seen and considered Regulations 3(3) and 9(5)(c) of Subsidiary Legislation 441.04 of Laws of Malta found the accused Luca Ferrera guilty of all the charges brought against him and condemned him to a fine (ammenda) of one hundred and seventy five Euro (€175.00) for both charges.

Having seen the application of defendant Luca Ferrera filed on the 27th May, 2015, wherein they humbly pray this Court to cancel, revoke and reverse the judgement from which this appeal is being made and consequently acquit him from all the charges brought against him.

That the grounds of appeal of defendant Luca Ferrera consist of the following:

Whereas the first point of contestation of the appellant is the fact that as clearly emerges from the documents exhibited by the representative of the Malta Tourism Authority [Doc QT1], the appellant is an operator of KAFE FRANS and not of Wild Honey. For the purposes of the Malta Tourism Authority, the appellant only operates the premises officially registered as KAFE FRANS, and consequently, he cannot be found guilty of operating an establishment that in reality does not exist! The appellant could only be found guilty of operating KAFE FRANS, and not Wild Honey. The prosecution, effectively, failed to prove that premises bearing the name Wild Honey actually exist.

Whereas the second point of contestation that is being made, without prejudice to the above, is that the affidavit of PC 202 J. Grech [Dok A] presented by the prosecution should not have been taken into account by the Honourable Court of Magistrates, and this because the said affidavit has been presented as drawn up in the Maltese language, whereas the charges against the appellant were drawn up in the English language. From the fact that the charges were presented in the English language, it is evident that the prosecution was well aware that the appellant is not familiar with the Maltese language, and thus, any affidavits should have been drawn up in the English language. In fact, the entire proceedings in this case were conducted in the English language.

Whereas consequently, on this basis, the First Honourable Court should not have taken cognisance of the said affidavit in deciding the present case, and thus the appellant humbly submits that the First Honourable Court should have thus reached the conclusion that the prosecution did not prove the charges to the degree required by law, and thus should have acquitted the appellant.

Whereas the third point of contestation that is being made, without prejudice to the above, is the fact that even if one concedes, just for the sake of the argument, that the affidavit of PC 202 J. Grech [Dok A] is admissable, there still exits a clear and unequivocal doubt as to the date when the appellant was in fact found in St. Lucia street, at KAFE FRANS, and was spoken to by the police. This is being said because whilst the charges brought against the appellant are dated 25th April 2014, in the affidavit of PC 202 J. Grech [Dok A] reference is made to "kien il-Gimgha sbieh il-Hadd". Clearly, this is not possible. Thus, in view of such wording, there is a clear doubt as to whether the appellant was found in KAFE FRANS on the night between Friday and Saturday, or on the night between Saturday and Sunday.

Whereas it is of the essence in criminal proceedings that the acts said to tantamount to a criminal offence are attributed to have happened at a particular time, on a particular date and at a particular place. If certainty as to any one of these elements is missing, then the charges proferred against the person charged cannot be said to have been proved at the level required by law in proceedings of a criminal nature.

Whereas the fourth point of contestation that is being made, without prejudice to the above, is the fact that whenever the appellant applied for a permit for tables and chairs, as proved before the First Honourable Court, the appellant was always allowed to leave the same tables and chairs in place as long as the music is stopped at a particular time. The reason for this is that although one can stop the music at any time, when one would have served his patrons with food and drink, one cannot simply ask them to leave the place just because a certain time would have passed. The appellant, as operator of a place of entertainment, cannot reasonably be expected to foresee how long his patrons will take to consume whatever they choose to order. It is on this basis that the appellant felt that he should allow the patrons to consume their ordered food and drink using the chairs and

tables in the street, since whenever he was given a permit to operate, he always was allowed to operate in such a manner.

Whereas the fifth point of contestation that is being made, without prejudice to the above, is that the First Honourable Court should not have found the appellant guilty of both charges proferred against him, but, if at all, only of the second charge, since the first charge should be deemed as being comprised and included in the second.

Having seen the records of the case.

Having seen the updated conviction sheet of the defendant.

Now therefore duly considers,

Witnesses

PL Quentin Tanti as representative of MTA testified and exhibited a document issued by the Malta Tourism Authority that the appellant is the operator ' *'Registered Operator Mr Luca Ferrera ID 0079053A'* (folio 15). The licencee of the establishment formerly known as Café' Frans remained Francis Attard. Nowadays, however, the establishment is known as Wild Honey.

Another witness was Gabriella Agius (Valletta Local Council Representative) who confirmed and exhibited a permit that was issued by the Local Council on the 10th July, 2014 for an event to take place on the 11th of July, 2014 and covered the time between 19.00 HRS and 23.00HRS. (Folio 20) and another permit issued on the 24th of April, 2014 for an event to be held on the 25th of April, 2014 covering the time between 19.00 HRS and 23.00HRS. Moreover, both documents confirmed the address of the establishment: 'WILD HONEY, ST LUCY STREET, VALLETTA and that the appellant was the licence holder of the establishment.

The appellant testified that the Police had called before 23.30p.m. on the night in question. The eleven o'clock maximum was for the playing of music and not for the

placing of the chairs and tables. He could not tell the clients to leave the table when they were still eating. During the cross examination the witness said that it was definitely not after 23.30p.m. (folio 48). At this point the Court drew the attention of the appellant that by 23.00 hours he had to remove the tables (folio 46). He also confirmed that the signature on the permit was his. During the re-examination the appellant confirmed that the permit was in Maltese and that he does not understand the Maltese language. He had signed the request for the permit after the explanation given by the officers at the Local Council.

The Prosecution also filed an affidavit by PC 202 J. Grech which was drawn up on the fourth of May 2014.

Grounds for Appeal

The first ground of appeal is about the name which is shown on the writ of summons. The appellant submits that he is the operator of 'Kafe Frans' and not of Wild Honey according to Document QT1 presented by the Malta Tourism Authority. However, the document issued by the Valletta Local Council on the 24th April, 2014, which document the appellant confirmed he had personally signed, reveals the name as WILD HONEY. It is obvious that appellant would not have accepted a permit for some other establishment. Moreover, from the testimony of PL Quentin Tanti it clearly results that the establishment formerly called Café' Frans is now known as Wild Honey. Hence the Court is dismissing the first ground of appeal.

The second ground of appeal refers to the language of the affidavit by PC 202 J Grech on page 4. The appellant argues that the Court should have ignored this affidavit because it is in Maltese. This Court holds that the Court of Magistrates was correct to consider this evidence as well. The Use of the English Language Act of 1967 does not create any unnecessary nullities in the proceedings. That Act was introduced to make life simpler for everybody not speaking in Maltese. If the appellant had any difficulty with the affidavit, he could have requested a translation of it. In any case from the testimony of the witness it is quite clear that he was totally aware of the details which appear in the affidavit. The Court is rejecting the second ground of appeal.

The third ground of appeal refers to the date because in the affidavit PC 602 J Grech (page 4) had said : 'It was Friday on the eve of Sunday'. First of all, this is clearly a lapsus calami as the same witness had already given the date 25th April 2014 on the very first line of the affidavit. Secondly a 2014 calendar reveals that the 25th April 2014 fell on a Friday. Thirdly it is common knowledge that a Friday precedes a Saturday and not a Sunday. This lapsus caused no problems to the appellant. Hence the Court is dismissing the third ground.

The fourth ground of appeal is that the appellant was obliged to stop the music at eleven but he could still keep the stables in the street. However, this is not reflected in the permit issued on the 24th April, 2014 which covers the hours 19.00 to 23:00 hours without creating any right for the applicant to keep the tables on the street after that hour. In fact, this permit does not mention any music at all. The words are: ' Days for which the permit is being requested: For 7 tables and chairs (1m x1 m) on Friday 25th April 2014 19.00hrs – 23 hours. Hence the Court is dismissing the fourth ground of appeal.

The fifth and final ground of appeal is that the appellant should not have been found guilty of the first charge once this is 'comprised' in the second charge. This is not what the law requires. The law requires a decision about every charge against the accused and then it is up to the court whether there are any grounds for the application of article 17(h) of chapter 9. Hence the Court is dismissing the fifth ground of appeal.

Consequently, this Court does not adhere to the applicant's request and confirms the judgement appealed in its entirety.