

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

Magistrate Dr Josette Demicoli LL.D

**The Police
(Inspector Matthew Spagnol)**

vs

Mohammed Galiga

Case no. 131/2018

Today 1st November, 2018

The Court,

Having seen the charges brought against Mohammed Galiga, and without any official documentation.

Accused of having, on the 22nd September 2018, at around 04:30hrs, in San Gorg Street, St Julian's, produced, sold or otherwise dealt with the whole or any portion of the plant cannabis in terms of section 8(e) of the Chapter 101 of the Laws of Malta,

Also accused with having, on the same date, time, place, and circumstances, without intent to kill or to put the life of Sammy El Farsi (ID. 55799M) in manifest jeopardy, caused harm to the body or health of Sammy El Farsi, which injuries are of slight nature; (Art 214, 221 of Ch. 9 of the Laws of Malta);

Also accused with having, on the same date, time, place, and circumstances, without intent to kill or to put the life of Ismael Esousi Lovegrove (ID. 182499M) in manifest jeopardy, caused harm to the body or health of Ismael Esousi Lovegrove, which injuries are of slight nature; (Art 214, 221 of Ch. 9 of the Laws of Malta);

Having seen the Attorney General's order in terms of Article 22(2) of Chapter 101 of the Laws of Malta dated 22nd September 2018.

Having heard witnesses.

Having heard oral submissions.

Having seen all the acts and documents of the case.

Considers

The accused is charged with selling cannabis and of having slightly injured Sammy El Farsi and Ismael Esousi Lovegrove.

PS 249 Michael Vella¹ confirmed on oath the PIRS report prepared by him. He stated that on the 22nd September 2018, at about 04:30hrs PS 249 Michael Vella was informed by PC 61 that the latter needed assistance because he had caught red-handedly a person who was selling drugs and he had attacked them and fled towards Hugo's Boutique Hotel. Thus, PS 249 went on site and upon the description given, together with PC 824 the accused was apprehended. PC 61 and his friends recognized the person who had just been arrested as the person who had attacked them. They explained that as they were going down the stairs near GIG, Pc 61 noticed that the accused was selling drugs and he went to stop him and to tell him to leave and this guy started insulting the police and threw stones at them and hurt them. Upon searching the accused some money was found but were returned to him. No drugs were found in the vicinity.

Pc 61 Larkin Lia² testified that on the day he was in Paceville at about 04:30hrs/05:00hrs together with his friends. They went near St George's Bay because one of their friends was not feeling well and as they were walking, a man (whom he recognized as being the accused) tried to sell to them a brown-coloured substance. He told them whether they wanted to buy drugs. Upon hearing this, the witness informed the accused that he was a police officer and upon hearing this the accused became aggressive and hurled insults at police. Hence, his friend Ismael Lovegrove and himself tried to restrain him and he phoned the sergeant for back-up. However, the accused managed to run away. Then, the accused started to throw stones at them and he hurt two of his friends. Then, he was eventually arrested. The witness explained that the accused "*kellu tissue f'idejh bil-haxix fih li dehret li kienet sustanza*". It was brown in colour. In cross-examination, the witness stated that the accused wanted to sell drugs. No money was mentioned. The accused told them "*you can't find like this anywhere else*". When the accused managed to unrestrain himself, he went about 15 to 20 metres away and he confirmed that he did not see

Sammy El Farsi³ testified that on the date, his friends and himself (four of them), were in Paceville on their way to the beach because a friend of theirs was feeling sick. As they were walking down, the accused approached them and offered them drugs. Actually he offered drugs to Larkin Lia, who advised him immediately that he was a police officer and this person became aggressive and was bad-mouthing Larkin Lia. Larkin called for back-up whilst trying to hold the accused. The accused

¹ Sitting of 3rd October 2018

² Sitting of 3rd October 2018

³ Sitting of 3rd October 2018

was being physical and Larkin as he was calling the police dropped something on the floor and the accused managed to escape and ran up the road for about 5 metres. Then, he started throwing stones at them and hurt the witness on the right calf area of his leg and hit his friend Ismael on his nose. Then, Larkin followed this person and the back-up arrived and they dealt with the situation. The witness stated that he could not remember the words used by the accused in offering drugs because he approached Larkin and it was Larkin who said that the accused offered him cannabis. However, he saw *“the gesture was obviously he came up to him, he put his hands in his pockets and sort of like tipo come here I try and give you something”*. The witness went to the clinic and confirmed the medical certificate exhibited in the acts⁴. In cross-examination, the witness stated that he saw the accused bringing out from his pocket a sort of a white plastic bag. It was transparent. He could not see whether there was actually something in the bag. When the accused ran away he did not see him throwing away the plastic bag.

Ismael Esousi Lovegrove⁵ testified that on the 22nd October 2018 he went to Paceville with his friends Sammy, Larkin, Shaun and two girls. As they were walking towards the bay, the accused tried to sell drugs to them. Larkin immediately informed the accused that he was a police officer and the accused started bad-mouthing him and became aggressive. He stated that he did not see what the accused might have had in his hand but he asked them whether they wanted drugs. He did not show anything to him. He was near Sammy and Larkin. The accused approached mostly Larkin. The witness was not near enough but he was sure that after the incident the accused threw away a tissue from his pocket where there were stones as the accused was coming back. He confirmed the medical certificate exhibited in the acts⁶. In cross-examination he stated that no type of drug was mentioned and not even the price.

Inspector Matthew Spagnol⁷ testified that apart from testifying with regards to the statement released by the accused, in cross-examination he confirmed that no drugs were found on his person.

In his statement, **the accused Mohammed Galiga**, stated that he went to Paceville to meet a friend. Then, eventually he went to the beach and bought a soft drink and stayed at the beach to smoke. Then, went up to Paceville again and saw two girls and two boys and started chatting up the girls and the boys tried to stop him and hit him badly and so he ran away and eventually was arrested.

Considerers

The first charge

Article 22(1)(B) of Chapter 101 of the Laws of Malta stipulates:

⁴ Dok MS6 at fol 17

⁵ Sitting of 3rd October 2018

⁶ Dok MS6 at fol 18

⁷ Sitting of 3rd October 2018

“For the purposes of this Ordinance the word ‘dealing’ (with its grammatical variations and cognate expressions) with reference to dealing in a drug, includes cultivation, importation in such circumstances that the Court is satisfied that such importation was not for the exclusive use of the offender, manufacture, exportation, distribution, production, administration, supply, the offer to do any of these acts, and the giving of information intended to lead to the purchase of such a drug contrary to the provisions of this Ordinance”

In terms of Section 22(1B) of the Dangerous Drugs Ordinance, even an offer to supply drugs amounts to dealing in drugs and since it is irrelevant whether any such substance is actually supplied following such offer, the offer in itself is sufficient to constitute the completed offence of dealing in drugs.

Reference is also made to the judgment in the names of **The Police vs Noor Ali Muse**⁸ wherein it was held:

*“bil-fatt biss illi l-imputat offra li jipprovdi l-cannabis, indipendentement minn dak li seta’ gara jew ma garax wara dan, ghal fini tal-ligi, huwa traffika l-pjanta tal-cannabis. Kif inghad fis-sentenza moghtija minn din il-Qorti kif diversament preseduta tat-12 ta’ Ottubru 2001, fl-ismijiet **Il-Pulizija vs Ronald Psaila**, liema sentenza giet ikkonfermata mill-Qorti tal-Appell Kriminali b’sentenza fl-istess ismijiet tat-8 ta’ Jannar 2002 (Appell Nru. 187/2001):*

*“Minn din id-disposizzjoni tal-ligi johrog car li r-reat ta’ Traffikar jikkonfigura anki jekk persuna **toffri** li taghmel wahda mill-azzjonijiet indikata f’dan l-Artikolu. Fit-test ingliz, il-kelma “joffri” hija trodotta bil-kelma “offer”. Issa stante li ma hemmx fl-Ordinanza definizzjoni ta’ din il-kelma, allura ghall-finijiet ta’ interpretazzjoni, din ghandha tittiehed fis-sinifikat ordinarju taghha, u cioe` li, spontaneament jew fuq rikjesta, direttament jew indirettament, **persuna turi**, bil-fatt jew bil-kliem, id-disponibilita` taghha li taghmel wahda mill-azzjonijiet indikati.*

*In proposito huma interessanti l-osservazzjonijiet maghmula fil-Blackstone Criminal Practice 2001 – (11th Ed. B20.29) fuq l-interpretazzjoni tal-frasi “**Offering to Supply**” kontenuta fil-Misuse of Drugs Act 1971 s. 4. “**An offer may be made by words or conduct ... Whether the accused intends to carry the offer into effect is irrelevant; the offence is complete upon the making of an offer to supply**” (vide kazistika indikata – pg. 776).”*

Dwar l-offerta li wiehed jipprovdi d-droga u b’referenza ghal Misuse of Drugs Act 1971 s. 4, jinghad hekk fil-Misuse of Drugs and Drug Trafficking Offences⁹:

⁸ Court of Magistrates (Malta) as a Court of Criminal Judicature decided on 24th June 2014

⁹ Fortson Rudi QC, *Misuse of Drugs and Drug Trafficking Offences*, 6th edition, Sweet & Maxwell, (2011).

“Although, in the ordinary way, a person is entitled to be judged on the facts as he believed them to be ... the mischief which the legislature has sought to punish is the act of making an offer to supply a controlled drug, irrespective as to whether the offer was bogus in nature, or not.

...

The offences ... may be committed even though the substance supplied (or offered) is not the drug that it was thought to be and was not even a controlled drug: see Haggard v Mason [1976] 1 W.L.R. 187; Goodard [1992] Crim. L.R. 588 and Mitchell (June 3, 1992, unreported).

In Haggard v Mason ... M bought 1,000 tablets of what he believed to be lysergide (LSD), a Class A controlled drug, and sold some of the tablets to Heward. Heward similarly believed the substance to be LSD whereas, in fact, it was Bromo STP (another hallucinogenic drug, similar in effect and appearance to LSD but not then controlled under the 1971 Act). M was convicted of offering to supply a controlled drug to H contrary to ... the 1971 Act.

Held: appeal dismissed: “In my judgement, the offence was completed at the time when the appellant met Heward and offered to sell him a quantity of lysergide. It matters not in relation to the offence of offering to supply that what is in fact supplied pursuant to that offer, the offer having been accepted, is not in fact a controlled drug”.¹⁰

Skond il-kazistika Ingliza, anke fejn l-akkuzat ikun jaf illi dak li jkun qiegħed joffri fil-fatt ma tkunx sustanza illegali jew sustanza ikkontrollata mil-ligi, la darba huwa joffri sustanza illegali, m’hijiex difiza li huwa jghid illi kien jaf illi s-sustanza fil-fatt ma kinitx illegali. “... it need not be proved ... that the accused had a controlled drug in his possession (or at least in his mind) at the moment that he made the offer. In Showers [1995] Crim.L.R. 402, S agreed to supply X with a rock of crack cocaine, but S actually gave X a peanut wrapped in cling film. The Court of Appeal dismissed the appeal. S had made an offer to supply a controlled drug. It was unnecessary to prove that S intended to supply a controlled drug and, it was not a defence that S knew that the substance was not a controlled drug under the MDA.”¹¹

¹⁰ *Ibid.*, p. 264.

¹¹ *Ibid.*, p. 265.

Fil-kaz ta' Mitchell (unreported, June 3, 1992, CA), fejn l-akkuzat offra li jipprovdi l-cannabis, u fejn meta saret tfittxija fuqu, irrizulta illi huwa kien fil-pussess ta' sustanza li kienet tixbah il-cannabis izda kienet fil-fatt innokwa, inghad hekk:

"An offer may be by words or conduct. If it is by words, one has to judge from the words, whether it is an offer to supply a controlled drug. If a person knowingly makes an offer to supply in words which have that effect, that is the offence..."¹²

U finalment fil-kaz ta' Goddard [1992] Crim. L. R. 588, fejn l-akkuzat ammetta li kien offra li jottjeni l-cannabis ghal terza persuna bil-prezz ta' £30 meta ma kellu l-ebda intenzjoni li jottjeniha, inghad illi "... it is quite plain that the offence is complete when the offer to supply a controlled drug is made, quite regardless of whether the offeror intends to carry the offer into effect by actually supplying the drug ... If a defendant having been convicted of this offence persuades a judge that it was not his intention to carry the deal into effect that may be a matter of mitigation but it cannot be a defence to the charge."¹³

Bearing all this in mind, the Court states that it believes Pc 61 Larkin Lia, Sammy El Farsi and Ismael Lovegrove when they testified that the accused went up to them and asked them whether they wanted to buy drugs. Their testimonies, except for some minor details, coincide. Pc 61 and Sammy El Farsi explained that the accused made a gesture of taking something out from his pocket. Whilst Pc 61 testifies that the accused showed him a tissue in which there was a brown-coloured substance, Sammy El Farsi saw him taking out a white plastic/transparent bag but the latter was not so near Pc 61 Larkin Lia. On the other hand, the version of events given by the accused himself in the statement is hardly credible particularly when he states that he chatted up two girls who were with the boys (the witnesses in this case) and the boys hit him badly. No evidence of any injuries such as a medical certificate was even produced. It is important to point out that the fact that no drugs were found on the accused or in his vicinity does not mean, as suggested by the defence, that the accused should be acquitted.

The difficulty which the Court has in this case is that the charge brought against the accused is that he offered to sell the whole or a portion of the plant cannabis. The charge is specific in nature. However, in the acts of this case, it has not been proven that the accused offered to sell cannabis. In fact he asked them whether they wanted drugs. Now, the term 'drugs', apart from the fact that it cannot be interpreted as being cannabis, is quite generic and can also include medicinals which can be bought over the counter or even substances which are not controlled under our legislation and in the latter case no charges can be brought against the person. In this case all the Court has at hand is the declaration that the accused approached

¹² *Ibid.*, p. 266.

¹³ *Ibid.*, p. 266.

the witnesses to ask them if they wanted drugs and that the substance offered was brown in colour. Again the fact that the substance may have been brown in colour does not mean that it was definitely cannabis. There is no circumstantial evidence whatsoever and the fact that no drugs were found in the vicinity, in this case, certainly does not help. Also the fact that the accused threw stones at the persons involved does not lead to the conclusion that he was necessarily selling cannabis as suggested by the prosecution. Thus the Court concluded that the evidence at hand is not enough and does not satisfy the burden of proof required at law to find guilt.

Second and Third Charges

With regards to the second and third charges the Court deems that upon the evidence produced and which has been referred to in the preceding paragraphs the accused should be found guilty of these charges. In fact it has resulted that the accused threw stones towards Sammy El Farsi and Ismael Esousi Lovegrove and as a result of which they suffered injuries. The injuries suffered by them were of a slight nature as certified and as evidenced by the medical certificates exhibited.

Moreover, although no formal admission was entered with regards to these charges, the accused's lawyer during the oral submissions has declared that these charges have been sufficiently proven.

With regards to the punishment to be meted out, the Court is taking into account the nature of the offence and the circumstances of the case. The Court deems that the accused's actions are unacceptable in a civil society considering that it was totally uncalled for. Hence, the Court deems that an effective prison sentence should be imposed.

For the above-mentioned reasons, the Court whilst not finding the accused guilty of the first charge brought against him and acquits him from same, after having seen articles 214 and 221(1) of Chapter 9 of the Laws of Malta finds the accused guilty of the second and third charges brought against him and condemns him to a period of six (6) months imprisonment.

After having seen article 383 of Chapter 9 of the Laws of Malta in order to provide for the safety of Sammy El Farsi and Ismael Esousi Lovegrove orders the offender to enter into his own recognizance in the sum of one thousand euro (€1,000) for a period of one year from today.

Dr Josette Demicoli
Magistrate