



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

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

Case Number: 146/2016

Today, 10th April 2019

**The Police
(Inspector Frank Anthony Tabone)**

vs

**Tetiana Ellul
(ID 41581(A))**

The Court,

After having seen the charges brought against the accused Tetiana Ellul, 40 years of age, daughter of Sergey and Lidiya nee` Polescho, born in Ukraine on 10th September 1975 and residing at No. 10, Residential Block B, Maisonette 6, Censu Tanti Street, St. Paul's Bay, Malta, holder of identity card number 41581(A);

Charged with having on 14th May 2016 on these Islands:

1. Attempted to distribute or offer or offer to supply or distribute the drug (*cocaine*), specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, to person/s, or for the use of other person/s, without being licensed by the President of Malta, without being fully authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939), or by other authority given by the President of Malta, to supply this drug, and without being in possession of an import and export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraph 6, of the Ordinance and when she was not duly licensed or otherwise authorized to

manufacture or supply the mentioned drug, when she was not duly licensed to distribute the mentioned drug, in pursuance of the provisions of Regulation 4 of the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;

2. And had in her possession the drugs (*cocaine*) specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, when she was not in possession of an import or an export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when she was not licensed or otherwise authorized to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to her for her personal use, according to a medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations of the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by 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;
3. And also for having on 14th May 2016 and on the previous months on these islands, had in her possession the drugs (*cocaine*) specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, when she was not in possession of an import or an export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when she was not licensed or otherwise authorized to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to her for her personal use, according to a medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations of the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

The Court was requested to order the accused to pay any Court expenses related to the appointment of any court experts in the course of the proceedings and this as stipulated in art. 533 of Chapter 9.

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 the accused plead guilty to the charges brought against her, in terms of Section 453(1) of Chapter 9 of the Laws of Malta, which guilty plea she confirmed after the Court explained to her the legal consequences thereof and allowed her sufficient time to reconsider her plea and to retract it;

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

Considered that:

In view of the guilty plea filed by accused in respect of the charges brought against her, the Court cannot but find her guilty of such charges.

For the purpose of the punishment to be inflicted, the Court took into consideration the criminal record of the accused, which although clean at the time of the present offences, today includes a conviction in respect of the offence contemplated in Section 7(2) of Chapter 63 of the Laws of Malta, for which accused was conditionally discharged and a conviction relating to breaching bail conditions imposed by this Court, for which accused was sentenced to a pecuniary punishment and the revocation of said bail.

The Court also took into consideration the serious nature of the crimes with which accused is charged and the circumstances of the case, including the amount of drugs in possession of accused. It results from the acts of the proceedings that on 14th May 2016, accused proceeded to Mount Carmel Hospital, a place intended for the care and cure of its residents, where her then boyfriend Jonathan Baldacchino was a patient, and there she left a number of items for him, amongst which were Twistees and Jumbo packets, some chocolate and packets of cigarettes. Three sachets containing cocaine were found in a Jumbo packet, which sachets were destined for Baldacchino. In terms of the report drawn up by expert Scientist Godwin Sammut, appointed by the Court during these proceedings, extracts taken from the white powder in the sachets were found to contain cocaine, which is controlled under Part I of the First Schedule of Chapter 101 of the Laws of Malta. The weight of the white powder was 1.43 grams and the purity of cocaine in the white powder was circa 8%.¹ According to Baldacchino, who testified in these proceedings, he had phoned accused and asked her “*whether she could bring something for me. I said powder. And I told her because I have been here for a long time and I am bored and fed up*”.² He stated that by powder he was referring to cocaine.

In respect of the first charge, which contemplates the attempt to supply the drug cocaine, the Court notes that accused’s actions were tantamount to the consummated offence of dealing in drugs and not merely to an attempt. Indeed as held in the judgement delivered by this Court as differently presided on 12th October 2001, in the

¹ This report is exhibited a fol. 53 to 60 of the records.

² A fol. 102 of the records.

names **Il-Pulizija vs Ronald Psaila**, which was subsequently confirmed by the Court of Appeal in its judgement of 8th January 2002, with reference to the definition of dealing in drugs in Section 22(1B) of Chapter 101 of the Laws of Malta:

*“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).”*

Furthermore, as held by the Court of Criminal Appeal in its judgement in the same names:

“Kif tajjeb osservat l-ewwel qorti fis-sentenza taghha, appena l-appellant accetta li jaqdi lill-persuna li kienet cemplitlu immaterjalizza r-reat ta’ traffikar fir-raza tal-cannabis u mhux, kif donnu qed jippretendi l-appellant, ir-reat ta’ tentattiv ta’ traffikar.”

It is therefore clear that on the basis of the evidence adduced, once accused accepted to supply Baldacchino with cocaine upon his request, as evident from her subsequent actions, the crime of dealing in drugs was complete. Yet, the Prosecution charged accused with the attempted crime and thus the Court cannot but limit itself to finding accused guilty of this charge. It notes however that Section 22(5) of Chapter 101 of the Laws of Malta prescribes for the attempt, the same punishment applicable for the consummated offence: *“If any person attempts to commit an offence against this Ordinance, or solicits or incites another person to commit such an offence, he shall, without prejudice to any other liability, be liable on conviction to the same punishment and forfeiture as if he had committed an offence under this Ordinance”*, and therefore, in this case, the punishment prescribed in Section 22(2)(b)(i) of Chapter 101.

For the purpose of the punishment to be inflicted, the Court is applying the provisions of Section 17(h) of Chapter 9 of the Laws of Malta in respect of the first two charges and is also considering the third charge absorbed in the second charge in so far as the two refer to the same date. It is furthermore applying the provisions of Section 17(f)

of Chapter 9 in respect of the mandatory fine applicable for the first charge and that which the court will apply for the third charge in so far as this refers to previous months.

In respect of the submissions made by the parties about the punishment to be inflicted as minuted during the sitting held on 27th March 2019, the Court notes that in terms of Section 392A(6) of Chapter 9 of the Laws of Malta, it is precluded from taking note of any informal agreement between the parties on the sentence to be awarded, once such agreement is not carried out in terms of the provisions of Section 392A(5) of said Chapter and is thus, not an informal one. Such provisions are rendered applicable to this Court in its present competence as a Court of Criminal Judicature in terms of Section 370(6) of the Criminal Code.

Furthermore, the Court is also taking into account that accused's guilty plea during these proceedings was certainly not an early one, but rather registered at a point when the Prosecution had already rested its case more than a year earlier.

Conclusion

For these reasons, the Court after having seen Parts IV and VI, Sections 22(1)(a), 22(2)(b)(i) and (ii) and Section 22(5) of Chapter 101 of the Laws of Malta, Regulations 4 and 9 of Subsidiary Legislation 101.02 and Sections 17(f) and (h) of Chapter 9 of the Laws of Malta, upon her guilty plea, finds accused Tetiana Ellul guilty of the charges brought against her and condemns her to a term of **nine (9) months effective imprisonment** – from which term one must deduct the period of time, prior to this judgement, during which she has been kept in preventive custody in connection with the offences of which she is being found guilty by means of this judgement – and a **fine (*multa*) of nine hundred and fifty euros (€950)**.

In terms of Section 533 of Chapter 9 of the Laws of Malta, the Court condemns the person sentenced to the payment of the expenses incurred in connection with the appointment of Scientist Godwin Sammut, amounting to the sum of one hundred and forty seven euro and fifty cents (€147.50). In respect of the costs incurred in respect of the appointment of expert Dr. Steven Farrugia Sacco, the Court is condemning Tetiana Ellul to the payment of the sum of one hundred and two euro and sixty six cents (€102.66), namely the costs incurred in downloading the content of the Samsung phone, which appears to be the only mobile phone that was relevant to this case.³ Such costs amounting in total to the sum of two hundred and fifty euro and sixteen cents (€250.16), are to be paid by Tetiana Ellul within three (3) months from today.

The Court orders that the drugs and contents of Document FT are destroyed, once this judgement becomes final and definitive, under the supervision of the Court Registrar,

³ In the computation of this sum, the Court took into account the costs under 'dritt' relating to one sim card and one access restricted device and the costs under 'expenses' together with VAT.

who shall draw up a *proces-verbal* documenting the destruction procedure. The said *proces-verbal* shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

Furthermore, it orders the release of the mobile phones exhibited as part of Document FT2 in favour of Tetiana Ellul.

Natasha Galea Sciberras
Magistrate