



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

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

Case Number: 224/2007

Today, 24th April 2019

**The Police
(Inspector Nezren Grixti)**

vs

**Albert Tanti
(ID 103148(M))**

The Court,

After having seen the charges brought against the accused Albert Tanti, son of the late Joseph Tanti and the late Olga born in Hamrun, on 9th January 1948, residing at 4, Triq l-Ispizjar Joseph Sciberras, Msida and holder of Maltese Identity Card number 103148(M):

Charged with having on 22nd July 2006, and during the previous months in Msida:

- a) Cultivated the plant Cannabis, in terms of article 8(c), Chapter 101 of the Laws of Malta;
- b) Had in his possession the whole or any portion of the plant cannabis, in terms of Section 8(d) of Chapter 101 of the Laws of Malta;

- c) Had in his possession the resin obtained from the Plant Cannabis, or any other preparation of which such resin formed the base, in terms of article 8(a) of Chapter 101 of the Laws of Malta;
- d) Had in his possession the drug Heroin specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of Part 4 and 6 of the Ordinance, and when he 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 (GN 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his 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 (GN 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

The Court was also requested to apply Section 533(1) of Chapter 9 of the Laws of Malta as regards the expenses incurred by the Court appointed experts.

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 parties declare that they were exempting the Court, as presided, from hearing all evidence tendered before the Court, as differently presided;

Having heard the prosecution declare that it was resting its case on the evidence adduced and having heard final oral submissions by the defence.

Considered that:

The facts which led to this case were as follows: On 22nd July 2006, the police received information that the accused might be in possession of drugs or involved in drug trafficking. Consequently, on the same day at about 13:00, Inspector Nezren Grixti deployed several members of the Drug Squad in the area of Msida, at 4, Triq l-Ispizjar Joseph Sciberras, where the accused resided. The accused was stopped and a search was conducted in his residence. According to Inspector Grixti, who at some point, was also present on site, the place was internally interconnected with another residence, number 36, and the accused was making use of these residences. Inside the residence, the police found two cannabis plants and other drug related items. Near the plants, the police also found a used syringe allegedly with traces of heroin,

new aluminium foil, and a small plastic bag containing traces of brown powder allegedly heroin. In a small internal yard, the police also found a new syringe, a burnt spoon allegedly with traces of heroin and plant vitamins. The accused was arrested and released a statement to the police on the same day.¹

In cross-examination, Inspector Grixti stated that in this particular case he had personally gone to the scene and confirmed that the residence in question had two entrances, although the second was closed. He could not confirm however whether the second entrance was under lock and key and whether there were other entrances to the said property. Inspector Grixti also confirmed that at the time, the address registered on the accused's identity card was indeed this residence, namely 4, Triq l-Ispizjar Joseph Sciberras, Msida. However, no further verifications were made as to whether any third parties were also registered as residing in this property or as to who actually owned the property. The witness described the property as an old, ground floor residence, having "*a couple of rooms in the ground floor*", which has been demolished since then, and that it was not taken care of at the time. It also comprised a small internal yard with a staircase, possibly, although he was not sure, leading to one or two rooms upstairs. There was no other access to these rooms except from the internal yard. Upon being questioned as to where the plants were actually found, Inspector Grixti replied that "*what I can recall is that they were found in this internal yard, a small internal yard, like a shaft, with a flight of small steps which leads to two rooms which are on top*". He also states that the plants were actually removed from the yard and were taken inside before the Scene of the Crime Photographer arrived on site. According to Inspector Grixti's testimony, therefore, although the plants were photographed in one of the rooms, standing besides a mattress lying on the floor, the plants were actually found in the internal yard. The witness also confirmed that the accused lived in this residence, had his belongings there and slept there.²

According to PS 1220 Chris Baldacchino, a search was conducted at number 4, Triq l-Ispizjar Joseph Sciberras, Msida, where accused resided. During this search, the items seized consisted of two plants suspected to be cannabis plants, a small plastic bag containing brown powder, new syringes and a burnt spoon.³

In cross examination, PC 1220 Chris Baldacchino explained that the search took place in the afternoon. Following information that drugs were being sold from said property and passing by the same, the witness and PC 213 noticed the accused outside the residence together with another person and as soon as they passed, the accused walked inside the property. Accordingly, suspecting that accused had likewise noticed them, they decided to enter the property. The witness stated that he had only seen one entrance and only the accused was present at the time of the search. He

¹ Vide the testimony of Inspector Nezen Grixti, a fol. 19 to 21 of the records.

² Vide this testimony a fol. 80 to 87 of the records.

³ A fol. 33 and 34 of the records.

stated that the accused resided there, unlike the third party to whom they had previously seen the accused talking to outside. In his own words, “*I do not know if other persons live there but I do not think there were other bedrooms*”. He did not remember finding other people’s clothes inside the said property at the time or finding others inside, apart from the accused. Furthermore, he confirmed that there was an open internal yard and stated that this was not accessible from other properties or from outside.⁴

In terms of the report drawn up by expert Scientist Godwin Sammut, appointed during the Magisterial Inquiry held in connection with this case and confirmed as expert during these proceedings, for the purposes of his analysis, he was handed over the following documents:

- 1) A brown envelope marked “Malta National Laboratory Forensic Division” with the following description: two spoons, one of them burnt on the underside;
- 2) A brown envelope marked “Malta National Laboratory Forensic Division” with the following description: a metal box that contains: a) two green packets of Rizla+ Papers; b) two blue packets of Rizla+ Papers; c) business card of Melita Insurance Brokers Limited with some handwriting on it; d) lottery tickets; e) business card of F.M. Agius Nurseries; f) 2 pieces of white paper; and g) a small brown substance;
- 3) A brown envelope marked “Malta National Laboratory Forensic Division” with the following description: a) a syringe; and b) a syringe in an opened packet;
- 4) A brown envelope marked “Malta National Laboratory Forensic Division” with the following description: two small plants that were planted in separate buckets containing soil;
- 5) A brown envelope marked “Malta National Laboratory Forensic Division” with the following description: a) a packet of Miracle Go Water Soluble All Purpose Plant Food and b) a green plastic bottle labelled Super Plant Food.

On the basis of the results obtained, the court expert concluded as follows:

- a) The plants were all *cannabis sativa*;
- b) Trichomes were found on the leaves of the plants in the exhibit indicated in paragraph 4 above. Trichomes are characteristic features of cannabis plants;

⁴ Vide this testimony a fol. 91 to 95 of the records.

- c) Heroin was found on a swab taken from the spoon that had the underside burnt in the exhibit indicated in paragraph 1 above. Heroin is controlled by Part I of Chapter 101 of the Laws of Malta;
- d) Analysis performed on the swabs taken from the other spoon in the exhibit indicated in paragraph 1 above and analysis performed on extracts taken from the other two syringes in the exhibit indicated in paragraph 3 above contained no drugs;
- e) The plants seized had a total weight of 9.02 grams without roots and twigs and were confirmed to be cannabis plants. The cannabis plant is controlled under Part III of Chapter 101 of the Laws of Malta. The cannabis plant contains the substance *Tetrahydrocannabinol* that was also confirmed in the plants seized in this case. The purity of *Tetrahydrocannabinol* is 4%. *Tetrahydrocannabinol* is controlled under the Third Schedule, Part A of Chapter 31 of the Laws of Malta;
- f) *Tetrahydrocannabinol* was found in the extracts taken from the brown substance in the exhibit indicated in paragraph 2 above. The weight of this substance was 0.75 grams. *Tetrahydrocannabinol* is controlled under the Third Schedule, Part A of Chapter 31 of the Laws of Malta.

In respect of the items seized from the said property, the Court points out that although both Inspector Grixti and PS 1220 state that a plastic bag containing brown powder was found during the search in the property, this is not mentioned by Scientist Godwin Sammut in his report and no analysis results to have been made on any such powder.

Considered also that:

The accused released a statement on 22nd July 2006, after he was duly cautioned in terms of law. At the time, the accused, as an arrested person or suspect, had no right to obtain legal advice prior to his interrogation, since such right only came into force on 10th February 2010, by means of Legal Notice 35/2010, and much less did he have the right to be legally assisted during his interrogation. This latter right came into force on 28th November 2016, through Legal Notice 401 of 2016.

In this respect the Court makes reference to the judgement delivered by the European Court of Human Rights on 12th January 2016 in the case of **Mario Borg v. Malta**, and to the judgement of the Court of Criminal Appeal in the names **The Republic of Malta vs Chukwudi Onyeabor** delivered on the 1st December 2016, in which case the Court referred to various judgments delivered by the Constitutional Court, namely, **Carmel Saliba vs Avukat Generali** delivered on the 16th May 2016, **Stephen Nana Owusu vs Avukat Generali** delivered on 30th May 2016, **Malcolm**

Said vs Avukat Generali et delivered on 24th June 2016 and Aaron Cassar vs Avukat Generali et delivered on 11th July 2016 and concluded that “*the denial of the right to legal assistance at the pre-trial stage as a result of a systematic restriction applicable to all accused persons must today be held to be in violation of the conditions for the admissibility of an accused’s statement.*”

Hence, in view of the fact that the accused was not given the right to legal assistance prior to his interrogation, the Court deems his statement inadmissible. This also applies to any declarations which the accused may have made prior to releasing such statement and to any reference made in the records of the proceedings to such statement or any declaration made by the accused.

The accused chose to take the witness stand during these proceedings.⁵ He explained that at the time of the incident he was residing in three houses which were all interconnected. The accused stated that he lived in house number 4, but the plants were found in house number 36. He further stated that as the houses were interconnected he could accede from number 4, where he lived, to number 36, where nobody lived but was used by homeless persons and furthermore, to house number 3. He went on to explain that the entire block was a squatter’s place, where people “*inject and use*”.

Considered further that:

Accused is being charged with the offences of cultivation and possession of the cannabis plant, resin obtained from the cannabis plant and heroin.

It is clear from the evidence adduced by the defence that accused is contesting the possession of the items found and seized in the said property by alleging that the property was also used by third parties or squatters. According to the Prosecution, the items in question were found in accused’s residence, and that although accused was registered as residing in property number 4, said property was internally interconnected to another property, namely property number 36, to which accused clearly had access, as evident from his own deposition. In actual fact although at one stage accused states that he lived in number 4, yet at the beginning of his deposition, he also states that he resided in three houses.

The Court notes that although in cross-examination, Inspector Grixti states that the two cannabis plants were initially found in the internal yard and were then moved inside the property where the Scene of the Crime Officer took photographs of the said plants, from the report of the said Inspector in the acts of the inquiry about this case, it results that these plants were found in property number 36 and therefore not in the internal yard. Although this latter report was not confirmed on oath by the Inspector

⁵ Vide testimony at fol. 102 to 112

during his testimony, yet the photos forming part of the report exhibited by PC 1253 Frederick Brincat, appointed as Scene of the Crime Officer during the inquiry, clearly show these plants inside the property and not in the internal yard. It is true that these could have been moved inside the property before the arrival of the Scene of the Crime Officer and yet, the Court doubts that this was the case. This is being stated first of all on the basis of the initial report filed by Inspector Grixti in the acts of the inquiry and secondly, since all other drug-related items found in the said property appear to have been photographed where they were actually found, in different areas of the property. Furthermore, it seems to the Court that it hardly makes any sense to have a Scene of the Crime Officer visit the site to take photographs of items found and then have such items moved prior to being photographed. In this regard and on the basis of the above considerations, the Court concludes that the cannabis plants were found in property number 36, as stated by accused.

Yet, despite accused's contestation, the Court cannot but make the following observations: Inspector Grixti states that accused lived in this residence, slept there and had his belongings there. This is also confirmed by PS 1220 Chris Baldacchino, who further states that there was nobody else in the property besides accused, at the time of the search and neither did he recall noticing other persons' belongings or other bedrooms within the property searched. Accused himself states that he lived there, and that this was the case is also evident from photograph 06 CBC 105, which shows clothes hanging in the internal yard. Although accused alleges that the property was accessible to third parties, he further states that he was the only one who lived there and thus, the Court has no doubt that the clothes belonged to accused. Furthermore, the spoons, one of which contained heroin, were found in the internal yard, together with a sealed syringe, as may be seen from the same photograph, in very close proximity to the hanging clothes. Likewise, a small piece of cannabis resin was found in a metal box together with rolling paper (Rizla paper) on a cupboard situated exactly by the entrance to the property, as may be seen from photographs marked as 06 CBC 102, 103 and 104. Judging by the number of items, furniture and moveables in this part of the property and considering that this area was immediately accessible upon entry through the door to accused's property, it is clear that this part was being occupied by the accused. Although neither Inspector Grixti nor PS 1220 mention that a small piece of cannabis resin was found during the search in the said property, this is one of the documents analysed by expert Scientist Godwin Sammut, who states in his report that upon arriving on site, "*a small brown substance which was in a metal box that was on a wooden cupboard as soon as one enters from the front door*" was shown to him by Inspector Grixti. Given such circumstances, the Court has no doubt that these items pertained to accused.

Furthermore, the Court cannot but note that if accused's allegation that third parties had access to the property was true, it is very unlikely that he would have left drugs lying around for the take. It is likewise very unlikely that any squatter would leave his cannabis resin, amongst accused's belongings, inside a metal box together with

Rizla paper, ready for consumption. Moreover, once accused lived and slept in these premises, the Court also finds it highly improbable that accused would have allowed third parties access to such premises at their whim. As for the cannabis plants, although these were found in property number 36, as already stated above, this was interconnected to property number 4, and was readily accessible to accused. There is no doubt therefore that these plants were within his effective sphere of control, as were the other drug related items found. The Court deems it implausible that a third party squatter would enter this property and either place these plants there, with or without the knowledge of the accused, who could not have been unaware of the said plants, or even cultivate the same. Perhaps if for argument's sake, the Court had to believe that third parties did indeed access the property, this would have been plausible had the drug related item consisted of some syringe or burnt foil strewn in some corner of the property, but not with respect to two plants which require watering or at least, some form of attention. Indeed, one of the plants appears to have been quite healthy as may be seen from photograph 06 CBC 110. Furthermore, the Court notes that the photographs exhibited by the accused, purporting to show syringes or drug related items, do not give an indication as to whether these were taken inside or outside the property and of the location.

In view of the above considerations, the Court deems that all four charges brought against accused have been proved to the degree required by law.

Considers further that:

As regards the punishment to be inflicted, the Court took into consideration the criminal record of accused at the time of the present case. It further took into account the minimal amount of resin found and that the dried leaves of the two plants weighed in all 9.02 grams, and therefore not a substantial amount. Yet since there were two plants, the Court is precluded from applying Section 7 of Chapter 537 of the Laws of Malta.

The Court is furthermore taking into account that this case goes back to 2006 and that these proceedings were lengthened both by the Prosecution and the defence. In any case, given the considerations above made, the Court deems that a minimum punishment is appropriate. Moreover, the Court is applying the provisions of Section 17(h) of Chapter 9 as regards the first two charges, and the provisions of Section 17(f) of Chapter 9 as regards the first, third and fourth charges.

Conclusion

For these reasons, the Court after having seen Parts IV and VI, Sections 8(a), 8(c), 8(d), 22(1)(a), 22(2)(b)(i) and (ii) of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02 and Sections 17(f) and (h) of Chapter 9 of the Laws of Malta, finds accused guilty of the charges brought against him and condemns him

to a term of six (6) months imprisonment and a fine (multa) of one thousand euro (€1000), which by application of Section 14(2) of Chapter 9 of the Laws of Malta may be paid by the person sentenced in consecutive, monthly installments of fifty euro (€50), the first payment to be made within a month from today. Should the person sentenced fail to make any one payment, any remaining balance shall become immediately due and shall be converted into imprisonment in terms of law.

Furthermore, in terms of Section 533 of Chapter 9 of the Laws of Malta, condemns Albert Tanti to the payment of costs relating to the appointment of experts during the inquiry, namely, the costs incurred in connection with the appointment of expert Scientist Godwin Sammut amounting to the sum of two hundred, sixty nine euro and thirty seven cents (€269.37), equivalent to one hundred and fifteen Maltese Liri and sixty four cents (Lm115.64) and the costs incurred in connection with the appointment of Scene of the Crime Officer PC 1253 Frederick Brincat, amounting to the sum of seventy nine euro and twenty cents (€79.20) equivalent to thirty four Maltese Liri (Lm34). Such costs amount in total to three hundred, forty eight euro and fifty seven cents (€348.57) and shall be paid by the person sentenced within twelve (12) months from today.

Orders the destruction of the plants, drugs and drug related items exhibited, as soon as this judgement becomes final and definitive and this, under the supervision of the Court Registrar, who shall draw up a proces-verbal documenting the destruction procedure. This document shall be inserted in the records of these proceedings within fifteen days from such destruction.

Natasha Galea Sciberras
Magistrate