



THE COURT OF CRIMINAL APPEAL

The Hon. Mr. Justice Aaron M. Bugeja M.A. (Law), LL.D. (melit)

Appeal number - 168/2019

The Police

vs

Sam Al KHATIB

Sitting of the 12th March 2020

The Court,

1. This is an appeal from a judgment delivered by the Court of Magistrates (Malta) on the 29th May 2019 against Sam EL KHATIB, holder of a Maltese identity card number 14391M, who was charged as follows:

Whilst being a registered person with the Commissioner of Inland Revenue as per Act of 1998 regarding Value Added Tax (Act no: XXIII of 1998) and regulations imposed by the said Act, you failed to submit within (6) weeks, to the Commissioner for Revenue (2) VAT declarations, with payments if any, for the periods ending 31st May 2014 and 31st May 2015 thus being in breach of Article 27, 66, 76(c) and 76(d) of Act XXIII of 1998. The Court was also requested that in case of conviction :

- i. Inflict penalty in terms of law; or
- ii. Apart from inflicting the penalty in terms of law, on a request by the prosecution, to order the accused to conform within the stipulated time frame, which time frame cannot exceed three months, under the penalty of not less than €5 for every day, which penalty commences on the first day after the lapse of the period stipulated by the Court.

2. By means of the said judgment, the Court of Magistrates (Malta), declared as follows :

Having noted that during the hearing of the 13th June 2018 the accused requested time to regularise his position;

Having noted that the accused failed to appear for the hearing of the 23rd January 2019 albeit he was duly notified of the hearing;

Having noted that till the hearing of the 29th May 2019 the accused had not regularised his position;

Having heard the oral submissions;

Considered that:

The Court noted that the accused had not regularised his position as requested by him during the hearing of 13th June 2018 and cannot but consider the accused's default as nothing but an admission of the charged as presented against him.

DECIDE

Hence, the Court, after seeing Article 27, 66, 76(c) and 76(d) of Act XXIII of 1998, declares the accused guilty as charged and condemns him to pay the fine of two thousand Euro (€2,000).

3. Sam EL KHATIB filed an appeal against this judgments whereby this Court was requested **to revoke, cancel and annul** the said judgment and declare the appellant not guilty of the charged brought against him, or alternatively to vary the said judgment by imposing a more just and adequate punishment applicable to the circumstances of the case. The appellant claims that the penalty imposed upon him as well as the abrupt end of the proceedings

which were not dependent on the appellant, place him at a disadvantaged state whereby he was served with a decision on the charges brought against him prematurely.

Considers the following: -

4. That the Court reflected on the grievance that the proceedings came to an abrupt end which were not dependent on the appellant. After reviewing the records of the proceedings, this Court finds that, to a certain extent this is true, though not necessarily for the same reasons envisaged by the appellant.
5. First of all, this Court notes that there is an issue relating to the language of the proceedings. The charge sheet was drawn in the English language. However the proceedings were carried out in the Maltese language. All the Court of Magistrates' minutes were drawn in Maltese, a clear indication that the proceedings were carried out in the Maltese language. Even the application of the appellant at fol 6 was drawn in Maltese, as was the demand for the execution of the judgment for appeal purposes at fol 8. However, the judgment was then delivered in the English language. The appeal application was then drawn in the English language. This shows that the Court of Magistrates felt it necessary to revert to the English language, understandably, for the benefit of the accused.
6. In view of this, this Court decided to hold the proceedings in the English language for the benefit of the appellant. This Court issued

the necessary order in terms of articles 3 and 7 of Chapter 189 of the Laws of Malta. However, it is to be noted that the Court of Magistrates did not issue any decree in terms of articles 3 and 7 of Chapter 189 of the Laws of Malta, despite the fact that it felt the need to adopt English as the language of the proceedings in this case. If the appellant was English speaking, and not Maltese speaking in terms of Chapter 189 of the Laws of Malta, then the proceedings before the Court of Magistrates ought to have been carried out in that language for the benefit of the accused. Yet the proceedings before that Court were, or at least *prima facie* seem to have been, carried out in the Maltese Language instead. From the records it is not clear to what extent the accused understood or had followed exactly the substance of the proceedings against him. The fact is that the judgment of the Magistrate's Court was delivered in the English language. This in itself is a procedural irregularity.

7. However there were more serious irregularities in the procedure adopted in this case. On the sitting of the 13th June 2018 the Court granted an adjournment to the accused in order for him to *regularise* his position. The case was adjourned to the 10th October 2018. This Court has not found any minute for this sitting scheduled to the 10th October 2018. At fol 4, there is a minute stating that the accused failed to appear in Court on the sitting of the 23rd January 2019. He was held in contempt of Court and fined with an ammenda of five hundred euro (€500) (sic!). The case was adjourned to the 29th May 2019.

8. On the 29th May 2019 the Court minute at fol 9 states that during the sitting there appeared Mr Paul Scicluna representing the VAT Department, WPC Louise Cuschieri representing the Prosecution, as well as the accused duly assisted. The case was decided and the accused was fined two thousand euro (€2000). No further details were supplied.

9. The words used by the Court in its judgment on this point are as follows -

The Court noted that the accused had not regularised his position as requested by him during the hearing of 13th June 2018 and cannot but consider the accused's default as nothing but an admission of the charged as presented against him.

10. First of all it does not transpire that the charges were read out or that the relative proceedings were confirmed by the representative of the Department of VAT. The minutes state that Mr Paul Scicluna was present as representative of the VAT Department. But he did not testify or present any letters to prosecute or other documents related to the charges. There is no indication that the Court proceeded in terms of, and in the order established by, article 375 of the Criminal Code. The Court did not receive any evidence of the Prosecution or of the Defence.

11. With all due respect, even if *gratia argomenti*, the accused had requested time to regularise his position, the Court could not, on the basis of this request alone, proceed to the closure of the case, decree a conviction and find guilt in the accused - on the basis of the

argument that his lack of action in the interim period was tantamount to an admission of guilt. The accused did not register any guilty plea and so it did not proceed in terms of articles 370(6), 392A and 453 of the Criminal Code.

12. This Court considers that the procedure adopted by the Magistrates' Court in this case contained substantial breaches of procedural formalities prescribed by Law that lead to the nullity of the proceedings and the eventual judgment delivered by that Court.

Decide

Consequently for the above-mentioned reasons, the Court decides that the proceedings before the Court of Magistrates and the eventual judgment delivered by the same Court are null and void and consequently orders the transmission of the records of these proceedings together with this judgment to the Court of Magistrates in order for it to start the proceedings against the appellant afresh.

Aaron M. Bugeja

Judge