



Court of Criminal Appeal

Hon. Madame Justice Dr. Consuelo Scerri Herrera LL.D.

Appeal No: 115/2016

The Police

Vs

Tanya Carmen Chetcuti

Today 14<sup>th</sup> July, 2020,

The Court,

Having seen the charges brought forward against the accused appellant namely Tanya Carmen Chetcuti, charged before the Courts of Magistrates as a Court of Criminal Judicature:

That on the 15<sup>th</sup> March, 2015 at about 22:00hrs whilst driving car, make BMW bearing registration number SHE BMW in Triq Markiz J. Scicluna, Swieqi and in these islands :

1. Driven or attempted to drive or be in charge of a motor vehicle or other vehicle on a road or other public place whilst unfit to drive through drink or drugs.
2. Driven, attempted to drive or was in charge of a motor vehicle or other vehicle on a road or other public place after consuming so much alcohol that the proportion of it in her breath, blood or urine exceeded the prescribed limit.

The prosecution requested that such person is disqualified from all her driving licenses for a period of time which is not less than six (6) months.

Having seen the judgment of the Courts of Magistrates as a court of Criminal Judicature delivered on the 1<sup>st</sup> March 2016 where the court decided that the accused had not been notified with the charges within the prescribed period of time and thus declared the proceedings as time bared.

Having seen all the relevant acts of the proceedings.

Having seen the updated police conviction sheet of the appellant exhibited in these proceedings in furtherance to a request by the presiding court.

Having seen the application of the Attorney General presented in the registry of this court dated 10<sup>th</sup> March 2016 wherein he requested that this Honourable court cancels and revokes the appealed judgment and in view of the above considerations examines and disposes of this case in the best possible manner.

Having seen the aggravations of the Attorney General which are the following:-

Consequently on the 7<sup>th</sup> March 2016 the Attorney General received on the 7<sup>th</sup> March 2016 from the courts of Magistrates as a Court of Criminal Judicature all the acts of the proceedings together with the judgement of the court in the abovementioned names and noticed that the court had given a wrong application of the law when deciding that the actions were time bared and this as will be explained in this appeal Thus the Attorney General filed an appeal in terms of section 63 of Chapter 65 of the laws of Malta.

*'As indicated above the incident took place on the 15<sup>th</sup> March 2015 nearly a year ago. The charges brought forward against the accused are regulated by articles 15A and 15B of Chapter 65 of the laws of Malta respectively. With regard to punsihemnt Article 15H provides that*

*'Every person who contravenes any of the provisions of articles 15A and 15B shall be guilty of an offence and shall on conviction for such an offence or for an offence under sub-article(4) of*

*article 15E be liable -(a) in the case of a first conviction, to a fine (multa) of not less than one thousand eight hundred euro (€1,800) or to imprisonment not exceeding six months, or to both such fine and imprisonment;(b) in the case of a second or subsequent conviction, to a fine (multa) of not less than three thousand euro (€3,000)or to imprisonment not exceeding one year, or to both such fine and imprisonment'*

Having established this, article 688 of Chapter 9 of the laws of Malta regulates the time frames with regard to the plea of prescription notably sub-section (e) of the same section where in it is found that the criminal action for crimes subject is time bared by the lapse of **two years** in respect of crimes liable to imprisonment for a term of less than one year, or to a fine (multa) or to the punishments established for contraventions.

Since the court judgment declaring the actin as being time bared was delivered during a period of one year from the date of the offence and since the accused was notified within the same year and thus within the two year frame this meant that the judgement is incorrect and is in fact defective and should thus be declared null

Thus undoubtedly it follows that on the 1<sup>st</sup> March on the date when the case was decided by the first court declared these proceedings as time barred even though the period of two years was still running and due to the fact that on account of the fact that no progress being was registered notwithstanding the number of sittings that were held wherein the accused was absent so much so that the court ordered a warrant of arrest in her regard the court carried on with the proceedings and moved on to pronounce its judgement.

Having seen the judgement delivered by this court on the 14<sup>th</sup> June 2019 given in the English language since the accused is a foreign national and does not understand the Maltese language and in this judgement the court held that the judgement of the first court was null since the charges were not notified to the accused appellant in the

English language notwithstanding that during the sitting of the 27<sup>th</sup> October 2015<sup>1</sup> she had asked to be notified in the English language.

Having seen that in this judgement the court ordered that the accused is notified of the charges in the English language and that the accused was only notified with such charges in the English language during the court sitting dated 23<sup>rd</sup> June 2020 and thus more than five years after the alleged incident.

Having seen section 15H of Chapter 65 of the Laws of Malta wherein the punishment applicable for the offences that the accused was charged do not carry a period of imprisonment that exceeds six months and thus in terms of section 688(e) of Chapter 9 of the laws of Malta the prescriptive period for such actions is two years. In view of the fact that five years had passed before the appellant being notified with the charges in the English language the Court declares these proceedings as time barred in terms of section 688(e) of chapter 9 of the laws of Malta and refrains from taking further cognisance of the case.

(ft) Consuelo Scerri Herrera

Imhalletf

VERA KOPJA

Franklin Calleja

Deputat Registratur

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<sup>1</sup> Fol. 25