



Criminal Court of Appeal

Hon. Judge Dr. Consuelo Scerri Herrera, LL.D., Dip Matr., (Can)

Appeal Nr: 1 / 2022

The Police

vs

Filip Miovski

Today the 10th May 2022

The Court,

Having seen the charges brought against Filip Miovski born in Macedonia on the 28th May 1990 and residing at Thistle Crt, Fl 2, Triq tal-Gidi, Xewkija, Gozo holder of identity card number 189313 A, before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having:

On the 18th November 2021 at about 22:30hrs whilst at Marsalforn Road, Zebbug, Gozo :

- i. Driven motor vehicle reg no GAL 595 make Suzuki Swift without a valid driving license;
- ii. Used motor vehicle reg no GAL 595 make Suzuki Swift on a road unless there was in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance in respect of third-party risks.

The Court was requested that if the accused is found guilty, in addition to the punishment, the accused is disqualified from holding or obtaining a driving license or a license in

respect of the motor vehicle driven by him at the time of the offence for a period of not less than eight days.

Having seen the judgment meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 25th February, 2022, whereby the Court after having seen the charges and in the light of the above mentioned reasons, this Court found the accused not guilty of both charges due to lack of proof.

Having seen the appeal application presented by the Attorney General in the registry of this Court on the 23rd March, 2022, whereby he humbly requests that this Honourable Court:

- a. Revokes and declares the judgement as null and without effect and proceed to find the accused guilty of all the charges proffered against him and consequently inflict a punishment in accordance with and within the parameters of the law ; OR
- b. Alternatively, in due consideration not to preclude the parties from the benefit of “doppio esame”, remit the acts of the proceedings of this case to the Court of Magistrates (Gozo) as a Court of Criminal Judicature to preside and decide over the same case after hearing from all the witnesses of the Prosecution.

Having seen the acts of the proceedings;

Having seen the updated conduct sheet of the appealed, presented by the prosecution as requested by this Court.

Having seen the grounds for appeal and that the grievances are clear and manifest and consist of the following:

A. Grievances and Grounds for Appeal

1. **The Executive Police has not been allowed to produce, in support of the charge, indispensable evidence which was admissible according to law;**

Whereas the appellant humbly submits that according to the acts of the proceedings, the judgement which was handed down by the Court of Magistrates (Gozo) as a Court of Criminal Judicature on the 25th of February 2022 failed to take cognizance of indispensable evidence and proceeded to acquit the accused on the basis of 'lack of proof' .

Whereas in the case at hand, the Prosecution duly notified a representative of Transport Malta in order to exhibit any documentation and evidence to substantiate the alleged offences. Given that the offences appertained to motor vehicles and Transport Malta is authority established by law to regulate transportation within the Maltese Islands, any evidence given by representatives of Transport Malta would prove indispensable and crucial to corroborate any alleged offences relating to motor vehicles.

Whereas the Prosecution had duly notified such representative of Transport Malta on the 11th of January 2022 and the Prosecution had also presented a copy of the Order of Service given to the representative of Transport Malta, such representative failed to appear on the date of the sitting.

In light of this, as evidenced by the minutes of the sitting of the 25th of February 2022, the Prosecution asked the Court for an "adjournment due to the fact that the only remaining witness of the Prosecution is the representative of Transport Malta."

However, it transpired that the defence opposed "in view of the fact that these are summary proceedings and the witness was duly notified".

Whereas the Prosecution humbly requested the Court again for an adjournment "due to the fact that the witness was duly notified with today's sitting and humbly requests that this testimony be heard".

However, the defence reiterated its objection on the aforementioned reasons and the Court reconfirmed its “order that the case be heard today”.

Whereas given that the Prosecution was precluded from presenting indispensable evidence, the Court proceeded with the case and acquitted the accused on the basis of lack of proof.

Whereas since the Prosecution had duly notified the representative of Transport Malta and had humbly requested for an adjournment, the Prosecution was precluded from doing anything else and on such basis the humble appeal is being lodged.

Whereas Article 413 (b) (vi) of the Criminal Code, Chapter 9 of the Laws of Malta, contemplates the right of appeal of the Attorney General in relation to summary proceedings for offences within the jurisdiction of the Court of Magistrates as a Court of Criminal Judicature, if it is proved that:

“The Police, or, as the case may be, the complainant has not been allowed at the trial to produce, in support of the charge, some indispensable evidence which was admissible according to law” (bold by appellant)

Whereas in accordance with Article 441 of the Criminal Code, Chapter 9 of the Laws of Malta:

“Whosoever being duly subpoenaed to give evidence or to give his opinion as an expert shall fail to appear in Court at the time fixed in the subpoena, or, having appeared, shall leave before he is dismissed, shall be liable to be sentenced by the Court to a fine (ammenda) and shall be liable to be compelled to appear to give evidence by means of a warrant of escort or of arrest” (bold by appellant)

Whereas in a separate case in the names “**Il-Pulizija vs Charles Polidano**” (decided on the 27th of March 2008), with reference to other previous judgements on the same matter such as “**Il-Pulizija vs Domenico Savio Spiteri**” (decided 5th January 1996), the Court of Criminal Appeal declared that:

“Illi mbaghad gie ripetutament ritenut minn din il-Qorti li jekk xhud, debitament notifikat biex jidher quddiem il-Qorti, jonqos li jaghmel hekk, sakemm il-partijiet ma jirrinunzjawx ghalih, il-Qorti ma tistax tghaddi ghas-sentenza imma ghandha rimedji ohra. Altrimenti l-kawzi w l-ezitu taghhom jigi jiddependi fuq jekk xhud ifettillux jobdi tahrika jew le. ... Mhux biss izda talli meta jirrizulta li dak ix-xhud ikun indispensabbli ghall-kaz tal-prosekuzzjoni (kif kien fil-kaz odjern), **il-Qorti ghandha tiddiferixxi l-kawza ghal data ohra w tipprocedi kontra x-xhud kif provdut fl-artikolu 441 (4) tal-Kodici Kriminali.**” (bold by appellant)

Whereas therefore in view of the above, the Prosecution humbly submits that it is amply clear that the judgement being appealed lacks the formalities and essential requisites at law and thus constitutes a breach or an omission of such formalities as stipulated under Article 428 of the Criminal Code, Chapter 9 of the Laws of Malta;

The Court heard the parties make their oral submissions in relation to the appeal of the Attorney General.

Considers further:

The facts of the case are as follows. The accused Filip Miovski was arraigned in court and charged with the offence of driving a motor vehicle registration number AGAL 595 without being in possession of a driving license and for being without an insurance policy whilst driving the same car. The accused allegedly had been stopped in Marsalforn Road, Zebbug by AFM personnel on the 18th November 2021 at about 22.00. Present was also PS 1040 John Grima who confirmed in his affidavit presented in court that he was present

when the accused was stopped whilst driving the car. PS 1040 then asked the accused to hand over a copy of his driving license and insurance policy. He was further asked to provide details of his last entry to Malta and the accused said that it had exceeded twelve months and thus was in contravention of SL 65.18.

In Court the prosecution presented the affidavit of PS 1040 (fol. 7). The prosecution also wanted to bring forward as a witness Saviour Farrugia. Saviour Farrugia was duly notified as it results from an examination of the positive notification presented in these acts during the sitting of the 25th February 2022 though he failed to turn up for the sitting. The prosecution insisted on hearing this witness though the defence objected on the premise that these are summary cases and thus the court should proceed to give judgment. The prosecution insisted that it wanted to hear such witness as he was pertinent in proving the charges brought forward against the accused though the court ordered the continuation of the case and disregarded altogether the positive notification. The first court then went on to pass judgment in the same sitting and found the accused not guilty of the charges brought forward against him and acquitted him of all charges.

The Attorney General filed an appeal based on the grievance that the court did not allow the prosecution to bring forward an essential witness in support of its charges. She held that the witness was a crucial witness and without his evidence the charges could never have been proven. The prosecution believes that the court was duty bound to give an adjournment and proceed according to Article 441 of the Criminal code namely to condemn the witness who failed to appear though being duly notified to the payment of a fine (ammenda) and move on and order that he shall be brought to court for the next sitting by means of a warrant of escort or of arrest.

The court makes reference to the judgment given by this court though preside over by a different judge in the names **il-Pulzija vs Raymond Mifsud**¹ where in it held that:

*“cirkostanzi fejn il-kawza tkun istitwita ex officio mill-Pulizija
Ezekuttiva u xhud jew xhieda ma jidhrux minkejja li debitament notifikati,
l-Qorti ghandha tiddiferixxi l-udjenza u taghmel dawk is-sanzjonijiet*

¹ Decided on the 28th September 2020

kontra dak ix-xhud inkluz li jingieb b'mandat t'arrest. Is-sensiela ta' sentenzi in rigward huma cari u bizzejjed li ssir referenza ghal dik fl-ismijiet **Il-Pulizija vs Saviour Farrugia** App Krim 25.7.194 u s-sentenzi hemm imsemmija. Dawn huma riflessjoni ta' dak ravoizat fl-artikolu 441(4) tal-Kapitolu 9 applikabbli ghall-Qorti tal-Magistrati bl-artikolu 525"

Another similar judgment is that in the names of **Il-Pulizija vs. Peter Sammut sive Peter Ferdinans** where this same court had decided that:-

Il-fatt li xhud ma jidhirx ghal udjenza partikolari ma jfissirx li huwa prekluz milli jixhed f'udjenza ohra, u dan anke f'kawzi sommarji. Ma hemm xejn fil-ligi u filgurisprudenza li b'xi mod jissuffraga tali proposizzjoni. Jekk xhud, debitament notifikat, ma jidhirx u l-parti li tkun talbitu ma tirrinunzjax ghalih (u f'dan il-kaz ma jirrizultax li l-prosekuzzjoni f'xi stadju rrinunzjat ghall-Ispettur Cordina), il-qorti ghandha tghaddi biex tipprovi skond il-ligi kontra dak ix-xhud u tidifferixxi sabiex huwa jinstema' f'udjenza ohra."

Likewise in the case in the names delivered by this court in the names **il-Pulizija vs Simon Vassallo**² the court held that:-

Fil-kaz fejn ix-xhud ikun gie notifikat bit-tahraka tax-xhieda u minkejja dan huwa ma jidherx biex jixhed fid-data u l-hin ta' meta tkun giet appuntata s-seduta, il-gurisprudenza ma tridx li l-Qorti tal-Magistrati taghzel tiehu t-triq il-qasira u tqis li n-nuqqas ta' dehra tax-xhud – anke jekk dan ikun xhud interessat – bhala nuqqas t'interess fil-proceduri u b'hekk tillibera lill-imputat fuq talba tad-Difiza ghall- librazzjoni tieghu minhabba li dan ix-xhud jibqa' ma deherx. Din mhix il-posizzjoni korretta fil-kaz ta' procediment sommarju mmexxi ex officio mill-Pulizija Eżekuttiva".

² Decided on the 25th February 2021

In the case **il-Pulizija vs Margaret Urry**³ this court gave a more detailed explanation as to what should take place when a witness who is notified fails to appear in court: _

*“Din il-kawza kienet giet istitwita bhala kawza tal-Pulizija u mhux bhala kawza privata – kif jidher car mill-komparixxi – u kienet ukoll giet prosegwita mill-Pulizija ex officio u mhux mill-parti offiza, kif jirrisulta mill-occhio ta’ kull verbal u anke tas-sentenza (**“Il-Pulizija v. Margaret Urry”** u mhux *“Veronica Caruana v. Margaret Urry”*). Konsegwentement kienu applikabbli ddisposizzjonijiet ta’ l-Artikolu 375 tal-Kodici Kriminali u mhux dawk ta’ l-Artikolu 374. (2) Il-partijiet f’din il-kawza kienu l-Pulizija Ezekuttiva u l-imputata Urry. Kellha kemm kellha interess Veronica Caruana, hija kienet semplicement xhud tal-prosekuzzjoni, f’dan il-kaz tal-Pulizija Ezekuttiva. Kif din il-Qorti kellha okkazzajoni t’fisser fis-sentenza taghha tat-8 ta’ Jannar, 1996 fl-ismijiet **Il-Pulizija v. Pierre Schembri**, “...meta xhud, debitament notifikat biex jidher quddiem l-ewwel qorti, jonqos milli hekk jidher, dik il-qorti ma tistax tibqa’ ghaddejja qisu ma gara xejn. Bhala minimu dik il-qorti ghandha tikkundanna lix-xhud ghal ammenda u, kemm-il darba l-prosekuzzjoni (pulizija ezekuttiva jew parti offiza ossia kwerelant, skond il-kaz) ma tirrinunzjax espressament ghal dak ix-xhud jew kemm-il darba l-qorti ma tkunx tal-fehma li xhud mhux indispensabbli biex isahhah l-akkuza, il-qorti ghandha wkoll tordna li dak ix-xhud jingieb b’mandat ta’ akkumpanjament jew b’mandat ta’ arrest (Art. 441(4) u 525(1)(a) tal-Kap. 9). Dan necessarjament jimplika li l-qorti ghandha tidifferixxi l-kawza. Altrimenti lkawzi, u l-ezitu taghhom, jigi jiddependi fuq jekk xhud ifettillux jobdi tahrika jew le! Anqas ma hu argument validu dak li jigi spiss ventilat quddiem il-Qrati Inferjuri u cioe` li x-xhud kellu interess li jidher u li allura, la ma deherx, il-qorti ghandha tibqa’ ghaddejja u, kif spiss jigri u kif gara f’dan il-kaz, tillibera.*

³ Decided 17th April 2001

L-interess principali fil-proceduri penali hu tal-partijiet – ilprosekuzzjoni (Pulizija Ezekuttiva jew, fil-kazijiet kontemplati fl-Art. 373, loffiz/kwerelant) u l-imputat. Ghandu kemm ghandu interess xhud fl-ezitu ta' kawza, ma jistax impunement, u hliet fil-kazijiet kontemplati mill-ligi, jippriva lill-parti li tkun harrkitu mid-deposizzjoni tieghu...”:-

Therefore in line with the above the court upholds the appeal of the Attorney General and thus annuls and revokes the judgment delivered by the first court on the 25th February 2022 and after having seen Article 428(3) of Chapter 9 of the laws of Malta orders that the case is sent back to the first court so that it may be heard a fresh on the merits and order that the accused is placed in the same position he was in prior to the judgment of the first court being delivered namely that the court is to hear the witness Saviour Farrugia should he be notified again.

Dr. Consuelo Scerri Herrera

Imhallett

Nadia Ciappara

Deputat Registratur