



**IN THE COURTS OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

Magistrate Dr. Monica Vella LL.D., M.Jur

Case Number 573/2020

The Police

(Inspector Joanna Piscopo)

(Inspector Audrey Micallef)

vs

Sharoon Lazar

Today, the 2nd February 2022

The Court;

Having seen the accusations brought against:

“Sharoon Lazar, holder of ID Card Nr. 63900A;

And charge him with having on the 25th October 2020 and/or the proceeding days and months, at Żebbuġ (Malta) and in the Maltese Islands:

1. Caused his Komal Carolina to fear that violence will be used against her or her property or against the person or property of any of her ascendants, descendants, brothers or sisters or any person mentioned in Article 222 of Chapter 9 of the Laws of Malta;
2. Harassed his wife Komal Carolina and behaved in away, which he knows or ought to know amounts to harassment of his wife.

And further accused that on the 25th October 2020 between 13:30hrs and 14:15hrs in Attard:

3. Used force against his wife Komal Carolina with intent to insult, annoy or hurt such person or others;
4. Insulted, threatened or provoked his wife Komal Carlina not otherwise provided for in this Code, or provoked or carried his insult beyond the limit warranted by the provocation.

The Court is kindly requested to issue a protection order, during the proceedings against Sharoon Lazar to the benefit of Komal Carolina and her family as per Article 412C of Chapter 9 of the Laws of Malta.

The Court is kindly requested to provide for the safety of Komal Carolina and her family of for the keeping of the public peace, in addition to, or in lieu of the punishment applicable to the office, requires that Sharoon Lazar to enter into his own recognizance in a sum of money fixed by the Court as per Article 383 et seq of Chapter 9 of the Laws of Malta.

The Court is kindly requested to condemn Sharoon Lazar to pay all expenses incurred by the appointment of experts during these procedures, and this in terms of Article 533 of Chapter 9 of the Laws of Malta.”

Having seen the records of the case.

Having seen the Attorney General’s consent for this case to be dealt with summarily.

Having considered all the evidence and documents brought forward.

Having heard the injured party, Karolina Komal, affirm on the 7th May 2021 that she has no interest in the continuation of the case against the accused, her husband, Sharoon Lazar.

Having heard on the 2nd February 2022, Dr. Benjamin Valenzia on behalf of the injured party, Karolina Komal, declare that as far as he was aware Karolina Komal, the injured party, had left Malta and had returned to her country, Pakistan, and that her position had remained the same, that she does not want to proceed with the case against her ex-husband, the accused.

Having heard the Defence request that, in view of difficulties encountered by the Prosecution to summon the parte civile for her cross-examination, her testimony be expunged from the acts of the proceedings.

Having heard submissions of the parties;

Having seen that the case was put off for judgement for today.

Considers:

The Facts in brief

The case regards an alleged case of domestic violence which was brought against the accused upon the complaint of the alleged victim.

Applicable Law and Jurisprudence

Article 543 of Chapter 9 of the Laws of Malta provides:

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543. It shall be lawful for the Police to institute proceedings even without the complaint of the private party in any of the following cases:

- (a) in the case of crimes for which the law does not expressly provide that the complaint of the private party is requisite;*
- (b) in the case of any offence consisting in the carrying of prohibited weapons, or in the case of any offence against any law relating to fishing, vehicles, or boats, or to any art or trade;*
- (c) in the case of any offence committed against a person who, by reason of physical or mental infirmity, is incapable of instituting criminal proceedings, even though such offence be one in respect of which, if committed against any other*

person, the complaint of the private party would be requisite;

(d) in the case of any offence affecting public order or the community in general;

(e) in the case of any offence involving domestic violence:

Provided that for the purposes of this paragraph “domestic violence” shall have the same meaning assigned to it by article 2 of the Gender-Based Violence and Domestic Violence Act:

Provided further that it shall be lawful, after proceedings have commenced before the court in virtue of this article for an offence mentioned in this paragraph, for an alleged victim of an offence involving domestic violence to request the court to stay proceedings against the alleged perpetrator, and when such a request is made the court may decide and direct the continuation of proceedings against the alleged perpetrator, giving particular consideration to the best interests of the complainant, any minors involved, and any other relevant third parties, and shall cause such request and decision to be registered in the records of the case.

(f) in the case of rape as defined in article 198:

Provided that it shall be lawful, after proceedings have commenced before the court in virtue of this article for an offence mentioned in this paragraph, for an alleged victim to request the court to stay proceedings against the alleged perpetrator, however, if such request is made, the court may decide to continue the proceedings against the perpetrator, giving particular consideration to the best interests of the complainant, any minors involved, and any other relevant third parties.

The Maltese Courts have applied this Article, in particular sub section (e) in various occasions.

In the case **II-Pulizija vs Dona Debono**¹ the Court made reference to the case **II-Pulizija vs Mohamed Ramadan**, whereby **this principle was also adopted by the Court and stated:**

²“Illi skont l-istess tieni proviso tal-artikolu 543(e) tal-Kodici Kriminali l-vittma ta’ delitt li jinvolve vjolenza domestika ghandha s-setgha li titlob li l-proceduri penali dwar reati jinvolve vjolenza domestika jigu mwaqfa. Jidher li meta l-vittma taghmel din it-talba, is-setgha li jkollha l-qorti mhix daqstant li twaqqaf il-proceduri, daqskemm li tordna li dawn jitkomplew jekk il-Qorti thoss li hemm ragunijiet bizzejjed biex dawn jitkomplew filwaqt li tinghata konsiderazzjoni partikolari ghall-ahjar interess tal-minuri involuti.

¹ Decided on the 25th May 2017

² Since the said judgement is in Maltese the quote is being reproduced in Maltese.

Il-Ligi tat is-setgha lill-Pulizija jiprocedu *ex officio* f'kull kaz li jinvolvi vjolenza domestika – irrispettivament minn natura jew forma tar-reat, dment

- (a) Li jkun jinvolvi vjolenza u
- (b) Dment li din tkun vjolenza domestika skont l-artikolu 2 tal-Kap 480.

L-Att dwar il-Vjolenza Domestika ma jippreskrivi ebda tifsira ghall-kelma “vjolenza”. Dan ghalhekk jista’ jinvolvi diversi tipologiji ta’ reati li fin-natura taghom jinvolvu elementi ta’ vjolenza. Din il-ligi ma taghmilx distinzjoni dwar dawk ir-reati ta’ vjolenza jekk l-azzjoni penali dwarhom hijiex procedibbli fuq il-kwerela tal-privat jew le. Ghalhekk, ladarba l-Ligi hija siekta fuq dan il-punt, jidher li dan l-artikolu 543(e) tal-Kodici Kriminali huwa applikabbli irrispettivament jekk ir-reat li jinvolvi vjolenza domestika jkunx wiehed minn dawk li jehtiegu l-kwerela tal-parti offiza jew le.

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F’dan il-kaz prezenti pero’ l-proceduri inbdew *ex officio* mill-Pulizija Ezekuttiva in kwantu whud minnhom gew kommessi bi vjolenza domestika kif imfissra fl-artikolu 2 tal-Kapitolu 2 tal-Kapitolu 481 tal-Ligijiet ta’ Malta. Dan ifisser ghalhekk li l-proceduri f’dan il-hlas tmexxew indipendentement mill-kwerela tal-privat u indipendentement mill-azzjoni privata. Ghalhekk anke jekk il-privat jirtira l-kwerela, ladarba l-procediment *ex officio*, il-prosekuzzjoni tal-azzjoni penali titkompli

quddiem il-Qorti ghaliex f'dak il-kaz l-azzjoni ma tigiix ritenuta estinta bl-irtirar tal-kwerela.

Izda bl-emendi introdotti fl-2005, gara li f'dawn il-kazijiet (fejn il-prosekuzzjoni tal-azzjoni penali tkun tiddependi mill-kwerela tal-privat tigi istitwita ex officio minhabba li jkunu kommessi bi vjolenza domestika), gew rezi applikabbli wkoll id-disposizzjonijiet tat-tieni proviso tal-artikolu 543(e).

Dan ifisser li ghalkemm il-procediment ikun immexxi ex officio, l-istess procediment jista' jigi mwaqqaf fuq talba tal-vittma. Ghalhekk il-kontinwazzjoni tal-azzjoni kriminali mibdija ex officio, (li allura tkun obligata li tibqa' ghaddejja sas-sentenza) issa tista' tigi mitmuma fuq id-decizjoni tal-vittma. Mill-banda l-ohra l-Qorti hija akkordata d-diskrezzjoni li tmur kontra din id-decizjoni tal-vittma u tista' tordna l-kontinwazzjoni tal-proceduri kontra l-allegat awtur.

Id-decizjoni li l-proceduri jitwaqfu hija tal-vittma u mbaghad ikun jispetta ghall-Qorti jekk tiddecidix li tezercita d-diskrezzjoni taghha biex tordna li dawn il-proceduri jitkomplew minflok li jitwaqfu b'decizjoni mill-vittma. L-effett ta' tali decizjoni tal-vittma hija li l-azzjoni penali ma titkomplix li tigi prosegwita. Il-Ligi hija siekta dwar l-effett legali ta' tali decizjoni fuq in-natura tal-azzjoni penali. Il-fatt li l-proceduri penali tkun qeghda tigi estinta – bhal meta sehh xi wahda mir-ragunijiet li in bazi taghhom l-azzjoni penali innifisha tigi mitmuma bhal kazijiet ta' mewt tal-awtur, mahfra

presidenzjali, recess tal-kwerela (fejn l-azzjoni titmexxa biss bil-kwerela tal-privat), preskrizzjoni jew *ir-res judicata*. Dan ghalix jekk tirrizulta xi wahda minn dawn il-fatturi l-azzjoni penali ssir estinta u ebda Qorti ma tista' tordna li l-proceduri jitkomplew. Ladarba estinta l-azzjoni penali tispicca. Mentri dak li jipprovdi t-tieni proviso tal-artikolu 543(e) huwa differenti – fis-sens li meta l-vittma taghzel li titlob li l-proceduri jieqfu, il-Qorti ghandha s-setgha u d-diskrezzjoni li taghzel li dawn jitkomplew. Kieku bid-decizjoni tal-vittma l-azzjoni penali tigi meqjusa estinta ebda Qorti ma tista' tkomplija taghha ghalix dak li huwa estint *ex lege* ma jkunx ghad fadallu hajja legali. U ladarba l-procedimenti penali jkun inbeda *ex officio* ikun kontrosens li l-istess procediment jigi estint bid-decizjoni tal-vittma.

Fil-fehma tal-Qorti ghalhekk, f'dan il-kaz kontemplat mit-tieni proviso tal-artikolu 543(e) tal-Kodici Kriminali il-ligi tipprovdi ghal sitwazzjoni fejn il-kundizzjoni tal-prosegwiment mill-prosekuzzjoni tal-azzjoni penali tigi affettwata b'tali mod li ladarba l-vittma tiddeciedi li l-proceduri kontra l-awtur allegat jieqfu, jinholoq ostaklu ghat-tkomplija tal-prosekuzzjoni tal-azzjoni penali biex b'hekk il-prosekuzzjoni tal-kaz tkun tista' tieqaf hemmhekk; izda, ghar-raguni hawn fuq imsemmija din id-decizjoni tal-vittma ma tistax iggib l-estinzjoni tal-azzjoni penali.

Ladarba d-decizjoni tal-vittma li titlob it-twaqqif tal-proceduri kontra l-awtur allegat ma ggibx l-estinzjoni

tal-azzjoni penali, ma tistax titqies li hija decizjoni li tolqot jew tidderimi l-meritu tal-azzjoni penali, u konsegwentement li ghalhekk hija prekluzja milli tigi dikjarata mill-Qorti tal-Magistrati bhala qorti istruttoria. Ghalhekk dik it-talba tal-parte civile hija ghalhekk proponibbli wkoll quddiem il-Qorti tal-Magistrati bhala qorti istruttoria. Fuq din it-talba, il-Qorti imbaghad hija intitolata li jew tilqa' t-talba u b'hekk it-tkomplija tal-prosekuzzjoni tal-azzjoni penali tieqaf (ghalkemm l-azzjoni ma tkunx estinta) jew (ladarba l-azzjoni ma tkunx estinta), tezercita d-diskrezzjoni taghha li tordna l-prosekuzzjoni tal-kawza titkompla.”

Evidence

The Court heard the evidence of the alleged victim and of the Prosecuting Officer. The Court also took cognisance of all the documents produced by the prosecution.

The Court also heard the alleged victim, during the sitting of the 7th May 2021, declare that she has not been further bothered by the accused during these proceedings and that she does not have any interest in the continuation of these proceedings against the accused.

Considers:

That these proceedings were instituted upon the complaint of the alleged victim;

That, undoubtedly, these proceedings fall within the parameters of domestic violence;

That, in view of the fact that the alleged victim declared that she has no interest in these proceedings, the Court considers that this case falls within the parameters of Article 543 (e) of Chapter 9 of the Laws of Malta, and that the Court should uphold the alleged victim's decision not to continue further these proceedings.

Decides:

For these reasons, and upon the application of the said Article 543 (e) of Chapter 9 of the Laws of Malta, the Court orders that these proceedings against the accused be stopped and stayed.

(ft) Magistrate Dr. Monica Vella LL.D, M. Jur.

(ft) Angelo Buttigieg

Deputy Registrar