



Criminal Court of Appeal

Hon. Judge Edwina Grima, LL.D

Appeal No: 103/2022

The Police

(Insp. James Turner)

vs

Sasa Manojlovic

Today, the 28th day of September 2022

The Court,

Having seen the charges brought against appellee Saso Manojlovic, holder of Serbian passport bearing number 012050798, wherein he was accused before the Court of Magistrates (Malta) of having on the 15th October 2021, at about 0430hrs at the Catamaran Terminal in Marsa or/and in other place in these islands, failed to declare to the Commissioner of Revenue that he was carrying a sum equivalent to 10000 euro, or more in cash, whilst leaving Malta to Pozzallo Sicily, in breach of Regulation 3 of Subsidiary Legislation 233.07 (Cash Control Regulations) of the External Transactions Act (Chapter 233 of the Laws of Malta).

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature dated the 21st February 2022, wherein the same Court, after

having seen Chapter 233 of the Laws of Malta and Regulation 3 and 3(5)(c)(ii) of Subsidiary Legislation 233.07 found accused guilty of the charge brought against him and condemned him to a fine (multa) of fifty euro (€50).

Having seen the appeal application filed by the Attorney General, on the 15th March 2022, wherein this Court was requested to vary the said judgment in the following manner:

1. By confirming that judgment with regard to the finding of guilt of the charge brought against Sasa Manojlovic;
2. By revoking the judgment wherein the First Court imposed a penalty of €50 and instead, in accordance with Regulation 3(5)(b) of S.L.233.07, imposing a penalty according to law. Having seen all the records of the case.

Having seen the updated conduct sheet of appellee, exhibited by the Prosecution as requested by this Court.

Having heard submissions by the parties.

Considers:

That, the appellant Attorney General brings forward one main grievance lamenting that the punishment meted out by the First Court was not in accordance with the law regulating the violation with which accused was charged, the penalty prescribed being much more onerous than that inflicted upon him by the court.

Accused, Sasa Manojlovic, was charged before the Court of Magistrates with having violated cash control regulations embodied in Subsidiary Legislation 233.07, wherein in terms of regulation 3 'any person entering, leaving, or transiting through Malta and carrying a sum of a value of ten thousand euro (€10,000) or more in cash shall be obliged to declare such sum to the Commissioner' for Revenue, which obligation shall be fulfilled upon completion of the applicable form appearing in the Schedule to the Regulations, and upon such form being handed to the Commissioner when

entering, leaving, or transiting through Malta. Now the penalty prescribed for this violation of the law is laid out in sub-regulation 5 of regulation 3 wherein it is stipulated as follows:

(5) (a) Without prejudice to what is provided in sub-regulation (6), if the sum mentioned in sub-regulations (1) and (3) which is falsely declared or not declared is of a value of more than ten thousand euro (€10,000) and up to precisely thirty thousand euro(€30,000), the Commissioner may enter into an agreement with the person therein mentioned, and impose a penalty of fifty per cent (50%) of the sum carried in excess of ten thousand euro (€10,000) or equivalent, together with another penalty of twenty-five euro (€25), in lieu of proceedings in court. The signing of this agreement, which may take place up to the delivery of a final judgement by the court, shall also mean that the person is renouncing to any claim he may have against the Commissioner or the Attorney General resulting from the case. In the absence of such agreement, the Commissioner shall detain the amount in excess of ten thousand euro (€10,000), or the whole amount when the cash is indivisible and deposit it in the Depository as provided in sub-regulation (7) and the person concerned shall, on conviction, be liable to a fine (multa) equivalent to fifty-five per cent(55%) of the sum carried in excess of ten thousand euro (€10,000) together with another fine (multa) of fifty euro (€50).

(b) Without prejudice to what is provided in sub-regulation (6), if the sum mentioned in sub-regulations (1) and (3) which is falsely declared or not declared is of a value of more than thirty thousand euro (€30,000), the Commissioner shall detain the sum in excess of ten thousand euro (€10,000), or the whole amount when the cash is indivisible and deposit it in the Depository as provided in sub-regulation (7) and the person shall, on conviction, be liable to a fine (multa) equivalent to fifty five per cent (55%) of the sum carried in excess of ten thousand euro (€10,000) together with another fine (multa) of fifty euro (€50).

(c) In the case where the sum carried or unaccompanied is of precisely ten thousand euro (€10,000):

(i) and an agreement takes place as provided for in paragraph (a), then the penalty shall be twenty-five euro (€25);

(ii) and there is a conviction, then a fine (multa) of fifty euro (€50) shall be imposed by the Court.

(d) All amounts of cash collected as a result of the agreement with the person as provided for in paragraph (a) shall belong to the Commissioner;

(e) All amounts imposed under these regulations as penalty in an agreement or as fine (multa) in a judgement shall be rounded up to the nearest euro (€1).

That from the acts of the proceedings it results that accused Sasa Manojlovic admitted to the charge brought against him in the initial stages of the hearing of the case, the First Court therefore passing on to deliver judgment and imposing the punishment envisaged in sub-regulation 5(c)(ii) of Regulation 3 of the Cash Control Regulations, being the penalty applicable when the sum of undeclared cash is of precisely €10,000. Now the only piece of evidence found in the court records consists of the statement released by accused to the investigating officers upon his arrest¹. During his interrogation accused admits that he tried to leave Malta by Catamaran to Sicily with the sum of over €36,000 of undeclared cash. He states that he was unaware of his obligation to declare the sums exceeding €10,000 when travelling by sea. Therefore, from this statement it is evident that the appeal filed by the Attorney General is well-founded. The penalty for the undeclared cash in this case is that stipulated in sub-regulation 5(b) of regulation 3, the sum found in accused's possession exceeding the €30,000 threshold as indicated in this provision of the law, being a fine equivalent to 55% of the excess amount over ten thousand euro, together with an additional fine of €50.

It is clear, therefore, that the judgment of the First Court is based on a wrong application of the law regulating the punishment meted out in relation to the violation of law of which accused was found guilty, and consequently the Court cannot but uphold the appeal filed by the Attorney General. In this case, however, the Court will not proceed to the forfeiture requested in the charge sheet since the excess sum was never exhibited by the Prosecution in the acts of the proceedings. Thus the penalty in this case should be that of 55% of the sum carried by accused in excess of €10,000, consisting therefore of 55% of €26,000, amounting o €14,300 and a further fine of €50 as stipulated in Regulation 3(5)(b) of Subsidiary Legislation 233.07.

¹ Exhibited in audio visual format as Document JT5, fol.15 of the court records

Consequently for the above-mentioned reasons, the Court upholds the appeal filed by the Attorney General, varies the judgment delivered by the First Court, confirms the same where accused was found guilty of the charge brought against him, however after having seen Regulation 3(5)(b) of Subsidiary Legislation 233.07, varies the punishment inflicted and condemns accused Sasa Manojlovic to pay a fine in total of €14,350.

(Sgn) True Copy

Joyce Agius

Deputy Registrar