



**COURT OF MAGISTRATES (MALTA) AS A COURT OF CRIMINAL
JUDICATURE**

MAGISTRATE NATASHA GALEA SCIBERRAS B.A., LL.D.

Case Number: 363/2013

**The Police
(Inspector Herman Mula)**

vs

**David Anthony McNally
(ID 19853(A))**

Today, 28th September 2022

The Court,

Having seen the charge brought against the accused **David Anthony McNally**, aged 48 years, son of Ronald and Sylvia nee` Watson, born in the United Kingdom on 26th February 1965, residing at 'Cosnica', Triq Wied Mejxu, Swieqi, and holder of Maltese identity card number 19853(A);

Charged with having on these Islands, on the night between the 21st and the 22nd December 2012:

Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the resin obtained from the plant cannabis, or any other preparation of which such resin formed the base, in terms of Section 8(a) of Chapter 101 of the Laws of Malta.

Having seen that the charge was filed by the Prosecution in the Registry of this Court on 20th June 2013;

Having also seen that the case was assigned to the presiding Magistrate in terms of the assignment of duties dated 30th April 2014;

Having seen the records of the case, including the Order of the Attorney General of 9th April 2013¹ in terms of sub-article (2) of Article 22 of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) for the accused to be tried before the Court of Magistrates as a Court of Criminal Judicature;

Having seen that the accused pleaded not guilty to the charge brought against him²;

Having heard the parties declare, during the sitting of 29th October 2014, that they were exempting the Court as presided from hearing again the evidence tendered before the Court as previously presided³;

Having heard the Prosecution declare that it was resting its case upon the evidence tendered and final oral submissions by the defence.

Considers that:

From the records of the case it results that the accused has been charged with the offence of having had cannabis resin in his possession on the night between the 21st and the 22nd December 2012, after allegedly having been noticed disposing of a joint and a substance suspected to be cannabis resin by PS 1220 Christopher Baldacchino, who was conducting a night patrol with his colleagues PC 777 and WPS 237 Antonella Vella in Paceville.⁴ On his part, the accused denied this allegation.⁵

¹ *Vide* a fol. 7 of the records.

² *Vide* a fol. 9 of the records.

³ *Vide* a fol. 19 of the records.

⁴ *Vide* the testimony given by PS 1220 Christopher Baldacchino (a fol. 26 to 33 of the records) and WPS 237 Antonella Vella (a fol. 34 to 39 of the records).

⁵ *Vide* the testimony given by the accused (a fol. 58 to 65 of the records and a fol. 73 to 82 of the records).

From the report exhibited by expert Scientist Godwin Sammut, appointed by the court to analyse the substance seized by PS 1220 on the said night and exhibited in these proceedings as Doc. HM 2⁶, it results that the said expert was handed over a brown envelope marked as S/B/223/2014, containing (i) a transparent plastic bag labelled ‘Date 22-12-12, Time 2.30am, Seized from the ground in the presence of McNally David Anthony ID 19853A by PS 1220, WPC 237; (ii) joint and (iii) a brown substance.

In respect of the said document, the expert concluded that the brown substance, which weighed 0.10 grams contained the substance *Tetrahydrocannabinol*. No illicit substances were found in the joint.⁷

Considers further that:

In view of the nature of the charge brought against the accused, the Court must consider the provisions of law recently introduced in Chapter 537 of the Laws of Malta by means of Act LXVI of 2021, which has amended the said Chapter and Chapter 101 of the Laws of Malta, *inter alia* as regards certain activities relating to cannabis. Article 4A(1) of Chapter 537, introduced by the said Act, provides as follows:

“Notwithstanding the provisions of any other law, the possession by a person over the age of eighteen (18) years of the drug cannabis in an amount not exceeding seven grams, in circumstances in which it may be reasonably deemed that such possession is for the personal use of such person, shall not constitute an offence, and that person shall not be subject to being taken into custody under arrest saving when there is a reasonable suspicion of trafficking or dealing in the drug cannabis”

Thus persons over the age of 18 years, as was the accused at the time of the charge brought against him, in possession of cannabis in an amount not exceeding seven grams, for personal use, are no longer subject to criminal proceedings before this Court, or to so called administrative proceedings before the Commissioner for Justice, since such possession no longer constitutes a criminal offence.

In view of the fact that in terms of the report exhibited by expert Scientist Godwin Sammut, the cannabis resin allegedly in possession of the accused weighed 0.10

⁶ *Vide* the Court’s decree a fol. 17 of the records.

⁷ *Vide* the expert’s report, a fol. 45 *et seq* of the records and his testimony, a fol. 42 to 44 of the records.

grams, the Court deems that it should apply this provision of law in his favour, as the law more favourable to him, despite the fact that at the time of the alleged act, such possession constituted a criminal offence punishable by law. In this respect the Court refers to the principles enunciated in **Il-Pulizija vs Martin Cassano** delivered by the Court of Criminal Appeal on 28th September 2017, **Il-Pulizija vs Hany Abdullatif Tawkif Elkhawiny** delivered by the said Court on 13th April 2021 and **Il-Pulizija vs Agostino Bugeja** delivered by the Criminal Court⁸.

The Court deems that that once the alleged fact attributed to the accused no longer constitutes a criminal offence, no punishment may be imposed upon him.

Conclusion

For these reasons, the Court finds the accused **David Anthony McNally** not guilty of the charge brought against him and acquits him thereof.

The Court orders the destruction of Doc. HM 2 under the supervision of the Court Registrar, once this judgement becomes final and definitive. The Court Registrar shall draw up a proces-verbal documenting the destruction procedure, and this shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

Natasha Galea Sciberras
Magistrate

⁸ Vol. XXIV, p. iv. p. 941

