



Criminal Court of Appeal

Hon. Justice Dr. Giovanni M Grixti LL.M., LL.D

Appeal nr: 387/2021

The Police

(Spettur Mark Anthony Mercieca)

Vs

Maria Cristina Veneziano

Today the 27 of October, 2022

The Court;

Having seen the charges proferred against Maria Cristina Veneziano holder of Italian Passaport No. YA8987977, before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having on these Islands, on the 9th August 2021 and in the previous months;

- 1) Imported, or caused to be imported, or took any steps preparatory to import any dangerous drug (cannabis grass) into Malta against the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.
- 2) Had in her possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or

any portion of the plant cannabis, in terms of Section 8(d) of Chapter 101 of the Laws of Malta;

Having seen the order of the Attorney General for the accused to be charged and tried by the Court of Magistrates (Malta) as a Court of Criminal Judicature;

Having seen the judgement of the Courts of Magistrate as a Court of Criminal Judicature of the 15th October 2021, by which the accused was found guilty of the charges profered against her and condemned to pay a fine of seven hundred euro (€700);

The Court also ordered the destruction of illegal substance, once the judgement became final and definitive, which destruction had to be done under the supervision of the Registrar, who should also draw up a process verbal documenting the destruction procedure to be inserted in the records of the proceedings by not later than fifteen days from the said destruction;

Having seen the application of appeal of MariaCristina Veneziano filed in the registry of this Court on the 27th October 2021, requesting therein this Court to vary the appealed judgement by 1) imposing a less onerous sentence that reflects this case under appeal or 2) without prejudice to the first request if the Court decides to still impose a fine, humbly requests that this be paid in instalments;

Having seen the records of the case;

Having seen the Conduct Sheet of appellant exhibited by the prosecution on order of this Court;

Having heard oral submissions of the parties;

Having considered:

1. That appellant's only grievance in her appeal is with regard to the punishment meted out by the first Court in that she considers the seven hundred euro fine to be manifestly unjust and exaggerated;

2. That, however, during oral submissions by the parties, both appellant and the Attorney General noted that after the judgement of the first Court, that with which appellant was accused is no longer a crime under Maltese Law;

3. That from an examination of the records, appellant was correctly charged before the Court of Magistrates (Malta) as a Court of Criminal Judicature by order of the Attorney General for alleged possession of the drug Cannabis. The amount in question was of six grams according to the evidence tendered by Inspector Mark A. Mercieca when he exhibited the drug before the first Court;

4. That by an amendment to Chapter 537 of the laws of Malta, possession of the drug Cannabis of an amount of less than seven grams no longer gives rise to an offence. Act LXVI of the 18 December 2021 introduced the new article 4A to Chapter 527 which provides as follows:

4A. (1) 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:

5. This amendment came into force on the 18th December 2021 by means of Legal Notice 478 of 2021, that is on the same day of its promulgation. It is a classic example of *jus superveniens* and must be applied in this case since the accused is entitled to the application of that law which is most beneficial to her and in this case since the fact of which she was accused is no longer an offence and since the case is not yet *res judicata* this Court must proceed by acquitting the appellant. Reference is made to the judgement **Ir-Repubblika ta' Malta vs *omissis* u Soko Moussa Shaha Ali** of the Court of Criminal Appeal of the 12 of October 2022 and the considerations made therein which this Court embraces to the full. This, however, only applies to the second charge being that of possession and due to the prosecuting inspector's testimony that the cannabis in question had a weight of 6 grams. The first charge, however, is that of importation of the drug and further considerations are necessary in order to decide whether the above amendment has any effect on the prohibition to import the Cannabis drug;

6. Importation of the Cannabis drug is prohibited in terms of article 15A of Chapter 101 of the laws of Malta this being a general prohibition apart from the specific instances for other drugs such as that prevalent in article 5 of the same law:

15A. (1) No person shall import or export, or cause to be imported or exported, or take any steps preparatory to importing or exporting, any dangerous drug into or from Malta except in pursuance of and in accordance with the provisions of this Ordinance.

7. That when the new article 4A of Chapter 537 states “notwithstanding any other law”, it does so only with regards to possession and does not include any other activity such as importation, dealing or trafficking in drugs which would otherwise remain untouched by this new legislation. Appellant pleaded guilty to both offences, the first being importation of the drug and during her interrogation she declared that she obtained the drug by purchasing it online whilst in Malta. Her admission to the first charge is unequivocal and whereas she shall be acquitted from the second charge for the reasons stated above, namely that possession less than seven grams is no longer an offence, the charge of importation still stands;

8. The first charge was subject to a term of imprisonment of not less than three months and not more than twelve months or to a fine (multa) of not less than €465.87 and not more than €2,329.37. The penalty meted out by the first Court, that is a fine of €700.00 cannot be considered as “manifestly unjust and exaggerated” as alleged by appellant and this Court finds no reason why it should consider delving into the exceptional measure of substituting the discretion exercised by the first Court with its own when the sanction is perfectly within the parameters of the law and close to the minimum;

9. The first request will therefore be dismissed. As for the second request, although *stricto jure* this should not form part of the demands in an appeal application as it can be put forward at anytime after judgement, this Court finds no reason why it should dismiss such a request to pay the fine in installments;

10. That in conclusion therefore, this Court acquits the appellant from the second charge of possession of the drug Cannabis, dismisses the demand to reform that part of the judgement where accused was condemned to a fine (multa) of €700.00 and accedes to the request to pay the said fine in installments and for this reason authorises appellant to pay the said fine in two equal installment of €350.00 each with the first installment payable at the end of October 2022 and the second installment at the end of November, 2022. And confirms the remaining part of the appealed judgement.