



Court of Criminal Appeal

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

Appeal nr: 112/2021

The Police

(Spettur Mark Mercieca)

Vs

Ebrahim Baba Mass

Today the 27th October, 2022

The Court;

Having seen the charges brought against the accused Ebrahim Baba Mass holder of Refcom number 24964/19, charged for having on the 14th July 2021 and in the previous months before this date on the Maltese Islands:

1. Supplied or distributed, or offered to supply or distribute dangerous drugs, being a drug restricted and controlled under the provisions of the Kindred and Medical Profession Ordinance to person/s, who are not authorised person/s or for the use of other person/s, without being fully authorised in breach of the Medical and Kindred Profession Ordinance, Chapter 31 of the Laws of

Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended.

2. Produced, sold or otherwise dealt with the whole or any portion of the plant Cannabis in terms of Section 8 (e) of the Chapter 101 of the Laws of Malta;

3. Produced, sold or otherwise dealt in the resin obtained from the plant cannabis, or any preparation of which such resin formed the base, in terms of Section 8 (b) of the Chapter 101 of the Laws of Malta;

4. Had in his 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 the Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;

5. Had in his possession the psychotropic and restricted drug without a special authorization in writing by the Superintendent of Public Health, in breach of the provisions of the Medical and Kindred Profession Ordinance, Chapter 31 of the Laws of Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended, which drug was found under circumstances denoting that it was not intended for his personal use.

6. 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, which drug was found under circumstances denoting that it was not intended for his personal use)

7. Had in his possession the drugs (cocaine) specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (G.N.292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs was supplied to him for his personal use, according to a medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations, of the Internal Control of Dangerous Drugs (G.N.292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta;

8. Had in his 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 the Chapter 101 of the Laws of Malta;

9. Committed these offences in, or within 100 metres of the perimeter of, a school, youth club or centre, or such other place where young people habitually meet in breach of Article 22 (2) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;

Having seen the judgement of the Courts of Magistrates as a Court of Criminal Judicature of the 14th October 2021, whereby the Court found the accused guilty of the charges brought against him and condemned him to a term of imprisonment of thirty (30) months, from which term must be deducted the period of time, prior to this judgement, during which he has been kept in preventive custody, together with a fine (multa) of five hundred euro (€500);

In terms of Section 533 (1) of Chapter 9 of the Laws of Malta, the Court condemned the accused to pay the expenses relating to the appointment of experts Dr.Godwin Sammut, Architect Robert Musumeci, the scene of Crime Officer PC 2089 and Dr.Marisa Lautier Mifsud amounting in total to the sum of €1049.41. The Court did not condemn the accused to pay the expenses relating to the appointment of Dr.Martin Bajada because the report could not be made use of in the circumstances. The accused was being granted two years to pay for the experts' expenses.

The Court ordered that the drugs exhibited as Dok GS1, be destroyed, once this judgement became final and definitive, under the supervision of the Court Registrar, who shall draw up a process-verbal to be inserted in the records of these proceedings not later than fifteen days from the said destruction.

The Court ordered that the two mobile phones exhibited as Dok MB2 be released in favour of the accused.

Having seen the application of appeal of Ebrahim Baba Mass filed on the 21st October 2021, through which he requested the Court

to vary the appealed judgment thereby a) confirming the finding of guilt with regard to the charges proffered against the appellant; and b) revoke that part of the judgement whereby appellant was sentenced to thirty (30) months imprisonment and to a fine of five hundred euros (€500), and instead apply a more favourable punishment.

Having seen the documents presented by the Prosecution;

Having seen the Criminal Record of the appellant;

Having seen the records of the case;

Having considered:

1. That through this appeal, the accused intends to seek a variation in the punishment meted out by the first Court on the premise that such punishment is disproportionate to the facts of the case and that it does not reflect the current trend towards restorative justice which favours the rehabilitation of guilty persons. During oral submissions, appellants learned counsel also discussed the element of the amount of drugs involved in the case as another reason why the punishment should be considered as disproportionate;

2. That the facts of this case relate to the apprehension of the accused by the Police Drug Squad in St. Julians following a search on his person due to his suspicious behaviour. The search resulted in a finding of various packets and tablets suspected to be drugs.

A laboratory analysis concluded that these were infact drugs of the following type and weight:

2 pieces of a brown substance being THC of 5.1gm in weight with 18% purity;

1 plastic bag containing buds of a green colour being THC of 4.24 gms in weight with 15% purity;

26 small plastic bags each containing buds of a green colour being THC of 12.78gms with 18% purity

1 plastic bag containing traces of brown crystals of 0.37 gms in weight being Cocaine;

1 plastic bag containing 10 tablets yellow in colour being MDMA and four tablets white in colour yielding negative for traces of drugs;

3. It is therefore manifestly evident that the accused had quite a selection of drugs to offer to prospective buyers in that part of St. Julians notorious for being an entertainment hub frequented mostly by youngsters and people of all ages alike thereby resembling a street vendor but of illicit substances. That in these circumstances, including that where the accused has been charged with committing the offences within 100 meters of the perimeter of a school, youth club or centre, or such other place where young people habitually meet, appellant's allegation that the punishment meted out is disproportionate certainly cannot be accepted. The accused registered a guilty plea also for the charge of trafficking which since the Attorney General opted to charge

him before the Magistrate's Court is subject to the punishment exceeding ten years imprisonment. This Court cannot agree that the punishment actually meted out is disproportionate and therefore finds no reason why it should disturb the discretion exercised by the first Court on this count;

4. That appellant also brings forward the argument that the appealed judgement does not reflect society's latest approach to restorative justice and sites an Italian jurist and caselaw of our courts to justify this grievance. Now there is no arguing that the idea of the penalty in criminal law has detached itself from the pure notion of punishment where it was, for a long time in the past, envisaged as a way to make good for having offended society at large. The notion of restorative justice is now enshrined in the Drug Dependence (Treatment not imprisonment Act) Chapter 537 and the Restorative Justice Act Chapter 516 of the laws of Malta. Appellant, however, has never laid claim to being dependant on drugs to the extent that he found himself in this situation and is purely and simply a drug trafficker now invoking the principles of restorative justice to obtain a lesser term of imprisonment which in any case can not be less than six months;

5. That calibrating the appropriate punishment is by no means an easy task and in so doing a Court will take into consideration various factors, including the benefits of a guilty plea and the time it was entered, even though this will not entitle an accused to an automatic discount in the punishment to be meted out. It will take into consideration the age of the accused, the nature of the offence, whether there is the possibility of an alternative punishment and the benefit or otherwise that can be had from such alternative.

The Court will also, however, consider the aspect of deterrence as it is within the nature of the penalty to disseminate the message that crime does not pay, not by parading the accused but rather by being consistent with its duty to protect society as a whole. And the manner in which the courts can protect society is not only limited to imprisonment of offenders but, as rightly pointed out by appellant, by reintegrating the offender to be a better citizen. In other words, a balance needs to be achieved between all these parameters;

6. That having considered the *quantum* of the term of imprisonment imposed on appellant which, due to the ninth charge, had to be increased by one degree, and that whatever the outcome, appellant was always subject to a term of imprisonment of minimum six months, and the amount of drugs which he had available for sale and for which he pleaded guilty of having infact sold, this Court can not adhere to his contention for a lesser punishment;

7. Concludes that for the above reasons appellant's grievances can not be upheld and that therefore his request for a variation of the appealed judgement is being dismissed.