



COURT OF CRIMINAL APPEAL

Hon. Mr. Justice Dr. Neville Camilleri
B.A., M.A. (Fin. Serv.), LL.D., Dip. Trib. Eccles. Melit.

Appeal Number 58/2021/1

The Police

vs.

Gernot Schmid

Today 25th. of July 2023

The Court,

Having seen the charge brought against the appellant **Gernot Schmid**, holder of Passport Number X470769, charged in front of the Court of Magistrates (Malta) as a Court of Criminal Judicature with having by several acts committed by him, even if at different times, which constituted violations of the same provision of the law and were committed in pursuance of the same design, are deemed to be a single offence, called a continuous offence:

1. from the month of December 2016 till June 2019 he failed to give Cornelia Astruid Schmid the sum fixed by the Court or

as laid down in the contract of maintenance for his child(ren) and/or wife, within fifteen days from the day on which according to such order or contract, such sum should have been paid.

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 1st. of February 2021 wherein the Court, after having seen Articles 7, 11, 18, 31(g) and 338(z) of Chapter 9 of the Laws of Malta, found the accused guilty of the charge brought against him and condemned him to a fine (*multa*) of five hundred Euro (€500).

Having seen the appeal filed by the appellant on the 9th. of February 2021 by which he requested this Court to reverse the judgment delivered on the 1st. of February 2021 by the Court of Magistrates (Malta) as a Court of Criminal Judicature.

Having seen all the acts and documents.

Having seen that this appeal had been assigned to this Court as currently presided by the Hon. Chief Justice Mark Chetcuti on the 9th. of January 2023.

Having seen the updated conviction sheet of the appellant exhibited by the Prosecution as ordered by the Court.

Having seen the transcript of the oral submissions heard by this Court as diversely presided.

Considers

That in his appeal application the appellant submitted that following the commencement of the proceedings of this case, the parties reached an amicable settlement on the 27th. of May 2020. He also states that on the 12th. of June 2020 he filed a Note together with a copy of the agreement signed between the parties as well as the Court decree confirming the acceptance of such agreement, which Note states that payment had been made. In his appeal, the

appellant notes that he had contested the amount of maintenance due and on the 31st. of October 2018 the Family Court in Malta awarded him a favourable judgment which was overturned on appeal on the 24th. of October 2019. Appellant was due to pay maintenance of nine thousand Swiss Francs per month. However, the parties reached an agreement. He submits that the Note filed on the 12th. of June 2020 clearly states that the civil party could confirm the contents of the agreement on oath if so required. He refers to the sitting held in front of the First Court on the 1st. of February 2021 in which, according to him, Cornelia Schmid confirmed that there existed no pending dues.

That it ought to be noted that during the final oral submissions heard by this Court as diversely presided, the Prosecution remarked that in its judgment the Court of Magistrates had noted that there was no evidence that the civil party had been paid. When the Court as diversely presided asked whether there was a confirmation by the complainant, the complainant's lawyer confirmed that payment was made in full (*a fol.* 96). When this Court as diversely presided asked at what stage was the payment made, the complainant's lawyer replied that it was made within twenty-four hours of the agreement signed because it was a transaction from a foreign bank. The same complainant's lawyer confirmed that this was done before the First Court delivered the appealed judgment further saying that her client did not testify because they had agreed so and they were in the process of negotiations and did not want to ruin them.

That this Court examined the records of the case from which the following result:

- In the affidavit of **PC 803 A. Pullicino** (*a fol.* 5) reference is made to the fact that on the 27th. of June 2019 Cornelia Astruid Schmid reported that her ex-husband Gernot Schmid had not been paying her maintenance.

- During the sitting of the 17th. of February 2020 held in front of the First Court, **Cornelia Astruid Schmid** (*a fol. 49 et seq.*) testified that she was still not being paid any alimony from her husband and that he had not paid since December 2016.
- During submissions heard in front of the First Court in the sitting of the 17th. of February 2020, the lawyer of the complainant submitted that the appellant did not pay maintenance from the period for which he is accused.
- On the 12th. of June 2020 the appellant filed a Note (*a fol. 65 et seq.*) with a copy of the agreement reached between the parties on the 27th. of May 2020 wherein it is stated that he was meant to pay maintenance in full and final settlement by means of a bank transfer.
- In the minutes of the sitting held on the 1st. of February 2021 in front of the First Court (*a fol. 74*), during which sitting judgment was delivered, it results that the complainant had appeared but was not assisted by her lawyer. For all intents and purposes, the lawyer of the complainant stated in front of this Court as diversely presided that she could not attend Court on that day due to family reasons (*a fol. 97*).

Considers

That the proceedings in question are *ex officio* and hence any withdrawal of the complaint does not lead to an acquittal. There is enough evidence to prove that the appellant was not paying any maintenance to Cornelia Astruid Schmid even though this was due. Apart from what has been noted above as to what results in the acts of the proceedings, it also ought to be noted that in the minutes of the sitting of the 14th. of October 2021 held in front of this Court as diversely presided the following is minuted (*a fol. 92*):

“Dr. Rodianne Sciberras for the civil party confirms that payment in full was made by the accused during the proceedings before the First Court [...].”

That this does not lead to an automatic acquittal of the appellant. As has already been stated, it results that the appellant had failed to pay maintenance for a considerable amount of time as the records reveal, so much so, that the failure to honour his obligations led to a report by the complainant at the Police Station. Hence the First Court rightly concluded that the appellant was guilty of the charge brought against him.

That reference ought to be made to the judgment delivered on the 9th. of July 2003 in the names **Il-Pulizija vs. Publius Said** (Number 124/2003) where the Court of Criminal Appeal (Inferior Jurisdiction) stated the following:

“Illi din il-Qorti hija tal-fehma li l-għan ewlieni tal-legislatur meta ntroduċa din il-kontravvenzjoni xi ftit tas-snin ilu kien li jgħib pressjoni fuq persuni li jkunu riluttanti li jhallsu manteniment lid-dipendenti tagħhom u mhux li jippunixxi biss għall-ksur tal-ordnijiet tal-Qrati, li kif intqal għandhom dejjem jigu obduti u osservati skrupolożament.”

Hence, since it results that the appellant had affected payment, therefore whilst confirming the finding of guilt of the charge brought against the appellant, there will be a mitigation in the penalty meted out.

Decide

Consequently, for the above-mentioned reasons, this Court is acceding to the appellant’s appeal limitedly and hence varies the appealed judgment by:

- confirming that part in which the Court of Magistrates found the appellant guilty of the charge brought against him;

- cancels and revokes that part of the same judgment where the appellant was condemned to pay a fine (*multa*) of five hundred Euro (€500) and instead this Court, after having seen Article 22 of Chapter 446 of the Laws of Malta, acquits the appellant on condition that he does not commit any offence with six (6) months from today.

The Court explained to the appellant in ordinary language that if he commits another offence during the period of conditional discharge, he will be liable to be sentenced for the original offence.

Dr. Neville Camilleri
Hon. Mr. Justice

Alexia Attard
Deputy Registrar