



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

**MAGISTRATE DR. NOEL BARTOLO
B.A., M.A. (FIN. SERV.), LL.D.**

Today 25th September 2023

The Police

vs

Maurizio Napoletano

Health Sitting (Case No 29/2022 NB)

The Court,

After having seen the charges brought against the accused **Maurizio Napoletano** born on 15th September 1987 in Bari Italy, son of Angelo Napoletano and Anna Cavallo residing at 171, P/H 5, Triq il-Qasam, Swieqi, holder of identity card number 0070825A; MT5056912 **in his personal capacity and on behalf of an representing the company Food Mania Ltd C 62485**

Accused that on the 23rd July 2020 at around 10.30am and during the previous days and the days after at La Maltesa Industrial Estate, San Ġwann:-

- 1. Had in his possession and offered for sale food intended for human consumption, without a label as may be prescribed which should be attached or affixed to or included in the container.*

2. *Had in his possession and offered for sale food intended for human consumption and so contaminated that it would be reasonable to expect it to be used for human consumption in that state.*

Having seen that by order of the Chief Justice Mark Chetcuti of the 26th April 2022 this case was assigned to this Court as presided in terms of Article 11(9) of the Code of Organization and Civil Procedure and Article 520(1)(a) of the Criminal Code.

Having seen that in the sitting held on 22nd June 2022 the Court ordered that proceedings be conducted in the English language given that the defendant does not understand the Maltese Language in accordance with Article 3(a) of Chapter 189 (Judicial Proceedings (Use Of English Language) Act) of the Laws of Malta.

Having seen all the records of the case.

Having seen the minutes of the 22nd June 2022 where the defence registered that the accused is submitting the plea provided in relation to warranty with respect of the second charge.

Having seen the evidence tendered by the prosecution and the testimony of the accused.

Having seen the minutes of the sitting of the 17th March 2023 where the accused registered an admission to the first charge and the case was adjourned for today for judgement.

Having heard the final submissions made by the Prosecuting Officer Malcolm Micallef and by the Defence lawyer Dr. Leon Camilleri.

Considers

On the 23rd July 2020 the Health Inspectorate officers Conrad Borg and Ryan Zerafa and the Veterinary Regulation Department officers Dr. Ornella Falcioni and Dr. Benedetto Zangrilli made a joint inspection on the accused in relation to a suspected food poisoning outbreak that occurred at Dolce Peccati, Tower Road, Sliema. The accused was informed about the presence of *Listeria Monocytogenes* in the mozzarella distributed by him.

Conrad Borg, Higher Environmental Health Practitioner, testified on the 15th July 2022 (fol 22 et seq) that the accused imported thirty individually sealed kilo packets of mozzarella, twenty of which were already distributed (Doc. CB3 – fol 29) and ten were stored in cold rooms in adequate temperature conditions. The accused co-operated with the Inspectorate and took a sub-sample to be analysed by a private laboratory.

The five sealed sub-samples taken by the Health Officers resulted positive for *Listeria* (Doc. CB5 – fol 31 et seq). The mozzarella was not being manufactured by the accused but was imported by his company, Food Mania Limited from Azienda Agricola Fondo Rocca based in Palermo, Sicily as evidenced by the invoice issued by the manufacturer to Food Mania Limited (Doc. CB2 – fol 28). The mozzarella which was already sold was recalled by the accused, sealed and destroyed by the Health Inspectorate Services (Doc. CB6 – fol 42). The results were communicated to the Rapid Alert System and the *Dipartimento Di Prevenzione Veterinario* in Palermo for further investigation (Doc. CB7 and 8– fol 43 et seq).

Officer Ryan Zerafa testified on the 15th July 2022 (fol 64 et seq) and exhibited the internal sample forms, data loggers, invoice (Doc. RZ1 – fol 68), the receipt issued by the laboratory (Doc. RZ2 – fol 69 et seq), internal sample forms (Doc. RZ3 – fol 71 et seq) and data temperature record sheets (Doc. RZ4 – fol 74 et seq). A second sample was taken by the Inspectorate on the 27th July 2020 for re-testing purposes (Doc. RZ5 and RZ6 – fol et seq). The witness confirmed that all three samples tested positive for *Listeria* and exhibited a copy of the results (Doc. RZ8A, RZ8B and RZ8C – fol 79 et seq). The witness also confirmed that the products were destroyed with the accused's consent (Doc. RZ9 – fol 107 et seq).

Renato Zerafa testified on the 15th July 2022 (fol 110 et seq) and confirmed that *Listeria* was found in three of the five samples tested. With reference to the private test results run by the private laboratory commissioned by the accused (fol 12 and 13), the witness stated that he is not aware whether the tests were run by an accredited laboratory. In addition he noted that the private laboratory tested only one sample which resulted negative to *Listeria* and the testing method differed from that run by the local Health Inspectorate.

Inspectors Dr. Ornella Falcioni and Dr. Benedetto Zangrilli from the Veterinary Regulation Department testified on the 16th December 2022 (fol 117 et seq) that since the product was imported sealed and manufactured by a third party, the accused was not obliged to test the products in accordance with EU Regulation 20.73 of 2005.

The accused testified on the 17th March 2023 (fol 132 et seq) that the products were imported buy him. Following the inspection of the Health Directorate he obtained from the manufacturer a certified analysis certificate conducted on the products in Italy which tested negative for *Listeria*. The samples taken by him were also analysed by a parivate laboratory company in Italy with the results being negative for *Listeria*.

During the final submissions the Prosecution argued that the plea relating to warranty does not subsist since the accused failed to prove that the accused took the necessary preliminary precautions such as obtaining a declaration from the company that the product was safe for consumption and free from contamination. The defence rebutted

that the testing obligation is set on the manufacturer and not the importer. The accused was in possession of the invoice ensuring traceability of the products. Since the products were packed and sealed when imported the accused was not obliged to test the products.

Considers

The accused registered an admission on the first charge which is contemplated in Article 19 (1) of Chapter 449 of the Laws of Malta and therefore as a consequence of such admission the said charge is deemed sufficiently proven.

As regards the second charge, Article 14 of Chapter 449 of the Laws of Malta provides:-

14.(1) Any person who:-

(a) sells, offers, exposes or advertises for sale or has in his possession for sale or for preparation for sale for human consumption;

...

any food which fails to comply with food safety requirements, shall be guilty of an offence against this article.

(2) For the purposes of this article, food shall be considered as having failed to comply with food safety requirements in the cases where –

(b) it is unfit for human consumption; or

(c) it is so contaminated, whether by extraneous matter or otherwise, that it would not be reasonable to expect it to be used for human consumption in that state.

In this regard the Defence raised the plea of due diligence, that is, the defence contemplated in Article 41(2) and (3) of Chapter 449 which provides:-

(2) Without prejudice to the generality of subarticle (1), a person charged with an offence against article 14, or 17, or 18 who-

(a) has not prepared the food in respect of which the offence is alleged to have been committed; or

(b) has not imported it into Malta,

shall be taken to have established the defence provided by that subarticle if he satisfies the requirements of subarticle (3).

(3) *A person shall be deemed to satisfy the requirements of this subarticle if he proves:-*

(a) *that the commission of the offence was due to an act or default of another person who was not under his control, or to reliance on information supplied by another person;*

(b) *that he carried out all necessary checks on the food in question as were reasonable, in all the circumstances, and that it was reasonable in the circumstances for him to rely on checks carried out by the person who supplied the food to him;*

(c) *that the sale or intended sale of which the alleged offence consisted was not a sale or intended sale under his name or mark; and*

(d) *that he did not know, and had no reason to suspect at the time of the commission of the alleged offence that his act or omission would amount to an offence against the relevant provision.*

(4) *The person charged shall not, without the leave of the court, be entitled to rely on the defence referred to in subarticle (3) if the defence involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, unless, after the reading of the charge in court and not later than twenty-four hours thereafter, he files a notice in court to be served on the prosecutor containing such information identifying or assisting in the identification of that other person as was then in his possession.*

The cited articles were discussed in the case **Il-Pulizija vs John Buttigieg et** decided by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 3rd November 2016. In the cited case the Court noted that the offence in Article 14 is not a strict liability offence hence it required the proof of the *mens rea*:-

*Osservazzjoni oħra li din il-Qorti tħossha fi dmir li tagħmel dwar ir-reati imputat lill-akkużati hu li dan ir-reat huwa ta' natura delittwali u mhux xi wiehed ta' strict liability. Issir riferenza għas-sentenza riċentement pronunzjata fl-ismijiet **Il-Pulizija vs Alban Josef Saliba**:-*

Skont kif mistqarr minn dawn il-Qrati dan ir-reat huwa ta' natura delittwali u mhux kontravvenzjonali. Dawn il-Qrati ma kkunsidrawh x bħala reat ta' strict liability jew technical

*offence*¹. L-anqas ma huwa ritenut reat kontravvenzjonali fejn skont dak mistqarr mill-Imħallef William Harding fis-sentenza *Il-Pulizija vs Mary Simiana tas-6 ta' Marzu 1954* l-element psikiku hu sodisfatt bis-sempliċi volontarjeta', bla ma jeħtieġ l-element doluż: imma hemm bzonn dejjem li l-imputat ikun ried il-fatt.

*Illi għalhekk dan ir-reat irid ikun kompost kemm minn actus reus kif ukoll minn mens rea*².

*F'dan il-każ, sabiex din il-Qorti tkun tista' ssib ħtija fl-imputati il-Prosekuzzjoni kellha tipprova lil hinn minn kull dubju dettat mir-raġuni li l-imputati naqsu milli jħarsu l-ħtiġijiet tal-ikel billi bieġħu, offrew għall-bejgħ jew kellhom fil-pussess tagħhom għall-bejgħ ikel għall-konsum mill-bniedem, li kien hekk ikkontaminat, iżda wkoll dan sar bil-ħsieb u l-intenzjoni. Irid għalhekk jiġi pruvat li **konxjentement u volontarjament** (i) naqsu li jħarsu l-ħtiġijiet tal-ikel; u għamlu dan billi (ii) **offrew** għall-bejgħ jew **kellhom fil-pussess** tagħhom għall-bejgħ (iii) **ikel kkontaminat**.*

Għall-kuntrarju, l-evidenza wriet li mhux talli l-imputati kienu inkonsapevoli tal-foreign object li l-provi ċirkostanzjali juru li dan sab ruħu f'pakkett ta' ħaxix provenjenti mill-Olanda, anzi, mill-atti processwali din il-Qorti ma jifdallha ebda dubbju li min kien effettivament u rejalment responsabbli mill-ġestjoni, l-operat u t-tmexxija tal-Staff Kitchen/Canteen ta' Mater Dei, altru li ssodisfa sal-grad rikjest mill-ligi il-ħtiġiet tas-subartikolu (3) tal-Artiklu 41 tal-Kap.449 tal-Liġijiet ta' Malta. Id-difiża tad-diligenza xierqa ġiet pruvata sodisfaċentement u dan mhux biss sal-grad tal-probabli iżda mingħajr dubbju dettat mir-raġuni.

Similarly to the cited case, the mozzarella that is the merit of these proceedings was manufactured and packed in an EU country, which evidence is not being contested by the Prosecution. Once imported, the sealed products were stored by the accused in cold rooms in adequate temperature conditions as confirmed by the Inspectors. Hence the products were necessarily contaminated prior to their importation in Malta as the accused stored the same sealed. From the tendered evidence it did not transpire that

¹ *Il-Pulizija vs Noel Grech*; Qorti tal-Appell Kriminali, Onor Imħallef Dr J. Galea Debono 24.09.2009: "Din hi dik li tissejjah "a technical offence" u ma hemmx għalfejn jirrizulta xi movent, intenzjoni specifika jew generika konnessa mal-kaccja per se jew ma xi tentattiv ta' kacca. Is-sempliċi garr ta' munizzjoni fil-perijodu projbit ikun jammonta għall-ksur talligi. Il-fatt li l-iskratak ma kienux ta' perikolu għal hadd, li ma kienux f'cintorin imma filkaxxa tagħhom u li ma kienux f' ghata huma konsiderazzjonijiet għal kollox irrilevanti.

² Vide Sentenza fl-ismijiet *Il-Pulizija vs Elton Saliba*, Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali, Magistrat Dr. Audrey Demicoli, 16 t'Ottubru, 2015.

the packaging was tampered with and the products were adequately sealed and hence the accused had no reason to believe that the products were contaminated. In this regard the Court thus deems that the Prosecution has failed to prove the intentional element on the part of the accused and therefore the Prosecution has failed to prove its case with respect to the second charge brought against the accused.

Decide

For the above-mentioned reasons and after having seen the unconditional guilty plea of the accused with respect to the first charge and after having seen Articles 14(1)(a)(2)(b)(c), 19(1) and 43(3) of Chapter 449 of the Laws of Malta, the Court finds the accused guilty of the first charge brought against him and condemns him to a fine (multa) of four hundred sixty-five Euro and eighty-seven cents (€465.87). The Court finds the accused not guilty of the second charge brought against him and therefore acquits him from the said second charge.

Dr. Noel Bartolo
MAGISTRATE

Caroline Perrett
Deputy Registrar

25th September 2023