



The Court of Criminal Appeal

His Honour the Chief Justice Dr Mark Chetcuti LL.D.

The Hon. Judge Dr Edwina Grima LL.D.

The Hon. Judge Dr Giovanni Grixti LL.D.

Today, Wednesday the 4th of October 2023

Bill of Indictment No : 02/2022

The Republic of Malta

vs

Ryan Rahiel Irfaan Naipal

The Court :

1. Having seen the charges brought against the accused Ryan Rahiel Irfaan NAIPAL, before the Court of Magistrates (Malta) as a Court of Criminal Inquiry wherein he was charged with having on the 23rd of November 2022 and in the previous weeks and/or months in the Maltese Islands:

- i. Imported or caused to be imported or took any steps preparatory to import any dangerous drugs (Cannabis Grass) into Malta against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;

ii. Together with another one or more persons in Malta or outside of Malta, conspired, promoted, constituted, organised or financed the conspiracy with other person/s to import, sell or deal in drugs (Cannabis Grass), in these Islands, against the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta or promoted, constituted, organised or financed the conspiracy.

2. Having seen the minutes of the proceedings held in front of the Court of Magistrates as a Court of Criminal Inquiry of the 24th of November 2022 whereby the accused as assisted by defence counsel, declared that he was pleading guilty to the charges brought against him.

3. Having seen the note of the Attorney General in terms of Article 392B of the Criminal Code, Chapter 9 of the Laws of Malta of the 22nd of December 2022, whereby it was declared that the charges proffered against the accused in front of the Court of Magistrates (Malta) as a Court of Criminal Inquiry and for which the accused had admitted his guilt, shall be considered as a Bill of Indictment for all intents and purposes at law.

4. Having seen the judgment of the Criminal Court of the 9th of May 2023 wherein the Court after having seen the provisions of Articles 2, 8(d)(e), 10(1), 12, 13, 14, 15, 15A, 16, 17, 18, 22(1)(a)(f)(1A)(1B), 22(2)(a)(i) and the proviso (aa), (3A)(a)(b)(c)(d)(7), 22A, 24A, 26 and 29 of Chapter 101 of the Laws of Malta, as well as Regulations 2, 4(a), 9 and 16 of Subsidiary Legislation 101.02 Internal Control of Dangerous Drugs Rules and Articles 17, 23, 23A, 23B, 23C and 392B of the Criminal Code, condemned the accused NAIPAL to a term of imprisonment of two (2) years and to a fine (multa) of four thousand euro (€4000) which in default of payment will be converted to a further term of imprisonment according to the law in terms of Article 11 of the Criminal Code. Also, ordered the forfeiture of all objects exhibited in Court, used in connection with the offence and the confiscation in favour of the Government of Malta of all the monies and other property, movable or immovable of the accused. Finally, the Court ordered that the drug seized and exhibited in relation to this case be destroyed unless the Attorney General declares by means of a

note within 15 days from the date of this judgment that this drug seized is no longer required in relation to other proceedings against third parties

5. Having seen the appeal application filed by accused Ryan Rahiel Irfaan Naipal on the 19th of May 2023 wherein he requested this Court to confirm that he is not guilty of the charges brought against him for which he was found guilty in the appealed judgment, and consequently acquits him, alternatively to vary the appealed judgment to a more lenient and equitable punishment that reflects the facts of the case.

6. Having seen the reply of the Attorney General of the 5th of June 2023 wherein she requested the Court to reject all the grounds of appeal of the appellant in their entirety and to confirm the judgment of the Criminal Court.

7. Having heard oral submissions by the parties.

8. Having seen all the acts of the case.

Considers:

9. Appellant puts forward three main grievances in his appeal application, two of which deal with the merits of the case, although it transpires from the acts of the proceedings that appellant admitted to all the charges brought against him and this during the compilation of evidence, thus triggering the procedure established in article 392B of the Criminal Code. In fact, in his final request to this Court he asks for an acquittal, although he has admitted his guilt, and this when duly assisted by his lawyer throughout the entirety of the proceedings. The Court, thus, is perplexed by the first grievance wherein appellant laments that the Criminal Court made an incorrect evaluation of the facts of the case, when it was evident that the compilation of evidence was stalled by his own admission to the charges, thus no further evidence was compiled in the case from this moment onwards. The only evidence which could be brought forward before the Criminal Court at this stage of the proceedings was only that which could have a bearing on the punishment to be inflicted. In fact article 392B(4) of the Criminal Code limits the powers of the said

Court after an admission of guilt within the parameters of this disposition of the law wherein it is stated that:

“(4) The Criminal Court shall, either *ex officio*, upon a request by the Attorney General or by the accused, examine that evidence that it deems relevant for the purposes of punishment, and after examining the submissions by the Attorney General and the accused relating to the punishment, proceed to pass on the accused such sentence as would according to law be passed on an accused convicted of the offence.”

10. Appellant contests the fact that the Prosecution failed to prove the material aspect of the crime since there is no evidence in the acts that the package which was received by appellant contained cannabis grass. The *proces-verbal* was never exhibited in the acts although the Attorney General in her application of the 22nd of December 2022 requested that the Court-appointed expert testify as to the quality and the quantity of the drugs involved. In fact, appellant states that even the Criminal Court ordered, in the sitting of the 24th of January 2023, that prior to passing on to deliver judgment expert Godwin Sammut was to be subpoenaed to give evidence, and that the *proces-verbal* relating to the inquest would be exhibited in the acts of the proceedings. At the end of the day, the court expert never testified and the Court in its judgment relied on the testimony of Inspector Mark Anthony Mercieca who stated that the package contained 500grammes of cannabis grass, appellant thus contesting this unsubstantiated piece of evidence.

11. In his first grievance, therefore, appellant does not contest his guilty plea, since he admits to the importation of cannabis grass with the help of an intermediary whom he indicates to the Police. What he contests is the amount of drugs which he has been found guilty of importing since he states in his sworn statement before the Inquiring Magistrate that he had requested the help of a certain Nick to procure him 20 grammes of cannabis grass from abroad, and this because the one he had obtained locally was of an inferior quality. He affirms that he was not aware that the package he had received from abroad and which he went to collect from the post office contained 500 grammes of the drug. Finally, he asserts that once the drug was never exhibited in the acts, the Criminal Court could not pass on to find him guilty of the charges brought against him, since this is a *sine qua non* condition for the

Prosecution's case to be successful. Also, the Criminal Court could not order the destruction of the drugs seized and the forfeiture of all the objects exhibited in Court since there are no exhibits to be found in the acts of the proceedings. It is appellant's firm view that the Criminal Court in finding guilt relied on an assumption as to the quality and quantity of the drug and also with regard to the percentage of the active ingredient of the drug, taking the lowest percentage possible in the absence of evidence in this regard. He maintains that his admission of guilt related to what he had stated on oath before the Inquiring Magistrate being the importation of 20 grammes of cannabis grass for his personal use, and not the amount indicated in the judgment.

12. Now, although appellant requests this Court to reverse the judgment of the Criminal Court and acquit him of the charges brought against him, he does not however contest his guilty plea since he admits his intention to import 20 grammes of cannabis grass for his personal use without an import authorization, conspiring with a third party, whom he names as a certain Nick, to help him in this importation. In fact, at no stage during these appellate proceedings does appellant request to change his plea, in the same manner as he did not enter such a request before the Criminal Court, which Court thus had to proceed to give judgment for the offences indicated in the bill of indictment, and this, as already pointed out within the powers conferred by law in terms of article 392B(4) cited above. Appellant was assisted by his lawyer throughout the entire proceedings. He was assisted by a lawyer when he entered his guilty plea upon arraignment, he affirmed his guilty plea before the Criminal Court where he was also duly assisted by his lawyer. He was also aware of the fact that the parcel he was to collect from the post office had been found to contain 500 grammes of cannabis, although he pleads ignorance with regards to this amount. Inspector Mercieca pointed this out to him both when he released his statement, as well as in front of the Inquiring Magistrate when he chose to confirm his statement on oath, and he was also aware of what Inspector Mercieca testified before the Criminal Court. At no point did he insist before the Criminal Court that evidence be brought forward with regard to the nature of the drug imported and the quantity, instead ploughing ahead with his guilty plea.

“The fact that a plea of guilty has been entered does not preclude an appeal against the resulting conviction. If the conviction is found to be unsafe despite the plea of guilty it will be quashed. However, the fact that an appellant was fit to plea, had received expert advice, had been aware of what he was doing and had intended to plead guilty would be highly relevant to the consideration of the safety of the conviction.¹”

13. Now it has been established many a time by jurisprudence that a guilty plea may be contested only in specific circumstances being:

i. If it is clear from the acts the accused has not understood the nature of the charges brought against him/her.

ii. It was not accused’s intention to admit to those charges.

iii. If the Court could not reach a declaration of guilt according to law on the facts admitted by the person charged and this in the light of the evidence found in the acts.

6. Tajjeb li in rigward issir referenza ghal dak li rriteniet din il-Qorti diversament presjeduta fis-sentenza fl-ismijiet *Il-Pulizija vs Martin J. Camilleri tal-20 ta’ Jannar 1995*: *“Dwar l-effett ta’ ammissjoni fuq l-appell talpersuna misjuba hatja din il-Qorti (jew ahjar, il-Qorti Kriminali li allura kienet tisma’ l-appelli mid-decizjonijiet tal-Qorti tal-Magistrati tal-Pulizija Gudizzjarja) diga’ kellha l-opportunita’ li tippronunzja ruhha fis-sentenza taghha tas-27 ta’ Ottubru, 1962 fil-kawza fl-ismijiet Il-Pulizija vs George Cassar Desain (Kollez. Deciz. XLVI.IV.911). F’dik is-sentenza gie ritenut, millkompjant Imhallel William Harding, fuq l-iskorta ta’ guriprudenza kemm Ingliza kif ukoll lokali, li fuq ammissjoni ta’ l-imputat, Qorti ma tistax hlief tghaddi ghall-kundanna tieghu ammenoke’ ma jirrizultax li l-imputat ma jkunx fehem in-natura ta’ l-imputazzjoni jew li ma kinitx l-intenzjoni tieghu li jammetti li hu hati ta’ dik l-imputazzjoni jew li fuq il-fatti minnu ammessi l-Qorti ma setghetx skond il-ligi, tikkundannah, cioe’ ssibu hati ta’ reat. Anke recentement, fis-sentenza ta’ din il-Qorti (diversament ippresjeduta) tat-28 ta’ April, 1993 fil-kawza fl-ismijiet *Il-Pulizija vs Joseph Mohnani*, fejn il-kwistjoni kienet simili ghal dik odjerna, intqal li ‘din il-Qorti ma tistax thares b’leggerizza ghal verbali ta’ Qorti ohra fis-sens illi dawn ghandhom jaghmlu stat fil-konfront tal-partijiet almenu prima facie sakemm ma jirrizultax evidenti li tnizzel xi haga bi zball’. Dan qed jinghad biex hadd ma jiffirma l-idea zbaljata li wiehed jista l-ewwel jammetti quddiem il-Qorti Inferjuri u wara, fuq ripensament,*

¹ Blackstone Criminal Practice Page 2037 D26.9

jappella billi jallega li hu ammetta bi zball jew li ma kienx jaf ghal x'hiex qed jammetti". Insenjament dan citat b'approvazzjoni minn din il-Qorti fis-sentenza Il-Pulizija vs Rainer Grima tat-12 ta' Mejju 2004 u aktar rrecenti fis-sentenza Il-Pulizija vs Andre Falzon App Krim 19.11.2015 u Il-Pulizija vs Tamer Mohammed Hussein Rozik App Krim 4.2.2016.²

14. The Court reiterates that from the acts of the case and from the testimony tendered by Inspector Mark Anthony Mercieca before the Criminal Court, it is evident that appellant was informed from the initial stages of his interrogation as to the nature of the charges brought against him. He was offered legal assistance at this stage which he refused, however was duly assisted upon arraignment and throughout the proceedings before the Criminal Court. He was thus well aware as to the nature of the charges and at no point did he ask to withdraw his guilty plea.

15. Furthermore, appellant was charged with the offence of importation of drugs without the necessary authorization and with the crime of conspiracy, both offences being amply proven from appellant's sworn statement exhibited in the acts. The quantity and nature of the drugs involved could only have a bearing on the nature of the punishment to be inflicted and not on his declaration of guilt.

16. Thus, although it would have been prudent for the Criminal Court to await the conclusions of the court-appointed expert with regard to the quantity and the nature of the drug imported, however, this did not have a bearing on the punishment meted out by the said Court. Appellant was condemned to a period of 2 years imprisonment and to a fine of €4000 and this after the Court applied in appellant's favour article 29 of Chapter 101 of Chapter 101 of the Laws of Malta. Thus, the Court went way below the minimum of 4 years imprisonment as established in article 22(2)(a)(i) of the Dangerous Drugs Ordinance, article 29 being applied vis-a-vis the minimum of the punishment applicable, with the fine meted out also being close to the minimum of €2,329.37.

17. Therefore, having made these considerations, it is evident that appellant's third grievance wherein he laments that the punishment inflicted is disproportionate

² Il-Pulizija vs Ivanova Parashkeva – App.Nru 426/2016 – 27/10/2016

and too harsh is manifestly unfounded since the Criminal Court was lenient in its decision and this in view of appellant's admission of guilt, as already pointed out, to the offences of importation of drugs and conspiracy in the same, both resulting proven from his own statement as duly sworn before the Inquiring Magistrate.

18. That with regards to the second grievance put forward by appellant wherein he maintains that the appellate judgment was *extra petita*, the Criminal Court applying in his regard the sanctions laid down by law for the offences of drug trafficking, aggravated possession of drugs, and money laundering, this is also manifestly unfounded and legally incorrect. Suffice it to say that the definition of drug trafficking includes "cultivation in such circumstances that the court is satisfied that such cultivation was not for the exclusive use of the offender, importation in such circumstances that the Court is satisfied that such importation was not for the exclusive use of the offender, manufacture, exportation, distribution, production, administration, supply, the offer to do any of these acts, and the giving of information intended to lead to the purchase of such a drug contrary to the provisions of the Ordinance."

19. Moreover, article 23(3A)(d) of the Dangerous Drugs Ordinance provides that:

Where an offence against this Ordinance in respect of which a person has been found guilty consists in any of the offences referred to in article 24A(1) the court shall, in addition to any other punishment, in its sentence or at any time thereafter, at the request of the prosecution (d) order the forfeiture in favour of the Government of all moneys or other movable property, and of the entire immovable property of the person so found guilty even if the immovable property has since the offender was charged passed into the hands of third parties, and even if the said monies, movable property or immovable property are situated in any place outside Malta.

20. The offences referred to in Article 24A include the offence of drug trafficking, and the offence of conspiracy with which appellant has been charged and to which offences he registered an unconditional admission of guilt. Thus, even this grievance is completely unfounded and is hereby being dismissed. Finally, the Criminal Court in meting out the punishment applicable to the concurrence of offences as envisaged

in article 17(h) of the Criminal Code, rather than inflicting a separate punishment for each and every offence, applied one single punishment being that of the more serious offence under the first charge. Thus, appellant's grievance in this regard does not hold water since the considerations made by the Criminal Code when applying this disposition of the law was made to his advantage and no wrong application of the law can result, the offence of conspiracy clearly used as a means to reach the end being the importation of the drug.

21. In view of these considerations the Court cannot find fault with the judgment of the Criminal Court such judgment being passed against appellant who was duly assisted by a lawyer all throughout the proceedings, when he chose to admit unconditionally to the two charges brought against him of importation of drugs and conspiracy in the dealing in the same. At no point did he contest the said charges although he affirms that he only intended to import 20 grammes of cannabis for his personal use. Also, at no point was it indicated to him that he was admitting only to the circumstances as envisaged by him.

Consequently, for the above-mentioned reasons the Court dismisses the appeal filed by appellant and confirms the judgment of the Criminal Court in its entirety.

The Chief Justice Mark Chetcuti.

Judge Edwina Grima.

Judge Giovanni Grixti