



COURT OF CRIMINAL APPEAL

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

Appeal Number 373/2017
Appeal Number 378/2017

The Police

vs.

Arthur Ciancio
Aaron Arthur Ciancio

Today 27th. of November 2023

The Court,

Having seen the charges¹ brought against **Arthur Ciancio**, holder of Identity Card Number 477045(M) and **Aaron Arthur Ciancio**, holder of Identity Card Number 242300(L), charged in front of the Court of Magistrates (Malta) with having:

¹ A fol. 1 et seq. and a fol. 350 et seq..

- A. jointly and/or severally, and/or in their capacity as directors of Liberty Merchants Limited (Registration Number C29770), on these Islands, between 1st. January 2005 and on 27th. March 2005, in various parts of Malta and outside Malta, by means of several acts committed by them, even if at different times, which acts constitute violations of the same provisions of the law:
1. for having, promoted, constituted, organized or financed an organisation of two or more persons with a view to commit criminal offences liable to the punishment of imprisonment for a term of four years or more (this in breach of Articles 18 and 83A(1), (4) and (5) of Chapter 9 of the Laws of Malta);
 2. for having, made part or belonged to an organisation referred to in sub-article (1) of Article 83A of Chapter 9 of the Laws of Malta (this in breach of Articles 18 and 83A(2), (4) and (5) of Chapter 9 of the Laws of Malta);
 3. for having, in Malta conspired with one or more persons in Malta or outside Malta for the purpose of committing any crime in Malta liable to the punishment of imprisonment, not being a crime in Malta under the Press Act (this in breach of Articles 18 and 48A of Chapter 9 of the Laws of Malta);
- B. jointly and/or severally, and/or in their capacity as directors of Liberty Merchants Limited (Registration Number C29770), on these Islands, between 1st. January 2005 and on 27th. March 2005, in Malta, by means of several acts committed by them, even if at different times, which acts constitute violations of the same provisions of the law:
1. with having, committed forgery of any authentic and public instrument or of any commercial document or private bank document, by counterfeiting or altering the

writing or signature, by feigning any fictitious agreement, disposition, obligation or discharge, or by the insertion of any such agreement, disposition, obligation or discharge in any of the said instruments or documents after the formation thereof, or by any addition to or alteration of any clause, declaration or fact which such instruments or documents were intended to contain or prove (this in breach of Articles 18 and 183 of Chapter 9 of the Laws of Malta);

2. with having, knowingly made use of any of the false acts, writings, instruments or documents mentioned in Article 184 of Chapter 9 of the Laws of Malta (this in breach of Articles 18 and 184 of Chapter 9 of the Laws of Malta);
3. with having, in order to gain any advantage or benefit for themselves or others, in any document intended for any public authority, knowingly made a false declaration or statement, or gave false information (this in breach of Articles 18 and 188 of Chapter 9 of the Laws of Malta);
4. with having committed any other kind of forgery, or knowingly made use of any other forged document (this in breach of Articles 18 and 189 of Chapter 9 of the Laws of Malta);

C. on behalf of the **Comptroller of Customs**, Arthur Ciancio and Aaron Ciancio, were also charged jointly and severally and/or in their capacity as directors of Liberty Merchants Limited bearing Registration Number C29770:

1. with having on the 26th. February 2005 and/or on an earlier date in order to obtain to their advantage and/or for personal benefit and/or for someone else, when as a consignee of Container Number CCLU313735/0 which arrived in Malta on MV Norasia Hamburg, purposely, involved themselves by making a false declaration

and/or furnished a document and/or information which were false in substantial detail, in the sense that the contents of this container were not Promotional Toys as declared in the Cargo Manifest/Bill of Lading bearing number 8SHAMLA3A3467, but cigarettes, and which document was subsequently consigned to the Customs Authorities as stipulated and needed according to law;

2. with having on the 26th. March 2005 and/or on an earlier date, under the same circumstances, when acting as a consignee of Container Number CCLU651879/2 which arrived in Malta with MV CSCL Europe V, purposely, had by way involved themselves by making a false declaration and/or submitted a document and/or information which were in fact false in substantial detail, in the sense that the contents of this container were not Giftwares as declared in the Cargo Manifest/Bill of Lading Number 8PKGMLA421245, but cigarettes, and which document was subsequently consigned to the Customs Authorities;
3. with having in the same period of time, place and circumstances, with the intent to fraud the Maltese Government, knowingly imported and/or entered, or was involved in order to be imported into Malta, these cigarettes of which the importation is prohibited and/or restricted and this knowingly so as to avoid the duty and/or any other form of tax due on these cigarettes to the detriment of the Government of Malta;

as regards to the cigarettes found in Container bearing number CCLU313735/0, the estimated value was Lm44,205 Excise Duty due Lm198,502 and also Import Duty and Value Added Tax which amount to Lm25,462 and Lm49,678 respectively; whilst in Container bearing number CCLU 651879/2 the estimated value was Lm99,950 Excise Duty due Lm448,821 and Import Duty

and Value Added Tax amounting to Lm57,571 and Lm112,324 respectively;

in breach of Articles 18, 60(a)(b)(k); Articles 62(a)(b)(i)(k)(m), 68(1), 69(1)(2), and paragraph (a) of the proviso of Article 62 of the Customs Ordinance (Chapter 37), and Articles 16(1)(j) and 17(A) of Act XVI of 1995 of the Laws of Malta;

D. on behalf of the **Commissioner of Value Added Tax**, Arthur Ciancio and Aaron Ciancio were also charged jointly and severally and/or in their capacity as directors of Liberty Merchants Limited bearing Registration Number C29770:

4. for having on the 26th. February 2005 and/or an earlier date in order to obtain to their advantage and/or for personal benefit and/or for someone else, when as a consignee of Container Number CCLU313735/0 which arrived in Malta on MV Norasia Hamburg, purposely, involved themselves by making a false declaration and/or furnished a document and/or information which were false in substantial detail, in the sense that the contents of this container were not Promotional Toys as declared in the Cargo Manifest/Bill of Lading bearing number 8SHAMLA3A3467, but cigarettes, and which document was subsequently consigned to the Customs Authorities as stipulated and needed according to law;
5. on the 26th. March 2005 and/or on an earlier date, under the same circumstances, when acting as a consignee of Container Number CCLU651879/2 which arrived in Malta with MV CSCL Europe V, purposely, had by way involved themselves by making a false declaration and/or submitted a document and/or information which were in fact false in substantial detail, in the sense that the contents of this container were not Giftwares as declared in the Cargo Manifest/Bill of Lading Number

8PKGMLA421245, but cigarettes, and which document was subsequently consigned to the Customs Authorities;

6. in the same period of time, place and circumstances, with the intent to fraud the Maltese Government, knowingly imported and/or entered, or was involved in order to be imported into Malta, these cigarettes of which the importation is prohibited and/or restricted and this knowingly so as to avoid the duty and/or any other form of tax due on these cigarettes to the detriment of the Government of Malta;

as regards the cigarettes found in Container bearing number CCLU313735/0, the value was estimated to be Lm44,205.00, Excise Duty amounting to Lm198,502.00, Importation Duty and Value Added Tax amounting to Lm25,462.00 and Lm49,678.00 respectively, whilst the cigarettes found in Container bearing number CCLU651879/2 the value was estimated to be Lm99,950.00, Excise Duty Lm448,821.00, Import Duty and Value Added Tax amounting to Lm57,571.00 and Lm112,324 respectively;

the seized cigarettes which altogether amounted to Lm144.155 and which were subject to Excise Duty amounting to Lm647,323, Import Duty amounting to Lm83,033.00 which duties were not duly paid and/or secured were also subject to Value Added Tax, which tax amounted to Lm162,002.00 and which tax had not been duly paid and/or secured, and this in breach to Article 80 of the Value Added Tax Act XXIII of 1998, offences and penalties;

also in contravention of Articles 60(a)(b)(c)(f)(g)(h)(j)(k) and paragraph (a) of the proviso of Article 62 of the Customs Ordinance (Chapter 37 of the Laws of Malta).

The Court was requested that should the accused be found guilty, apart from inflicting the punishment prescribed at law, to order the forfeiture of all the objects exhibited in the proceedings.

The Court was also requested that, in pronouncing judgment or in any subsequent order, to sentence the person/s convicted, jointly or severally, to the payment, wholly or in part, to the Registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee, within such period and in such amount as shall be determined in the judgment or order, as per Article 533 of Chapter 9 of the Laws of Malta.

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 14th. of September 2017 wherein the Court, after having seen the relevant Articles sent by the Attorney General namely Articles 18, 48A and 83A(1), (4) and (5), 183, 184 and 188 of Chapter 9 of the Laws of Malta, Articles 18, 60(a)(b)(k), 62(a)(b)(i)(k)(m), 68(1), 69(1)(2), and paragraph (a) of the proviso of Article 62 of Chapter 37 of the Laws of Malta, Articles 16(1)(j) and 17(A) of Act XVI of 1995 of the Laws of Malta, 60(a)(b)(c)(f)(g)(h)(j)(k) and paragraph (a) of the proviso of Article 62 of Chapter 37 of the Laws of Malta, found:

- the accused Arthur Ciancio as Director of Liberty Merchants Limited guilty of the charges as described in Articles 183, 184 and 188 of Chapter 9 of the Laws of Malta and condemned him to a period of imprisonment of two (2) years suspended for four (4) years in terms of Article 28A of Chapter 9 of the Laws of Malta and found him not guilty of the other charges and acquitted him from them;
- the accused Aaron Ciancio not guilty of any of the charges and acquitted him accordingly.

The Court ordered the confiscation of the contents of the containers being kept at Mifsud Verandahs. The Court upheld the request of the Prosecution to condemn the accused Arthur Ciancio

to pay the court expenses of the court appointed experts and this within one month from when he is called up to do so by the Registrar of the Criminal Courts. The Court ordered that a copy of the judgment is sent to the Director of the Criminal Courts so that he may collect the expenses of the court experts from the accused Arthur Ciancio *nomine*.

Having seen the appeal filed by Arthur Ciancio on the 27th. of September 2017 by which he requested this Court: "to vary and reform the judgment delivered by the Court of Magistrates as a Court of Criminal Judicature on the 14th. of September 2017 in the names above-mentioned, and this by:

(a) *revoking and cancelling that part of the judgment wherein the appellant as Director of Liberty Merchants Limited was found guilty of the charges as described in Articles 183, 184 and 188 of the Criminal Code, and instead declares him not guilty of these three charges and acquits him from these three charges;*

(b) *confirms that part of the judgment where the appellant was acquitted of the other charges brought against him and declared not guilty; and*

(c) *alternatively, in case this Honourable Court does not accept this appeal as regards guilt under the charges described in Articles 183, 184 and 188 or any one of them, to impose a lesser punishment which is more just in the circumstances."*

Having seen the appeal filed by Attorney General on the 5th. of October 2017 by which the Court was requested: "to reform the [appealed] judgment whereby:

whilst confirming the finding of guilt of Arthur Ciancio of the charges reflecting the breach of Articles 183, 184 and 188, including the payment of court expenses in terms of Article 533 of the Criminal Code and the confiscation of the contents of containers retained at Mifsud Verandahs, as well as confirming the acquittal of Arthur Ciancio from the accusations numbered (1), (2), (3) of Part A of the charges proffered, this

Honourable Court finds Arthur Ciancio guilty of parts C & D of the charges in their entirety; and

without prejudice to the above, revokes the acquittal from all charges of Aaron Ciancio and instead finds him guilty of parts C & D of the charges in their entirety; and

consequentially proceed to inflict a punishment against both accused in accordance to the applicable (and most favourable) law at the time of the commission of the said offences."

Having seen all the acts and documents.

Having seen that these appeals 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 sheets of Arthur Ciancio and Aaron Arthur Ciancio exhibited by the Prosecution as ordered by the Court.

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

Having heard, during the sitting of the 24th. of October 2023, legal counsels declare that they had further submissions to add to the submissions which were heard by this Court as differently presided, during which sitting further submissions were heard.

Considers

That the facts around this case are as follows: The Police received anonymous information that a container full of cigarettes, possibly counterfeit, was due to arrive in Malta at some time during the last week of February 2005. This was due to be transhipped to the United Kingdom. The Police identified the container as CCLU3137350 which belonged to China Shipping and was

discharged from the vessel on the 26th. of February 2005. It left Shanghai with a declaration that it had 510 cartons of promotional toys with the destination being Grand Harbour Promotions Limited at St Julian's. The container was opened at Mifsud Verandahs after the Police had made a request to this effect. The status of the ship was changed to an in-transit one by an email of the 24th. of February 2005 sent by Medsea Shipping by Charles Galea who allegedly called on behalf of Grand Harbour Promotions Limited and then sent the email. The ship contained cigarettes and not toys. The Police traced the phone call to Arthur Ciancio. The phone is registered on behalf of the company Liberty Merchants Limited. Arthur Ciancio is one of the directors. The email was sent from an IP address provided by Waldonet in the name of Arthur Ciancio. The second container allegedly carried giftware of Bristow Potteries. A Bill of Lading found in the residence of Arthur Ciancio referred to a container "addressed" to Falcon Company Ltd but the address was fictitious. This was also destined to Malta but the destination was changed to Felixstowe. The instructions were made by phone and by email on the 20th. of March 2005. The container contained cigarettes and not gifts.

That it ought to be highlighted that this judgment will address two appeals: one filed by Arthur Ciancio and another one filed by the Attorney General. The nature of the two appeals requires examining the evidence which was brought forward in the proceedings as the appeals raise questions about the way the Court of Magistrates appreciated the facts. This Court examined the evidence once and notes that it is a Court of revision and it does not replace the discretion of the First Court where it transpires that from the evidence presented the First Court could reach the conclusion it reached. In this respect, reference is made to the judgment delivered on the 25th. of November 2022 in the names **Il-Pulizija vs. Joseph Tabone** (Numru 421/2013), where the Court of Criminal Appeal stated that:

"Illi huwa spiss affermat fil-ġurisprudenza illi mhuwiex normali illi din il-Qorti ta' revizjoni tiddisturba l-

apprezzament dwar il-provi magħmul mill-Ewwel Qorti jekk tasal għall-konkluzjoni li dik il-Qorti setgħet raġonevolment u legalment tasal għall-konkluzjoni li tkun waslet għaliha. Il-Qorti għalhekk eżaminat mill-ġdid l-atti proċesswali, inkluż id-dokumenti kollha eżebiti u t-testimonjanzi tax-xhieda li ddeponew quddiem l-Ewwel Qorti, biex b'hekk tkun f'posizzjoni aħjar tevalwa jekk dan l-apprezzament hekk magħmula mill-Ewwel Qorti kienx wieħed raġonevolment u legalment validu.²"

Considers

Considerations Regarding the Grievances Of Arthur Ciancio

That the appeal of Arthur Ciancio is limited to that part of the appealed judgment dealing with breaches of Articles 183, 184 and 188 of Chapter 9 of the Laws of Malta. He lodges three grievances with a number of arguments supporting them.

First grievance of Arthur Ciancio

That by means of his first grievance Arthur Ciancio argues that there is no evidence beyond reasonable doubt that links him with the documents the Court considered as evidence of his guilt. He says that there is no evidence that shows that it was he who forged the documentation. He says that Inspector Ian Abdilla testified

² "Ara, fost oħrajn, l-Appelli Kriminali Superjuri: *Ir-Repubblika ta' Malta v. Rida Salem Suleiman Shoaib*, 15 ta' Jannar 2009; *Ir-Repubblika ta' Malta v. Paul Hili*, 19 ta' Ġunju 2008; *Ir-Repubblika ta' Malta v. Etienne Carter*, 14 ta' Diċembru 2004; *Ir-Repubblika ta' Malta v. Domenic Briffa*, 16 ta' Ottubru 2003; *Ir-Repubblika ta' Malta v. Godfrey Lopez* u *Ir-Repubblika ta' Malta v. Eleno sive Lino Bezzina* 24 ta' April 2003; *Ir-Repubblika ta' Malta v. Lawrence Ascjak sive Axiak* 23 ta' Jannar 2003; *Ir-Repubblika ta' Malta v. Mustafa Ali Larbed*, 5 ta' Lulju 2002; *Ir-Repubblika ta' Malta v. Thomas sive Tommy Baldacchino*, 7 ta' Marzu 2000; *Ir-Repubblika ta' Malta v. Ivan Gatt*, 1 ta' Diċembru 1994; u *Ir-Repubblika ta' Malta v. George Azzopardi*, 14 ta' Frar 1989; u l-Appelli Kriminali Inferjuri: *Il-Pulizija v. Andrew George Stone*, 12 ta' Mejju 2004; *Il-Pulizija v. Anthony Bartolo*, 6 ta' Mejju 2004; *Il-Pulizija v. Maurice Saliba*, 30 ta' April 2004; *Il-Pulizija v. Saviour Cutajar*, 30 ta' Marzu 2004; *Il-Pulizija v. Seifeddine Mohamed Marshan et*, 21 ta' Ottubru 1996; *Il-Pulizija v. Raymond Psaila et*, 12 ta' Mejju 1994; *Il-Pulizija v. Simon Paris*, 15 ta' Lulju 1996; *Il-Pulizija v. Carmel sive Chalmer Pace*, 31 ta' Mejju 1991; *Il-Pulizija v. Anthony Zammit*, 31 ta' Mejju 1991."

that he had traced the email to a particular telephone number on the basis of information provided by Waldonet and the Cybercrime Unit and that yet neither a representative of the Cybercrime Unit nor of Waldonet testified in the proceedings. He insists that Inspector Abdilla's testimony about these sources is inadmissible. He says that he could not cross-examine these sources. He further says that the person who gave the information to the Police about the email did not appear as a witness.

That Arthur Ciancio also laments that even the information given by Dr. Martin Bajada is inadmissible. He says that he does not know what information Dr. Bajada obtained from Waldonet and what the contents of the request were and that consequently there is no evidence which proves that he sent the email. He argues that given that the connection was through an internet service using a telephone number this does not mean that the use was exclusively restricted to one person and that any other person present at the residence could have made use of the service.

That Arthur Ciancio argues further that as regards the documentation of Bristow Potteries and Mdina Glass is concerned, no evidence was presented to prove that the documents were found at his actual residence. He says that the Prosecution failed to prove that only he lived at that address and that once the Prosecution decided to charge a second person as allegedly residing in the same address this shows that the residence in question was occupied by at least two persons. He says that the Prosecution did not provide evidence as to the authorship of the documents concerned and that furthermore there is no evidence that the computer was exclusively used by him (Arthur Ciancio) or that he was the owner of the computer. He insists that some of the documents were found in the bin and hence there was no intention to use them. As to the signatures, he laments that no handwriting expert was appointed. He insists that the Prosecution failed to prove that these documents were prepared by himself.

That this Court will start by making reference to that part of the grievance where Arthur Ciancio submitted that representatives from the Cybercrime Unit and Waldonet should have been produced as witnesses to be examined and cross-examined if the need arose. Reference will also be made to the same plea which according to Arthur Ciancio applies both to what Inspector Ian Abdilla testified under oath and what the Court expert Martin Bajada wrote in his report.

That this Court notes that our law deals with hearsay evidence in Articles 598 and 599 of Chapter 12 of the Laws of Malta. The articles are applicable to criminal proceedings by Article 520(1)(d) of Chapter 9 of the Laws of Malta. Article 598 of Chapter 12 of the Laws of Malta states the following:

“(1) As a rule, the court shall not consider any testimony respecting facts the knowledge of which the witness states to have obtained from the relation or information of third persons who can be produced to give evidence of such facts.

(2) The court may, either *ex officio* or upon the objection of any party, rule out or disallow any questions tending to elicit any such testimony.

(3) Nevertheless, the court may require the witness to mention the person from whom he obtained knowledge of the facts to which any such question refers.”

That Article 599 of Chapter 12 of the Laws of Malta deals with when hearsay evidence is admissible. This Article states the following:

“The court may, according to circumstances, allow and take into consideration any testimony on the relation of third persons, where such relation has of itself a material bearing on the subject-matter in issue or forms part

thereof; or where such third persons cannot be produced to give evidence and the facts are such as cannot otherwise be fully proved, especially in cases relating to births, marriages, deaths, absence, easements, boundaries, possession, usage, public historical facts, reputation or character, words or deeds of persons who are dead or absent and who had no interest to say or write a falsehood, and to other facts of general or public interest or of public notoriety.”

That furthermore case-law has also followed the line that hearsay evidence is hearsay evidence if one takes as the truth the words which were spoken by some third person. But it is not hearsay evidence if the evidence given is considered simply as evidence that such words were spoken. If so considered, this evidence may be used to corroborate other evidence available in the proceedings.

That the Court considers that part of the evidence of Inspector Ian Abdilla may be considered as hearsay evidence as no representative of the Cybercrime Unit or of Waldonet was produced. However, the Court will consider other evidence in the proceedings. In fact, the Prosecution carried out a search in the address which resulted from the information and also examined the contents of the documents found in Arthur Ciancio’s own room which served as a bedroom and an office and the important documents were found there. So, besides the testimony of Inspector Ian Abdilla, there is further evidence that points to Arthur Ciancio in particular. One cannot consider that the fact that certain information emanating from what one can classify as hearsay evidence tallies with the actual finding of the relevant documents in Arthur Ciancio’s room as just pure coincidence. One can, therefore, consider that part of the inspector’s testimony relating to information from the Cybercrime Unit and from Waldonet as hearsay but that it corroborates the evidence documentation which the Prosecution lifted from Arthur Ciancio’s room!

That moreover, there is further corroborative evidence resulting from the representatives of Mdina Glass, Bristow (and Playmobil) who outrightly denied that the documents were theirs. Furthermore even the DHL representative confirmed that one document carried the signature of Arthur Ciancio.

That the Prosecution did not have to prove that the house belonged to Arthur Ciancio. For Criminal Law purposes it is enough that the defendant has 'control' of the object rather than ownership or possession in the Civil Law sense. Nor did the Prosecution have to prove that only the defendant lived in the house. In fact, the defendant's son shared the house with his father. But the Court carefully read the testimony of the son and from this it results that he only accepted his father's decision to consider him as director merely out of filial duty rather than an enthusiasm for his father's business. In fact, the son had a different occupation. The Court has also considered that the evidence was recovered from the bedroom/office of Arthur Ciancio. These coincidences cannot happen altogether. They all point in one direction and in one direction only. Moreover, one cannot ignore the testimony tendered by Charles Schiavone (the security manager of DHL Malta - *a fol. 151 et seq.*) whose company was entrusted with the delivery of the parcel to Falcon Company. He says: *"On the 23rd. of March 2005 we received a letter by email showing the reference number I have mentioned before whereby they were asking to change the address of the delivery of the parcel. [...] The new destination for delivery was Villa Riviera, 44, W. Lassel Street, Il-Qortin Mellieħa. We also received instructions from DHL Malaysia with the same request."*

That having considered all the evidence, this Court has no doubt that the forged documents are firmly linked to Arthur Ciancio. The Prosecution has proved that it was him who created or used these documents and, in his report, the court appointed expert came to the conclusion that various documents were forged. In its judgment the First Court made reference *in extenso* to these conclusions by quoting whole paragraphs from the report. Hence,

for all the above-mentioned reasons, the first grievance of Arthur Ciancio is being rejected.

Second grievance of Arthur Ciancio

That by means of his second grievance Arthur Ciancio argues that the material elements of Articles 183, 184 and 188 of Chapter 9 of the Laws of Malta have not been proven. He argues that according to the Prosecution false declarations were made in connection with two containers and that the Prosecution alleged that the letterheads and letter of Bristow Potteries and Mdina Glass were not genuine. Representatives from both these companies confirmed this. However, Arthur Ciancio laments that the Prosecution did not make any allegations about the bill of lading and the ship's manifest yet the Prosecution insisted that these have false declarations. He argues that the First Court failed to indicate the particular document.

That the appellant argues also that the simple fact that a person makes a false declaration on the bill of lading and the cargo manifest does not amount to any breach of Articles 183 and 184 of Chapter 9 of the Laws of Malta and hence insists that there is no breach of these articles if the bill of landing and the cargo manifest are considered. As to the documents pertaining to Bristow Potteries and Mdina Glass, Arthur Ciancio says that these are neither a public document, a commercial document or a private bank account. He says that there is also no act of trade and hence the documents issued by Bristow Potteries and Mdina Glass cannot be considered as a commercial document. Ciancio further argues that no evidence was provided that these documents were actually delivered to the intended consignee.

That as far as Article 188 of Chapter 9 of the Laws of Malta is concerned, Arthur Ciancio says that the documents of Bristow Potteries and Mdina Glass were not intended for a public authority. He says that with regards to the bill of lading and the cargo manifest, no witness testified to explain the purpose of these documents and argues that there is no evidence that these were

intended for a public authority. He says that these documents are meant as a contract of carriage of goods and that they were recovered from a private residence or a shipping agent. He argues further that the goods were not intended as a local import and that the evidence compiled by Martin Bajada shows that these documents were not intended for a public authority.

That this Court will start its considerations regarding the second grievance of Arthur Ciancio by making reference to the relevant articles at law. Article 183 of Chapter 9 of the Laws of Malta says that:

“Any other person who shall commit forgery of any authentic and public instrument or of any commercial document or private bank document, by counterfeiting or altering the writing or signature, by feigning any fictitious agreement, disposition, obligation or discharge, or by the insertion of any such agreement, disposition, obligation or discharge in any of the said instruments or documents after the formation thereof, or by any addition to or alteration of any clause, declaration or fact which such instruments or documents were intended to contain or prove, shall, on conviction, be liable to imprisonment [...].”

That as regards the malicious use of false documents, Article 184 of Chapter 9 of the Laws of Malta reads as follows:

“Any person who shall knowingly make use of any of the false acts, writings, instruments or documents mentioned in the preceding articles of this Sub-title, shall, on conviction, be liable to the punishment established for the forger.”

That Article 188(1) of Chapter 9 of the Laws of Malta states that:

“Whosoever, in order to gain any advantage or benefit for

himself or others, shall, in any document intended for any public authority, knowingly make a false declaration or statement, or give false information, shall, on conviction, be liable to the punishment of imprisonment for a term not exceeding two years or to a fine (*multa*):

Provided that nothing in this article shall affect the applicability of any other law providing for a higher punishment.”

That Article 188(2) of Chapter 9 of the Laws of Malta, which was introduced by Act VII of 2010, provides that:

“Where the document referred to in sub-article (1) is not one intended for any public authority the punishment shall be that of imprisonment not exceeding one year or a fine (*multa*).”

That from the records of the case it results that representatives of Bristow Potteries and Mdina Glass testified that the documents with the letterheads of these companies were not genuine at all. These can be considered as commercial documents. In a decision delivered on the 13th. of December 1954, the Court of Criminal Appeal presided by three judges held that a charabanc ticket amounted to a writing or document and the fact that the ticket is printed does not rule out considering the ticket as a writing. The same Court added that is a commercial writing because it is connected with the transport enterprise.

That in his Notes on Criminal Law (Second Year – Criminal Law), Professor Sir Anthony Mamo states that:

“In all crimes of forgery of documents, the material element consists [...] in the counterfeiting or altering of the document. It is a fundamental rule in this matter that the object of the falsification must be the very writing itself.”

That in the judgment **Il-Pulizija vs. Paul Galea** delivered on the 17th. of October 1997, the Criminal Court of Appeal followed the distinction between *falso ideologico* and *falso materiale*. Put succinctly this means that one takes a genuine document and alters its contents or else creates a completely false document. In this case, there is ample proof that the documents of Bristow Potteries and Mdina Glass were created from scratch to pass off the contents in the ship. The Court expert affirms.

That Arthur Ciancio insists that the documents in question do not fall under any one of the types of documents mentioned in Article 183 of Chapter 9 of the Laws of Malta. It has already been stated above that the documents “allegedly emanating” from Bristow Potteries and Mdina Glass are definitely commercial documents. Moreover, the fact that these documents were found at the house of Arthur Ciancio and not in the hands of third parties by no means excludes the falsity of the documents.

That Arthur Ciancio further submits that the documents were intended to be sent to the United Kingdom addressed to a certain Michael German of All Trade Logistics. He also submits that neither the Comptroller of Customs nor his representatives never declared that the Customs had received a copy of the bill of lading or a cargo manifest. According to Ciancio then Article 188 of Chapter 9 of the Law of Malta does not apply as the documents were not meant for a public authority.

That Apart from the importance of the documents in question, this Court also notes what is specified in Article 188(2) of Chapter 9 of the Laws of Malta. Apart from this, this Court makes reference also to the judgments referred to in the appealed judgment, specifically those found *a fol.* 651 to 653, and applies them to this judgment. In his Notes on Criminal Law (Second Year – Criminal Law), Professor Sir Anthony Mamo states that:

“An intention merely to deceive, i.e., to represent as genuine a document which is known to be false, is

sufficient. Or, perhaps, more correctly it can be said that the intention to defraud or injure the rights of others does not require to be proved, because such intention is presumed by the law from the very fact of the forgery of the document in any one of the manners specified by law”.

That further on, Professor Mamo also explains that:

“The instrument must appear upon the face of it to have been made to resemble the true instrument: not necessarily or exact resemblance, but such as to be capable of deceiving persons using ordinary observation, according to their means of knowledge.”

That the Court also notes that even if the documents were intended for a foreigner outside our shores, our Courts would still have jurisdiction as per Article 5 of Chapter 9 of the Laws of Malta. Hence, considering what has been stated, the second grievance of Arthur Ciancio is also being rejected.

Third grievance of Arthur Ciancio

That by means of his third grievance Arthur Ciancio submits that the punishment inflicted by the First Court should have been less severe.

That this Court notes that it does not disturb the discretion of the First Court if the punishment meted out by the said Court is within the parameters established by law. That in respect to this grievance, this Court refers to the judgment delivered on the 20th of December 2022 in the names **Il-Pulizija vs. Wajdi Lahir Benhamed** (Number 386/2022) where this Court as differently presided stated the following:

“10. Issa, għal dak li jirrigwarda appelli minn piena, huwa paċifiku li sabiex Qorti tal-Appell tibdel il-piena li tkun erogata l-Ewwel Qorti, irid jirriżultalha li tali piena

tkun żbaljata fil-prinċipju jew manifestament eċċessiva.
[...]

11. Mill-banda l-oħra din il-Qorti trid tagħmel l-evalwazzjoni tagħha dwar jekk il-Qorti tal-Maġistrati (Malta) applikatx piena li kienet manifestament eċċessiva meta wiehed jieħu kont ukoll tal-aspetti retributtivi u preventivi tas-sentenza emessa minnha.”

That this Court notes that the punishment meted out by the First Court in respect of Arthur Ciancio is within the parameters of the law for the charges he was found guilty of. Considering this and the circumstances surrounding this case and considering also that this Court believes that the punishment meted out by the First Court was not excessive and was within the parameters of the law, hence the grievance under examination is also being rejected.

Considers

Considerations Regarding the Grievances Of The Attorney General

That the Attorney General excludes from his appeal the acquittal of both the accused with regards to the charges numbered (1) to (3) of Part A of the charges and the acquittal of Aaron Ciancio from the charges numbered (1) to (4) of Part B.

That in his appeal the Attorney General laments of three grievances. This Court will make the considerations regarding the first two grievances together.

First and Second grievance of the Attorney General

That in his first grievance the Attorney General notes that it appears that the original intention was to import the goods in Malta with one of the containers (CCLU3137350) was clearly intended for the local market. He says that one wonders why Arthur Ciancio requested a transhipment at a late stage by using

fraudulent means to achieve his goals. Reference is made to Inspector Ian Abdilla who he says filed documentation in Court representing an invoice for container CCLU3137350 with Malta as a final destination as well as an email correspondence which Arthur Ciancio sent using false names and details. He says that the evidence tendered by Pierre Vella confirmed that both containers were intended for Malta but their final destination was changed just before their arrival in Malta. According to him, the evidence of Martin Bajada supports all this. He further argues that it is clear from the evidence that Arthur Ciancio was involved in the importation of the containers in Malta and he was concerned in importing or bringing into Malta any prohibited goods etc. and says that the fact that the objects were prohibited results from the report of Martin Bajada and from the *modus operandi* involved. He says that Arthur Ciancio should be found guilty of the charges pertinent to breaches under Chapters 37 and 406 of the Laws of Malta and in the latter case automatically by virtue of Article 80(1) of the same Act.

That the second grievance of the Attorney General is about the acquittal of Aaron Ciancio. He agrees that Aaron Ciancio was not involved in the forgery and the falsification of documents but says that Aaron Ciancio had been summoned in Court in his joint capacity of director of Liberty Merchants Limited. The Attorney General quotes Article 77 of Chapter 37 of the Laws of Malta and refers to the shifting of the burden of proof in so far as the payment of duties is concerned. He makes reference to jurisprudence. He further says that Aaron Ciancio admitted in Court that he was one of the directors and Inspector Ian Abdilla testified that he was helping his father with regards to container costings and accounting work. The Attorney General argues that the Customs and VAT representatives testified that no duty was paid with regards to the goods involved. He made reference to Article 13 of Chapter 249 of the Laws of Malta and states that Aaron Ciancio failed to sufficiently prove that the offences pertinent to Chapters 37 and 406 of the Laws of Malta were committed without his knowledge and that he had exercised all

due diligence to prevent the commission of the offence. The Attorney General states this submission also applies to Arthur Ciancio.

That as far as the above two grievances are concerned, this Court notes that the word "import" according to one Law dictionary is defined as: *"to bring goods into one country from another country and these are regulated by customs law."* Article 2 of Chapter 37 of the Laws of Malta gives the following definition:

"“imported goods” or “goods imported into Malta” means goods produced outside, and imported into or brought into, Malta and include goods produced in Malta, exported therefrom and afterwards imported thereinto.”

That the English dictionary gives the definition of a "freeport" as *"a port or airport where no tax is paid on goods that are delivered because they are then going to be sent to other countries."*

That according to Article 15(5) of Chapter 334 of the Laws of Malta:

"Subject to such conditions and the giving of such security as he may determine, the Comptroller shall-

- (a) allow any goods destined for a Freeport to be landed in Malta free of customs duty:

Provided that in all cases, the said goods shall (unless otherwise permitted by the Comptroller) be transferred into the Freeport within seven working days of having been landed;

- (b) allow the transit of any goods destined for export from a Freeport to any port or airport in Malta without levying customs duty thereon:

Provided that the said goods shall (unless otherwise permitted by the Comptroller) be loaded on a ship or aircraft within seven working days of having exited from the Freeport.”

That the Court has closely examined the testimony of Pierre Vella, the representative of Medsea Shipping agents of China Shipping. He confirmed that the first container was expected to be delivered to Grand Harbour Promotions though his company had never worked with such a company. However, he also testified that he had received an email to change the destination of the container from Malta to Felixstowe. As to the second container he also confirmed that he had received a request by email for a change of destination. In fact he confirmed the email as shown in Doc. “IA 12” (*a fol. 77*).

That the Attorney General submits that the containers together with their goods were destined for Malta and that the defendants were trying to avoid paying any taxes. However, the evidence shows that these emails were sent for a change of destination. Moreover, Adrian Mallia (Operations Manager at Malta Freeport) confirmed that Malta Freeport is not involved with Excise Duty or VAT. When he was asked about the timing of requests for changes of destination the witness replied about twenty-four hours to twelve hours prior to the arrival of a vessel. As far as the re-loading of containers is concerned, it was stated that everything takes place in the Freeport itself. In addition the CEO of the Freeport, Alex Montebello said that taxes are not due in Malta when the containers are at the Malta Freeport for transshipment purposes.

That because of the two emails requesting the transshipment of the containers when these were at the Freeport, the defendants cannot be found guilty of having avoided the payment of any duty. Hence the Court is rejecting this first grievance of the Attorney General.

That as regards the second grievance, this Court has read the testimony of Aaron Ciancio which was tendered in front of the First Court. Although he was a director of the company, and Article 13 of Chapter 249 of the Laws of Malta applies, yet the above considerations should be considered including the fact that Aaron Ciancio has been shown to be totally uninterested in his father's business. Considering all this, even the second grievance of the Attorney General is being rejected.

Third grievance of the Attorney General

That in the third grievance the Attorney General says that if this Court is of the opinion that one or both of the accused should be found guilty of the offences falling under Chapters 37 and 406 of the Laws of Malta, then the punishment inflicted by the First Court with regards to Arthur Ciancio ought to be reviewed and a fresh punishment ought to be imposed on Aaron Ciancio since he was not found guilty of any charge brought against him.

That as far as the punishment inflicted by the First Court with regards Arthur Ciancio is concerned, this Court makes reference to the considerations made above regarding the third grievance of Arthur Ciancio in his appeal application. The considerations therein mentioned apply also here. Considering also that this Court has rejected all the grievances brought forward by the Attorney General, then there is no justification whatsoever for the grievance under examination to be acceded to. Hence, even the third grievance of the Attorney General is also being rejected.

Decide

Consequently, for all the above-mentioned reasons, this Court rejects both the appeal filed by the Attorney General and the appeal filed by Arthur Ciancio and confirms the judgment delivered by the First Court in its entirety.

Finally, this Court orders that any time-limits mentioned by the First Court in the appealed judgment shall start from today and

this Court has warned Arthur Ciancio of the serious consequences which will follow if during the operational period of the suspended sentence he commits an offence punishable with imprisonment.

Dr. Neville Camilleri
Hon. Mr. Justice

Alexia Attard
Deputy Registrar