



Court of Criminal Appeal

Onor. Imħallef Consuelo Scerri Herrera, LL.D., Ph.D.

Appeal Number: 461/2023

The Police

vs

Abdulkani Mohamed

Today, the 7th of December 2023

The Court,

Having seen the charges brought against the appealed, Mohamed Abdulkani of 20 years s/o Mohamed and Sokra, born in Somalia on the 18th of May 2003, residing at Number 8, Room 5, Triq Irblat, Sliema, holder of Police Number 181-088 and Refcom No. 25170 and Maltese Travelling Document 006510, being charged with having:
On the 20th of June 2023 and the months prior to this date in these islands;

1. In order to gain any advantage or benefit for himself or others, in a document intended for a public authority, knowingly made a false declaration or statement and gave false information;

Chapter 9, Art 188 (1) of the Laws of Malta;

2. Made a false statement, or gave false information, or produced any false document, for any of the purposes of the **Identity Card and Other Identity Documents Act**, knowing the same to be false.

Chapter 258, Art (2) (b) of the Laws of Malta.

The Court is requested to apply Section 533 of Chapter 9 of the Laws of Malta, as regards to the expenses incurred by the Court appointed Expert.

Having seen that the accused had admitted to the charges brought against him and thus these have been sufficiently proven;

Having seen the judgment of The Court of Magistrates (Malta) as Court of Criminal Judicature of the 21st of June 2023 the Court, upon his own admission, found the accused, Abdulkani Mohamed guilty of the charges brought against him and condemned him to sixteen months of effective imprisonment.

The Court also ordered the confiscation of the *corpus delicti* specifically the false documents which were presented in today's sitting by the Prosecution.

Having seen the application of the Attorney General wherein she asked this Honourable Court to **reform** the judgment proffered against the accused in these proceedings by:

- 1) Confirming it in the part where it found the accused guilty of the charge proffered against him;
- 2) Reversing it in the part relating to the punishment meted out and instead condemn the accused to a punishment in conformity with the law.

The Attorney General in her application stated that, on the 26th June 2023 she received the records of these proceedings and felt aggrieved by the aforesaid judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature, in relation to the punishment meted out;

That, the reasons due to which the appellant Attorney General felt aggrieved by the aforesaid judgment of the Court of Magistrates (Malta) are clear and manifest and consist of the following:

That the accused was found guilty of the charges brought against him, the gravest of which, in terms of punishment is that of making a false statement, or giving false information, or produced any false document, for any of the purposes of the Identity Card and other Identity Documents Act, knowing the same to be false. The punishment established for this offence is that stipulated in article 24(2) of Chapter 258 of the Laws of Malta is that of imprisonment for a period of not less than two years and not exceeding five years.

That on the other hand, the accused was also found guilty of Article 188 of Chapter 9 of the Laws of Malta, which states that “188. (1) *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 in view of the above, the appellant is of the opinion that the Court of Magistrates was not correct in the quantum of sixteen (16) months imprisonment meted out against the accused, and this is because the punishment arrived at in terms of article 17 of the Criminal Code in the case of concurrent offences and punishments exceeds that of sixteen (16) months imprisonment. In fact, the minimum punishment for the offence contemplated in the charge according to article 24(2) of Chapter 258, which offence is the gravest from the offences of which the accused was found guilty, is that of twenty-four months (24) months imprisonment, and therefore, the punishment of sixteen (16) months imprisonment meted out by the Court of Magistrates is below the minimum prescribed by law.

Having seen that Abdulkani Mohamed was notified during the sitting of the 31st October 2023, failed to appear on the 17th November 2023, unlike his lawyer, to make his oral submissions regarding the Attourney General’s appeal.

Having seen that on this day the Attorney General made reference to their appeal application and stated that they had nothing else to add.

Considers,

The Attorney General filed an appeal basing its aggravations on the fact that the Court of first instance meted out a wrong punishment that does not fall within the parameters set out by the law.

That the accused had appeared before the Courts of Magistrates (Malta) as a Court of Criminal Judicature on the 21st June 2023 and registered a guilty plea to both charges brought forward by the prosecution. The accused was charged with two offences. The First offence violates Article 188(1) of the Criminal Code, namely that of making false declarations to a public authority or giving false information to a public authority. Article 188(1) of the Criminal Code reads as follows:-

188. (1) 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 (Fine)

The second offence violates Article 24(2)(b) of Chapter 258 of the laws of Malta which provides the following:

24 (2) Any person who –

(b) makes any false statement, or gives any false information, or produces any false document, for any of the purposes of this Act, knowing the same to be false;

shall be liable on conviction to imprisonment for a period of not less than two years and not exceeding five years.

The first Court took into consideration certain factors prior to sentencing the accused, namely the very serious nature of the offence for which the accused pleaded guilty, which ultimately is an offence that could jeopardize national security; his early guilty plea at the earliest stage of the proceedings and his cooperation with the police. Although not quoted in the judgment, the First Court made use of Article 17(b) of the Criminal Code, applicable for concurrent offences. This section provides the following:-

17. In the case of concurrent offences and punishments, the following provisions shall apply:-

(b) a person guilty of more than one crime liable to temporary punishments restrictive of personal liberty, shall be sentenced to the punishment for the graver crime with an increase varying from one-third to one-half of the aggregate duration of the other punishments;

Therefore, in this case the more serious punishment can be found in the second offence, breaching Article 24(2)(b) of Chapter 258 of the Laws of Malta. Whereas, the first offence in terms of Article 188(1) of the Criminal Code states that whoever is found guilty shall be liable to a term of imprisonment of not more than two years or a fine. Therefore, with the application of article 17(b) of the Criminal Code the minimum which could have been awarded in this case is two years and eight months, being one third of the aggregate duration of the other punishment.

The Court took note of the circumstances of the case, namely the registration of an early guilty plea; the fact that that no time of the Court was wasted; the young age of the accused, and his clean conduct sheet. Thus, this Court is of the opinion that it should sentence the accused the minimum punishment according to law.

The First Court did not give any reasons as to why it handed down a punishment which goes below the minimum provided by law. When applying Article 27 of the Criminal Code, the Court has to highlight any grave and serious reasons why it should go below the minimum prescribed by law.

Thus, in these circumstances the appeal of the Attorney General should be entertained since the punishment awarded by the Courts of Magistrates (Malta) as a Court of Criminal Judicature was incorrect.

The Court thus, is confirming that part of the judgment where it found the accused guilty of the charges brought forward against him but revokes that part of the judgement given by the First Court regarding the punishment imposed. Thus, this Court is **upholding the appeal of the Attorney General and after seeing the relevant sections at law namely Articles 17 and 188(1) of Chapter 9 of the Laws of Malta, and Article 24(2)(b) of Chapter 258 of the Laws of Malta, condemns the accused appellate to a term of 32 months imprisonment.** This Court also confirms that part of the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature, where it ordered the confiscation of the *corpus delicti*, specifically the false documents which were presented before the First Court by the prosecution.

(ft) Consuelo Scerri Herrera

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