



**IN THE COURT OF MAGISTRATES (GOZO)
AS A COURT OF CRIMINAL JUDICATURE**

Magistrate Dr. Jean Paul Grech B.A., LL.D
M.Juris (Int. Law), Adv. Trib. Eccl. Melit

JUDGEMENT

Given today, Wednesday, the eleventh (11th) of December 2024

Case Number 405/2024

The Police

(Superintendent Bernard Charles Spiteri)

Vs

Basnet Hari

The Court,

Having seen the charge brought against **Basnet Hari**, born on the ninth (9th) January 1997 in Nepal and residing at Tower Flats, Flat 2, Triq I-Imgarr, Għajnsielem, Gozo holder of Identity Card Number 296198(A) for having on the eleventh (11th) of November 2023, at around five minutes to eleven at night (22:55hrs) whilst in Triq Marsalforn, Rabat, Gozo:

(1) driven a vehicle Kymco Agility with registration number QQZ 489 without having a valid driving license.¹

In the case of any other offence under sub-article (1), the Court was requested to, in addition to the punishment, under that sub-article, disqualify the offender from holding or obtaining a driving licence for a period of not less than eight (8) days.²

Having seen the sworn declarations and the documents which were submitted;

Having heard submissions by the parties;

Considers:

The facts of the case are as follows: on the eleventh (11th) of November 2023 the Police were conducting road checks in Triq Marsalforn, Rabat, Gozo as per authorisation issued by Police Inspector Keith Xerri. At about five minutes to eleven at night (22:55hrs), a motorcycle Kymco Agility bearing registration number plate QQZ 489 was stopped by the Police officers conducting the road check. The driver was identified as Basnet Hari holder of identity card number 296198(A) who handed also

¹ Article 15(1)(a) of Chapter 65.

² Article 15(3) of Chapter 65.

to the Police a Nepalese driving licence. The Police informed him that in the absence of a Maltese licence and an international driving licence, he could not drive said motorcycle. He was informed that criminal proceedings were going to be instituted against him.

Considers:

The charge which is being brought against the accused is that he was driving a motorcycle bearing registration number plate QQZ 489 without a valid driving licence. Both the Prosecution and Defence agree that at the point in time the accused was stopped by the Police, he was in possession of a valid driving licence issued by Nepal, so much so that PS 506 Derrick Bugeja exhibits a copy of this licence together with his sworn declaration. The Prosecution also presented evidence to the effect that on the eleventh (11th) of November 2023, the accused was not in possession of a valid Maltese driving licence. The Prosecution did not present any evidence showing that the accused had been in Malta for a period exceeding twelve (12) months from his last date of entry. Nor did the Defence present any evidence showing that the accused had been in Malta for a period less than twelve (12) months from his last date of entry.

The defence is contending that it was the Prosecution's duty to bring forward evidence showing that the accused had been in Malta for a period exceeding twelve (12) months. Since the Prosecution failed to

bring proof to this effect, the accused should be acquitted. The Defence also quoted a judgement given by the Court of Criminal Appeal (Inferior Jurisdiction) in the names ***The Police vs Sunil Gurung***, given on the tenth (10th) of July 2024 which endorsed an identical argument being made by the Defence in today's case.

The twelve-month concession period emerges from regulation 5 of Subsidiary Legislation 65.18. This regulation provides that a person in possession of a valid driving licence issued by the competent authority of a third country is authorised to drive a vehicle in Malta for a period of not more than twelve months from his last date of entry. Once this time limit expires, the person concerned would require a Maltese driving licence to continue driving in Malta.³

The issue which this Court is being called upon to decide is whether it is up to the Prosecution or up to the Defence to prove the accused's last date of entry into Malta.

³ Reg. 5 of S.L 65.18 specifies: *"The holder of a driving licence issued by the competent authority in a third country may drive in Malta, for a period not exceeding twelve months from the date of his last entry into Malta, any class or description of vehicle covered by the driving licence issued to him by the competent authority in that third country:*

Provided that a person holding a driving licence issued by the competent authority of a third country may not drive a vehicle in licence categories C1, C1E, C, CE, D1, D1E, D, DE or f unless that person is also in possession of a certificate of professional competence issued in accordance with regulation 29 or unless that person is an exempt driver in accordance with regulation 28."

Maltese law of evidence is based on the maxim that *onus probandi incumbit ei qui dicit non qui negat*. This maxim also extends to criminal proceedings: it is the Prosecution – who is at the end of the day charging the accused – who has the duty to prove the case. The accused is deemed innocent until proven guilty: he does not need to prove his innocence unless he is called upon either by law or by need to rebut the evidence brought against him by the Prosecution.

In the case under examination from the evidence submitted, it is clear that the Prosecution proved the following:

- (a) on the eleventh (11th) November 2023 at around five minutes to eleven at night (22:55hrs) the accused was driving a motorcycle bearing registration number QQZ 489 in Triq Marsalforn, Rabat, Gozo. The fact that the accused was driving emerges clearly from the sworn declaration of PS 506 Derrick Bugeja. The Police Officer also duly ascertained the identity of the accused as the person driving the motorcycle and even took a photo of his Nepalese driving licence which was shown to him by the accused;

- (b) at that point in time the accused was not in possession of a valid Maltese driving licence entitling him to drive in Malta. This as confirmed by the sworn declaration of Transport Malta official Saviour Farrugia.

Bearing in mind the charge being brought forward against the accused, precisely that the accused was driving a vehicle without a valid driving licence, the Court considers that from the evidence submitted the Prosecution managed to prove its case beyond reasonable doubt.

In view of this, the accused found himself in a situation wherein it became necessary and impellent for him to rebut the evidence adduced against him by the Prosecution with a view to disprove the facts being alleged by the Prosecution. In order to be successful in his defence and hence secure an acquittal, the accused needed only to disprove that fact on a balance of probabilities.

In the case under examination, the accused tried to undermine the Prosecution's case by claiming that he was in possession of a valid Nepalese driving licence. Consequently, on the basis of regulation 5 of Subsidiary Legislation 65.18 he was authorised to drive without him not having to prove anything else. **The Court however does not consider that by simply showing that he was in possession of a valid Nepalese driving licence, the accused had on a balance of probabilities disproved the Prosecution's claim that he was driving without a valid driving licence. To satisfy the balance of probabilities requirement⁴ in the circumstances of this case, the Court considers that the accused had also to adduce proof showing that he had not been in Malta for a**

⁴ This has been defined as as convincing the Court that the facts being ascertained are more likely and probable to have happened rather than not.

period exceeding twelve (12) months from his last date of entry. In this way the accused would have triggered successfully the application of regulation 5 of Subsidiary Legislation 65.18 and consequently disproved the Prosecution's case. Since the accused did not bring evidence as regards his last date of entry, it cannot be said that he managed to effectively puncture the Prosecution's case. Hence the Prosecution's case still holds.

Furthermore, the Court considers that nowadays as a direct consequence of the free movement of persons within the European area, it is immensely difficult not to say impossible for the Prosecution to prove the date of a person's entry into Malta. Malta forms part of the Schengen area meaning that if a person would have entered Malta via another EU state which forms part of the Schengen area, there would be no controls vis-à-vis that person upon his arrival in Malta. Therefore, there would be no administrative record of that person's entry into Malta; nor a stamp on his passport indicating the date of entry into Malta. Hence, to prove such entry, the Prosecution would need to summon all representatives of airlines flying into Malta as well as representatives of vessels sailing into Malta to establish when a person would have travelled on a particular airline or vessel with a view to determine the exact date of entry. This would be quite an impossible feat.

In the light of all the above, the Court is dismissing the Defence's plea that the Prosecution was under an obligation to prove the date of the accused's last entry into Malta.

As regards the charge, as already pointed out earlier, this has been proven by the Prosecution and consequently the Court will be proceeding to declare the accused guilty of this charge.

- **Decide**

Therefore, for the reasons expounded above the Court after having seen articles 15(1)(a) and 15(3) of Chapter 65 **is finding the accused guilty** of the charge brought against him and is condemning him to a fine (*multa*) of one hundred and fifty euros (€ 150). Furthermore, the Court is disqualifying the offender from obtaining or holding a driving licence for a period of eight (8) days running from tomorrow at midnight.

Dr. Jean Paul Grech

Magistrate

Joseph Grech

Deputy Registrar