



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

**MAGISTRATE DR. GIANNELLA CAMILLERI BUSUTTIL
B.A., M.A. (Fin. Serv.), LL.D.**

Today 5th September 2024

Case Number: 8434/2023

The Police

(Inspector Marshal Mallia)

vs

Melih Yilmaz

The Court,

Having seen the charges brought against the accused Melih Yilmaz, thirty two (32) years old, born in Turkey on the twenty ninth (29th) May of the year nineteen ninety one (1991), residing at number fifteen (15), Michelle, Triq Guže' Bonnici, Iklin and holder of Maltese Identity card number 170849A:-

You are hereby accused of having on these Islands on the sixteenth (16th) March of the year two thousand and twenty three (2023) and in the previous months:-

1. Imported or caused to be imported the psychotropic and specified drug (Amphetamine) without due authorization, in breach of the Medical and Kindred Professions Ordinance, Chapter 31 of the Laws of Malta and the Drugs (Control) Regulations, L.N 22/1985 as amended.

Having seen the records of the case, including the Order of the Attorney General dated eighteenth (18th) October of the year two thousand and twenty-three (2023),

issued in terms of subarticle (2) of Article 120A of the Medical and Kindred Professions Ordinance, Chapter 31 of the Laws of Malta, for the accused to be tried before the Court of Magistrates as a Court of Criminal Judicature¹ ;

Having seen that the accused pleaded not guilty to the charges brought against him² ;

Having heard the final oral submissions by the prosecution and the defence.

Considers that:

Inspector Jonathon Pace³ testifies that on the sixth (6th) October of the year two thousand and twenty three (2023), after a court sitting in separate proceedings against the accused Melih Yilmaz, Inspector Marshall Mallia had informed him that he had received a similar package to the one he had been investigating, with the name Melih Yilmaz. Inspector Pace explains that he had called the accused, and the accused went to the Police Headquarters in Floriana. He confirms that he had arraigned the accused before the Court of Magistrates, in separate proceedings and charged him with the offence of importation of cannabis grass. He explains that in that case, the accused had purchased around thirty five (35) grams of Cannabis Grass for his personal use. He states that in that case, the accused had told him that it wasn't easy to cultivate cannabis plants and in fact he had shown him three dead cannabis plants. The accused had also told him that for that reason he had imported Cannabis Grass for his personal use. Regarding the case at hand, Inspector Pace stated that he was not involved in the investigation. The witness exhibited a report⁴, which relates to separate proceedings against the accused which have been concluded.

Inspector Marshall Mallia⁵ testifies that on the sixteenth (16th) March of the year two thousand and twenty three (2023), the Police received a package from Malta Post, containing twenty two (22) grams of Amphetamine. This package was labelled as costume jewellery and it was addressed to Melih Yilmaz, Flat number four (4), number fifty nine (59), St. Joseph Court, Triq Sir William Reid, Gżira. A search warrant for this address was obtained but the accused did not reside there. On the sixth (6th) October of the year two thousand and twenty three

¹ At fol. 3 of the acts of the proceedings

² At fol. 8 of the acts of the proceedings

³ At fol. 10 and fol. 25 of the acts of the proceedings

⁴ 'Doc JP' at fol. 27 of the acts of the proceedings

⁵ At fol. 18 of the acts of the proceedings

(2023) Inspector Jonathan Pace had informed him that he had arraigned Melih Yilmaz and charged him with the importation of Cannabis grass. Inspector Mallia explains that although the package had a different address, it had the same name. The package was similar and it was also labelled as costume jewellery. Inspector Mallia testifies that Inspector Pace had called the accused, who then went to the Police Headquarters. After being given his legal rights, and after he signed a note of refusal for legal assistance, he was spoken to by Inspector Marshal Mallia. The accused confirmed that he had ordered the package via telegram but he stated that he had ordered Cannabis Grass. The accused had told him that he did not receive the package. Inspector Mallia explains that this package was originally found on the sixteenth (16th) March of the same year. The accused also told him that since he did not receive the package, he ordered another package and that was the package that led to his arrest by Inspector Pace. He was then charged in court in relation to the second package. Inspector Mallia exhibited the statement of the accused⁶, the note of refusal for legal assistance⁷, an evidence bag containing the parcel addressed to the accused⁸ and the substance found inside the parcel.⁹

Under cross examination, Inspector Mallia confirms that a controlled delivery had not been carried out. Inspector Mallia also testifies that the accused had told him that he had used his friends' address because he sometimes sleeps there. A search was carried out in the property in Gżira, but no drugs were found. A certain Furkan Agredig who lived in this property was questioned by the Police and it resulted that he had nothing to do with the parcel. He confirms that the substance found in the parcel was Amphetamine.

The defence exempted the prosecution from bringing forward as witnesses **PC 756 Johann Xuereb** and **PS 2333 Alana Caruana** in relation to the note of refusal of legal assistance and the statement of the accused¹⁰.

Godwin Sammut¹¹ testifies that he was appointed by this Court on the sixth (6th) December of the year two thousand and twenty three (2023) to analyse the substance marked as 'Doc MM3'. On the fifteenth (15th) February of the year two thousand and twenty four (2024) he was given two exhibits by the court Exhibits

⁶ 'Doc MM' at fol. 23 of the acts of the proceedings

⁷ 'Doc MM1' at fol. 24 of the acts of the proceedings

⁸ 'Doc MM2'

⁹ 'Doc MM3'

¹⁰ At fol. 9 of the acts of the proceedings

¹¹ At fol. 30 of the acts of the proceedings

Officer Andre Azzopardi which were labelled as K/B/351/2023 and K/B/352/2023, even though he explained that exhibit K/B/351/2023 was not needed for this case. The substance was a yellowish white powder, and it resulted that there were traces of Amphetamine and Caffeine. He explains that most of the powder was made of Caffeine and there were traces of Amphetamine. The total weight of the powder was 10.51 grams. He exhibited his report¹² and also returned the exhibits marked as K/B/351/2023 and K/B/352/2023.

PS 118 Eman Joe Borg¹³ confirms that on the sixth (6th) October of the year two thousand and twenty three (2023), upon instructions being given to him by Inspector Marshall Mallia, he executed an Arrest Warrant at residence number fifty nine (59), St. Joseph Court, Flat number four (4), Triq Sir William Reid, Gzira. At around four o'clock in the afternoon (4.00p.m), a male person who resulted to be a certain Furkan Agredig, was seen entering the apartment's common area and was stopped by the Police. He was informed that he was under arrest and was given a copy of his letter of rights. A search was conducted in the apartment and on his person, but they didn't find anything related to drugs. He was then escorted to the Police General Headquarters for further investigations.

Stephen Abela¹⁴ testifies that he works as a custom officer at Malta Post and that he checks packages coming from outside the European Union. He explains that there was a package with a declaration that it contained costume jewellery. This package contained various packages and he found a suspicious white powder in it and therefore he contacted the Drug Squad. He exhibited three photos¹⁵. Under cross examination, he confirms that he took these photos on the sixteenth (16th) March of the year two thousand and twenty three (2023). He also confirms that he had opened the parcel himself.

The accused **Melih Yilmaz** did not give evidence in these proceedings but released a statement¹⁶ on the sixth (6th) October of the year two thousand and twenty three (2023). He states that he lives at number fifteen (15), Triq Ġuże Bonnici, Iklin and that he has been living there since December of the year two thousand and twenty two (2022). He was shown a photo of the package which had been intercepted by the Custom Officials on the sixteenth (16th) March of

¹² 'Doc GS' at fol. 32 of the acts of the proceedings

¹³ At fol. 44 of the acts of the proceedings

¹⁴ At fol. 46 of the acts of the proceedings

¹⁵ 'Doc SA 1', 'Doc SA 2' and 'Doc SA 3' at fol. 49 *et seq.* of the acts of the proceedings

¹⁶ 'Doc MM' at fol. 23 of the acts of the proceedings

the year two thousand and twenty three (2023), which package was addressed to Melih Yilmaz, number fifty-nine (59), St. Joseph Court, Triq Sir William Reid, Gżira and contained twenty two grams (22g) of amphetamine. Asked to explain what he knows about this package, the accused stated that around seven (7) or eight (8) months before, he had ordered *cannabis* but he didn't receive the package so he had ordered again and he had received a package and he was arraigned in court by Inspector Jonathan Pace in relation to the second package. With regards to the first package which he had never received, he states that he had ordered it on the address in Gżira, because his friends live there and sometimes he sleeps there but he says that his friends are not involved. He states that he had ordered cannabis from telegram and paid one hundred euros (€100) for twenty grams (20g) cannabis and he paid with cryptocurrency. He stated that sometimes he has economical difficulties and he ordered cannabis grass from Telegram because it's cheaper. He stated that he never used amphetamine but sometimes he smokes Cannabis Grass.

Considers further:

In terms of the first (1st) and only charge, the accused is being charged with the offence of having on the sixteenth (16th) March of the year two thousand and twenty three (2023), and in the previous months, imported or caused to be imported the psychotropic and specified drug, amphetamine.

In this case the prosecution is alleging that the accused had imported the psychotropic drug, Amphetamine and thus should be found guilty of the offence proffered against him. On the other hand, the defence is stating that the charge of importation of amphetamine has not been proved beyond reasonable doubt because the accused did not order the drug Amphetamine but Cannabis Grass as admitted in his audio visual statement. The defence insists that the prosecution did not produce any evidence linking the accused to the importation of amphetamine.

In the judgment in the names **Ir-Repubblika ta' Malta vs Eleno sive Lino Bezzina**¹⁷ decided on the twenty fourth (24th) April of the year two thousand and three (2003), the Court of Criminal Appeal held that :-

“Illi l-grad ta' prova li trid tilhaq il-prosekuzzjoni, sakemm ma jkunx hemm specifikat mod iehor fil-ligi, huwa tal-htija lil hinn

¹⁷ Bill of Indictment number 10/1994

*minn kull dubbju dettat mir-raguni. Fil-kamp kriminali huwa l-oneru tal-prosekuzzjoni li tipprova l-akkuza taghha kontra l-akkuzat 'beyond reasonable doubt,' kif gie deciz fil-kawza “**Pulizija vs Bugeja**”, tas-26 ta' Marzu, 1987. Illi min-naha l-ohra d-difiza, msahha bil-presunzjoni tal-innocenza tal-akkuzat, tista' tibbaza u/jew tipprova l-kaz taghha anke fuq bilanc ta' probabbilita', jigifieri jekk huwa probabbli li seta' gara dak li gie rrakkuntat mill-akkuzat kif korroborat mic-cirkostanzi jew le.*

Illi dan ifisser li l-prosekuzzjoni ghandha l-obbligu li tipprova l-htija tal-akkuzat oltre` kull dubbju dettat mir-raguni u f'kaz li jkun hemm xi dubbju ragonevoli, il-prosekuzzjoni tigi kunsidrata li ma ppruvatx il-kaz taghha ta' htija u ghalhekk il-Qorti hija obbligata li tillibera.

*Illi l-Onorabbli Qorti ta' l-Appell Kriminali (Sede Inferjuri) fil-kawza fl-ismijiet “**Pulizija vs Peter Ebejer**” deciza fil-5 ta' Dicembru, 1997 qalet illi:-*

*“Ta' min ifakkar hawnhekk li l-grad ta' prova li trid tilhaq il-prosekuzzjoni hu dak il-grad li ma jhalli ebda dubbju dettat mir-raguni u mhux xi grad ta' prova li ma jhalli ebda ombra ta' dubbju. Id-dubbji ombra ma jistghux jitqiesu bhala dubbji dettati mir-raguni. Fi kliem iehor dak li l-gudikant irid jasal ghalih hu li, wara li jqis ic-cirkostanzi u l-provi kollha, u b'applikazzjoni tal-buon sens tieghu, ikun moralment konvint minn dak il-fatt li trid tipprova l-prosekuzzjoni. Ghamlet sew infatti l-ewwel qorti li ccitat b'approvazzjoni l-ispjegazzjoni moghtija minn Lord Denning fil-kaz “**Miller v. Minister of Pensions**” [1974] 2 All E.R. 372 tal-espressjoni "proof beyond a reasonable doubt";*

"Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt, but nothing short of that will suffice" (373-374).

That reference is also being made to the case **Police v. Stefan Scicluna** decided on the seventh (7th) March of the year two thousand and eighteen (2018) wherein the Courts of Magistrates was faced with a similar situation, and the Court held that:-

“Illi, tenut ta’ dak kollu li nghad hawn fuq, minn imkien ma jirrizulta sodisfacentement pruvat li l-imputat kien ordna s-sustanza mephredone. Tenut kont tac-cirkostanzi li jirrizultaw mill-atti processwali (fosthom l-ammissjoni tal-imputat li kien ordna l-legal highs diversi drabi, li kien ibieghhom, u li kellu ansjeta’ minhabba lmarda ta’ ommu) jirrizulta li l-verzjoni moghtija mill-imputat hija wahda verosimili u kredibbli.

Illi l-provi li hemm fl-atti ma humiex sufficjenti ghal sejbien ta’ htija fir-rigward tal-imputazzjonijiet kollha addebitati fil-konfront tal-imputat, provi li fil-kamp penali jridu jindikaw lil hinn minn kull dubbju dettat mir-raguni l-htija ta’ l-imputat. Illi dak li jirrizulta fl-atti processwali jista’ jindika biss diversi ipotesijiet u mhux certezzi u li ma jista’ qatt ikun prova univoka u ma jista’ qatt iwassal lil din il-Qorti ghal konkluzjoni wahda. Il-Prosekuzzjoni bbazat il-kaz taghha fuq numru ta’ fatti u eskludiet diversi fatti ohra u ghamlet numru ta’ kongetturi.

Illi, mehud in konsiderazzjoni dan kollu, jezisti dubbju dettat mir-raguni dwar jekk l-imputat huwiex hati tal-imputazzjonijiet kollha addebitati fil-konfront tieghu. Il-Qorti ma jirrizultalhiex li l-Prosekuzzjoni rnexxielha tipprova dak li l-imputat qed jigi akkuzat bih taht iz-zewg imputazzjonijiet addebitati fil-konfront tieghu.”

The evidence brought before this Court, on the basis of which this Court is being requested to adjudicate the innocence or guilt of the accused, is made up largely of the testimony of the prosecuting Officer Inspector Marshal Mallia who conducted the investigations in this case, the testimony of Police Inspector Jonathan Pace who conducted the investigations in a separate case against the accused and the version of events given by the accused himself in his statement released to the Police. Other witnesses brought forward by the Prosecution are the Malta Post Official Stephen Abela, PS 118 Eman Joe Borg who executed the search warrant and the court appointed expert Dr. Godwin Sammut.

As results from the evidence adduced, Malta Post Officials had intercepted a package on the sixteenth (16th) March of the year two thousand and twenty three (2023), which package was addressed to a certain Melih Yilmaz, Flat 4, 59, St. Joseph Court, Triq Sir William Reid, Gżira. It was also confirmed by the court expert Dr. Godwin Sammut that the substance found in the same package consisted of a yellowish white powder, weighing 10.51 grams, which was mostly made up of Caffeine but there were also traces of Amphetamine.

The Prosecution is mainly relying on the fact that the accused had been accused and found guilty in other proceedings of having imported *cannabis grass*, which the accused had received in a similar package, which was also addressed to Melih Yilmaz and marked as Costume Jewellery, but had a different address to the one forming the merits of this case. On his part, the accused is denying that he ordered and imported into Malta the substance amphetamine. Consequently, the Court must now determine whether it has been proved, beyond any reasonable doubt, that the accused imported the said amphetamine into Malta.

The Court considers that although the facts of this case tend to raise suspicion as to the intention of the accused, yet in the present case, the Court is not satisfied that there is sufficient evidence to the degree required by law, to lead it to conclude that the accused had the intention to import amphetamine. In his statement, the accused not only denies importing amphetamine, but also insists that on both occasions, he had ordered *cannabis grass* and he further explains that he had ordered a second package, because he had never received the first package that he had ordered. The Court considers that from the evidence adduced, it results that although the package forming the merits of this case, was intercepted on the sixteenth (16th) March of the year two thousand and twenty three (2023), the accused was only interrogated with respect to this package on the sixth (6th) October of the year two thousand and twenty three (2023). It results that in the meantime, the accused had already been arraigned in court, charged with having imported cannabis grass in June of the year two thousand and twenty three (2023). Considering that the first package had been seized by the Police without the accused's knowledge, the Court finds nothing implausible about this part of the accused's version, or about his explanation that he had ordered Cannabis Grass again online at a cheaper price. The Court further notes that from the acts of these proceedings, it results that the second package which formed part of separate

proceedings, contained cannabis grass and Inspector Pace had testified that when searching the accused's property they had only found some dead cannabis plants.

After having taken into consideration all these circumstances, and in the absence of any other evidence to substantiate the charge proffered against the accused, the Court finds that the Prosecution has failed to prove the said charge to the level of beyond reasonable doubt. Hence in view of the above considerations this Court is acquitting the accused of the charge proffered against him.

Conclusion

For these reasons, the Court finds the accused **Melih Yilmaz** not guilty of the charge brought against him and acquits him thereof.

The Court orders the destruction of 'Doc. MM3' under the supervision of the Court Registrar, once this judgement becomes final and definitive. The Court Registrar shall draw up a *proces-verbal* documenting the destruction procedure, and this shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

Magistrate Dr. Giannella Camilleri Busuttil

Deputy Registrar Michela Attard Deguara