



**IN THE COURT OF MAGISTRATES (MALTA)
AS COURT OF CRIMINAL INQUIRY**

**MAGISTRATE DR. ABIGAIL CRITIEN
B.A., Trib. Eccl. Melit., LL.M. (Family Law) (Lond), LL.D.**

**The Police
(Inspector Audrey Micallef)**

Vs

Prahlad Nepal (PA 0420750)

Today the 25th of April, 2023

The Court;

Having seen the charges brought against Prahlad Nepal, 33 years old, son of Keshab Prasad and Betmeya Nepal, born on the 10th January 1990 in Sindhupalchok, Nepal and residing at 24, The White House, Triq it-Tamal, St. Julians and holder of Passport Number PA0420750;

Accused with having, on the 8th February 2023 between 18:00hrs and 19.30hrs in 24, The White House, Triq it-Tamal St. Julians:

1. Without the intent to kill or to put the life of Naresh Lamsal who lives in the same household, in manifest jeopardy, voluntarily caused bodily harm or ill health causing an offence of grievous nature as certified by Dr. Matthew Ellul (Med. Reg. 3815) of Mater Dei Hospital;
2. Attempted to use force with intent to insult, annoy or hurt Naresh Lamsal who lives in the same household.

This Court was requested to issue a protection order during court proceedings against Prahlad Nepal to the benefit of Naresh Lamsal and in his family as per Article 412C of Chapter 9 of the Laws of Malta, to provide for the safety of Naresh Lamsal and his family or for the keeping of public peace, in addition to, or in lieu of the punishment applicable to the offence, requires

that Prahlad Nepal to enter into his recognizance in a sum of money fixed by the Court as per Article 383 et seq of Chapter 9 of the Laws of Malta.

This Court was further requested that in case of conviction, in addition to the applicable punishment at law, orders Prahlad Nepal to incur the payment of costs in the appointment of any experts in the proceedings as contemplated in Article 533 of Chapter 9 of the Laws of Malta.

Having seen that the Prosecuting Officer Inspector Audrey Micallef has read and confirmed on oath the charges brought against the accused during the sitting dated the 25th of April 2023;

Having seen and heard the accused's reply to the charges brought against him, that is, that he is not guilty to the same charges;

Having seen the acts of the case and the documents exhibited:

- Conviction sheet dated the 3rd March 2023
- Police Bail Conditions Form dated the 9th February 2023
- Copy of the accused's passport
- Medical certificate dated the 8th February 2023 signed by Dr. Matthew Ellul
- Report dated the 8th February 2023
- Statement of the accused dated the 9th February 2023

Having heard the victim Naresh Lamsal testify under oath during the sitting dated the 25th April 2023 whereby he requested this Court to stay proceedings against the accused and further declared that he is also exercising his right not to incriminate himself;

Considered

That the first charge against the accused is that without the intent to kill or to put the life of Naresh Lamsal **who lives in the same household**, in manifest jeopardy, voluntarily caused bodily harm or ill health causing an offence of greivous nature as certified by Dr. Matthew Ellul (Med. Reg. 3815) of Mater Dei Hospital and that the Second charge against the same accused is that he attempted to use force with intent to insult, annoy or hurt Naresh Lamsal **who lives in the same household**, both of which fall under the Domestic Violence in terms of Article 2 of Chapter 581 of the Laws of Malta due to the fact that the accused and the victim used to live in the same household at the time of the incident;

That in terms of the Proviso contained in Article 543(e) of Chapter 9 of the Laws of Malta, the law states that:

"Provided that for the purposes of this paragraph "domestic violence" shall have the same meaning assigned to it by article 2 of the Domestic Violence Act:

Provided further that it shall be lawful, after proceedings have commenced before the court in virtue of this article for an offence mentioned in this paragraph, for an alleged victim of

an offence involving domestic violence to request the court to stay proceedings against the alleged perpetrator, and when such a request is made the court may decide and direct the continuation of proceedings against the alleged perpetrator, giving particular consideration to the best interests of any minors involved, and shall cause such request and decision to be registered in the records of the case”.

That the victim, Naresh Lamsal testified in the sense that he requested this Court to stay proceedings and further stated that he is exercising his right not to testify so as not to incriminate himself;

That in terms of the judgement in the names **Il-Pulizija v. Norman Cascun**¹ decided by the Court of Criminal Appeal on the 12th of December 2019, the same Court of Appeal stated that:

“L-Artikolu 543 tal-Kodiċi Kriminali - li jagħti is-setgħa lill-Pulizija li jipproċedu ex officio f’kull każ li jinvolvi vjolenza domestika, intiza ai termini tal-Artikolu 2 tal-Kap. 581 tal-Liġijiet ta’ Malta, irrispettivament min-natura jew forma tar-reat li jinvolvi tali vjolenza - jippreskrivi sitwazzjoni fejn il-kontinwazzjoni tal-azzjoni kriminali mibdija ex officio, (a prescindere mill-fatt jekk ir-reat li jinvolvi vjolenza domestika jkunx wieħed minn dawk li jeħtieġu l-kwerela tal-parti offiża jew le - stante li l-Liġi hija siekta fuq dan) tista’ tiġi mitmuma fuq deċiżjoni tal-vittma. Hawnhekk il-leġislatur ried li jintroduċi kwalifika għar-regola li azzjoni kriminali istitwita ex officio tibqa’ miexxa indipendentement mir-reċess jew remissjoni tal-parti privata sabiex fil-każijiet ta’ vjolenza domestika jissalvagwardja l-interessi supremi tar-relazzjonijiet familjari (forsi biex jipprova jsalva dak li hu salvabbli u ma jkunx hemm attrit jew peġġorament tar-relazzjonijiet interpersonali bejn membri tal-familja li fl-aħħar mill-aħħar ikunu jridu jibqgħu jgħixu flimkien taħt l-istess saqaf jew iżommu l-kuntest domestiku ta’ bejniethom). Hawnhekk allura l-Liġi trid li tipprevali il-Grazzja fuq il-Ġustizzja fl-interess suprem tal-ħajja domestika u l-importanza li din għandha fil-kuntest soċjali tal-pajjiż. Iżda l-Qorti hija akkordata, per via eccezionale, u fil-każijiet appositi, id-diskrezzjoni li tmur kontra din ix-xewqa tal-vittma u tordna li l-proċeduri kontra l-awtur allegat jitkomplew. Fil-fehma tal-Qorti però l-enfasi tal-Liġi f’dan il-proviso qiegħed fuq l-għażla tal-vittma aktar milli fuq id-diskrezzjoni tal-Qorti”.

That it is clear that the legislator wanted to emphasise that in cases of domestic violence the victim had the right to request that the proceedings against the aggressor are stayed and this is precisely what Naresh Lamsal as the victim in these proceedings declared in his testimony;

That the accused and victim Naresh Lamsal no longer live under the same roof;

That the accused has a clean criminal record;

That although the charges as brought against the accused cannot in any be regarded as insignificant or of a trivial nature, it transpires that there is no pending danger due to the fact that the parties no longer live under the same roof and they have put this incident behind

¹ Appeal No. 233/19

them and consequently this Court does not deem it fit to insist on the continuation of the same proceedings and to go against the wishes of the same victim.

Decide

Therefore, for the reasons cited above, the Court after having seen Article 543(e) of Chapter 9 of the Laws of Malta and Article 2 of Chapter 581 of the Laws of Malta, accedes to Naresh Lamsal's request to stay proceedings against the accused and consequently this Court abstains from taking further cognisance of the charges brought against him in these said proceedings.

The Court orders that the Attorney General is granted access to a scanned copy of the acts as well as a scanned copy of this present decision.

MAGISTRATE DR. ABIGAIL CRITIEN

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