



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

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

**Today 13th March 2024**

**Case Number: 49/2021**

**The Police**  
**(Inspector Andy Rotin)**

**vs**

**Pakeetharan Khathirkamanathan**

The Court,

Having seen the charges brought against the accused **Pakeetharan Khathirkamanathan**, thirty (30) years of age, son of Khathirkamanathan and Kamal Devi, born in Sri Lanka, on the fifth (5th) February of the year nineteen ninety one (1991), residing at number three (3), level three (3), door number (4), Balbi Street, Marsa and holder of Police Number 19FS-010 and Refcom Number 25396:-

And you have been charged with having on the sixth (6th) March of the year two thousand and twenty one (2021), between the hours of eleven in the morning (11.00hrs) and noon (12.00hrs), in Zimelli Street, Hamrun. Malta, and/or in any other time or location within the Maltese Islands:

1. Had in your possession (otherwise than in the course of transit through Malta or the territorial waters thereof) the whole or any portion of the Cannabis plant which goes against Article 8(d) of Chapter 101 of the Laws of Malta, which

drug was found under circumstances denoting that it was not intended for his personal use.

The Court is also being requested, in case of guilt, to order the accused to pay any relative fines in connection with the appointment of Court experts according to Article 533(1) of Chapter 9 of the Laws of Malta.

The Court is also being requested that in case of guilt, apart from inflicting the appropriate punishment according to the Law, orders as well the confiscation of the objects exhibited.

Having also seen that this case was assigned to the presiding Magistrate in terms of the assignment of duties dated ninth (9<sup>th</sup>) March of the year two thousand and twenty three (2023)<sup>1</sup>;

Having seen the records of the case, including the Order of the Attorney General of the twelfth (12<sup>th</sup>) of March of the year two thousand and twenty one (2021) in terms of sub-article (2) of Article 22 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, for the accused to be tried before the Court of Magistrates as a Court of Criminal Judicature<sup>2</sup>;

Having seen that the accused pleaded not guilty to the charges brought against him<sup>3</sup>;

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

**Considers that:**

Whereas, to substantiate the charge proffered against the accused, the **prosecution** brought forward the following witnesses:-

**Inspector Andy Rotin<sup>4</sup>** testified that on the sixth (6<sup>th</sup>) of March of the year two thousand and twenty one (2021), he was stationed at the Hamrun Police Station and at around half past eleven in the morning (11:30 a.m.) he was informed by PS 2126 Isabelle Galea, that PC 2 Glen Ellul and PC 636 from the Rapid Intervention Unit were conducting a patrol in Hamrun when they had noticed three (3) persons and one of them who resulted to be the accused, was acting in a suspicious manner. Inspector Rotin testified that he was informed that the accused

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<sup>1</sup> At fol. 41 of the acts of the proceedings

<sup>2</sup> At fol. 12 of the acts of the proceedings

<sup>3</sup> At fol. 18 of the acts of the proceedings

<sup>4</sup> At fol. 20 and 56 of the acts of the proceedings

was carrying a container which contained 11.3 grams of suspected *cannabis*. He explained that the accused was arrested and after being given all his legal rights, he was interrogated at the Hamrun Police Station. Inspector Rotin confirmed his signature, the signature of PC 1428 Joseph Gauci, the accused's signature and also the signature of the interpreter on the statement dated sixth (6<sup>th</sup>) March of the year two thousand and twenty one (2021). He also testified that the drug was sealed in evidence bag number M01395113 in the presence of the accused and forwarded to his Office. He also exhibited the same evidence bag<sup>5</sup>.

The defence counsel exempted the prosecution from bringing forward any evidence regarding the voluntary nature of the statement released by the accused<sup>6</sup>.

**PS 2126 Isabelle Galea**<sup>7</sup> testified that on the sixth (6<sup>th</sup>) of March of the year two thousand and twenty-one (2021) at around twenty minutes past eleven in the morning (11:20 a.m.), PC 636 and PC 2 from the Rapid Intervention Unit, went to the Hamrun Police Station together with the accused. She had been informed that the Police Officers had conducted patrols in Hamrun and the accused had been seen acting suspiciously and he was stopped and a suspected illicit substance was found. The witness stated that she went together with her colleagues to the Drug Section to weigh the substance which was found. She also stated that she conducted checks with regards to the CCTV cameras found at number four (4), Triq Zimelli, Hamrun. She explained that the owner had handed the footage to the Hamrun Police Station and that she had seen the footage and handed over everything to the Inspector. PS 2126 stated that in the footage she could see that there was a male person who was running and that he threw something near a van and then ran away. She stated that a Police Officer had stopped the accused and arrested him. The witness was shown the evidence bag marked as Dok AR1 but she stated that she had never seen the substance because other Police Officers had weighed the substance. She stated that the weight of the substance was that of 11.3 grams. The witness recognised the accused in the court hall and she also confirmed that she had prepared the Police report<sup>8</sup> exhibited in the acts of the proceedings.

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<sup>5</sup> Dok AR 1

<sup>6</sup> At fol. 18 of the acts of the proceedings

<sup>7</sup> At fol. 22 of the acts of the proceedings

<sup>8</sup> At fol. 9 of the acts of the proceedings

**PC 636 Brandon Pullicino**<sup>9</sup> testified that on the sixth (6th) March of the year two thousand and twenty one (2021), he was conducting a patrol in Triq il-Kbira, San Ġużepp, Hamrun together with PC 2 and they had noticed three persons who were acting suspiciously. PC 2 went to speak to these persons but they ran away and his colleague started running after them. PC 636 stated that he parked his vehicle and ran after them. He stated that he saw PC 2 arresting a person who later was identified as being the accused. PC 636 testified that he had been informed by his colleague that he had a suspicion that the accused hid a packet near a parked van. He stated that there was also CCTV in the area. The accused was arrested and given his rights and he was taken to the Hamrun Police Station. The witness also stated that the plastic packet which had been disposed of by the accused contained green leaves. The witness was shown Doc AR 1 and he recognised the same packet. The witness further explained that he had been driving the car in Triq il-Kbira, San Ġużepp and until he parked his car, PC 2 had started running after the accused. He stated that when his colleague got out of the car, the accused ran away.

Under cross-examination, the witness confirmed that when he was conducting a patrol in the area with PC 2, he saw three male individuals and PC 2 started running after the accused because he ran away. When he went past the same spot, the other two individuals were no longer there. He stated that, to his knowledge, the other two individuals were not arrested. He also stated that he had found the packet together with his colleague, in the presence of the accused as he was arrested at the same spot. He stated that all this happened under the surveillance of CCTV. The witness further explained that when his colleague ran after the accused, he had seen the accused throwing a packet near a parked van and he had told him in Maltese “*rema rema hemmhekk*”.

**PC 2 Glenn Ellul**<sup>10</sup> testified that he was stationed at the Rapid Intervention Unit. He stated that on the sixth (6th) March of the year two thousand and twenty one (2021) at around twenty minutes past eleven in the morning (11:20a.m.) he was on duty together with PC 636 Brandon Pullicino and they had noticed three individuals in Triq Żimelli in Hamrun. He explained that when these persons saw the Police car, two of them left and the third one who the witness identified

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<sup>9</sup> At fol. 26 of the acts of the proceedings

<sup>10</sup> At fol. 60 of the acts of the proceedings

as the accused, ran away. PC 2 explained that as he saw him running away, he went out of the car and started running after him. He stated that he could not see the accused but he kept running and then he saw the accused near a white van. He arrested the accused, together with his colleague and they found a plastic bag near the van containing suspected *cannabis*. The accused told them that it was not his. Then they escorted him to the Hamrun Police Station, conducted a search and informed the Police Sergeant at the Hamrun Police Station that there were CCTV cameras near the van. He also explained that they had collected the substance and gave it to Police Sergeant Isabelle at the Hamrun Police Station. He stated that he did not see the accused throw away the plastic bag but he suspected that he threw something away.

**Gilbert Mercieca**<sup>11</sup> testified and exhibited his report, from where it transpires that he had withdrawn the exhibit marked as Doc RA1 from the acts of the proceedings (Exhibit number K/B/354/2021), which contained one evidence bag with the seal number M01395113, which evidence bag contained one plastic bag with herbal material weighing 9.76 grams. After conducting his analysis, the expert concluded that :-

*“The herbaceous substance found inside the plastic bag, inside DOK RA1, tested positive for the presence of Controlled substances (Cannabis – THC).*

*The herbaceous material was identified as parts of the Cannabis plant, with a total weight of 9.76g, and an estimated market value of €146. The estimated percentage of THC in the material was 7%. ”*<sup>12</sup>

The accused released a **statement** to the Executive Police, after being given all his legal rights, wherein he stated that on the sixth (6th) March of the year two thousand and twenty one (2021), he was working at The Journey Restaurant in Hamrun and at around eleven o'clock in the morning (11 a.m.) he went out to buy milk. He stated that before he went to buy milk, he met his friend Abdullah who lives in Marsa. He stated that when he was with his friend, he saw a Police car passing by and he threw away a bag of marijuana. He stated that he ran away but the Police apprehended him. The accused was shown the bag of *cannabis* marked

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<sup>11</sup> At fol. 66 of the acts of the proceedings

<sup>12</sup> At fol. 75 of the acts of the proceedings

as M01395113 and he confirmed that it was in his possession on the sixth (6th) March of the year two thousand and twenty one (2021). He also confirmed that the bag contained marijuana. He stated that he bought the substance on that same day at around quarter past ten in the morning (10:15a.m.) near the Blata l-Bajda church. He explained that he bought it for one hundred and fifty euros (€150). He stated that the person who sold it to him was smoking in the street and the accused went up to him to see if he had marijuana to sell and he sold it to him. He stated that he always buys marijuana from different persons. The accused denied that he was planning to sell the substance found in his possession to someone else. He stated that he bought the substance for his personal use. He stated that if had access to marijuana, he would smoke every day during the night time but not during the day. He also stated that this was his first encounter with the Police.

### **Considers further:-**

The accused is being charged with the offence of possession of the cannabis plant in circumstances denoting that this was not intended for his personal use. As results from the evidence adduced, the accused himself confirmed that he was in possession of the said substance. However, he denied that he was planning to sell the substance found in his possession to someone else. He stated that he bought the substance for his personal use. It was also confirmed by the court expert Gilbert Mercieca that the substance found in the accused's possession was the Cannabis plant, with a total weight of 9.76g. Consequently, the Court must now determine whether it has been proved, beyond any reasonable doubt, that the accused's possession of the said substance was intended exclusively for his personal use or otherwise.

As held by the Court of Criminal Appeal in its judgement of the twenty third (23rd) May of the year two thousand and two (2002), in the names **Il-Pulizija vs Brian Caruana:**

*“kull kaz hu differenti mill-iehor u jekk jirrizultawx ic-cirkostanzi li jwasslu lill-gudikant ghall-konvinzjoni li droga misjuba ma tkunx ghall-uzu esklussiv tal-akkuzat, fl-ahhar mill-ahhar hija wahda li jrid jaghmilha l-gudikant fuq il-fattispecji li jkollu quddiemu w ma jistax ikun hemm xi “hard and fast rule” x’inhuma dawn ic-cirkostanzi indikattivi. Kollox jiddependi mill-assjem tal-*

*provi w mill-evalwazzjoni tal-fatti li jaghmel il-gudikant u jekk il-konkluzzjoni li jkun wasal ghalha il-gudikant tkun perfettament raggungibbli bl-uzu tal-logika w l-buon sens u bazata fuq il-fatti, ma jispettax lil din il-Qorti li tissostitwiha b'ohra anki jekk mhux necessarjament tkun l-unika konkluzzjoni possibbli”.*

In its judgement of twelfth (12<sup>th</sup>) May of the year two thousand and five (2005) in the names **Il-Pulizija vs Marius Magri**, the Court of Criminal Appeal held that:

*“Illi dawn il-kazijiet mhux l-ewwel darba li jipprezentaw certa diffikolta` biex wiehed jiddetermina jekk id-droga li tkun instabet kienitx intiza ghall-uzu personali jew biex tigi spjaccjata. Il-principju regolatur f'dawn il-kazijiet hu li l-Qorti trid tkun sodisfatta lil hinn minn kull dubbju dettat mir-raguni w a bazi tal-provi li jingabu mill-prosekuzzjoni li l-pussess taddroga in kwistjoni ma kienx ghall-uzu esklussiv (jigifieri ghall-uzu biss) tal-pussessur. Prova, ossia cirkostanza wahda f'dan ir-rigward tista', skond ic-cirkostanzi tal-kaz tkun bizzejjed.”*

From the evidence brought forward in this case, it results that the accused was found in possession of the amount of 9.76 grams cannabis grass during day-time in Hamrun and that he ran away when he saw the Police and threw the cannabis grass away. However, this Court does not believe that these circumstances alone prove beyond reasonable doubt that the accused was actually in possession of the said cannabis grass in circumstances denoting that the said drug was not for his personal use. In view of the amount of *cannabis grass* found, the accused's uncontested declaration that he uses drugs and that the drugs found in his possession were intended for him, in view of the circumstances in which the drugs were found, and in the absence of any other evidence to substantiate the charge proffered against the accused, this Court does not believe that the prosecution managed to prove to the level of beyond reasonable doubt that the accused's possession was one with intent to supply. Hence in view of the above considerations this Court is acquitting the accused of the charge of aggravated possession of the cannabis plant brought against him, whilst it is finding him guilty of the simple possession of the cannabis plant.

## Considerations on punishment

As regards the punishment to be inflicted, the Court took into consideration the clean conviction sheet of the accused, the nature of the offence of which the accused is being found guilty (simple possession of the cannabis plant), the circumstances of the case and the quantity of the drug cannabis found in possession of the accused, which exceeds the amount of seven (7) grams but does not exceed the amount of twenty eight (28) grams.

The Court is also taking into consideration the provisions of law introduced in the Drug Dependence (Treatment not Imprisonment Act), Chapter 537 of the Laws of Malta by means of Act LXVI of 2021, which has amended the said Chapter and the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, inter alia as regards certain activities relating to cannabis. Article 4A(2) of Chapter 537 provides as follows:

*“(2) Where a charge for breach of the drug laws consists of a charge of possession of the drug cannabis in a quantity of more than seven grams but not more than twenty-eight grams, irrespective of purity, in circumstances which do not give rise to reasonable grounds to believe that the prohibited drug is not for personal use by the person in possession thereof, that person shall be tried in accordance with the Commissioners for Justice Act and, upon conviction by the Commissioner for Justice assigned by the Minister to hear drug offence cases, shall be liable to a penalty of between fifty euro (€50) and one hundred euro (€100): Provided that the person shall not be subject to being taken into custody under arrest saving when there is a reasonable suspicion of trafficking or dealing in the drug cannabis.”*

Article 3(4) of the Commissioners for Justice Act, Chapter 291 of the Laws of Malta then provides that:-

*(4) Notwithstanding the other provisions of this Act, an offence against the Dangerous Drugs Ordinance or against the Medical and Kindred Professions Ordinance which is triable under this Act*



*shall not cease to be a criminal offence and the courts of criminal jurisdiction shall retain a concurrent jurisdiction to try that offences so however that the punishments applicable after the coming into force of this Act shall not exceed the punishments which would be applied had the offence been tried before a Commissioner for Justice under this Act:*

*Provided that the Courts of criminal jurisdiction shall, by virtue of this Act, be entitled to apply any penalty which may be applied by a Commissioner for Justice under this Act in respect of an offence which according to this Act is to be tried before a Commissioner for Justice: ...”*

Therefore, in the circumstances of this case, where the accused is being found guilty of being in possession of cannabis of an amount exceeding seven grams but not twenty-eight grams, for personal use, the Court deems that it should apply these provisions of law in his favour, as the law more favourable to him. Therefore the applicable punishment for the offence of which the accused is being found guilty is that of a penalty established in Article 4A(2) of Chapter 537 of the Laws of Malta.

## **Decide**

For these reasons the Court, after having seen articles 8(d), 22(1)(a), 22(2)(b)(i)(ii) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, Regulation 9 of the Internal Control of Dangerous Drugs Rules, Subsidiary Legislation 101.02, Article 4A of the Drug Dependence (Treatment not Imprisonment) Act, Chapter 537 of the Laws of Malta, Article 3(4) of the Commissioners for Justice Act, Chapter 291 of the Laws of Malta, is acquitting the accused **Pakeetharan Kathirkamanathan** of the charge of aggravated possession of the cannabis plant brought against him whilst it finds him guilty of being in possession of the cannabis plant (simple possession) and consequently condemns him to the payment of a penalty of eighty euros (Eur. 80).

Additionally, in terms of Article 533 of Chapter 9 of the Laws of Malta, the Court is ordering the accused to pay the Registrar of this Court the sum of three hundred

and eight nine euros and forty cents (€ 389.40) representing expenses incurred in the employment of experts in these proceedings.

Furthermore, the Court is ordering the destruction of the contents of Document AR 1, once this judgement becomes final and definitive, under the supervision of the Court Registrar, who shall draw up a *proces-verbal* documenting the destruction procedure. The said *proces-verbal* shall be inserted in the records of these proceedings by not later than fifteen days from said destruction.

Magistrate Dr. Giannella Camilleri Busuttil

Deputy Registrar Michela Deguara