



COURT OF CRIMINAL APPEAL

Hon. Mr. Justice Dr. Neville Camilleri
B.A., M.A. (Fin. Serv.), LL.D., Dip. Trib. Eccles. Melit.

Appeal Number 3537/2024/1

The Police

vs.

Md Maktum Hasan Sourav

Today 3rd. of June 2025

The Court,

Having seen the charges brought against **Md Maktum Hasan Sourav**, holder of Identity Card Number 265900(A), charged in front of the Court of Magistrates (Malta) as a Court of Criminal Judicature with having on the 6th. of April 2023 between 14.00hrs and 15.00hrs in Triq il-Mina ta' Ħal-Kirkop, Kirkop drove vehicle with registration number PQZ 180:

1. without a driver's license by the Authority of Transport in Malta;

2. through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations caused Adrian Pace involuntary slight injuries as certified by Dr. Ian Gauci M.D. of Paola Health Centre;
3. through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations caused Michelle Leanne Pace involuntary slight injuries as certified by Dr. Maria A. Zammit M.D. of Paola Health Centre.

The Prosecution requested that the accused be disqualified from all his driving licenses. The Court was also requested to, in case of guilt, deduct points from the driving license as indicated in Regulation 36B and the Sixth Schedule of Subsidiary Legislation 65.18 of the Laws of Malta.

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature dated 17th. of March 2025 where the Court found the accused not guilty of the charges brought against him.

Having seen the appeal filed by the appellant Attorney General on the 14th. of April 2025 by which, after referring to the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 17th. of March 2025, he requested this Court that: *"after considering all the evidence, and all the arguments already put forth and also those that will be brought up during the appeal proceedings, **REVERSES** the judgment, and consequently remit the acts of the proceedings back to the Court of Magistrates as a Court of Criminal Judicature for the latter Court to proceed in terms of law."*

Having seen all the acts and documents.

Having seen the updated conviction sheet of Md Maktum Hasan Sourav exhibited by the Prosecution as ordered by the Court.

Having heard the final oral submissions regarding the first grievance contained in the appeal application.

Considers

That this is a judgment regarding the first grievance contained in the appeal filed by the appellant Attorney General.

That in his first grievance, the appellant notes that on the 1st. of November 2023, witnesses Adrian Pace and Michelle Leanne Pace informed the Prosecution by means of written correspondence that they both reside abroad and that due to logistical and financial reasons it was not possible for them to visit Malta on the 20th. of May 2024 to testify in person before the First Court. The appellant also notes that on the 10th. of May 2024, the Prosecution filed an application in front of the First Court and requested that the two witnesses testify via video-link since they would be absent from Malta at the time of the proceedings. The appellant notes that it was only on the day of the siting itself, i.e. on the 20th. of May 2024, that the First Court decreed the application by rejecting the request contained in it because *“these are summary proceedings and it is not clear as to the statues [sic!] of the persons indicated by the Prosecution and dato e non concesso the fact “money is very tight” is not a valid reason for video-conferencing.”* The appellant quotes Article 647A(1) of Chapter 9 of the Laws of Malta and argues that Chapter 9 of the Laws of Malta grants discretion to the Court of Magistrates to decide whether to accept or reject such applications. He says that if it results from the evidence that any of the Prosecution’s witnesses are residing outside Malta and could not be brought to Malta at the time of the proceedings, the Court of Magistrates could not refuse that application for such witness to testify in accordance with the procedure established by Article 647A of Chapter 9 of the Laws of Malta.

That before making the considerations regarding the grievance under examination, this Court makes reference to the acts of the proceedings from which the following result:

- The charges against Md Maktum Hasan Sourav were issued in October 2023.

- On the 1st. of November 2023, Adrian Pace sent an email to the Prosecution saying (*a fol. 22*): *“Thank you for your email and I must apologise for the delay in answering you. We feel duty-bound to be present in Court to give evidence. Unfortunately, we will not be able to oblige as I am a pensioner and money is very tight. If we could get funding from the Courts that would be much appreciated. If not, then video conference must be.”*
- On the 10th. of May 2024, the Prosecution filed an application requesting the First Court to authorise that the testimony of Adrian Pace and Michelle Leanne Pace be heard by *video-conferencing*.
- Two sittings were held in front of the First Court: one on the 20th. of May 2024 (*a fol. 24*) and the other on the 17th. of March 2025 (*a fol. 36*).
- The application filed on the 10th. of May 2024 (*a fol. 19*) was decreed by the First Court during the sitting of the 20th. of May 2024 for the following reason (*a fol. 24*): *“The Court does not accede to the request because these are summary proceedings and it is not clear as to the statues [sic!] of the persons indicated by the Prosecution and dato e non concesso the fact “money is very tight” is not a valid reason for video-conferencing.”*
- During the sitting of the 20th. of May 2025 (*a fol. 24*), the case was adjourned for judgment for the sitting of the 17th. of March 2025.
- The First Court delivered judgment during the sitting of the 17th. of March 2025 (*a fol. 36*).

That from the acts of the proceedings it results that the Prosecution were not able to notify Adrian Pace and Michelle Leanne Pace since it results that they do not reside in Malta so much so that the Prosecution filed an application in front of the First Court so that the persons mentioned give their testimony by video-conferencing.

That whilst this Court agrees with the First Court that, considering the nature of the charges brought against Md Maktum Hasan Sourav, the proceedings are of summary proceedings, yet this Court notes that the First Court adjourned the sitting of the 20th. of May 2024 for judgment for ten months later, i.e. for the 17th. of March 2025! The First Court could have delivered judgment on the same day when the first sitting was held, i.e. on the 20th. of May 2024, or else adjourn the case to a few weeks later.

That, despite what has been stated above, this Court notes that the Prosecution were not able to positively summon Adrian Pace and Michelle Leanne Pace for the reasons mentioned above. Hence, it results that the Prosecution took all necessary action to make sure that these two witnesses give their testimony in front of the First Court.

That in the judgment referred to by the appellant Attorney General in his appeal i.e. the one delivered on the 27th. of January 2021 in the names **Ir-Repubblika ta' Malta vs. Osama Ebeid** (Number 9/2018), the Court of Criminal Appeal (Superior Jurisdiction) stated the following:

“23. Dan ma għandux ifisser, madanakollu, illi l-Prosekuzzjoni m'għandhiex tara illi x-xhieda jiġu rintraċċati u jingiebu fil-qorti biex jixhdu *viva voce*. U jekk jiġu rintraċċati u ma jistgħux jingiebu Malta, x-xiehda tagħhom għandha tinstema' bil-proċedura imfassal fl-artikolu 647A tal-Kodiċi Kriminali, biex b'hekk l-akkużat ikollu jedd jikkontrolla dik ix-xiehda, haġa li sa issa jidher li għadha ma seħhietx.” [emphasis added]

That in the judgment delivered on the 26th. of April 2023 in the names **Ir-Repubblika ta' Malta vs. Christopher Polidano** (Number 11/2018), the Court of Criminal Appeal (Superior Jurisdiction) stated the following:

“Illi l-Avukat Ġenerali għadu ma ressaq ebda talba sabiex isir dak maħsub fl-artikolu 646 hawn fuq iċċitat, u allura huwa biss f’dak l-istadju tal-proċeduri illi l-Qorti Kriminali kellha tqies jekk jeżistux iċ-ċirkostanzi ravvizati fis-subartikolu (2) għall-artikolu 646 u mhux qabel. Dan għaliex il-Qorti irid ikollha is-serħan tal-moħħ, bil-provi li jingiebu quddiemha, fosthom bil-gurament tal-Marixxall eżekutanti it-taħrika tax-xhud, illi din ma tistax tinstab, u mhux biss, irid jitqieghed fiż-żgur ukoll il-prova illi x-xhud hija fil-fatt imsiefra jew inkella ma tistax tinstab. Sa dan l-istadju, madanakollu għad ma hemm ebda dikjarazzjoni fl-atti mill-istess Avukat Ġenerali li ser jitlob li x-xieħda ta’ Rachael Fred miġbura fil-kumpilazzjoni, tinqara lil ġurati minflok tingieb biex tixhed fil-qorti. Fuq kollox tibqa’ dejjem fis-setgħa tal-Qorti tordna li x-xieħda tinstema’ permezz tal-proċedura maħsuba fl-artikolu 647A tal-Kodiċi Kriminali, jekk ikun il-każ.” [emphasis added]

That Article 647A(1) of Chapter 9 of the Laws of Malta states the following:

“Without prejudice to the provisions of articles 646 and 647, the court may, if it deems it proper so to act, allow for the audio-recording or for the video-recording of any evidence required from a witness as aforesaid or a witness residing outside Malta, in accordance with such codes of practice as the Minister responsible for justice may, by regulations, prescribe.”

That whilst this Court notes that the First Court was not bound to accede to the request contained in the application filed by the Prosecution on the 10th. of May 2024 wherein it was requested that two witnesses in question testify via video-conferencing, yet the reasons mentioned by the First Court in the minutes of the sitting held on the 20th. of May 2024 (which minutes have been quoted above) can not be considered as being justified. Hence it results

that the Prosecution was not allowed to bring forward the two witnesses concerned.

That consequently for the all the above-mentioned reasons the first grievance of the appellant Attorney General ought to be upheld and the acts of the proceedings will be sent back to the First Court so that the case can start from the moment exactly before the First Court rejected the request of the Prosecution in the application filed on the 10th. of May 2024 (*a fol.* 19).

Decide

Consequently, for all the above-mentioned reasons, this Court accedes to the first grievance of the appellant Attorney General, revokes the appealed judgment and, in order not to deprive the parties from the right of double-examination, orders that the acts be remitted back to the First Court so that the case can start from the moment exactly before the First Court rejected the request of the Prosecution in the application filed on the 10th. of May 2024 and so that the First Court proceeds in terms of law.

Dr. Neville Camilleri
Hon. Mr. Justice

Alexia Attard
Deputy Registrar