



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

**MAGISTRATE DR.
LAURENCE QUINTANO**

Sitting of the 28 th April, 2004

Number 424/2003

The Police

(Inspector Carmelo Bartolo)

Versus

Emma Louise Mullally

The Court

Having seen the charge against Emma Louise Mullally, 21 years old, daughter of William and Jean nee Ralph, born in London England on the 19th December, 1981 and residing at Seabank Hotel, Imtarfa Road, Mellieha Bay, holder of Passport Number 36110068 who is accused that in these Islands on two different and separate occasions namely the 13th May 2003 and the 16th May 2003, she laid before the Executive Police an information regarding an

offence knowing that such offence had not been committed, or had falsely devised the traces of an offence in such a manner that criminal proceedings may be instituted for the ascertainment of such offence

Having seen all the documents in the file of the case including the Attorney General's consent to have the case decided summarily, (19th May, 2003); the accused's own consent to such form of proceedings (19th May, 2003), copies of the statements made to the Police dated 16th May, 2003 (2.55 p.m), and 16th May, 2003 (4.40p.m.), the report marked JG and dated 13th May, 2003 (05.29)(page 43) and reprinted and reproduced on page 73 as document CD,

Having heard all the evidence viva voce,

Has considered

The Relevant Witnesses

The facts of the case can be summarised as follows. On the night between the 12th and the 13th of May, 2003, Emma Mullally was in the company of Elizabeth Smith (who testified on oath on the 19th May 2003). At some point during the evening, the accused asked Elizabeth Smith to take care of her bag while she (the accused) made a phone call on her mobile. Elizabeth Smith was reluctant to remain at the bar and she took the accused's handbag with her. The next day Elizabeth Smith went to the accused room. The latter informed Elizabeth Smith that she (the accused) had filed a report with the police that the bag had been stolen (see page 17 and 24). The accused also insisted that the Nokia telephone was in the bag. Elizabeth Smith here reminded the accused that the accused had been using the phone the night before. The same witness also affirmed that the accused had withdrawn twenty five pounds from an ATM and that the accused had spent all the money on drinks. The same witness affirmed that the accused had been speaking on

her [the accused's] mobile phone after further questions from the Prosecution. (page 21).

Inspector Bartolo testified that the accused had filed a report about a grab and snatch incident. She also gave a description of her assailant though as she was drunk she could not actually recall what had happened. In a later meeting with Inspector Bartolo, the accused stated that she did not even recall having given a description of her assailant. She informed him that the bag had been returned to her but the money and the Nokia phone were still missing. She, however, expressed her doubts about the money (See pages 29 and 30). The accused was asked to call at Police Headquarters on the 16th May 2003 and she informed the Police that her bag had been returned. (page 31). Further investigations were carried out by the Police and Elizabeth Smith was asked about the mobile phone. Elizabeth Smith insisted that the accused's mobile phone was in the bag.

Inspector Bartolo then asked the accused about the mobile phone and informed her about what Elizabeth Smith had just said. The accused showed him another mobile phone and stated that this was not functioning and that it was not the one that she had reported missing. (page 33). Finally, when cajoled by her friend to tell the truth, the accused said:

'OK. This is the mobile phone that I had reported missing when I made the report at the Divisional Police.' (See page 33).

The accused also informed the witness that the bar owner had given her the mobile back and when she was asked why she had made a second report about the disappearance of the mobile, she stated that she was very sorry for what had happened and that she was feeling embarrassed to explain the situation to the Police as any explanation would have revealed the state of drunkenness she had been in (See page 34). As to the money, she informed the witness that she could have spent all her

money but insisted that she was sure that she had the sum of forty pounds inside her purse.

PS 298 Joseph Grima testified that the accused smelled of alcohol during the filing of the report.

PS 162 Joseph Howard testified that when the Police Officers were speaking to the accused's friend, the latter explained that the mobile phone in question that was reported missing was still in the possession of the accused. The accused gave the officers another mobile phone which they showed to the accused's friend. The latter insisted that that was not the right mobile phone. 'The right one is still in her [the accused's possession]. The Officers spoke to the accused again who started crying and then gave her mobile phone to the officers.

The accused took the witness stand on the 3rd February, 2004 and stated that she had got her bag back but not the mobile. She added: 'I think it was a Monday I had to go down to the CID. In the meantime the mobile had turned up. Many people had told me to say just tell them that you still did not have it. I was embarrassed. I did not know what to do. A foreign country, so I told them I still did not have it.' She also stated that at the time of her first report she thought that she had lost everything.

She also testified that she was not drunk the day Inspector Bartolo and Sergeant Howard went to talk to her. She also recalled that on that day she had told them that the mobile phone had been lost or stolen. To a question posed by her lawyer 'So actually you informed the police that you found the mobile phone?', the accused replied in the affirmative.

Statements to the Police

In her first statement to the Police, the accused said that she had phoned the Qawra Police to inform them that had recovered her bag. (page 39). She also said that her mobile was still missing but expressed reservations or doubts about the money. (page 40).

In her second statement to the Police, when asked why she had not informed the Police that she had recovered her mobile, she stated that she had failed to do because she was feeling too embarrassed to do so.

Submissions made by the Parties

The Prosecution submitted that two reports had been made (On the 13th and on the 16th May 2003) and that they were both false. On a second meeting with the Police Officers she continued to insist that her mobile phone had not been found when she knew that this was false. The mobile phone was actually in her bag.

The defence replied that the Law distinguishes between 'information', 'report' and 'complaint'. The facts do not amount to false reporting. As to the actus reus: Not any information will be considered as amounting to a report. As to the mens rea: there must be the intention to file a report knowing that no offence has been committed. During the first report the accused believed that both her handbag and her mobile had been stolen.

As to the second 'report', defence submitted that this amounted to an information and not to a report. There was no actus reus. There was no second report at all.

Points of Law.

The charge against the accused falls under section 110(2) of Chapter 9 of the Laws of Malta. The section reads as follows:

'Whosoever shall lay before the Executive Police an information regarding an offence knowing that such an

offence has not been committed, or shall falsely devise the traces of an offence in such a manner that criminal proceedings may be instituted

For the ascertainment of such offence, shall, on conviction, be liable to imprisonment for a term not exceeding one year’.

The law deals with reports, information(s)¹ and complaints in sections 535 to 540 of Chapter 9.

Section 535 states:

Information.Report. (Marginal Note)

‘(1) Any person may give information to any officer of the Executive Police of any offence liable to prosecution by the Police ex officio, of which such person may have in any manner become aware.

(2) Nevertheless, no action shall be taken by the Police upon any anonymous report or information, except in the case of a flagrant offence or where the report or information refers to some fact of a permanent nature. In any such case, it shall be lawful for the Police to proceed on such report or information, after ascertaining the flagrancy of the offence or the permanent fact.

Section 536 states:

Contents of information. (Marginal Note)

The informer shall clearly state the fact with all its circumstances and shall, as far as possible, furnish all such particulars as may be requisite to ascertain the offence, to establish the nature thereof as well as to make known the principals and the accomplices.

Section 537

¹ It is rather strange to find the word ‘Information’ in the plural. Uncountable Nouns in English do not have a plural. Examples: health, furniture and information. See Bywater F.V. ‘A Proficiency Course in English’ Hodder and Stoughton 1978

Form of Information (Marginal Note)

An information may be laid verbally or in writing:

Provided that where an information is laid verbally, it shall, except in cases which admit of no delay, be reduced to writing forthwith and shall be signed by the informer, or, if he is unable to write, by the Police Officer by whom it is reduced to writing.

Sections 538, 539 and 540 do not concern this case..

Information.

Professor Mamo in his Notes on Criminal Procedure comments thus about the word 'Information'

The information (denunzja) is the act whereby an individual spontaneously gives notice to the Executive Police of an offence being one which can be prosecuted ex officio, howsoever he may become aware of it. As a general rule there is no duty imposed on private individuals to give information on offences committed. The law generally leaves it in their discretion to give or to forbear from giving such information. But there are cases in which to fail to give such information may constitute an offence.

Omissis

The formality required by 537(2) is necessary to ensure the authenticity of the information of which the informer must assume the responsibility. [The absence of this formality will in no case preclude the Executive Police from acting upon the Information. See footnote 6]²

Reports.

² Mamo Professor Anthony Notes on Criminal Procedure page 13

As to Reports, Professor Mamo comments as follows:

Every public officer has the duty of making known to the competent authority any offence upon which proceedings may be taken *ex officio* and of which he may become aware in the execution of his public duties. The report is the act whereby a public officer, who in the execution of his duties becomes aware of an offence for the prosecution of which the complaint of the injured party is not requisite, is bound to give notice thereof to the competent authority.³

After this exposition of the Law and of the comments on it, the Court is making the following considerations:

(a) Section 535(1) speaks of information and uses the word 'report' immediately after the word 'anonymous'

(b) Section 110(2) speaks of 'information' and introduces the word 'knowing'

(c) Section 537 requires that any information may be laid either verbally or in writing

It is up to the Police Officer to reduce everything to writing but failure to do so will not lead to any nullity.

(d) The charge practically speaking reproduces section 110(2) of Chapter 9.

(e) The Court therefore concludes that both when the accused went to the Police Station of her own accord and when she was summoned by the Executive Police, she was giving information within the terms of section 110(2).

(f) Her first information may be considered as partly genuine as at the time she did not have her mobile or her bag with her and it was 5 o'clock in the morning, soon after she had finished drinking. But the information tendered by the accused is partly false because she reported 'a snatch and grab' incident when she had never been subjected to such an assault. This part of the report was never defended even when she testified in court.

(g) As to the word 'knowing', the Court has doubts whether, during the first laying of information, the

³ Mamo Professor Anthony Notes on Criminal Procedure pages 12 and 13.

accused **knew** that her bag and mobile had not been stolen at all. However, in spite of her drunken state, she **knew** that nobody had carried out a grab and snatch exercise. It was worse, on her part, to give a description of the person who attacked her.

(h)As to the second meeting with the Executive Police, this was another form of information (and not a report) and this time she definitely **knew** that her mobile had **NOT** been stolen. She kept insisting about the disappearance of her mobile because, she stated, she had been so advised and also because she felt embarrassed. She only broke down when pressed further by the Police. This time she was definitely not under the influence of drink and there is no excuse at law for her behaviour. She was misleading the course of justice. She was free not to go to the Police Station the first time but the second time she was in duty bound to give the correct information once she had started the whole proceedings.

Professor Mamo comments as follows about this article⁴

‘The simulation may be either verbal or direct or real or indirect. The former must consist in a denunciation, that is in an information or report or complaint to the Executive Police: and the crime is completed by the presentation of such information, report or complaint, so that the subsequent confession of the untruth would not avail to exclude it. It is not absolutely essential that the denunciation of the offence to the police should comply with all the requirements of form prescribed by the law of procedure for the formal information or complaint so long as it is calculated to induce further inquiries to be undertaken for the ascertainment of the offence denounced’.

⁴ Mamo Professor Anthony Notes on Criminal Law Second Year (Part II) page 60

The Court has stopped quoting at this point because the rest of the paragraph deals with a real or indirect simulation. This falls under the second part of section 110(2) after the word 'or', which part has nothing to do with this case.

Conclusion of the Court.

In both instances, the Court is satisfied that both the actus reus and the mens rea required by law subsist.

The Court, having seen section 110(2) of Chapter 9 finds the accused guilty as charged. However, once one considers her clean conduct sheet and also the small amount involved, the Court does not feel that it should condemn the defendant to a term of imprisonment but instead it is setting her free on condition that she does not commit another crime within eighteen (18) months from today. The Court explained article 22 of Chapter 446 in simple terms to the accused.

MAGISTRATE

< Final Judgement >

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