



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

**MAGISTRATE DR.
CONSUELO-PILAR SCERRI HERRERA**

Sitting of the 7th March, 2005

Number 685/2004

**The Police
Inspector Mario Haber
V**

**JOSEPH MARTIN BORG
WONG WAU PANG**

The Court

Having seen that the accused **JOSEPH MARTIN BORG** aged 41 son of Alfred and Adalgisa nee Fenech, born in Attard on the 11th November 1962 and residing at 'Camelia', Valletta Road, Mosta, holder of identity card number 724262M and **WANG YAU PANG** son of Pang Sang and Tangami residing at Qawra holder of identity card number 168608A were arraigned before her accused with having on the 10th August 2004 and on the previous dates at The Wing Wah Restaurant, St. Anthony Street, Bugibba and in other parts of Malta taken in his

employment or gave work to any person who was not an exempt person and was not in possession of a licence granted to him for the purpose of such employment or work.

Also with having in the same circumstances as an employer who employs another person whole time, part-time or otherwise under a definite or indefinite contract or on probation, failed to notify the Employment and Training Corporation of such employment.

Having seen all the documents exhibited in the acts of these proceedings in particular the consent given by the Attorney General dated 27th August 2004 [fol 18] so that these proceedings are dealt with summarily.

Having heard both accused declare that they had no objection for their case be dealt with by this Court as a Court of Criminal Judicature as can be evidenced from the examination in chief held in accordance with section 370(4), 390(1) and 392 of Chapter 9 of the Laws of Malta of both accused on the 24th August, 2004.

Considers the following:

On the 24th August 2004 **Wei Hong gave evidence under oath** [fol 13] and confirmed that she knew both accused present in Court. Joseph Martin Borg was her boss whereas Wang Yau Pang runs the restaurant where she was found by the Police. She stated that she did not work in the restaurant by the name Wing Wah but used to go there once a week to help her friend Suni who is a waitress in the said restaurant. She stated that Suni at times used to leave the restaurant early and when she did so, she would help her close the premises. Asked if she knew Wang Yau Pang know as Jimmy, the accused said that she knew him and at times used to help him in the restaurant in the kitchen. Asked by the defense if Jimmy ever paid her for her work, she confirmed that he did not pay her for any services due to their friendship, although at times, tipped her. With regards to her relationship with the accused Joseph Martin Borg, she state that the latter

applied on her behalf for a work permit to work in the restaurant. She categorically denied he ever gave her any money. She continued to say that she only met the accused Joseph Martin Borg a few times and she was not in a position to state whether her work permit was issued or not.

On the 27th August 2004 **Wei Hong again gave evidence** [fol 24] and apart from confirming her previous evidence, she repeated that both accused never gave her any money for services rendered. She also confirmed that she never worked in the restaurant. She stated that sometimes the accused Wang Yau Pang used to give her some money as tips for example a pound or fifty cents. She also confirmed that at times she would go out to dinner with Jimmy. She stated that when the Police went to the restaurant and asked her whether she had a work permit, she had told them that she had applied for one. When asked what answer she gave to the Police who asked her how could she work there if she had no work permit, the witness said she could not remember what answer she gave them since she was very nervous at that point in time. She said that at times there would be some tips on a table and she would ask the accused Wang Yau Pang whether she could take them and he would kindly say yes to her. With regards to the day when the Police walked into the restaurant, she confirmed that there were no patrons in the restaurant. Actually the restaurant was closed and there had been no bookings for that evening. Asked what she was doing in the restaurant, she said that she was there hoping to get a work permit as an assistant chef. She confirmed that at times she would give a helping hand when the restaurant was busy and that she served customers on very few occasions.

On the 1st September 2004, **Inspector Mario Haber gave evidence** [fol 28] and confirmed that on the 10th August 2004 he was called to the Wing Wah Restaurant at about ten at night since he was told that there was a problem regarding a Chinese lady. He said that when he arrived he found a Chinese woman with a paper and a file number. The witness said that at that point in time he

could not establish whether she had a work permit or not so he took her to the Police Headquarters in Floriana. From inquiries he made the following day, it resulted that there was a pending application for a work permit. He also came across an application in the name of the witness Wei Hong for an extension of her stay in Malta, dated 5th August which had been decided and it was agreed that she had to leave the island although this decision was not yet communicated to her.

The witness then went on to explain what Wei Hong had told him in particular that she used to go to the restaurant in question during the month prior to him finding her there twice a week for only two hours. She had told him that the owner of the restaurant was Joseph Martin Borg, but Wang Yau Pang, know as Jimmy, used to give her some tips because she used to help him. The witness said he also spoke to Joseph Martin Borg about Wei Hong and he had told him he was responsible for the restaurant but did not know anything about Wei Hong and confirmed he never gave her any payment although he knew that Jimmy used to give her some tips. Jimmy also confirmed with him that he used to give her some of the tips since she used to help him. The witness said that Joseph Martin Borg informed him that he had applied on behalf of the said Wei Hong for a work permit but it was still pending. He confirmed that there was a pending application. The witness went on to say that Joseph Martin Borg had told him that on the day of the inspection he was abroad and thus could not confirm the allegations that Wei Hong was in the restaurant. Joseph Martin Borg also confirmed with the witness that throughout the pendency of the application he had only met Wei Hong twice and that he never gave her any salary. The witness said that Wang Yau Pang had told him also that it was true that Wei Hong and Joseph Martin Borg had met twice.

On the 1st December 2004, **Inspector Mario Haber again gave evidence** [fol 46] in cross examination wherein he stated that he had been working in the Immigration Squad for the last six months and that was the first inspection he

ever did in Bugibba. He said that he knows that there are frequent inspections carried out but apart from the one he had carried out but could not confirm how many inspections were carried out in the area. He said he did not know how long this restaurant had been in operation prior to his inspection but on the night in question there were several other inspections being carried out, more than fifty in number in the same locality. He said that he had come across other foreigners working without the relevant permits who were cooking and cleaning. He said that he did not see Wei Hong working himself and that it was PS 1460 George Farrugia who saw her work. He said that PS 1460 George Farrugia had told him that the restaurant was empty and that Wei Hong was standing either besides or behind the bar and he did not check whether there were any bookings or reservations for that night. The inspection in question was only carried out by PS 1460 George Farrugia. He emphasized that in the restaurant there was raw food ready to be cooked, meat cut in bowls, the cooker was on and even the lights in the kitchen were on. There was no chef in the kitchen. He said it was later on during the day that it resulted to him that the chef was the accused Wang Yau Pang. Asked if he had any witnesses who could confirm that Wei Hong was in the restaurant in question working on any other day prior to the inspection, the witness said he had none.

On the 1st September 2004, **PS 1460 George Farrugia gave evidence** [fol 31] wherein he stated that he recalls that on the 20th August 2004 he was assigned to the Immigration Police and was asked to carry out a number of inspections in different localities in Bugibba to see if there were any foreigners working without a work permit. He said that at about ten o'clock on that same day, he went to a Chinese restaurant where he found a lady. He identified himself and asked her who was responsible for the restaurant and she replied that the owner had fallen sick and went home. He asked her whether she worked there and she replied that she did and so he asked her for the working permit where she showed him a small piece of paper with a reference number. So, he called Inspector Mario Haber to confirm whether that number was in actual

fact a working permit and Inspector Haber asked him to accompany the lady to the Qawra Police Station, which he said he did.

On the 1st December 2004, **PS 1460 George Farrugia again gave evidence** [fol 48] wherein he stated that he is not assigned with the Immigration Police but on that particular date he said he was detailed to work with the Immigration Police. He said he used to carry out those duties occasionally. Asked how many inspections he carried out on the day in question he said they were about twenty or twenty-one. However this was the only case in which he found a person working without a working permit on that day. He did not carry out the inspection alone, but together with PC 1355 and PC 1247. He went on to explain that when he entered the restaurant he saw Wie Hong standing at the entrance and subsequently behind the counter. He said that the restaurant was empty with no patrons and that neither he nor the police officers who were accompanying him asked Wei Hong to serve them anything. He then entered the kitchen, and saw food outside a dresser and Wei Hong placed it in a fridge. He said that Wei Hong collaborated with the Police and that in no way did she obstruct them from carrying out their duties. He confirmed that he did not see Wei Hong working in the restaurant.

On the 1st September 2004, **Alexander Fenech** [fol 33] an employee in the Department of Citizenship and Expatriates gave evidence and said that he was asked to carry out a research to see whether there was an application for a work permit issued in the name of Wei Hong. He said it transpired that there was such application which was approved by the Board, but they were still waiting for the police clearance from the Immigration Office and that thus the final decision was still pending. He said that the said application bore the number CEA2341/2004 but he could not say when it was submitted. He said that Wei Hong had previously applied to work with Orient, an international trading company and that her application was refused.

Alexander Fenech confirmed that due to the objection of the Police, the work permit of Wei Hong was refused on the 11th August 2004 by the Board.

On the 24th January 2005, **the accused Joseph Martin Borg gave evidence** [fol 51] wherein he stated that he is the director of the Wing Wang Restaurant in St. Anthony Street, Bugibba, which restaurant opened three to four weeks prior to the incident in July 2004. Asked how many persons were employed with him prior to the incident in question, the accused said that there were two persons, the co-accused known as Jimmy and another person. Asked if he had ever seen Wei Hong, the accused answered that he had seen her twice before, in November 2004 when he had applied for a work permit for her and subsequently late in June when he was given the equipment for starting the work in the restaurant. Asked what relationship he had with Wei Hong, the accused answered that he was going to employ her as an assistant cook once she would get a work permit and that he applied for her work permit in late May. He stated that the agreement with Wei Hong was that once the permit gets through, he would approach her once again. In the month of June he had spoken to a certain John Buttigieg who works at the Labour Office who had told him that there was no objection from their side to her application to be processed by the Police. Asked to answer to the charge given by the Prosecution against him that he had employed someone without the necessary licence the accused answered that he had never did such a thing and that he only knew what happened when the Police called on him.

The Court took note of the note of submissions of the accused Wang Yau Pang and that of the Prosecution.

The Court agrees with the Defence in principal as to what facts the Prosecution has to prove namely that Wei Hong was not in possession of a working permit on the date of the inspection and secondly that Wei Hong was indeed working at the Wing Wah Restaurant on the day of the inspection.

With regard to the first factor, in particular if Wei Hong had a work permit to work on the 10th August 2004 in the restaurant in Bugibba, the Court makes reference to the evidence of the witness of the Prosecution Alexander Fenech, Principal Officer with the Department of Citizenship and Expatriates, when he said in his evidence of the 11th October 2004, that Wei Hong only had a pending application, and consequently no work permit had been issued till that date.

There is no doubt however that Wei Hong was found on the premises behind the counter in a restaurant, which was open. It is true that there were no patrons in the restaurant and possibly more so there were no bookings for that evening, however the restaurant was open to the public. This is a fact since the Police entered the premises freely and were not stopped and when they entered the kitchen, raw food was noticed prepared in bowls on the cooker and it was Wei Hong who put the food in the fridge. It is to be noted that there was no cook on the premises, in spite the premises being open.

The Court made a thorough appreciation of the evidence given by Wei Hong in particular to that part of the evidence when she said that she went to the restaurant regularly to help her friend Suni, a waitress in the same restaurant in question. When asked if she knew the accused Wang Yau Pang she replied in the affirmative and added that she used to go to help him in the restaurant and at times served clients too. It is true that she repeatedly said that she was not engaged in the restaurant and that she did not have a salary but she certainly said that the accused Wang Yau Pang used to give her tips regularly.

Asked about her work permit she said that the owner Joseph Martin Borg had applied on her behalf to work as an assistant cook in the restaurant. Thus, it is of common knowledge that the accused knew how to cook and so was able to cook the prepared food that was on the counter the day the police walked in.

There is no doubt about it that Wei Hong was used to go regularly at the restaurant and even used to give a helping hand to the staff once needed.

The Defence in her note of submissions state that "if the Prosecution fails to produce evidence that proves beyond reasonable doubt and moral persuasion that Wei Hong was actually working at the restaurant, all the evidence produced to prove that Wei Hong was not in possession of a working permit on the day of the inspection became irrelevant and consequently, the accused cannot be found guilty of the charges brought forward against them."

The Court here makes **reference to the judgment given by the Court of Appeal** in the names **Il-Pulizija v Aboussa Alam Sakili** given **on the 31st August 2000** where it was held that:

"Il-Qorti ezaminat l-provi mressqa b'certa reqqa li sintezi biss taghha nghatat aktar 'l fuq f'din is-sentenza u jidhrilha li l-kaz tal-Prosekuzzjoni gie minnha ppruvat lil hinn minn kull dubbju ragjonevoli. Dan sar principalment mill-ammissjoni tal-istess appellant mad-diversi xhieda li huwa fil-fatt kien qed jahdem. Pero ta' certa rilevanza wkoll il-Qorti jidhrilha huma c-cirkostanzi li fihom instab l-imputat ghax minkejja li effettivament m'instabx jahdem proprju f'dak l-hin, jirrizulta li din kienet biss haga accidentali. Li kieku nstab jahdem il-prova kienet tkun wahda assoluta li fil-kamp kriminali dan ma huwiex rikjest."

The Court examined the evidence brought forward diligently by the parties as clearly indicated above and is of the opinion that the Prosecution succeeded to prove that Wei Hong was not in possession of a working permit to work, even though she is not an exempted person in accordance with the Ordinance. The Prosecution did not need to prove her income from this employment.

It results to the satisfaction of the Court that Wei Hong used to be present in the restaurant in question in order to train until she gets such working permit.

As well noted by the Prosecution in her submissions, **this Court has given her opinion** regarding this matter **in the judgement delivered on the 5th October 2004** in the names **Police v Omar Granata** where it was stated that, "*Mhux xi element kostituttiv ta' dan r-reat li ghandu jkun hemm xi forma ta' hlas jew kumpens ghal xoghol li jkun sar*". Although in this case Wei Hong was receiving tips.

As has been declared in the **judgment delivered by the Court of Appeal delivered on 23rd November 1999** in the names **Police v Paolo D'Arrigo**;

"Li hemm bzonn dan r-reat hu li l-Prosekuzzjoni tipprova li bniedem qed jahdem sabiex b'hekk ikun qed jesercita il-professjoni jew xoghol tieghu minghajr il-permess tal-Prim Ministru w irrespettivament miz-zmien li jkun hadem."

From the evidence tendered by the accused Joseph Martin Borg, who is the director of the Wing Wah restaurant, it resulted that he is the person responsible for the same restaurant. Asked how many persons he had in employment working in his restaurant, he answered he had two, the co accused and another person. So the co accused Wang Yau Pang is only employed in the restaurant, thus cannot be held responsible for the employment of third parties.

Consequently the Court, having seen the relevant sections at law in particular Section 32(1)(b) of Chapter 217 of the Laws of Malta, and article 3A to 10 of Legal Notice 110/1993, declares the accused JOSEPH MARTIN BORG guilty of the charges brought forward against him and condemns him to a fine of five hundred maltese liri and with regards the accused WONG YAU PANG the Court declares that it does not find him guilty of the charges brought forward against him and consequently orders his acquittal.

Informal Copy of Judgement

< Final Judgement >

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