



MALTA

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

**MAGISTRATE DR.
JACQUELINE PADOVANI**

Sitting of the 4th April, 2005

Number. 295/2005

POLICE
INSPECTOR JOSRIC MIFSUD
INSPECTOR PIERRE MICALLEF GRIMAUD
VS
VIDADI MUSTAFAYEV

The Court,

Having seen the charges brought against the accused Vidadi Mustafayev, 49 years of age, son of Khalik and Nidjabed nee' Mehidyev, born in Baku Azerbaijan on the 3rd August 1955 and residing at R Rzh Strait 5, Baku, holder of Seaman's Identity number DK N 0000248, and charge him with having on these Islands, in the Fliegu ta' Kemmuna formerly known as the South Comino Channel, on the 2nd April 2005 at around 1605 hrs, whilst in command of MV Natevan, registered in Azerbaijan, for having contravened or failed to comply with any of the

provisions of the regulations made or deemed to be made under Article 28 of Chapter 352 of the Laws of Malta (Malta Maritime Authority Act).

Moreover, for having on the same day, time and circumstances failed to comply with any direction given by the Authority in exercise of its powers under the Malta Maritime Authority Act or failed to comply with any provision of the act and regulations made there under in breach of Article 78 of Chapter 352 of the Laws of Malta.

Having heard the evidence on oath.

Having seen all documents exhibited in the record of the proceedings.

Having heard the oral submissions of both parties.

Considers:-

From the evidence of the Prosecution, it is evident that Captain David Bugeja, Deputy Master with the Malta Maritime Authority, testifies that he received a report that the vessel Natevan was sailing within the Maltese Territorial Waters and in fact was navigating through the South Comino Channel, which is a prohibited area according to the Laws of Malta. This information was given to him from the Palace Tower Signal Station, it was given to him by the Master of the Malta-Gozo ferry boat. Captain Bugeja confirms that the vessel had been in the vicinities of the Valletta port when it received instructions to go to area 6, which is the bunkering area.

Anthony Caruana, Operations Manager with the Malta Maritime Authority, informed the Court that the ship, the Natevan, had passed through the South Comino Channel and that the witness therefore had called the Palace Tower Signal Station to check this out and the report was confirmed. He exhibited document AC.

Inspector Mifsud exhibited document JM 'sabiex jittiehdu passi kontra' MT Natevan.

Anthony Cassar, at page 39 et seq, exhibited the log book which recorded the time within which the vessel crossed the South Comino Channel. The information was related via the Master of the Gozo Channel ferry boat, the Malita, which position was 36 degrees and 767 North and 14 degrees 20 minutes 194 East.

In cross examination, Anthony Cassar confirmed that in spite of the fact that the vessel Natevan had not given an estimated time of arrival, it had proceeded to bunkering area number 6 and this without having contacted the relevant authorities. He confirmed that every communication between the vessels is meant to be recorded. Mr Cassar, at page 46 in fact corrected himself and said that the vessel Natevan had in fact given an ETA, Estimated Time of Arrival, at 1600 hrs. Asked if he can confirm that in fact there were several communications between the Master and Port Control Personnel who were on shift at the time, so that one hour before the actual crossing of the channel, the accused actually informed Port Control that he was proceeding and gave his bearings, Anthony Cassar stated that he would have checked.

In fact, at page 47, the witness continues:

‘Witness: No because the thing is, it is illegal to pass between the two islands

Defence: I assume so you should highlight this to the Captain right?

Witness: Of course, even the Captain knows according to his charts that he cannot pass through the channel

Pros: Are these communications between the Malta Port Control and the vessels in port are they all recorded?

Witness: Yes.

I need the recording please.’ (see page 47).

In his second testimony, Captain David Bugeja, at page 54 et seq, confirmed that the vessel had given an

estimated time of arrival in Malta, and that it is normal practice that it communicates with that particular bunker which is providing supplies, in this case it was area 6:

‘ so its not that this vessel was an unknown vessel, this vessel wasn’t expected in Malta.’ (see page 55),

‘Court: That was what this Court was led to believed that there was no communication with the vessel and that there was only communication from Malita when the vessel was sighted crossing the channel

Witness: I don’t think that was the case

Court: No it wasn’t the case, is it true also that there was a lot of communication and in fact this vessel had already been ordered and given instructions to proceed to bunkering area 6, and in fact was doing that and it was in communication...

Witness: I am not aware to what you are referring.’

Captain Bugeja testified that it was not normal practice for Malta to give any navigational instructions to a ship, and that this responsibility rests only on the Master of the vessel.

Gilbert Mifsud testified that he works with Valletta Port Control as a Traffic Controller. He confirmed that he had a telephone call from the Captain of the Malita of the Gozo Channel confirming that a ship was crossing the South Comino Channel. Gilbert Mifsud confirmed that he checked on the computer through the internet, and found that in fact, the vessel was the Natevan.

Gilbert Mifsud confirmed that he radioed the ship and asked for its position, and that the accused had in fact confirmed that he was crossing the South Comino Channel. He exhibited the radio conversations on a CD, which was marked and exhibited as exhibit GM. Mifsud confirmed that in his communications with the Master of the vessel Natevan, at around 2.05pm, he was given the ship’s estimated time of arrival, and he was given all relevant information regarding the vessel, that is, the last port of call, nationality, brass and net weight, whether he

was in cargo or in ballast, and the draft. Mifsud stated that when the vessel was five miles from the Valletta port, he had to make contact with the bunker barge and had to be given the area where he had to bunker.

Mifsud confirmed that he knew that the Natevan was going to be given the bunkering area number 6, that is, this area is pre-confirmed with Valletta Port Control. Mr Mifsud could not confirm to the Court that the accused had actually contacted him at three o'clock, one hour before estimated time of arrival, because it was the bunker master who had contacted him. He could not confirm his position, five miles out of the Valletta port:

'if I had to tell you that one hour prior to the actual crossing of the channel, he made contact with Valletta Port and he gave them his route, what can you tell me?

Witness: Li kieku...nista' nghidlek li ghaddej minn hemmhekk hux

Defence: Siegha qabel ma ghadde pero' siegha qabel ma ghadde

Witness: Le siegha qabel ma ghadde ma nafx ma nistax nghid.'

Anthony Vella, at page 70, confirmed the exhibit GM as a CD and confirmed the record of all conversations between the vessels and the port control, and recorded between 1400hrs and 2000hrs on the date in question.

Mario Micallef, at page 73 et seq, stated that the Natevan had called him when they were about two hours away from Malta on the date in question at two o'clock in the afternoon, at the Palace Tower Signal Station. The vessel Natevan was calling to receive bunkers, and the vessel gave him his time of arrival, which was at 1600hrs. Mario Micallef answered that he was to contact him again when the vessel was one hour away. He did this and was told to come five miles east of Valletta Fareway Buoy.

The Captain of the Oil Stone confirmed that the bunker area for this vessel was area 6, and the Captain of the bunker barge gave the Natevan this information.

Mario Micallef stated that the vessel was first given the bunker area number 1 to which he proceeded, but then because of weather conditions, he told the Harbour Master that the bunkering position was to be area number 6 (see page 76).

To go to bunkering area number 6, one had to go around Gozo. Mario Micallef stated that the first time he saw the vessel on the computer was at the end of the channel. Mario Micallef stated that he had only been working on a new system with the internet for the last couple of weeks:

‘at no time did the Captain inform you that he was proceeding to area 6 through the Malta Channel?

Witness: Through the South Comino Channel?

Defence: Through the channel

Witness: Through the South Comino channel no

Defence: Through the channel qallek?

Witness: Jista’ jkun imma...bil-gurament tieghek...’

The accused Vidadi Mustafayev stated that according to normal procedures, on arrival he informed the port control about the estimated time of arrival of his vessel the Natevan. They received instructions to wait five miles away where he informed Valletta Port Control. Valletta Port Control told him to go back to Valletta Port and then to go straight to bunkering area number 6. The instructions to go to bunkering area number 6 came from the bunkering barge. The accused confirmed that he told Valletta Port Control twice about the manner in which he was proceeding.

In cross examination, the accused confirmed that he was using a 1976 map which was updated and corrected in 1988.

Considers:-

From the evidence produced to this Court, it is evident that the accused prior to traversing the Gozo Channel, had informed Valletta Port Control twice of its proposed course, and was not in any way stopped or warned by Valletta Port Control. In fact, it was only when the Master of the Gozo ferry boat witnessed the Natevan traversing the Gozo Channel that he immediately phoned up Port Control to alert them of the situation. It was then that Valletta Port Control radioed the accused as the Master of the Natevan, to stop on that course of action and alerted him that he was not allowed to cross the channel.

It must be said that the Court examined the witness Mifsud and the manner in which he gave evidence in the witness box and finds that his evidence can not be given any credibility at all. In fact, inspite of his repeated confirmation and blustering that he did not know what the position of the Natevan was, after several repeated questions from the Defence, he actually confirmed that the accused might have told him that he intended to cross the Gozo Channel, and this before he proceeded to enter the same channel.

Considers:-

In view of the above evidence that the accused had actually informed Port Control twice of his intended course, that is, to cross the Gozo Channel to proceed to bunkering area 6, and in spite of the fact that Mr Mifsud of Valletta Port Control confirmed that it was not his duty to warn vessels of the restrictions of shipping in the said Gozo Channel, this Court finds it very hard to believe that Valletta Port Control would allow an illegal course, even when broadcasted twice by a Captain, to take place in an unhindered way, posing a threat to smaller pleasure crafts and fishing vessels and swimmers alike, and then to proceed with a criminal action with the imposition of five thousand pounds (Lm5000) fine.

Informal Copy of Judgement

In view of all this, this Court finds that it has no alternative but to find the accused not guilty as charged and acquits him of the charges brought to him.

< Final Judgement >

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