



COURT OF CRIMINAL APPEAL

**HON. MR. JUSTICE
JOSEPH GALEA DEBONO**

Sitting of the 28 th September, 2006

Criminal Appeal Number. 189/2006

The Police

vs.

Acar Cumali

The Court,

Having seen the charge brought against the accused Acar Cumali before the Court of Magistrates (Malta) as a Court of Criminal Judicature for having, on the 8th February, 2006 at about 00.45 a.m., at “Portside Bar”, which is situated at the Ferries, Sliema, having smoked in a closed or private place which is opened to the public and was not in a smoking area in terms of regulation 3 of L.N. 414 of 2004.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature

on the 11th May, 2006, whereby after the Court saw Regulation 3 of L.N. 414 of 2004, on accused's plea of guilty, found the accused guilty as charged and condemned him to an admonition, having had regard to the circumstance of the case.

Having seen the application of appeal filed by appellant Attorney General on the 26th May, 2006, wherein he requested this Court to reform the above mentioned judgement by confirming the declaration of accused's guilt but varying the punishment to one according to law.

Having seen the records of the case;

Having seen appellant Attorney General's ground of appeal is the following namely:

That the First Court on accused's plea of guilty only imposed a simple admonition without having specified the special reasons for awarding a punishment below the minimum prescribed by law when any breach of L.N. 414 of 2004 carries with it a minimum punishment of a fine multa of one hundred Maltese liri (LM100) according to Section 18 (2) of Chapter 315 of the Laws of Malta, which punishment should have been imposed by the First Court.

Having seen accused's updated Criminal record filed by the prosecution as ordered by this Court;

Having seen the minute entered in the record of today's sitting whereby accused, a Turkish national residing in Malta declared that although he was conversant with the Maltese language, he would prefer if the proceedings were conducted in the English language from now onwards;

Having seen the Courts' decree of today's date whereby it ordered that proceedings will henceforth be conducted in the English language for accused's benefit;

Having heard oral submissions by counsel;

Having duly considered:

That the offence admitted by the accused before the First Court is that covered by Regulation 3 (not “Article” as stated in the judgement appealed from) of the Smoking in Premises Open to the Public Regulations (L.N. 414 of 2004), which provides that :-

“Smoking is hereby banned in any enclosed private or public premises which is open to the public except in designated smoking rooms”.

That these regulations do not provide for the punishment in case of their breach, however the punishment is specified in the principal act, namely the Tobacco (Smoking Control) Act (Chapter 315) which in Section 18(1) provides that :-

“Any person who contravenes or fails to comply with any of the provisions of this Act or of any regulations made under this Act shall be guilty of an offence against this Act.”

Sub-section (2) provides :-

“Any person guilty of an offence against this Act or against any regulations made under this Act, shall, without prejudice to his liability under any other law, be liable, on a first conviction, to a fine (multa) of not less than one hundred liri and not exceeding five hundred liri, (underlining of this Court).

Therefore there is no doubt that when the First Court condemned the accused only to the punishment of admonition which is a punishment appertaining to contraventions, it had imposed a punishment less than the minimum expressly established by this special law.

Having considered that :

The Attorney General is justified in stating that in its judgement the First Court did not mention any special and extraordinary reasons which could have justified such a reduction in the punishment, as laid down in Section 21 in the Criminal Code which states that :-

“The Court may, for special and exceptional reasons to be expressly stated in detail in the decision, apply in its discretion any lesser punishment which it deems adequate, notwithstanding that a minimum punishment is prescribed in the article contemplating the particular offence” (underlining of this Court).

That when the First Court awarded the punishment of admonition it stated only textually “*stante ic-cirkostanzi tal-kaz*”.

In the considered opinion of this Court such very vague and generic motivation does not satisfy the requirement of Section 21 which states that the First Court should expressly state in detail what the special and extraordinary circumstances are. In the absence of such indication of these special and extraordinary reasons, the First Court could not have awarded a punishment less than the minimum prescribed by law.

For these reasons the Court is upholding the Attorney General’s appeal and varying the judgement of the First Court by confirming it where, upon accused’s plea of guilty, it found him guilty of the charge proffered against him and revoking it where it condemned accused only to an admonition and instead, after seeing Section 18(2) of Chapter 315 and Regulation 3 of L.N. 414 of 2004, condemns the accused to a fine (multa) of one hundred pounds (LM100).

Informal Copy of Judgement

< Final Judgement >

-----END-----