

Kopja Informali ta' Sentenza



**QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI**

**MAGISTRAT DR.
MIRIAM HAYMAN**

Seduta tad-9 ta' Jannar, 2008

Numru 1/2009

**The Police
(Sp. Pierre Grech)**

v

**Momin Yusa Yahya
22 years son of Momin and Jnabo nee Gebri
Born in the Ivory Coast of Africa on the
1/1/1985 residing at No. 4 St Andrews Street,
Zurriq and holder of ID 38244 (A)**

The Court,

Has seen the charge against the above mentioned Momin Yusa Yahya charged with having on these islands on the night between the 2nd and 3rd August, 2007 been in

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Qrati tal-Gustizzja

possession of the resin obtained from the plant cannabis, or any other preparation of which such resin forms the base, in breach of Section 8 (a) of the Chapter 101 of the Law of Malta; which offence took place in, or within 100 metres of the perimeter of a school, youth club or centre, or such other place where young people habitually meet, and in conditions denoting that the said drug was not intended for his exclusive use.

In the case of a conviction the Court is also requested to sentence the person convicted or the persons convicted, jointly or severally, to the payment, wholly or in part, to the registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee, including such experts as would have been appointed in the examination of the proces verbal of the inquiry, within such period and in such amount as shall be determined in the judgement or order in terms of article 533(1) of Chapter 9 of the Laws of Malta.

Seen the order issued by the Attorney General under Chapter 101 of the Laws of Malta a folio 8.

Seen also that under examination (without oath) accused answered he was not guilty as charged.

Seen also the Court order for these proceedings to be conducted in the English language a folio 9.

Considers

This case revolves around the finding of the substance cannabis resin on the person of the accused by two police officials who, according to their evidence, found his antics suspicious. On the other hand accused issued a statement under interrogation and later, viva voce under oath, testified that although such substance was found on his person by the police, this did not belong to him but to an Italian male to whom he had given assistance.

It is pacific between parties and definitely not in contestation that the substance found on the accused by

PC 101 Enriques and Spiteri was cannabis resin to the weight of 15.31 grams as concluded by Court expert Pharmacist Mario Mifsud, vide Dok MM a folio 72.

It is also confirmed by the Court appointed architect Valerio Schembri that accused was apprehended within hundred metres of parameters of any place, club, centre or such other place where youngsters habitually meet – such place has to be without any doubt the centre of Paceville in the month of August!!!

Considers

As already premised two were the police officers who apprehended accused. Thus PC 101 Noel Enriquez testified that around 1.30 a.m. he together with his colleague, were patrolling Paceville in the vicinity of Clubs Bohemia and Axis there they noticed, as he was noticed in other parts of St Julians, the accused loitering. At about the premised time they (the police) stopped the accused in the vicinity of Axis and inquired about his presence – he replied that he was waiting for a friend. A search was conducted on his person and the mentioned cannabis as well as the sum of sixty Maltese lira were found. PC 101 also considered that before such a search was conducted on he witnessed accused hand something silverfish to a person who, for him seemed a student. Under cross examination Enriquez testified that when he saw the exchange between the accused and this student he was a distance of one to two metres away, and this from the headlight of the police car. Asked why such a search was conducted on accused, Enriquez answered because accused aroused suspicions because he was seen loitering in three different places and because he was seen handing over this silverish something to this would be student. Questioned at length why the student was not also apprehended, this police official answered that since he had already moved away, for fear of leaving their official car with its contents therein unattended, they chose to let the student go.

Re asked whether at any one of the locations that accused had been viewed, they had witnessed any person unconscious on the ground, he answered in the negative.

PC 1138 Andrei Spiteri was the other police official who participated in apprehending the accused.

PC 1138 Andrei Spiteri also testified about the reason, manner and result of accused's arrest. He spoke about having been on patrol with his colleague PC 101. Here he witnessed the accused at three different localities in the area of St Julians and Paceville. He testified that once accused was seen giving something to a French student, he was apprehended and searched packets of cigarettes full of alleged cannabis substance were found in his possession. Asked what version accused tendered a tempo vergine, Spiteri answered that accused had informed them that he was waiting for a friend. However, no other person was witnessed in the vicinity of the accused except for the above mentioned student.

Under cross examination Spiteri reiterated his previous version of facts adding that the "acquirer student" was not apprehended for fear that accused would actually run away and also because both police officials feared leaving the police car unattended.

On his part accused released a statement to the investigating police and chose to give evidence under oath.

In his statement he denied any knowledge of the contents of the foil as also of the fact that the contents were his. At this stage he explained that on the night of his arrest he was alone in Paceville close to Axis Discotheque, here he saw a man lying on the ground because of water trailing down towards this man, the accused urged him to get up. Upon doing so this man gave the accused three packets of cigarettes because this stranger wanted to go to the toilet to clean himself. On returning this stranger told the

accused that he was an Italian, in Malta on holiday. During this exchange of information between the two, the police arrived and this Italian vanished and thus accused arrested. Asked why he did not return the packets of cigarettes to the Italian on his return, accused answered that the Italian had informed him he would take them when he was leaving.

Viva voce he repeated having seen this man lying on the road and water coming towards this person. He reiterated that this man asked him to keep the packets of cigarettes for him till he went to clean his clothes. Accused testified that on the Italian guy's return he had wanted to return the packets of cigarettes, but the Italian had asked him to wait, to chat a bit and later on his departure he would take the cigarettes. It was at this point that the Police arrived. On seeing the Police approach the other guy, Italian according to the accused, ran away. Accused denied any exchange of anything with this guy.

Considers

The Court is thus faced with an acceptance of accused of possession of packets of cigarettes but a denial on his part of ownership thereof or knowledge of contents thereof. Accused also denies and transmission of any object between him and this Italian stranger – a transmission clearly witnessed by the two apprehending police officers. In fact accused although accepting the passage of the packets of cigarettes, three, from the Italian to himself, makes no mention, once he chose to give evidence, of the silver foil object transmitted from him to any other person, denying any exchange from himself to the Italian. On the other hand the policemen were categorical about the exchange of this foiled wrapped object, at a stage when they had no knowledge that other foiled wrapped material was in the packets of cigarettes in the possession of the accused. Moreover the Court is fully satisfied with police officers reason why accused was apprehended and the student (whose nationality frankly is not important) not followed for the same purpose. The

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Court does not uphold defence's theory that such was done due to accused's skin colour. The Court does not believe that police officers apprehended accused only because they believed that he was more suspicious than the actual "student".

Thus the Court finds accused guilty as charged after having seen section 8, 22(2)(b) of Chapter 101 of the Laws of Malta and condemns him for eight months imprisonment and to a fine of 1163 Euros (500 Maltese liri).

< Sentenza Finali >

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