



CRIMINAL COURT

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

Sitting of the 9 th June, 2008

Number 6/2007

The Republic of Malta
Vs
Steven John Lewis Marsden

The Court,

Having seen the bill of indictment no. 6/2007 against the accused Steven John Lewis Marsden wherein he was charged with:

After the Attorney General premised in the First Count of the Bill of Indictment that Steven John Lewis Marsden planned to import drugs illegally into Malta in agreement with others. In fact on the night of the ninth (9) and tenth (10) of July, two thousand and six (2006) and the preceding months he intended to get from Alicante in South Spain a considerable quantity of drugs illegally which he had acquired from another

person with whom he had agreed about the deals. The intended drugs included specifically ecstasy pills. That accused used to agree with others to obtain the drugs in Spain, planning the route and means of transport to Malta and to whom to sell the drugs, providing all necessary assistance for this illegal activity causing untold harm to Maltese society.

By committing the abovementioned acts with criminal intent, *Steven John Lewis Marsden* rendered himself guilty of conspiracy to trafficking in dangerous drugs in breach of the provisions of The Medical and Kindred Professions Ordinance.

Wherefore, the Attorney General, in his aforesaid capacity, accused *Steven John Lewis Marsden* of being guilty of having, with another one or more persons in Malta, and outside Malta, conspired for the purpose of committing an offence in violation of the provisions of the Medical and Kindred Professions Ordinance (Chapter 31 of the Laws of Malta) and specifically of dealing illegally in any manner in ecstasy pills and of having promoted, constituted, organized and financed such conspiracy.

Demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than one thousand Maltese Liri (Lm1000), and of not more than fifty thousand Maltese Liri (Lm50,000), and the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in sections 120A(2)(a)(I), (2A), (2B) and 121A (1) (2) of Chapter 31, and in sections 20, 22, 23 and 533 of the Criminal Code, or to any other punishment applicable according to law to the declaration of guilty of the accused.

Having seen the Note filed by accused on the 15th. February, 2007, in which he gave notice of the following preliminary pleas :-

(1)the lack of jurisdiction of the Maltese Courts on the allegation of conspiracy or of dealing, as the Bill of Indictment does not in any way provide any indication that the *actus reus* was committed in Malta.

(2)The charge is not based on the facts as resulting from the compilation of evidence.

(3)In this case, as amply appears from the records, the accused actually imported into Malta pills which were not against the law and are not drugs and therefore there is no offence. The alleged conspiracy, even if it were committed in Malta, followed by importation is absorbed in the importation, and in this case there was no illegality and no breach of Chapter 31 of the Laws of Malta.

Having seen the minutes of the sittings of the 19th. October, 15th. November, 2007 and of the 14th. February, 2008, where an adjournment was sought pending the decision of an appeal from this Court's decision on a similar plea of jurisdiction raised in the case of Charles Kenneth Stevens and subsequently to await the outcome of a Human Rights Case lodged by said Stevens before the European Court of Human Rights.

Having seen the minutes of the sitting of the 15th. May, 2008 , where accused declared that, at that stage, he was withdrawing his first plea regarding the lack of jurisdiction of the Maltese Courts in this case and was filing a note renouncing to the first plea regarding jurisdiction and having seen said Note.

Having heard submissions by learned Counsel for the Defence and learned Counsel for the Prosecution in the course of the same sitting.

Having seen its order bringing the date of the case forward to today's sitting for judgement, in view of the

fact that accused has not been granted bail and that therefore this case should be given priority over other pending trials.

Now therefore considers.

That with regard to the second preliminary plea filed by accused, namely that the charge is not based on the facts as resulting from the compilation of evidence, although it is not expressly stated in accused's Note, this second plea, as far as this Court can make out, would appear to be a plea of nullity of the bill of indictment based on article 449 (1) (b) and on paragraph (b) of sub-article (5) of said article of the Criminal Code, which paragraph refers to the case when *"... the fact stated in the indictment does not constitute, in substance, the offence stated or described in such indictment ."* Now for a similar plea to be upheld it is necessary that that the facts as described in the bill of indictment the nullity of which is being pleaded do not in substance constitute the crime with which accused is being charged in that bill of indictment or in a particular count of said bill of indictment. (vide. Judgement of this Court of the 20th June, 1995 in re: "Ir-Republika ta' Malta vs. Aibrahim Bashir Ben Matue" confirmed on appeal on the 15th February, 1996, "Ir-Repubblika ta' Malta vs. Lawrence Gatt et." [6.12.2002], confirmed by the Court of Criminal Appeal on the 22nd. May, 2003; "Ir-Repubblika ta' Malta vs. Dominic Bonnici" [5.1.2004] confirmed on appeal on the 22nd.April, 2004, and others.)

In these judgements the Court quoted abundantly from case law where it was held that in examining whether the facts, as stated, are related to the part of the indictment containing the charge, the Court has to limit itself to the facts as stated in the bill of indictment and not as these facts might result from the acts of the compilation of evidence or indeed the facts as they might eventually result in the course of the trial by jury.

It has also been held by our Courts that the reason for the annulment of the bill of indictment should emanate from the document itself and the Court should not go into and investigate the truth or accuracy of the facts stated in the bill of indictment but it should limit itself to ensure that the formal requisites prescribed by law have been observed.

In "Rex. vs. Strickland" [21.3.1923] (Vol. XXV, p.iv. p.833) it was held that:-

"Tanto secondo la nostra giurisprudenza quanto secondo quella inglese, la nullita' dell'atto d'accusa non si accorda per ragioni nel merito ma per difetti sostanziali recanti un pregiudizio, non altrimenti rimediabile nell' accusato, risultanti dalla faccia dello stesso atto che si impugna..... Da altre sentenze stampate risulta che quando si e' trattato della nullita' o meno dell' atto d'accusa, tale atto e' stato sempre esaminato per se stesso, indipendentemente dal merito e delle prove."

Having considered;

That the first and only count of the bill of indictment in this case refers to the crime of conspiracy for the purposes of committing an offence in violation of the provisions of Chapter 31 of the Laws of Malta, and specifically of dealing illegally in any manner in ecstasy pills and of having promoted, constituted, organised and financed such conspiracy. The facts upon which the Attorney General intends to base his accusation in this count of the bill of indictment are the following:-

"That Steven John Lewis Marsden planned to import drugs illegally into Malta in agreement with others. In fact on the night of the ninth (9) and tenth (10) of July, 2006, and the preceding months he intended to get from Alicante in South Spain a considerable quantity of drugs illegally which he had acquired from another person with whom he had agreed about the deals. The intended drugs included specifically ecstasy pills.

That accused used to agree with others to obtain the drugs in Spain, planning the route and means of transport to Malta and to whom to sell the drugs, providing all necessary assistance for this illegal activity"

"By committing the abovementioned acts with criminal intent, Steven John Lewis Marsden rendered himself guilty of conspiracy to trafficking in dangerous drugs in breach of the provisions (of) the Medical and Kindred Professions Ordinance."

That it is obvious that the facts as stated in the narrative part of this count of the bill of indictment, and in particular the parts underlined by this Court, if proven, would constitute the offence of conspiracy accused is being charged with.

As such on the face of it the bill of indictment purports to state facts which are in perfect consonance with the charge.

If on the other hand this plea is to be understood in the sense that the evidence collated in the course of the compilation of evidence would not lead to a verdict of guilt under the only count of the bill of indictment, this would not be a preliminary plea but more of a plea to the general issue which can only be decided by the jury at the appropriate stage of the trial.

Therefore this second plea is unfounded at law and is being dismissed.

With regard to the third plea, accused was arraigned and charged with three offences, namely that of conspiracy for the purposes of selling or dealing in a drug (ecstasy), that of importing or offering to import psychotropic and restricted drugs (ecstasy) and of having had in his possession such drug without special authorisation under such circumstances that indicated that such possession was not intended for

his exclusive use. On filing the bill of indictment, the Attorney General limited himself to just one offence, namely that of conspiracy. Accused argues that he actually ended up by importing into Malta pills which were not against the law and which were not drugs. As such, once he has not been charged with the importation or possession of drugs, and once the offence of conspiracy would have been absorbed in these two offences if he had been charged therewith and found not guilty thereof, he should be likewise declared not guilty of the charge of conspiracy contained in the only count of the bill of indictment.

To this Court's mind, this is a convoluted way of reasoning and cannot form the basis of any successful preliminary plea. Even if accused is correct in stating that the actual importation did not involve prohibited or restricted drugs, this does not debar the Attorney General from charging accused with conspiracy on the basis of other evidence, independently of what was the subject matter of the actual importation. Indeed, even if there resulted the importation and possession of an illegal drug, there was nothing to stop the Attorney General from limiting himself to charging accused solely with conspiracy. This is absolutely his prerogative and it cannot be queried by his Court for all that matters.

Accused is not juridically correct when he expects firstly that the Attorney General should have also charged him with the importation of the drugs and then, because the charge of conspiracy - for purposes of punishment only according to article 17 (h) of the Criminal Code - would have been absorbed into the charges of importation and possession, if the latter did not result as proven, he would likewise have had to be acquitted of the charge of conspiracy. This line of reasoning simply does not hold water legally.

Moreover, whether, in that hypothetical case, a jury would have acquitted accused of the other charges of importation and possession, is purely a matter of

conjecture and certainly can never be decided or assumed by the Judge in the Criminal Court, as matters of fact are reserved solely for the jury to decide.

Accordingly also this plea is being dismissed.

For the above reasons, this Court is abstaining from taking further cognizance of the first plea of lack of jurisdiction as this was withdrawn by accused and is dismissing the second and third preliminary pleas of accused.

The case is being adjourned *sine die* until the final outcome of any eventual appeal from this judgement is known, or, in case an appeal is not lodged, until it is this case's turn to be heard by the jury, considering any priority that has to be given to this case in view of the fact that accused has been refused bail.

In the meantime accused is to remain under preventive custody.

< Final Judgement >

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