



COURT OF CRIMINAL APPEAL

**THE HON. MR. JUSTICE
DAVID SCICLUNA**

Sitting of the 12 th November, 2008

Criminal Appeal Number. 404/2007

The Police

v.

Fredrick Schell

The Court,

Having seen the charges brought against the said Fredrick Schell before the Court of Magistrates (Malta) as a Court of Criminal Judicature that in these Islands, in these last years, with several acts committed at different times and which constitute violations of the same provision of the law and committed in pursuance of the same design;

a. Missapplied, converting to his own benefit or to the benefit of any other person anything which has been entrusted or delivered to him under a title which implies an

obligation to return such thing or to make use therefore for a specific purpose; that is misapplied money that the company WWF Travel TV plc, collected from the employees of the same company and this after a monthly deduction of money was effected from the wages of the said employees as tax due to the Government of Malta, and so that the same money gathered as tax from the employees of the said company was to be paid to the Inland Revenue Department within the time prescribed by the law which money amounted to more than Lm50,000 and which had to be paid to the Department of Inland Revenue and the Government of Malta, and which amount of money had been entrusted and/or delivered to him as Director of the company WWW Travel TV plc, under a title which implies an obligation to return such thing and/or make use thereof for a specific purpose , and this by reason of his profession, trade, business, management, office or service or in consequence of a necessary deposit, and this in breach of Article 293 and 294 of Cap 9, of the Laws of Malta;

b. On behalf the Commissioner of Inland Revenue, he is also charged with having in these Islands during these last years, in his office as Director of WWW Travel TV plc, with several acts at different times and made with one resolution, as an employer and/or manager, and/or principal officer and/or payer, and therefore responsible according to section 23(1) of the Income Tax Management Act, Cap 372 (hereinafter referred to as the 'Act') and regulation 30 of the 1998 Regulations on the Final Settlement System (FSS) Rules (hereinafter referred to as the 'Regulations'), after having been paid income taxable under section 4(1)(b) and/or (d) of the Income Tax Act, Cap 123 in breach of the provisions hereinafter mentioned:

1. Failed to remit to the Commisioner of Inland Revenue within the time prescribed by law, the tax deducted from the same income as obliged to do under section 23(1) of the Act and regulation 15(1) of the Regulations covering the period from April 2000 till

November 2001 and this with respect to the sum of sixty thousand Maltese liri (Lm60.000);

2. Failed to remit to the Commissioner of Inland Revenue within the time prescribed by law the detailed prospects according to section 23(2) of the Act and regulation 15(1) of the Regulations covering the period from April 2000 till November 2001;

3. Failed to remit within the prescribed time the annual returns (the prospects, document/s) which consist of forms FS 3 and FS 7 for the year 2000;

4. Having exercised any profession or occupation or held any appointment or been employed by any other person or engaged in business without a licence from the Minister responsible for Immigration and this in breach of section 11(1) of Cap. 217 of the Laws of Malta.

The Court was requested, apart from awarding punishment prescribed by law, in the name of the Commissioner of Inland Revenue, to order the said Fredrick Schell to abide by the Income Tax law and this in accordance with section 23(9) of the Income Tax Management Act.

The Court was also requested, apart from awarding punishment prescribed by law, to declare the said Fredrick Schell a prohibited immigrant and to issue a removal order against him, and this in terms of section 15 of Cap. 217 of the Laws of Malta;

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 7th November 2007 by which that Court acquitted the said Fredrick Schell from the charges brought against him under Chapter 372 and 123 of the Laws of Malta as also those brought against him under the Final Settlement System and Regulation 1998 but found him guilty as charged under section 11 of Chapter 217 of the Laws of Malta and condemned him to the payment of a fine of five hundred Maltese liri (Lm500);

Having seen the application of appeal filed by the Attorney General on the 21st November, 2007, wherein he requested this Court that, while confirming Fredrick Shell's guilt in relation to the offence for having exercised any profession or occupation or held any appointment or been employed by any other person or engaged in business without a licence from the Minister responsible for Immigration and this in breach of section 11 (1) of Chapter 217 of the Laws of Malta and confirming the imposition of the fine of five hundred Maltese liri (Lm500) therefor, to annul and revoke that part of the said judgement where the Court of Magistrates (Malta) did not find Fredrick Shell guilty of "misappropriation" and of the "charges under Chapter 372 and 123 of the Laws of Malta" as abovementioned and instead to find Fredrick Schell guilty also of the crimes of "misappropriation" and of the "charges under Chapter 372 and 123 of the Laws of Malta" as mentioned in the charge sheet and in the first part of the appeal and to inflict the punishment therefor in terms of Law;

Having seen respondent's plea of the 5th November 2008 in the sense that the demand in the application of appeal has not been formulated according to law thus rendering the appeal null;

Having seen the records of the case;

Having heard submissions by the parties to the case;

Having considered:

From a reading of the appealed judgement it results that respondent Fredrick Schell was only found guilty in respect of the charge brought against him in terms of section 11(1) of Chapter 217 of the Laws of Malta and marked as number four (4), having been acquitted from all the other charges. Nonetheless the demand in the application of appeal is so that this Court confirms the appealed judgement insofar as respondent was found guilty and condemned as aforesaid and revokes that part

where he was acquitted and instead that he be found guilty thereof as well and accordingly condemned to the appropriate punishment. This is a similar situation to that in the judgement delivered on the 14th April 2005 in the names **Il-Pulizija v. Joseph Grech**¹ where the appellant in that case (the person charged) had requested the Court to *“tikkonferma s-sentenza appellata in kwantu l-ewwel akkuza, b’dan illi tirrevoka s-sentenza appellata in kwantu t-tieni u t-tielet akkuza u tilliberah minnhom.”*²

Now, section 419 of the Laws of Malta provides that the application of appeal should contain **“under pain of nullity”: “(c) a demand that the judgment of the inferior court be reversed or varied”**. This Court has consistently quashed applications of appeal where the dictates of the law are not scrupulously observed; and this because it has always been held that where the demand should have been for the variation of the judgement and instead the reversal of the judgement is requested, this amounts to the total absence of the appropriate demand.

In its judgement of the 30th June 1995 in the names **Il-Pulizija v. Joseph Galea**, this Court dealt with the matter of the nullity of applications of appeal in depth and reached the following conclusions:

“(a) Bhala regola generali, id-disposizzjoni in ezami, cioe` li r-rikors ghandu jkun fih it-talba ghat-tahsir jew ghat-tibdil tas-sentenza, giet ‘very strictly and rigidly interpreted’ (The Police v. John Hill, Criminal Appeal, 23/9/72).

“(b) Ghalkemm il-ligi titkellem dwar talba ghat-tahsir jew ghat-tibdil, fil-prassi ta’ din il-Qorti dejjem gie accettat, fil-kazijiet li hekk jippermettu, li jkun hemm kemm talba ghat-tahsir kif ukoll talba ghat-tibdil, purche` li din it-tieni talba tkun subordinata ghall-ewwel wahda. Infatti, anke jekk intalab biss it-tahsir,

¹ Per Mr. Justice Joseph Galea Debono.

² In that case appellant had furthermore requested, but only *in subsidium*, that *“f’kaz li dan l-appell ma jintlaqax u fir-rigward il-piena tintalab ir-riforma tas-sentenza f’dak li ghandu x’jaqsam mal-iskwalifika tal-licenzja.”*

din il-Qorti tista' flok thassar ghal kollox is-sentenza u konsegwentement tillibera lill-appellant jew issib hati lill-appellat - skond min ikun appella – tilqa' l-appell in parti u tbiddel is-sentenza, per ezempju limitatament ghall-piena inflitta fuq l-appellant. Mill-banda l-ohra, jekk is-sentenza appellata tkun in parti sabet hati lill-appellant u in parti illiberatu minn xi akkuzi jew imputazzjonijiet, gie dejjem ritenut li jekk flok talba ghat-tibdil issir talba ghat-tahsir, ir-rikors ikun null (P. v. Anthony Zammit, 1/10/60, Vol. XLIV.iv.940; P. v. Richard Vincenti Kind, App. Krim., 16/9/72); P. v. Carmelo Agius, App. Krim., 14/10/72).

“(c) *Ir-raison d'etre* tal-paragrafi (a), (b) u (c) tas-subartikolu (1) tal-artikolu 419 huwa s-simplifikazzjoni u l-kjarezza. Il-legislatur evidentement ried li r-rikors ghandu jkun redatt b'tali mod li mill-ewwel ipoggi kemm lill-Qorti kif ukoll lill-intimat fil-posizzjoni li jkun jafu ezatt x'inhuma l-fatti kollha essenzjali, minn xhiex qed jilmenta l-appellant, u x'inhu jitlob.”

It has also been retained that the best format to follow when the demand is for the judgement to be varied, reformed, changed or altered, is that first the request to vary, reform, change or alter the judgement should be made, this should be followed by a request for the confirmation of that part of the judgement in respect of which appellant has no grievance, then a request for the reversal, revocation or annulment of that part which the appellant feels aggrieved by, and finally the prayer for the requested change, viz. the acquittal or reduction of punishment, or as the case may be, the finding of guilt and imposition of punishment³.

In this case, as in the aforementioned case **Il-Pulizija v. Joseph Grech**, appellant did not request this Court to vary or reform the appealed judgement and consequently his application of appeal is null.

³ See Criminal Appeals: **Il-Pulizija v. Joseph John Agius**, 9th April 2003; **Il-Pulizija v. Joseph Grech**, 14th April 2005.

Informal Copy of Judgement

For these reasons:

Respondent's plea is acceded to, the application of appeal is hereby declared null and this Court hereby abstains from taking any further cognisance of it.

< Final Judgement >

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