



## **COURT OF CRIMINAL APPEAL**

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

Sitting of the 26 th November, 2008

Criminal Appeal Number. 103/2008

**The Police**

**v.**

**Graham Yu Mei Zhang**

The Court,

Having seen the charge brought against the said Graham Yu Mei Zhang before the Court of Magistrates (Malta) as a Court of Criminal Judicature that on the 15<sup>th</sup> September 2005 in Yu Mei's Chinese Restaurant, 36B Triq San Gorg, San Giljan At the request of the Employment and Training Corporation, on the 15<sup>th</sup> August 2005 and before this date, failed to notify the Employment and Training Corporation that she had employed with her Long Yun, a person of foreign nationality;

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 9th April 2008 by which that Court, after having seen section [*recte*: regulation] 3(a) of Legal Notice 110/93 and article [*recte*: regulation] 10 of Legal Notice 110/93, found the said Graham Yu Mei Zhang guilty as charged and condemned her to the payment of a fine of one thousand, one hundred and sixtyfive euros (€1,165);

Having seen the application of appeal filed by the said Graham Yu Mei Zhang on the 16<sup>th</sup> April 2008 wherein she requested that this Court reverses, revokes and annuls the said judgement and acquits her from all charges and punishment at law;

Having seen the records of the case;

Having heard the evidence;

Having heard submissions by the parties to the case;

Having considered:

That appellant's grievance lies in the fact that a distinction should be drawn between a person who works normal working hours and a person who is at the workplace simply on trial as was the case here.

Now, this Court heard the evidence tendered by the Employment and Training Corporation inspectors Louis Buhagiar and John Calleja. From the evidence tendered it would appear that on the 15<sup>th</sup> September 2005 they carried out an inspection at appellant's restaurant called "Yu Mei's Chinese Restaurant" in St. George's Road, St. Julian's, and that they found working there as chef a certain Long Yun. According to Louis Buhagiar no explanation was given by appellant as to the said Long Yun's presence there. Moreover, as it did not result that the ETC had been informed about the said Long Yun's employment, a request was made by the ETC to the Police to institute proceedings against appellant, specifically, according to the letter at page 2 of the

records: *“Talli fil-15 ta’ Settembru 2005 u qabel din id-data nqast li tavza lill-Korporazzjoni tax-Xoghol u Tahrig, li haddimt mieghek lil Long Yun, persuna ta’ nazzjonalita` barranija”.*

However, when the charge was prepared by the Executive Police, it was written in the following incongruous format – reproduced in this judgement in the opening paragraph:

*“Billi int akkuzat li fil-15/09/2005 f’Yu Mei’s Chinese Restaurant, 36B Triq San Gorg, San Giljan*

*Fuq talba tal-Employment & Training Corporation, talli fil-15 ta’ Awissu 2005 u qabel din id-data, nqast li tavza lill-Korporazzjoni tax-Xoghol u Tahrig li haddimt mieghek lil Long Yun, persuna ta’ Nazzjonalita` barranija.”*

Whoever typed out the charge mistakenly typed “Awissu” instead of “Settembru” because the charge itself starts by making reference to the “15/09/2005”. The mistake was so evident that appellant did not even include the matter of the date as one of her grievances in her application of appeal and the point was only raised during the hearing of the case before this Court. This Court has often stated, however, that it will only take cognisance of those grievances raised in the application of appeal.

Nonetheless it must be pointed out that after hearing the evidence the presiding Magistrate proceeded to write the judgement in her own hand on the charge sheet, making reference there to “Having seen the charge”. Although the presiding Magistrate did not refer to a specific date, it is quite obvious that she was referring to the 15<sup>th</sup> September 2005 as on the back of the charge sheet where the presiding Magistrate’s notes are, there is reference to the names of the witnesses Louis Buhagiar and John Calleja and under each of their names the date “15.09.2005” is written. Clearly therefore, when the first Court found appellant guilty “as charged”, it was referring to the 15<sup>th</sup> September 2005. Unfortunately whoever transcribed the judgement (at p. 12 and 13) left out the first part of the

charge and made reference to the mistaken date “15<sup>th</sup> August 2005 and before this date”.

Indeed from the evidence tendered by inspectors Buhagiar and Calleja, there is nothing to suggest that Long Yun was already in employment on the 15<sup>th</sup> August 2005 as they found him working in appellant’s kitchen on the 15<sup>th</sup> September 2005. Furthermore, although appellant states that the said Long Yun was only working in the kitchen “on trial”, there is no evidence at all to suggest this. Consequently the appeal is to be dismissed.

For these reasons:

The Court dismisses the appeal and confirms the judgement of the first Court insofar as it found appellant guilty of having on the 15<sup>th</sup> September 2005 and before such date failed to notify the Employment and Training Corporation that she had employed with her Long Yun, a person of foreign nationality, and insofar as it condemned her to the payment of a fine of €1,165.

**< Final Judgement >**

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