



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.
CONSUELO-PILAR SCERRI HERRERA**

Sitting of the 7th April, 2009

Number 900/2003

The Police
Inspector Edel Mary Camilleri
V

BASSAM EL AMMAMI

The Court

Having seen that the accused **BASSAM EL AMMAMI**, aged 47, son of Ghaleb and Sultana nee Nasr, born in Syria on the 4th June 1961 and residing at 10, 'Moonwind', Enrico Sacco Street, Marsa, in possession of a identity card number 21488A was arraigned before her accused with having on the 17th July 2003 and later dates, in Santa Venera, and other areas on these Islands, by means of unlawful practice or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or any imaginary power, influence or credit, or to create the

expectation or apprehension of any chimerical event, shall make any gain to the prejudice of another person, therefore made gain of LM4300 to the detriment of the Golden Shepherd Group Limited.

Having heard the accused declare that he understands the English language well and that he understood the charges brought forward against him by the prosecution.

Having seen all the documents exhibited in the acts of these proceedings in particular the statement released by the accused on the 4th August 2003 exhibited at fol 15 et seq, the kwerela of Dottor James Bannister (fol.13), and the sections at law sent by the Attorney General on the twenty fourth of June 2004 (fol. 40) so that this case may be dealt with summarily by this Court as a Court of Criminal Judicature in accordance with section 370(3)(b)(c)(e) of the Criminal Code.

Having seen that the accused had no objection to his case to be dealt with summarily as declared by himself during the sitting of the 6th September 2004 (fol. 44).

Having heard all the witnesses produced by the prosecution and the same accused give evidence on the 26th February 2009.

Having taken note of the note of references presented by the defence.

Having considered:

On the 3rd March 2004 **Police Inspector Edel Mary Camilleri** (fol. 9) took the witness stand and on oath stated that on the 29th July 2003 a kwerela had been drawn up by Dottor James Bannister on behalf of the Golden Shepherd Group Limited wherein he was requested to investigate a case concerning the issuing of a Bank of Valletta cheque for the amount of LM4300 being payable to St. Philip Hospital by Bassam El Ammami.

She stated that it resulted to her, that this cheque had been presented at the bank so that it could be cashed but it had been referred to drawer on the 19th July 2003 although the date of the same cheque was 17th July 2003. The witness exhibited a photocopy of the cheque in question which was marked as Doc. EMC 1.

She stated that she spoke to John Depasquale in his capacity of financial controller of St. Philip Hospital who stated that on the 10th July 2003, a certain Libjan national whose name was Tarek Salah Barkallah was accompanied by an employee of the Libjan Embassy by the name of Alahrash and the accused to hospital and this because Tarek Salah Barkallah needed to undergo an operation. He signed a pre-registration form and it was intended that he had to stay in hospital for two days. She stated that further on, Tarek Salah Barkallah was requested to leave a deposit at the same hospital and to leave a deposit prior to the operation.

She stated that in fact Tarek Salah Barkallah left some dollars in cash equivalent to LM354. She went on to say that the length of the stay at the hospital had increased and thus the patient incurred further expenses and the accused was ready to pay for such expenses.

In fact, the accused issued a cheque to the amount of LM4300 as a deposit prior to the operation on the 17th July 2003, which cheque was subsequently referred to drawer.

The witness went on to say that Tarek Salah Barkallah remained in hospital till the 22nd July 2003 and the total amount of expenses totalled to LM4183.84. She stated that the amount of LM354 previously paid had to be deducted from this amount leaving a balance of LM3839.94. When Tarek Salah Barkallah was to be dismissed from hospital, the accused had requested the refund of LM471.16 but the hospital had promised such refund only when the cheque was honoured and passed on to the accounts section of the same hospital.

She stated that she had summoned the accused to her office and after she gave him the usual caution, the accused released a statement which was exhibited as Doc. EMC 2, on which the witness confirmed her signature, that of the accused and that of PC 1235 Warren Magri.

She stated that the accused in his statement said he was a consultant construction engineer and that he knew he had no funds in the account when he issued the cheque in question and added that he was ready to pay Mr. Depasquale as soon as he got paid by a client of his. He also stated that the reason for issuing that cheque was because his cousin Tarek Salah Barkallah needed to be operated. She stated that when the accused released his statement he had said that he had agreed with Mr. Depasquale that he was to deposit money so that the cheque would be cashed.

On the 3rd March 2004 **PC 1235 Warren Magri** (fol. 17) took the witness stand and on oath confirmed the identity of the accused present in court and also the signature of Inspector Edel Mary Camilleri, the accused signature and his own on Doc. EMC 2 which is a statement released by the accused after being duly cautioned.

That on the 29th March 2004 **Michael Cutajar** (fol. 20) took the witness stand and on oath stated that after being asked to give all information relevant to the account number 40012250086 at Bank of Valletta in the name of Basam El Ammami, he stated that this current account was opened on the 13th January 2003. He presented the opening form relevant to this account together with the relevant signature, which were marked as Doc. MB (fol. 22). He stated that this account was blocked by Bank of Valletta, but when asked when and why, the witness answered that it was blocked on the 30th January 2003 by means of garnishee order 211/03 in the amount of LM263. He further stated that at that moment in time the client had only seven pounds. Asked by the court if the client was informed of this, the witness answered that he did not inform the client.

On the 6th September 2004 **Michael Cutajar** (fol. 45) took again the witness stand and on oath stated that he worked at San Gwann branch of Bank of Valletta as a relationship officer. After being exempted from his banking secrecy by the Court, he explained that the procedure of the bank was that once they receive a garnishee, they would inform the account holder of such seizure by means of a letter. He stated that however, this garnishee order was not extended so consequently they unblocked that account shortly after.

On the 30th March 2004 **Dottor James Bannister** (fol. 25) took the witness stand and on oath confirmed his kwerela against the accused presented on the 29th July 2003 marked as Doc. CSH.

On the 30th March 2004 **Giovanni Depasquale** (fol. 28) took the witness stand and on oath stated that he occupied the post of Accountant to the company known by the name of Golden Shepherd Group Limited. He exhibited the original of a cheque issued by the accused dated 17th July 2003 addressed to St. Philip Hospital for the sum of LM4300 which cheque was marked as Doc. BOV. He stated that he had deposited same cheque on the 19th July 2003, and it was returned to him on the 19th July 2003 with a note 'referred to drawer'. He further stated that he had spoken to the accused, whom he recognised in court, about this cheque and the accused had asked him for some time so that he could make good for that cheque. He told him that he was owed some money by a certain Attard and consequently, once he received it, he would be in a position to pay him. The witness went on to state that till that date the accused had not honoured that cheque. He further stated that this cheque was due as a deposit, and in actual fact, the hospital is still owed LM3829.84.

He explained that the accused on that day was accompanying a relative of his who needed urgent surgery in Malta and due to the fact that his relative was a foreigner, they needed a deposit to carry out such an intervention. Subsequently, they asked the patient to pay

a deposit and the accused offered to make good for such deposit and in fact gave them a cheque of LM4300. He stated that when the patient left hospital, the accused asked for a refund and they were not in a position to give him the refund since the cheque in question was not honoured. He stated that as far as he knew, the patient was operated and had his full medical services and there were no complaints regarding the operation. He stated that it wasn't him who collected the cheque and at that time he did not carry out any conversation with the accused, it was only after that the cheque was not cashed that he spoke to the accused. He further stated that last December they had carried out a public deed with the accused and again he did not honour what was stated in that public deed which was dated 11th December 2003.

On the 6th September 2004 **Giovanni Depasquale** (fol. 47) took again the witness stand and on oath stated that since March 2004 the accused had made no payment on account of his debts with them.

On the 12th October 2004 **the accused** (fol. 49) took the witness stand and again on the 26th February 2009 and on oath stated that he knew that there was a teacher in the Libyan school by the name of Salem who was living opposite him. He stated that when this Libjan terminated his contract with the school, he left Malta and about seven or eight months later, his son was very sick and he called him up from Libya and told him that his son needed an operation. The accused went on to say that he arranged for the operation to take place at the Golden Shepherd Group in St Philip Hospital. He stated that he had accompanied Salem's son to the hospital and the doctors examined him and they told him that he needed to do the operation immediately. The accused further stated that his cousin Salem did not have the money to pay for the operation costing nearly LM4300 and he had asked him if he had the money and the accused replied he did not have the money.

The accused said that Salem's son had to do the operation, otherwise he would die since it was a question

of life and death, so he (the accused) accompanied him to the hospital and asked the accountant if he accepted the guarantee. The accused said that he told the lady that he was ready to give her a cheque as a guarantee so that the operation would take place, subsequently Salem would go to Libya to bring the money.

The accused said he had told them that he had no money in the account, however when he would receive the money from Libya he was to forward it to them. The accused said that Salem went back to Libya and never came back, but his son did the operation and spent ten or eleven days at St. Philip Hospital and subsequently he spent some time recovering at his house because he could not travel. Then, the accused went on to say, there was a re-examination and the doctor said that he could leave and he left. The accused stated that he bought him a ticket to leave and told him to tell his father to bring the money but he never did.

The accused confirmed that he had told the authorities of St Philip Hospital that he had no money in the account but was ready to pay the money once he received them, but till that day he had not received any money. Notwithstanding this, the accused went on to say, St Philip Hospital initiated a civil case against him and they also made a garnishee order in his regard.

He said that there was a period of time when he was not in contact with the Court about this case, then he met Inspector Camilleri and she told him about the Court case and he came straight away, went to St. Philip Hospital to get papers to prove that the amount was settled, however St. Philip's told him that the amount was not settled and so he came to an agreement with them, which agreement he exhibited as Doc. AB. The accused submitted also a copy of the bill as Doc. AB 1 and confirmed that he released a statement when being interrogated by the prosecuting officer, which statement is exhibited in Court as Doc. EMC 2 at fol. 15. The accused confirmed that this was released by himself and that he had nothing else to add to it. He stated that today he was paying the sum

of €400 per month and that there is a balance of about €3300.

Having considered further:

In brief, the facts of this case are as follows:

The accused accompanied a young boy to St. Philip Hospital to have some medical intervention, which intervention appeared to be of a severe nature and had to be treated immediately. He thus accompanied the patient Tarek Saleh Barkallah to hospital accompanied by an employee of the Libyan Embassy, Mr. Alahrash, and the patient he was asked to pay for the operation in advance. The accused said that since the operation was a question of life and death, he offered to issue a cheque as a guarantee for the patient so that the operation would take place. He explained that he spoke to a lady accountant and told her that he had no finances in his account but the moment he received some money that was owed to him, he would honour his commitment.

The prosecution brought forward the accountant Mr. Depasquale who confirmed that the accused issued a cheque for the sum of LM4300 to make good for an operation which was going to be carried out on another person. He confirmed that he did not speak with the accused when he issued the cheque but only after the cheque was not honoured that he made contact with the accused.

It transpires from the bill exhibited in the acts of these proceedings, which document is marked as Doc. AB, that the operation was carried out on the patient Tarek Saleh Barkallah and that the bill was in effect sent to Mr. Alahrash at the Libyan Embassy. The accused further stated that the hospital initiated civil proceedings against him and also issued a garnishee order against him and that subsequently they drew out a civil agreement so that the accused would pay the debts. It appears from a receipt attached to the bill, Doc. AB, that in fact payment had been affected. These facts have not been contradicted at all by the prosecution. The accused never

denied issuing a cheque but explained the reasons which led him to issue the cheque in question.

The Court considered further:-

For the purpose of section 308, the fundamental element of this crime, consists in the intention to deceit (by any one of the reasons mentioned in that section), with a view of making a gain to the prejudice of another person.

Our local courts have had occasions to examine in detail, the material element of the offence in question in its judgment on the 20th June 1997 in the names **Police vs Emanuel Ellul**. As for the first element, this has been described by the Italian Jurist **Francesco Antolisei** in the following words:

"Per quanto concerne l'elemento soggettivo, e cioè il dolo, valgono le regole generali. L'agente, quindi, deve volere non solo la sua azione, ma anche l'inganno della vittima, come conseguenza dell'azione stessa, la disposizione patrimoniale, come conseguenza dell'inganno e' infine, la realizzazione di quel profitto che costituisce l'ultima fase del processo esecutivo del delitto. Naturalmente, occorre che la volontà sia accompagnata dalla consapevolezza del carattere frodatorio del mezzo usato, dell'ingiustizia del profitto avuto in mira e del danno che ne deriva all'ingannato. Data la molteplicità degli elementi necessari per l'esistenza del dolo in questo complesso reato, sussiste un ampio margine per l'errore di fatto" (Antolisei, F., Manuale di Diritto Penale - Parte Speciale, Vol. 1, Giuffrè (Milano), 1986, p. 303).

It is necessary to point out what was held in the judgment **Police (Inspector Alexandra Farrugia Mamo) vs Michael John Turner** delivered on the 7th January 1998, in particular that the agent be aware of the deceit being perpetrated or of the deceitful nature of the means used.

Reference is also being made to the court's judgment decided by the Court of Criminal Appeal on the 2nd January 1896 in the names **Regina vs Francesco Cachia and Charles Beck** whereas it held that:

"Quel articolo non richiede solamente una asserzione mensoniera e falza, ma richiede inoltre, che siano stato impegnate inganno, raggire o simulazione, ed e necessario quindi, che la falza assertiva, sia accompagnata da qualche atto diretto a darla fede."

This court also makes reference to the two court judgments quoted by the defence in its note in the names **The Police vs Anthony Francis Willoughby**, decided by the Court of Appeal on the 12th February 1999, and the other in the names **The Police vs Philip Petroni** decided by the same court on the 16th March 1999 in particular to the following quotation:-

*"Mhux kull cekk li ma jigix onorat mill-bank necessarjament jammonta ghar-reat ta' truffa (artikolu 308 tal-Kap 9) jew ghar-reat minuri, izda kompriz w involut f'dak ta' truffa ta' lukru frawdolent nnominati (artikolu 309 tal-Kap 9) u dan huwa hekk anke jekk kemm il-darba jirrizulta li meta nhareg ic-cekk jew meta kellu jigi msarraġ, minn hargu kien jaf li ma hemmx flus fil-kont relattiv. Kif tajjeb osservat il-Qorti Kriminali kolleġjalment komposta fis-sentenza tad-disgha w ghoxrin ta' Novembru, 1922 fil-kawza fl-ismijiet **Sua Maesta v Antonia Demicoli** mhux kull forma ta' lokupletazzjoni ossia arrikament magħmul għad-dannu ta' haddiehor, tammonta għal frodi fis-sens tal-ligi penali. Fil-ligi tagħna, biex ikun hemm t-truffa jew il-frodi nnominati, irid ikun gie perpetrat mill-agent, xi forma t'ingann jew qerq, liema ngann jew qerq, ikun wassal lil vittma sabiex tagħmel jew tonqos milli tagħmel, xi haga li ggibilha telf patrimonjali, bil-konsegwenti qliegħ għall-agent (vide **Appell Kriminali fl-ismijiet Il-Pulizija v Emanuele Ellul, deciz fl-ghoxrin ta' Gunju, 1997 u Il-Pulizija v David Frendo, deciz fil-hamsa w ghoxrin ta' Marzu, 1994.**) Dan t-telf, hafna drabi, jkun jikkonsisti filli l-vittma, proprju għaliex tkun giet ingannata voluntarjament, tagħti xi haga lil agent [vide **Il-Pulizija v Carmel Cassar Parnis deciza mill-Qorti tal-Appell Kriminali nhar t-tnax ta' Dicembru 1959 – Vol. XLIII – IV - 1140**]. Jekk l-ingann jew qerq ikun jikkonsisti f' "raggiri o artifizji" – dak li fid-dottrina jissejjah wkoll mise en scene – ikun hemm t-truffa; jekk le, ikun hemm r-reat minuri ta' frodi nnominata*

[jew lukru frawdolent innominat] (vide fost ohrajn ***Il-Pulizija v Francesca Caruana deciz mill-Qorti tal-Appell Kriminali nhar l-hamsa w ghoxrin ta' Lulju 1953*** – Vol. XXXVII – IV – 1127; ***Il-Pulizija v Giuseppe Schrainer deciz mill-Qorti tal-Appell Kriminali nhar t-tlieta ta' Marzu 1956***). Naturalment, il-hrug ta' cekk fuq kont bla flus jista jkun proprju l-mezz t'ingann adoperat biex jinduci lil dak li jkun sabiex jaghmel jew jonqos milli jaghmel xi haga li ggiblu telf partimonjali bil-konsegwenti ngann ghall-agent [vide ***Il-Pulizija v Francis sive Franco Farrugia deciza mill-Qorti tal-Appell Kriminali nhar s-sebgha ta' Frar 1985*** - Vol. LXIX – V – 596]

The Court believes in this case, that the hospital staff were aware that the cheque in question was issued simply as a guarantee and not as effective payment. The prosecution never brought forward the lady accountant to contradict what the accused said when the accused issued the cash. The elements of the case under review, did not result and the debt in question is a matter which falls under the realm of a civil action.

The **Court** is of the opinion that, after having regard of the circumstances of the case, in particular sections 308, 309 and 310 of Chapter 9 of the Laws of Malta, **decides to find the accused BASSAM EL AMMAMI not guilty of the charges brought forward against him and acquits him accordingly.**

< Final Judgement >

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