



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

**MAGISTRAT DR.  
EDWINA GRIMA**

Seduta tal-21 ta' April, 2009

Numru. 46/2007

The Police

(Inspector Josric Mifsud)

Vs

John Cameron having 45 years of age, son of richard and Lilian nee' Jerome, born in Brighton, England on the 11<sup>th</sup> April 1963 and residing at Flat 7, St. Anthony's Court, Triq I-Emigrant, Nadur, Gozo or Flat 2, Savoy Terrace, Sir Hilderbrand oaks Street, Sliema holder of identity card number 40013(A)

The Court,

Having seen the charges brought against the accused, being charged with having in these islands on the 17 July 2007 in the inspector's office at Victoria Police station, Gozo at about 19;00hours:

1. that with the intention of harming PC42, PC102, PC111, PC115, PC138, PC155, PC272, PC277, PC332, PC400, PC528, PC534, PC625, PC653, PC870, PC1079, PC1279, PC1384, PC1403, PC1425, PC1513, PC1542 accused these persons to a competent authority with a crime when he knew that those persons are innocent in terms of Section 101 of Chapter 9, of the laws of Malta.
2. that at the same date, time and place and circumstances denounced to the Executive Police with a crime that he knew did not happen or that he invented traces of a crime in a method that criminal procedures will begin in order to ensure that the crime took place in terms of Section 110(2) of Chapter 9 of the Laws of Malta;
3. that at the same place, date and time, disturbed the public peace and order with shouting and disturbance,
4. also that he did not obey legitimate orders of an authority or of someone who was in charge of a public service, or that he did not leave, or disturb him while performing his duties, or in any other way, without authority, interfered in his duties, by not allowing somebody else to do that which he is ordered to do by law or that he can do, or by eliminating or harming that which somebody else had done in terms of law, or by any other method whatsoever, such as this disobedience or this interference are not under any other dispositions of this code or any other law (338ee)

Having seen the documents exhibited and all the acts of the proceedings

Having heard the evidence.

Having seen the consent of the Attorney General for the case to be dealt with summarily in terms of Article 370(4) of the Criminal Code

Considers,

That the main charges brought against the accused by the prosecution are those found in Section 101 and Section 110(2) of the Criminal Code, being the crimes of calumnious accusation and the simulation of an offence.

**Section 101 – Calumnious or False accusation.**

The crime of false accusation as outlined in Section 101 of the Criminal Code deals with any information, report or complaint whether filed verbally or in writing defined as being verbal and direct (as opposed to the crime contemplated in Section 110(1) being the calumnious accusation known as real or indirect.) As Professor Mamo points out in his Notes on Criminal Law “such crime is completed by the mere presentation of the information, report or complaint to the competent authority.”

It must be stated that from the wording of Section 101 it is clear that the sole intention of the person being charged with the commission of this crime, must have been to cause harm to the person or persons being unjustly charged or accused and also that the false report or information must be such that criminal action could have been instituted or was instituted against the person or persons being unjustly reported. In a judgment delivered by the Court of Criminal Appeal in its inferior jurisdiction on the 7 November 1949 in the names The Police vs Vincenzo Attard it was decided:

”Biex ikun hemm ir-reat ta’ falza denunzja hemm bzonn li d-denunzja falza tkun dwar delitt jew konravvenzjoni li jaghtu lok ghal azzjoni kriminali persegwibbli quddiem il-Qorti ta’ Gustizzja Kriminali.”

Also in another judgment in the names the Police vs Joseph Seychell (17/10/1997 Criminal appeal) it was stated: “L-akkuza jew denunzja, ghall-finijiet tal-kalunja ma tirrikjedi ebda formalita partikolari; l-unika haga li hi rikjesta hi li dik l-akkuza jew denunzja issir quddiem awtorita kompetenti, jigifieri awtorita’ li ghandha is-setgha

li tipprocedi biex tinvestiga u eventwalment tressaq il-Qorti lil dik il-persuna li tkun allegatament ikkomettiet dak ir-reat.”

Finally in yet another judgment delivered by the Court of Criminal Appeal in its inferior jurisdiction it was stated:

“Kull ma jirrikjedi l-artikolu 101 (reat ta’ kalunnja) huwa l-att materjali tar-rapport lill-awtoritajiet kompetenti, u l-element formali fis-sens li min ghamel dak ir-rapport kontra persuna fejn akkuzata b’reat, kien jaf li dik il-persuna filf-att ma kenitx ghamlet dak ir-reat, bil-konsegwenza naturali li tali agir effettivament iwassal sabiex tigi kagjonata hsara lill-persuna rapportata. Kif dejjem gie ritenut, wiehed huwa tenut dejjem responsabbli ghall-konsegwenzi naturali ta’ dak li intenzjonalment u volontarjament jaghamel.” (The Police vs Doreen Zammit – 15/06/2001)

### **Section 110(2) – the simulation of an offence**

This provision was added to our code by Ordinance IX of 1911 and was modeled in its substantive part on Section 211 of the Italian Code of 1889.

Professor Mamo in his Notes on Criminal Law states:

“The simulation of an offence is considered as a crime for the injury which it does to the administration of justice by misleading it; for the alarm which the news of an offence causes in the public; for the inconvenience and expense to which the officers of justice may be put; for the danger of suspicions and molestations to which law-abiding citizens may be exposed in the attempt to ascertain an imaginary fact. ... This crime differs from that of calumnious accusation in as much as in the simulation of offence there is no specific accusation against any determinate person and there is not, therefore, the intent to cause an innocent person to be unjustly convicted or charged ... The simulation may be either verbal or direct or real or indirect. The former must consist in a denunciation, that is in an information or report or

complaint to the Executive Police: and the crime is completed by the presentation of such information report or complaint, so that the subsequent confession of the untruth would not avail to exclude it. ... Finally the denunciation must be made without specifying the supposed offender; otherwise this crime degenerates into that of calumnious accusation.”

In a judgment delivered by the Court of Criminal Appeal in its inferior jurisdiction in the names The Police vs David Mizzi (16/02/1998) it was decided:

“ Kwantu ghar-reat ikkontemplat fl-artikolu 110(2) – is-simulazzjoni ta’ reat – dan, bhal tal-kalunja, jinqasam f’simulazzjoni reali jew indiretta u f’simulazzjoni verbali u diretta. Is-simulazzjoni reali jew indiretta tavvera ruhha meta wiehed bil-qerq johloq tracci ta’ reat b’mod li jistghu jinbdew proceduri kirminali sabiex jizguraw li dak ir-reat kien sar. Is-simulazzjonui verbali jew diretta tirrikjedi semplicement li l-agent jiddenunja lill-Pulizija Ezekuttiva reat li hu jkun jaf li ma sarx. Ghalhekk element kostitutiv ta’ dan ir-reat hu l-konsapevolezza ta’l-agent li r-reat li hu qed jiddenunja fil-fatt ma sehhx.”

Now from the evidence brought forward by the prosecution it results that on the date of this incident the accused was given orders by two police officers being PS 1464 Michael Portelli and PC759 Emanuel Zammit to report to the Victoria Police station and bring with him all permits he had in hand with regard to the Silver Sea Snack Bar which he was currently running at Xlendi. Whilst at the restaurant the police also told a Mr. Joseph Buttigieg who was present to accompany the accused to the police station. Accused and his friend reported voluntarily at the station. It resulted that the permits were in the hands of the proprietor a certain Josephine Mercieca, (who later reported also at the police station) however the accused was not registered as a substitute on the said permits, since an application to this effect was still pending. Whilst being interrogated the accused became tense and turned aggressive. The police officers

present, including the prosecuting officer himself state in their evidence that Cameron began stating that he was being victimized and alleged that half of the police corps that are from Malta, serving in Gozo is corrupt and that these police officers are regular clients at bars in Gozo not having the necessary permits. He did not mention any police officers by name or number. At this point Mr. Buttigieg was ordered to leave the inspector's office and the accused insisted that he remain there as his witness. When this wish was not granted, the accused tried to walk out of the office twice but was eventually restrained by the police. In his testimony, the accused denies that he alleged that the police officers are corrupt, but that they know of other bars who are operating without a license since they are regular clients at the said bars.

Consequently the following facts result:

1. The accused does not indicate the person or persons in the police corps whom he alleges are corrupt. The persons indicated in the first charge brought against him are not mentioned by the accused. In actual fact 22 police officers are indicated in the said charge when it seems that the accused indicates in general terms as half of the police corps. Who are these half, he does not indicate.
2. The accused states that these officers are corrupt because they are clients at bars in Gozo who operate without the necessary permits. This does not amount to a crime in terms of law. He does not allege that the police do not report these people because they are being bribed by these bar owners. At no point in time does he allege so or does he mention it with the intent to file a report or pass on an information to the police in order that action may be taken by the competent authorities against the said police officers.
3. No evidence is brought forward by the prosecution in order to prove that the allegations made by the accused are actually false.
4. The prosecution has failed to prove that the police constables indicated in the first charge are members of the police force or that they are serving in Gozo and have

been transferred to Gozo from Malta as alleged by accused.

The accused's behaviour was a reaction to the fact that he was called in at the police station with regards to his permits to run his bar in Xlendi. It is true that the accused overreacted to the police's actions which were legal at all times. The accused thought however that he was being unjustly treated, that he was being victimized and consequently reacted to this in a verbally aggressive manner. At no point in time was he filing a report or passing an information to the police for action to be taken. At no point in time was he creating the traces of an offence in order that the said offence be prosecuted before a court of law. At no point in time did he mention any particular police officer or officers as being corrupt or as accepting bribes and also at no point in time did he bring forward any false evidence to that effect. Consequently, the first two charges brought against the accused do not result from the acts of the case and the accused is acquitted from the same.

The last two charges brought against the accused are contraventional. The accused is being charged with disturbing the public peace and good order and with having failed to obey the legitimate orders of the police in terms of sections 338(dd) and 338(ee) of the Criminal Code. As already pointed out above, it is clear that accused was very nervous and tense due to the fact that he was called in at the police station. In fact he immediately thought that he was being unjustly treated by the police officers and also stated clearly that he was being victimized since there were other bars operating also without a permit. He got so worked up that he became verbally aggressive. This results clearly both from Inspector Mifsud's testimony as well as from the evidence of PS1464 Michael Portelli. In this state of mind, the accused completely lost control of his actions, especially when his friend Joseph Buttigieg was ushered out of the room. He was ordered by Inspector Mifsud to sit down in

order to be questioned which he refused to do repeatedly. In fact accused himself states in his evidence that after asking Inspector Mifsud whether he was arrested, and receiving a reply in the negative, he thought that he was therefore free to stand up and leave. Consequently the last two charges have been amply proven.

In considering the punishment to be inflicted for these two charges, the Court is taking into consideration the clean criminal record of the accused and the circumstances in which this incident occurred. Although the Court understands that the accused, being a foreigner and a person who therefore does not understand the Maltese language might have panicked when being questioned at the police station, however his behaviour cannot be justified, since both the police inspector as well as the police officers involved were only carrying out their duties and this incident could have been avoided had the accused answered to the questioned put to him without passing any undue comments.

Consequently after having seen Sections 338(dd) and 338(ee) of the Criminal Code, acquits the accused from the first and second charges brought against him, but finds him guilty of the third and fourth charges and condemns him to an ammenda of €25 on each charge.

**< Sentenza Finali >**

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