



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

**MAGISTRATE DR.  
MIRIAM HAYMAN**

Sitting of the 8 th May, 2009

Number. 705/2006

**THE POLICE  
INSPECTOR PIERRE GRECH**

**VERSUS**

**KHALIF ID AHMED born Somalia on the 1<sup>st</sup> January,  
1977, residing at Marsa Open Centre, Marsa, holder of  
ID card number 30078A, and travel document number  
02574;**

**The Court;**

Having seen charges brought against the above-mentioned **KHALIF ID AHMED** who was charged of having on these islands on the night between the 21<sup>st</sup> and 22<sup>nd</sup> July, 2006:

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a. Imported or offered to import psychotropic and restricted drug (cathinone) without a special authorization in writing by the Superintendent of Public Health, in breach of the provisions of the Medical and Kindred Professions Ordinance, Chapter 31 of the Laws of Malta and the Drug (Control) Regulations, Legal Notice 22 of 1985 as amended;

b. Also of having imported or offered to import psychotropic and specified drug (cathine) without having proper authorization, in breach of the provisions of the Medical and Kindred Provisions Ordinance, Chapter 31 of the Laws of Malta and the Drug (Control) Regulations, Legal Notice 22 of 1985 as amended;

c. Also of having been in possession of psychotropic and restricted drug (cathinone) without a special authorization in writing by the Superintendent of Public Health, in breach of the provisions of the Medical and Kindred Professions Ordinance, Chapter 31 of the Laws of Malta and the Drug (Control) Regulations, Legal Notice 22 of 1985 as amended, under such circumstances that such possession was not intended for his personal use;

d. Also of having been in possession of psychotropic and specified drug (cathine) without having proper authorization, in breach of the provisions of the Medical and Kindred Professions Ordinance, Chapter 31 of the Laws of Malta and the Drug (Control) Regulations, Legal Notice 22 of 1985 as amended, under such circumstances that such possession was not intended for his personal use.

Seen the Attorney General's order under Section 120A of Chapter 31 of the Laws of Malta (folio 7);

Seen that accused on interrogation answered he has not guilty of the charges proffered against him;

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Seen also Attorney General's counter order under the above-mentioned Chapter of the Law after Prosecution had exhausted all its evidence at folio 293;

Seen all records of the case;

Heard all submissions.

Considers:

A brief review of accused statement already indicated that the facts of the case are certainly not contested. Accused was in fact comprehended at the Malta International Airport in possession of a bag full of Khat plant. As attested by Mr Alphonse Cauchi in representation of the mentioned Malta International Airport, accused arrived in Malta on flight number KM 2395 from Holland on the 21<sup>st</sup> July, 2006 (folio 277).

PC 1514 Renaldo Cremona (folio 29) and PC 102 Anthony Portelli (folio 32), were police officers who apprehended accused at Airport. The Customs' official Lawrence Montesin Victor Sant and Jesmond Vella also testified about the Khat finding in the possession of the accused at our Airport (folio 40 – 45).

It is salient to the charges under examination to consider Pharmacist's Mario Mifsud conclusion having been appointed to analyze the plant in question by the Inquiring Magistrate. He testified:

*'That the plants contained in the black suitcase, contained 11,812.3 grams of Khat plants. These plants contained the substance cathene which is a stimulant and controlled in the Third Schedule, Part B of Chapter 31 of the Laws of Malta and cathinone, a stimulant substance which is controlled also in Schedule 3, Part A, of Chapter 31 of the Laws of Malta'* (folio 61 – 62).

He further testified with regards to substance cathinone and cathene that:

*'.....cathinone if not preserved rightly, decomposes to cathene which means that the active ingredient which is*

*controlled under Chapter 31. ...converts to cathene which is controlled under Section 31B' (folio 63()).*

Pharmacist Mario Mifsud further quoted from the Journal of Forensic Science, Scientist Lee MM who stated that: *'Study demonstrated that by air drying the young Khat....at ambient temperature, cathinone may be detected in Khat samples that have been harvested for more than 10 days.'*

He thus premised that freshness of the Khat laves was important to preserve its stimulant effect, therefore it can be refrigerated or transported in banana leaves, thus slowing down the breakdown of the substance cathinone.

DOK MM at folio 723 is Pharmacist's Mario Mifsud report containing his analysis and conclusions.

To substantiate his conclusions with regards to his analyses and research with regards to Khat plant, Pharmacist Mifsud also exhibited a paper published by the Drug Enforcement Administration (DEA) (folio 112 – 114). In folio 113 thereof one finds the indications of how the Khat plant should be preserved to slow down the breakdown of cathinone.

From his part Defense Counsel exhibited DOK KIA folio 116 – 118, a study published by the University of Pennsylvania – African Studies Centre.

Considers:

The Court at this point of this judgment must point out what is believed to be already a known fact, besides the fact that the Court has brought such a point to the attention of the parties, that it has already delivered a judgment analyzing identical issues – Inspector Pierre Grech vs Aweys Maani Khayre, dated 16<sup>th</sup> April, 2009. Reference is being made because the legal points, being raised are identical. The contested issue is that the Khat plant is nowhere scheduled in our Drug Laws, namely Chapters 31 and 101 of the Laws of Malta. What

is scheduled under Chapter 31 are the substances cathinone and cathene. Thus what is scheduled are alkaloids present in this plant.

Oxford Advanced Learner's Dictionary (Fifth Edition), page 29 defines the word alkaloid as '*...any of a class of poisonous substances that occur naturally in various plant. Some alkaloids are used as basis for plants.*'

Therefore to reiterate what remains in contestation, as alleged by Defense, is a point of a Constitutional nature as based on the dictum '*nullum crimen sine lege*'; certainly a fundamental element in Criminal Law as entrenched in the Constitutional and the European Convention on Human Rights to which we adhere to. Thus no contestation can and lies here. No act can be admonished or penalized unless so legislated.

Certainly it is a legal fact that the Khat plant per se is nowhere legislated in our Drugs Laws, equally uncontested is that as above premised alkaloids, cathinone and cathene are.

Certainly accused's ignorance of the Schedules, rather the contents therein pertaining to Chapter 31 of the Laws of Malta is no excuse, comforted this by another dictum that '*ignorance of the Law is no excuse*'. This is not an excusable mistake of fact.

Certainly accused is aware of the stimulant effect pertinent to the Khat plant – so much so he had every intention to refrigerate it to preserve its effect (folio 27). Certainly he had every intention of sharing the same with his friends as a present.

Certainly as resulting from the documentation exhibited by Pharmacist Mario Mifsud and Defense Counsel (above referred to) the Khat plant is in wide use in accused's country of origin and countries of similar cultures. This custom and maybe regularity of it have induced accused to import maybe inadvertently the scheduled cathinone and cathene.

Considers:

Prosecuting Officer was correct in his submissions in mentioning that our Drug Laws nowhere mention the specific word ecstasy, yet it is certainly an illegal substance within our jurisdiction. In fact as he correctly stated the Law in Chapter 31, Third Schedule lists the substance MDMA – the scientific common name thereof. Thus ecstasy being the day to day common name would be Prosecution's argument be excluded from our Schedule. The Court further stretches this argument in asking if such exclusion would translate into an argument of lack of *mens rea* to commit a related crime because the street name of the mentioned substance is excluded from our Drug Laws. This is certainly not the legal position in Mala.

The Court once again refers to the judgment The Police (Inspector Pierre Grech) vs Aweys Maani Khayre, and quotes therefore the dangerous effects which the substance cathinone and cathine have on the human body.

*'Khat leaves contain psychoactive ingredients known as cathinone, which is structurally and chemically similar to d-amphetamine and cathine, a milder form of cathinone. Fresh leaves contain both ingredients, those left in unrefrigerated beyond 48 hours would contain only cathine, which explains users' preference for fresh leaves.'* (Khat Plant by Dr Mohamed Al Kamel Ain-Shams, Faculty of Medicine, Cairo, Egypt – <http://www.geocities.com/forceps1974/khat.html?20098page1>.)

In the same paper the treatment for khat dependence is outlined.

*'Khat is sympathomimetic and its pharmacological effects are believe to parallel those of amphetamine. Psychiatric manifestations induced by khat are similar to the effects of other known stimulants.'* (ibid page 3).

Regardless of embedded customs in accused's country of origin, regardless of his lack of knowledge of our Drugs Laws, the absence of the word Khat should not be interpreted that their derivatives through chewing (or in soup as stated by accused in his statement) are rendered legal. Our Laws nowhere delineate how the substances cathinone and cathene are to be retrieved - whether as a natural component in a plant or through laboratory facilities.

In addition to the above-premised, attention must also be paid to the words of the charges proffered – as resulting from Mario Mifsud's analysis both substances where present.

Considers:

Thus, after the above-mentioned analysis finds accused guilty as charged after having seen Sections 40A and 120A of Chapter 31 of the Laws of Malta.

With regards to the penalty to be imposed – seen the amounts of the substances found, again Pharmacist Mifsud's second report marked as DOK MM1, folio 312, 11,812grams of Khat plant rendering between 4.25 - 40.5grams of cathinone, and between 9.8 – 14.19grams of cathene, considering also accused habitual use of Khat plant, his clean conviction sheet, condemns him to a term of imprisonment of six(6) months and to the fine(multa) of four hundred sixty six Euros (€466);

Seen also Article 533 of Chapter 9 of the Laws of Malta, orders that **KHALIF ID AHMED** pays the sum of one hundred forty-six Euros and fifty-one Euro cents(€146.51) – costs incurred in connection with expert fees.

**< Final Judgement >**

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