



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

**MAGISTRATE
DOREEN CLARKE**

Sitting of the 23 rd November, 2009

Number. 197/2008

**The Police
[Superintendent Paul Vassallo]**

vs

Dayang Sakienah Binti Mat Lazin

Case Number: 197/2008

Today the 23rd November, 2009,

The Court,

Having seen that Dayang Sakienah Binti Mat Lazin, aged 20, daughter of Mat Lazin and T. Rahimah, born in Terengganu, Malaysia on the 28th January, 1988, bearer

of Malaysian passport no. A18631724, residing locally at the Sliema Hotel, Sliema Ferries, Sliema.

Was charged:

With having on these islands on the 5th March, 2008 and in the preceding months, belonged to an organization of two or more persons with a view to committing criminal offences.

And also with having on these islands on the 5th March, 2008 and in the preceding months, by several acts even though committed at different times but constituting a violation of the same provisions of law and committed in pursuance of the same design:

- Conspired with one or more persons in Malta or outside Malta for the purpose of committing any crime in Malta;
- Carried out acts of money laundering by:
 - a) converting or transferring property knowing that such property is derived directly or indirectly, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;
 - b) concealing or disguising the true nature, source, location, disposition, movements, rights with respect of, in or over, or ownership of property, knowing that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity
 - c) acquiring property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
 - d) retaining without reasonable excuse of property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

e) attempting any of the matters or activities defined in the above forgoing sub-paragraphs (i), (ii), (iii) and 9iv) within the meaning of article 41 of the Criminal Code;

f) acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above forgoing sub-paragraphs (i), (ii), (iii), (iv) and (v).

The Court was requested to prohibit the said Dayang Sakienah Binti Mat Lazin from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property in terms of Article 5(1)(b) of the Prevention of Money Laundering Act, Chapter 373 as well as to issue orders as provided for in Articles 5(1) and 5(2) of the same act.

The Court was also requested to appoint an expert to draw up an inventory of all properties, as described in Article 2 of Chapter 373, belonging to the said Dayang Sakienah Binti Mat Lazin.

Having seen the order of the Attorney General issued in terms of section 3(2A)(b)(c) of Chapter 373 of the Laws of Malta.

Having heard the witnesses and the oral submissions of the parties.

Having seen the acts of the proceedings.

Having seen articles 18, 48A and 83A(2) of Chapter 9 of the Laws of Malta and article 3 of Chapter 373 of the Laws of Malta.

Having considered

That the facts of this case are relatively simple. Defendant is a Malaysian girl who was seeking to better her financial and personal situation. She was introduced to some persons who proposed that she travel to Europe to carry packages for them in Europe and Africa. Defendant would be given one thousand dollars (\$1,000) for every trip.

Defendant agreed; and with an other Malaysian girl, Noor Faizura Binti MD Lias, travelled to Spain. Both were given the same instructions i.e. on their arrival in Spain they had to contact a specific person who would give them further instructions. They met this person and after a train ride they were taken to a house where they were to stay until given further instructions. After a few days a third girl joined them, also Malaysian, who had travelled from Malaysia before them and had already taken packages containing drugs from one county to the other in Europe. Soon after, on the 29th January 2008, defendant was sent to Malta and she was asked to carry two packets containing yellowish powder in a corset which she wore around her waist; defendant was of the opinion that these bags were heavier than one kilogramme. Defendant was told what she was to do once in Malta, whom to contact and in which hotel she was to stay. She did as instructed and delivered these packets. She was then given further instructions; after three days the person to whom she consigned the packets gave her thirty six thousand Euros (€36,000) which money she was to take back to Spain. Defendant in fact went back to Spain back to the same house where she had been staying previously; after she went back the third girl went back to Malaysia while Faizura made two trips to Malta delivering drugs to persons in Malta. On one of these trips Faizura stopped at Milan before proceeding to Malta and there she also delivered some packages containing drugs. It was then defendant's turn to come on a second trip to Malta carrying packages in the corset round her waist. This time the packages contained something which defendant described to the prosecuting officer as leaves. Some time after delivering these packages she was given six thousand Euros (€6,000) however she was not to take them back to Spain but she had to send the money to two persons in Argentina via Western Union. After effecting the transfer defendant went back to her hotel and soon after was intercepted by the police who took her into custody.

That it is worth noting that the police first involved themselves in this matter following a missing persons

report regarding defendant; this report was made by her parents in Malaysia after they lost contact with defendant. It has to be said that defendant had not told her parents that she was leaving Malaysia and on her arrival in Spain she was allowed to contact them only once to inform them that she had arrived safely in Europe (she did not specify where in Europe).

That these facts emerge not only from defendant's statement but also from the testimony given by Noor Faizura Binti MD Lias and from the documents filed including those showing the two transfers of €3,000 each effected by defendant to different persons in Argentina.

That in reality defendant does not contest any of these facts. However a reading of her statement as well as from submissions made it would appear that when she first accepted to travel to Spain she was not aware that she would be a drug courier for the persons who engaged her; she claims she thought that she would be carrying gold items or clothing, that she would be given the items the day before travelling and that she was not allowed to open the packages. She claims that it was only when the third girl joined them in the house in Spain that she realised what she and Faizura would be doing.

That Faizura also claimed in her testimony that initially she thought she would be carrying gold items and clothes, however she did admit that while still in Malaysia one of the persons with whom they were making these arrangements did tell her that she might be given drugs to carry.

Having considered

That the offences being imputed to defendant are three: forming part of an organisation with a view to committing criminal offence, conspiring with other persons to commit a crime in Malta, and money laundering.

That as said above defendant claims that she was not aware that she would be acting as a drug courier however

even if the Court had to accept this assertion as true (which it doesn't), it is extremely hard to believe that defendant had no suspicion that what she would be doing was illegal. The instructions she said were given to her whilst still in Malaysia and the amount of money that she was promised were sufficient to raise doubts in any person as to the legitimate nature of the task she was given. In reality defendant discredited herself when she said that she didn't even tell her parents about the new "job" that she had just found or that she was leaving Malaysia. Furthermore Faizura in her testimony admits that both she and defendant were scared of going to Spain; if what they were doing was legitimate they had no reason to be scared.

That in this regard the fact that, as defendant herself claims, she was pregnant and unmarried in a Muslim country and would consequently face great difficulties is of some relevance. Defendant herself claims that she needed money in order to be able to make a new life for herself and her child; in that moment of need this "opportunity" was presented to her and she took it but she was scared because she must have known that what she was going to do was wrong. If she had any doubts as to the legitimate nature of what she was going to do these were done away with on her arrival in Spain when she and Faizura were joined by the other Malaysian girl who told them specifically that they would be carrying drugs.

That in view of the foregoing and of the facts as they emerge from the acts of the proceedings there can be no doubt that defendant formed part of an international organisation which existed to traffic drugs from one country to the other and that she did conspire with these persons to commit a crime in Malta. The Court is in fact satisfied that the first two charges brought against defendant have been sufficiently proven.

Having considered

That in so far as the third charge, that of money laundering, is concerned defendant's main contention

seems to be that the prosecution failed to prove an underlying offence. Defence further claims that since no drugs were found in defendant's possession and since the report filed by the Court appointed expert shows that there were no traces of illegal substances on the corset worn by defendant then prosecution failed to show a link between the criminal activity it was alleging and the money taken out of Malta and transferred by defendant.

That there is no doubt that on one occasion defendant personally carried €36,000 out of Malta to Spain and that this money was given to her soon after she had delivered two packets containing a yellowish powder. Neither is there any doubt that on another occasion defendant transferred €6,000 via Western Union to Argentina; this money was also given to her soon after she delivered some packages. From the acts there is also no doubt that the persons defendant was working for trafficked in drugs. Neither is there any doubt that the person who gave her the money in Malta was working in conjunction with the persons defendant worked for.

That it is to be emphasised that the charge of money laundering brought against defendant is based on Chapter 373 of the laws of Malta and not Chapter 101. In the latter case the prosecution must necessarily show a link between the assets being laundered and some criminal activity prohibited under Chapter 101. In the former case (i.e. an offence under Chapter 373) what the prosecution must show is a link between the laundered assets and an offence listed in either the first or second schedule of the said Chapter 373 which however also include traffic in narcotic drugs and psychotropic substances.

That it must also be emphasised that what must be shown for the prosecution to satisfy its onus is a link between some criminal activity and the assets in question. This has been affirmed by the Court of Criminal Appeal in the case *Republic of Malta vs John Vella*¹ when it said:

¹ Decided on the 29.11.1999 and quoted in *Police vs Paul Borg* (Court of Criminal Appeal in its inferior jurisdiction 06.10.2003).

....l-Avukat Generali jista' akkuza persuna bir-reat ta' money laundering minghjar ma jkollu sentenza ta' kundanna ta' dak li jkun qed jigi allegat li huwa l-attivita kriminali sottostanti.... Certament pero ikun x'jkun il-kaz, jekk l-Avukat Generali jiddeciedi li jakkuza lil xi hadd b'money laundering ... irid jindika n-ness bejn l-attivita kriminali sottostanti partikolari li jkun qed jallega.

That in view of the fact that once in Spain defendant definitively knew that the persons she was “working” for trafficked in drugs, in view of the nature of the instructions given to defendant, in view of the clear admission by Faizura that she brought drugs to Malta following instructions of the same persons from whom defendant took identical instructions, the Court has no doubt whatsoever that the prosecution satisfied its onus in showing a link between the money which passed through defendant’s hands and the drug trafficking operation organised by the persons from whom defendant was taking instructions.

That once the prosecution satisfied this onus, in terms of article 22(1C)(b) of Chapter 101 of the Laws of Malta which applies to proceedings for an offence of money laundering by application of article 3(2A)(3) of Chapter 373, the burden of proof then shifts on defendant who has the onus of showing the lawful origin of the money in question. Defendant produced no such evidence.

That in these circumstances the Court is satisfied that even the third charge brought against defendant has been sufficiently proven.

That in so far as the penalty to be meted out is concerned the Court considered on the one hand the gravity of the offences of which defendant is being found guilty and the amount of money involved; on the other hand the Court considered the personal circumstances of defendant as well as her age when she committed these offences and her clean criminal record.

Informal Copy of Judgement

For these reasons the Court, after having seen articles 18, 48A and 83A(2) of Chapter 9 of the Laws of Malta and section 3 of Chapter 373 of the Laws of Malta, finds defendant guilty of the charges brought against her and condemns her to six years imprisonment and to the payment of a fine of forty two thousand Euros (€42,000) which fine shall be converted to a further term of imprisonment of eighteen (18) months if it is not paid within six months. Defendant is also being condemned to pay the sum of nine hundred eighty two Euros and sixty one cents (€982,61) representing expenses incurred in the appointment of experts in this case; payment is to be effected within six months.

< Final Judgement >

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