



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

**MAGISTRATE DR.
AUDREY DEMICOLI**

Sitting of the 19th February, 2009

Number. 732/2003

**Police
(Inspector Edel Mary Camilleri)
(Inspector Joseph Mercieca)**

vs

Ashraf Sallam

The Court ;

Having seen that the accused Ashraf Sallam of 41 years, son of Shahin and Kewsar nee' Mehee, born in Eygpt on the 16th February 1962, residing at 106, Triq San Xmun, Bugibba and Nike Apartment, Triq il-Gifen, Bugibba, and Flat 9, Tigne' Seafront Apartment, Tigne', Sliema and

holder of identity card number 15911A was arraigned before it and charged with having:

On the 26th August 2003, and previous dates in Bugibba and other areas on these islands, he has misapplied, converted to his benefit or to the benefit of any other person, the sum of Lm1268.30 and Lm588 having been entrusted to him or delivered to him under a title which implies an obligation to return such thing or to make use thereof for a specific purpose, to the detriment of Marija Bartolo and others. In terms of sections 293 and 294 of Chapter 9 of the Laws of Malta.

To be a recidivist after being sentenced for an offence by judgment delivered on the 26th May 1998 by the Court of Appeal which has become absolute.

Having seen all documents and records of the proceedings, including the note filed by the Attorney General (folio 113) dated 14th July 2004 whereby he transmitted the acts and records of the preliminary investigation to be heard and decided by this Court as a Court of Criminal Judicature and whereby he deemed that from the preliminary investigation there might result an offence or offences under the provisions of Sections 18, 49, 50, 293, 294 and 310 of the Criminal Code.

Having seen that on the 28th July 2004 (*a folio 115*) the accused answered that he had no objection that his case is heard by summary proceedings and decided by this Court as a Court of Criminal Judicature.

Having seen the note of final submissions filed by the Prosecution and Defence Counsel.

Having considered that:

The accused in this case stands charged with the crime of misappropriation contemplated in Sections 293 and 294 of the Criminal Code. The facts of this case are briefly as follows. The complainants spouses Bartolo and their inlaws spouses Camilleri had booked a Caribbean cruise with the

accused who was acting as an agent of Mondial Tours. The complainants are alleging that they paid the sum of Lm1856.30 to the accused which sum was intended to be used by him to book a cruise for two persons for the Caribbean with Mondial Travel. The Prosecution is alleging that the accused did not use the amount paid to him by the complainants for the said purpose but kept the money for himself.

The accused on the other hand maintains that the money entrusted to him by the complainants was intended as a deposit for a Caribbean cruise for five persons and also as payment for the issue of three insurance policies. The accused asserts that the whole issue with the complainants arose because the latter expected him to provide them with five cruise tickets costing Lm600 each (total of Lm3,000) when he had only received a global payment of Lm1856 from them. The accused refused to do so because he was only paid the full price for two tickets and three insurance policies so he gave the complainants two tickets for the cruise and three insurance policies. The accused alleges that the complainants instead of paying the balance of the price due for the tickets to him, and in order to avoid paying the commission due, went directly to Mondial Travel and the latter issued the three remaining tickets. The commission due to the accused for the five tickets was Lm300 and therefore the accused says that he felt justified in retaining the Lm300 which would have been due to him had the complainants honoured their obligations and paid him the full price for the five tickets.

After having examined the evidence submitted by both the Prosecution and the accused in this case the Court retains that there is a conflict in the evidence submitted by the Prosecution which conflict should obviously favour the accused. From the receipt exhibited on page 16 of these proceedings for example it clearly transpires that the deposit effected by the complainants relates to a booking for five persons and not two. This fact is also confirmed by the same complainants in cross examination (vide their evidence on pages 149 to 150) whereby they both

confirmed that the deposit effected by then related to a booking for five persons. Furthermore the invoice exhibited on page 134 clearly indicates that the dealings made by the accused with Mondial refer to a booking for five persons. This fact is also confirmed by the documents exhibited on pages 132 and 135 respectively. The document on page 15, which document is signed by Mondial Travel employees confirms that Mondial Travel received the total sum of Lm1188 from the accused out of which they repaid him the sum of Lm88 due to him as commission. Apart from this amount which the accused had paid to Mondial the document on page 157 indicates that the accused paid an additional Lm179 from the amount entrusted to him by the complainants for the issue of three insurance policies. The accused therefore paid a total of Lm1279 on behalf of the complainants.

The Prosecution is further alleging that the complainants had to repay to Mondial Travel the amount of Lm1268.30 which they had already paid the accused so that the former would issue their tickets. This assertion is clearly contradicted by complainant Mary Bartolo who when cross examined confirmed that apart from the sum of Lm1,800 which she had paid to the accused she had not paid anything else to Mondial Travel for the issue of the tickets. It is also to be noted in this regard that Mary Bartolo alleges that her sister had had an argument with the accused relating to the issue of the tickets but she failed to specify the reasons for this argument or to indicate what had happened to the two tickets relating to her sister and brother in law. Furthermore Mondial Travel employees are also very vague as to what payments were actually effected directly to them by the complainants.

The Court is of the opinion that the evidence submitted by the Prosecution, and in particular the invoices and receipts submitted by the same Prosecution, do not in any way indicate that the accused retained the amount entrusted to him by the complaints for his personal perusal. The Prosecution cannot be said to have substantiated its allegations or to have proved beyond

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reasonable doubt the charges brought against the accused.

For these reasons the Court declares the accused as being not guilty of the charges brought forward by the Prosecution in his regard and the accused is therefore being acquitted from the said charges.

< Final Judgement >

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