



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

**MAGISTRATE DR.
AUDREY DEMICOLI**

Sitting of the 24th September, 2010

Number. 589/2006

**Police
Inspector Maurice Curmi**

vs

Beverly Joyce Sciberras

The Court;

Having seen that the accused Beverly Joyce of 49 years, wife of late Martin, daughter of Victor Townsend and Doris nee Tristran, born UK on the 7th April 1956, and residing at 'Scicluna Flats', Flat 1 Siberia Street, Marsascala, holder of ID number 186503 (L) is being charged with having:

In November 2005 and the previous months, in Malta, by means of any 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 on the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, made gain of around three thousand Malta lira (LM 1000) to the detriment of Anthony Agius and others according to articles 308, 309 and 310 Chapter 9 of the Laws of Malta;

She is further being charged also with having on the same time, date, place and circumstances misappropriated, converted to her own benefit or to the benefit of any other person, anything which has been entrusted or delivered to her under a title which implies an obligation to return such thing or make use thereof for a specific purpose i.e. the sum of about LM 3000 pertaining to Anthony Agius and others, and that this sum of money was entrusted or delivered to her by reason of her profession, trade, business, management, office, service or in consequence of a necessary deposit, according to articles 293 and 294 Chapter 9 of the Laws of Malta;

She is also being charged with having on the same time, date, place and circumstances failed to comply with the conditions stipulated in the D.P.L. Permit number 08/2005 according to article 11 Chapter 70 of the Public Lotto Act;

The honourable court is humbly being requested, if the accused is found guilty, apart from the punishment prescribed by law, to order the person convicted to the payment of the cost incurred in connection with the employment in the proceedings of any expert or referee, according to article 533 Cap. 9 of the Criminal Code of the Laws of Malta;

Having seen all documents and records of the procedures including the note filed by the Attorney General (a. folio 96) dated 21st July 2008 whereby he transmitted 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:-

- a) Sections 308, 309 and 310(1)(a) of Chapter 9 of the Laws of Malta;
- b) Sections 293, 294 and 310 (1) (a) of Chapter 9 of the Laws of Malta;
- c) Section 11 of Chapter 70 of the Laws of Malta;
- d) Sections 17, 23, 31 and 533 of Chapter 9 of the Laws of Malta;

Having seen that on the 3rd July 2009 the accused answered that she had no objection that her case is heard summarily and decided by this Court as a Court of Criminal Judicature.

Having heard all evidence submitted in this case.

Having heard the final submissions made by the Prosecution and the Defence Council;

The facts of this case are in brief as follows. On the 15th November 2005 (exhibited at page 27 and 28 of these proceedings) the Lotteries and Gaming Authority sent a letter to the Economic Crimes Unit within the Police Force requesting them to investigate Beverly Joyce Sciberras, i.e the accused, in relation to fraud and misappropriation and breach of the provisions of the Public Lotto Act. From the investigations conducted by the Police it transpired that on the 3rd of February 2005 the Lotteries and Gaming Authority on behalf of the Director of Public Lotto issued a DPL permit to the accused in her capacity of Chairperson of the organisation 'Place God 1st' authorising her to hold a public lottery. The accused had applied to hold a public lottery upon the premise of awarding twenty two prizes, amongst which a Ford Ka, two flights and a personal computer system (the total value of the prize fund was

Lm6,570). The lottery was due to be drawn on the 2nd May 2005 and tickets were being sold at 25 cents each. Subsequent to the issue of the permit the Lotteries and Gaming Authority received two requests from the accused to postpone the date of the draw and these requests were upheld and the date of the draw was fixed for the 30th March 2006. In the meantime however the Lotteries and Gaming Authority started receiving claims from several individuals who chose to remain anonymous, whereby they voiced their suspicions that the lottery advertised by the organisation 'Place God 1st' was a scam. The only complainant who chose to reveal his identity to the Authority was a certain Tony Agius who explained to the Authority and later on to the Police that he had been asked to print the tickets for the lottery by the accused and was subsequently not paid for the printing. The said Mr. Agius also stated that he had purchased fifty lottery tickets from the accused. When summoned by the Authority and subsequently by the Police the accused (vide statement at page 29-32 of these proceedings) admitted that she was having financial difficulties with the set-up of the lottery. She also stated that she had not yet purchased any of the prizes but had submitted a Lm100 deposit for the Ford Ka and booked the flight tickets. She also stated that she had sold Lm3,000 worth of tickets but had already spent the said money to pay for lottery expenses. The accused was informed by the Authority that she was either, to cancel the lottery and refund the price of the tickets to the purchasers or else submit a bank guarantee to the Authority equivalent to half the value of the prize fund. She informed the Authority that she was going to give them a reply in this regard but failed to do so and the Authority therefore passed all the relevant information to the Police and requested them to investigate. On the 23rd March 2006 the Authority communicated with the accused to fix a date for the lottery to be drawn and on the 27th March 2006 she informed the Authority that the lottery could not be drawn because of financial difficulties encountered by the foundation and at that point she expressed her willingness to pay back the price of the tickets to the purchasers.

The above facts were confirmed by several employees of the Lotteries and Gaming Authority who gave evidence during these proceedings, amongst which Stephen Vella who gave evidence on the 22nd February 2008, Mario Galea who gave evidence on the 16th May 2008, Janet Abela who gave evidence on the 20th April 2009 and exhibited copies of all the stubs of the 12,273 tickets which had been passed on to the Authority by the accused and were indicated as being the stubs of all the tickets sold by her.

The accused released a statement to the Police on the 26th December 2005 whereby she confirmed that she had organised the lottery in her capacity as Chairperson of the organisation 'Praise God 1st' and whereby she stated that she was the only member of the organisation and confirmed that none of the prizes indicated on the lottery tickets had been purchased. She also stated that the lottery was not drawn because she had been let down by the printers who did not deliver the tickets on time and by the Post Office for the same reason. She also said that she had sold around Lm2900 worth of tickets and that she had used the money for lottery expenses and to set up the organisation's website. She also confirmed that she still owed around Lm4,500 to the printer for the printing of the lottery tickets. The accused gave evidence during these proceedings on the 22nd October 2009 whereby she exhibited a copy of the document whereby the foundation which she chaired was set up and stated that the foundation was set up in 2004 and she was the President and Dr. Mark Busuttil and a certain John Stilger were committee members. She then repeated the facts stated in the statement released to the Police. She maintained that the prizes for the lottery were to be purchased out of the proceeds from the lottery and said that the Lotteries and Gaming Authority were aware of this fact. The accused published adverts in local newspapers advertising purchaser of the lottery tickets that the lottery was not held and that they could therefore reclaim the price paid for the tickets (relative adverts exhibited on paged 91 to 95 of these proceedings) and stated that no-one had so far reclaimed the amounts in question. She

also said that the foundation had no money and that she was going to pay the money personally if someone reclaimed the price of the tickets. She also said that most people had bought the tickets to effect a donation to the foundation and not because they were interested in the prizes to be won. The accused also exhibited a copy of the bank statements relating to the foundation and an expenditure and received income account (Doc. BS8 at page 140 of the proceedings).

As stated above the accused is being charged with fraud and misappropriation and also for failing to comply with section 11 of Chapter 70 of the Laws of Malta. Regarding the third charge no evidence whatsoever was produced specifying in what manner the accused failed to comply with the conditions stipulated in Section 11 of Chapter 70 and she is therefore going to be declared not guilty of the said charge.

The first charge relates to fraud. The provisions relating to fraud in our Criminal Code are sections 308, 309 and 310 which sections read as follows:-

“308. Whosoever, by means of any 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 of 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, shall, on conviction, be liable to imprisonment for a term from seven months to two years.

309. Whosoever shall make, to the prejudice of any other person, any other fraudulent gain not specified in the preceding articles of this sub- title, shall , on conviction, be liable to imprisonment for a term from one to six months or to a fine(multa).

310. (1) In the cases referred to in this sub-title –

(a) when the amount of the damage caused by the offender exceeds two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) the punishment shall be that of imprisonment from thirteen months to seven years;

(b) when the amount of the damage caused by the offender exceeds two hundred and thirty-two euro and ninety-four cents (232.94) but does not exceed two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37), the punishment shall be that of imprisonment from five months to three years: Provided that if the punishment laid down for the relevant offence in the preceding articles of this subtitle is higher than the punishment laid down in this paragraph the former punishment shall apply increased by one degree and in the case of the offence under article 294 the punishment so increased shall not be awarded in its minimum;

(c) when the amount of the damage caused by the offender does not exceed twenty-three euro and twenty-nine cents (23.29), the offender shall be liable to imprisonment for a term not exceeding three months;

(d) when the amount of the damage caused by the offender does not exceed eleven euro and sixty-five cents (11.65), the offender shall be liable to imprisonment for a term not exceeding twenty days or to a fine (multa) or to the punishments established for contraventions.

(2) The provisions of subarticle (1)(c) and (d) shall not apply in the case of any of the crimes referred to in articles 296 and 298.

**310A. The provisions of articles 121C, 121D and 248E(4) shall apply to offences under this sub-title.
Jurisdiction.**

310B. The offences under this sub-title shall be deemed to be offences even when committed outside Malta and, without prejudice to the provisions of

article 5, the criminal action therefore may also be prosecuted in Malta according to the laws thereof against any person who commits or participates in the offence as provided in this Code -

(a) when the offence took place, even if only in part, in Malta or on the sea in any place within the territorial jurisdiction of Malta; or

(b) when the gain to the prejudice of another person has been received in Malta; or

(c) when a person in Malta knowingly assisted or induced another person to commit the offence; or

(d) when the offender is a Maltese citizen or a permanent resident in Malta and the fact also constitutes an offence according to the laws of the country where it took place:

Provided that for the purposes of this paragraph "permanent resident" shall have the same meaning assigned to it by article 5(1)(d)."

The elements of the crime of fraud are the patrimonial loss of the victim and the consequential gain in favour of the accused. In a judgement dated 12th February 1999 the Court of Criminal Appeal (inferior jurisdiction) gave the following definition of the elements of the crime of fraud:-

“Fil-ligi taghna biex ikun hemm it-truffa jew il-frodi innominata irid ikun gie perpetrata mill-agent xi forma ta’ ingann jew qerq, liema ingann jew qerq ikun wassal lill-vittma sabiex taghmel jew tonqos milli taghmel xi haga li ggibilha telf partimonjali bil-konsegwenti qligh ghall-agent (Il-Pulizija v. Emmanuele Ellul, App. Krim., 20/6/97; ara wkoll Il-Pulizija v. Daniel Frendo, App. Krim., 25/3/94). Dan it-telf hafna drabi jkun jikkonsisti filli l-vittma, proprju ghax tkun giet ingannata, volontarjament taghti xi haga lill-agent (Il-Pulizija v. Carmel Cassar Parnis, App. Krim., 12/12/59, Vol. XLIII.iv.1140). Jekk l-ingann jew qerq ikun jikkonsisti f’ “raggiri o artifizi” – dak li fid-dottrina jissejjah ukoll mise en scene – ikun hemm it-truffa; jekk le, ikun hemm ir-reat minuri ta’ frodi innominata (jew lukru frawdolent innominat) (ara, fost ohrajn, Il-Pulizija v. Carmelo Cassar Parnis, App.

Krim., 31/10/59, Vol. XLIII.iv.1137; II-Pulizija v. Francesca Caruana, App. Krim., 25/7/53, Vol. XXXVII.iv.1127; ara wkoll II-Pulizija v. Giuseppe Schrainer, App. Krim., 3/3/56).”

In the case in question the persons who bought the tickets paid the price of the tickets to the accused because they were led to believe that the lottery was going to be drawn and there was the possibility that their ticket would be the winning ticket and consequently they could win one of the prizes indicated on the said tickets. During these proceedings it transpired that the accused issued the tickets and started selling them with the intention of funding the expenses related to the lottery from the proceeds of the same lottery. This included the payment for printing the tickets and the purchase of the prizes. The whole issue is therefore whether the fact that the accused started selling tickets for the lottery without having actually purchased or otherwise obtained the prizes for the said lottery can be said to amount to the crime of fraud contemplated in Sections 308 and 309 of the Criminal Code. The Court is of the opinion that the Prosecution failed to prove that the accused intended to defraud the people who bought the lottery tickets when she sold the said tickets and that the accused's actions amount to a total amateur approach to the whole matter of organising a lottery as well as to lack of experience in this regard. Had the accused intended to defraud the lottery ticket purchasers she would not have applied for an extension to be able to sell more tickets. It is also to be noted that she had indicated to the Lotteries and Gaming Authority that she was requesting an extension because of financial problems related to the said lottery and after the request for a second extension she had voiced her willingness to fund the price of the tickets to the purchasers. The fact that the accused failed to pay the printer the full amount due for his services is a civil issue which this Court does not need to delve into.

The accused has also been charged with the crime of misappropriation. The Court of Criminal Appeal (*Pulizija vs Enrico Petroni et 9.6.1998*) established that

misappropriation takes place in the following circumstances:-

“Kwantu għall-kwistjoni mqajjma mill-appellanti u cioe` jekk il-“gidba semplici” – a differenza tal-artifizji u raggiri – tistax tammonta ossia twassal għar-reat ta’ frodi innominata, ir-risposta hija certament fl-affermattiv, basta li tali gidba tkun effettivament tammonta għal “qerq”, cioe` tkun intiza jew preordinata sabiex il-persuna l-ohra (il-vittma) taqhmel jew tonqos milli taqhmel xi haga li gqibilha telf patrimonjali bil-konsegwenti arrikkiment għal min jghid dik il-gidba, u basta, s’intendi, li tkun effettivament waslet għal dan it-telf minn naha u arrikkiment min-naha l-ohra.”

The Court deems that the accused in this case was not given the money by the purchasers of the tickets with a specific obligation or with an obligation to give the money back. Moreover it was not proven that the accused made a financial gain from the whole situation and moreover she expressed her willingness to give the money back to the people who had purchased the tickets after she realized that the lottery draw could not materialise. Furthermore it is very clear that the whole situation came about because of total lack of expertise and organisational skills on behalf of the accused and not because she specifically intended to misappropriate money from the purchasers of the tickets.

For the above reasons the accused is hereby being declared not guilty of the charges brought against her and consequently acquitted from the said charges.

< Final Judgement >

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