



COURT OF CRIMINAL APPEAL

**THE HON. MR. JUSTICE
DAVID SCICLUNA**

Sitting of the 27th October, 2010

Criminal Appeal Number. 94/2010

The Police

v.

Geza Attila Balla

The Court,

Having seen the charges preferred against Geza Attila Balla, 26 years old, son of Attila and Eva nee Vepsz, born in Budapest, Hungary, on the 11th April 1983, residing in London, Worland Road No 36 E15 4EY, Stratford, United Kingdom, and holder of passport number ZJ477298 issued in Hungary, before the Court of Magistrates (Malta) as a Court of Criminal Judicature for having in these islands on the night between the 29th and the 30th January 2010 and in the preceding days:

(1) conspired with another one or more persons on these Islands or outside the Maltese Islands for the purpose of selling or dealing on these Islands in the psychotropic and restricted drug (cathinone) in breach of article 120A of the Medical and Kindred Professions Ordinance, Chap 31 Laws of Malta, and Legal Notice 22 of 1985 as amended, or constituted, organized or financed such conspiracy;

(2) conspired with another one or more persons on these Islands or outside the Maltese Islands for the purpose of selling or dealing on these Islands in the psychotropic and restricted drug (cathine) in breach of article 120A of the Medical and Kindred Professions Ordinance, Chap 31 Laws of Malta, and Legal Notice 22 of 1985 as amended, or constituted, organized or financed such conspiracy;

(3) 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;

(4) imported or offered to import 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;

(5) 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;

(6) 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.

The Court was requested that, besides awarding the punishment prescribed by law, it orders the said Geza Attila Balla to pay expenses related to the appointment of experts in terms of section 533 of Chapter 9 of the Laws of Malta;

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 3rd March 2010 whereby it declared that, after having seen regulation 3(1) of Legal Notice 22 of 1985, sections 40A, 120A(1)(a)(f)(1A), 120A(1)(b), 120A(2)(b)(i) of Chapter 31 of the Laws of Malta, it acquitted the said Geza Attila Balla of all the charges brought against him;

Having seen the application of appeal lodged by the Attorney General on the 9th March 2010 requesting this Court to reform the judgment in the sense that it confirms that part whereby the accused was acquitted from the first, second, third and fifth charges brought against him whilst revoking the part whereby the accused was acquitted from the fourth and sixth charges brought against him and subsequently proceed to find him guilty of the fourth and sixth charges brought against him, and consequently inflict a punishment against the same in accordance with law;

Having seen the record of the proceedings;

Having heard the submissions by the Attorney General;

Considers:

This Court at the outset points out that respondent Geza Attila Balla did not appear before this Court even though it

resulted that he was duly notified in terms of article 647B of the Criminal Code. Accordingly the Court proceeded to hear the case on the 22nd September 2010 in terms of section 422(2) of the Criminal Code and put it off for judgement to be delivered today.

Now, appellant's grievance is basically that the first Court should not have acquitted respondent of the fourth and sixth charges relating to importation and possession of the psychotropic substance cathine. Appellant disagrees with the first Court's assessment that it was respondent's intention to import the khat plant but not the underlying substance cathine. In this respect he refers to respondent's statements which, he says, show a knowledge of what he was importing.

In the first place this Court must point out what it believes to be a unique situation. Respondent came to Malta with a suitcase containing khat plants. On arriving at the airport and before collecting his suitcase, he immediately approached a customs official to inform him that he had imported "something illegal" in his suitcase, namely khat.¹ Customs and police officers examined the suitcase which respondent was asked to collect from the carousel and in fact it was found to contain a substantial number of khat plants weighing 22,236 grams which, according to pharmacist Mario Mifsud, contained about 22 grams of cathine.²

Now, in his first statement to the Police, respondent, when asked about what he knew about the khat plant, replied that he had read that it contained the substance cathine "which is a drug substance and when someone chews the plants he also ingests the cathine and this makes him feel high." He was also asked the question by the investigating officer whether he knew that importing khat plants in Malta is illegal, to which respondent replied "Yes I know." In his second statement he was asked how he came to know about the psychotropic substance

¹ Evidence given by Salvu Buhagiar at p. 45 – 49.

² Evidence given by Pharmacist Mario Mifsud at p. 51 – 54.

cathine. His reply was: “I read about the khat plant on the internet because I wanted to know what I was working with, that is what substances I was carrying all over Europe, knowing that in a number of European countries the drug³ is illegal and so I informed myself about the characteristics of the plant.”

It is to be pointed out that the investigating officer asked a very misleading question when he asked whether respondent knew that importing khat plants into Malta is illegal. There is to date no provision of law in Malta which regulates the plant *catha edulis*. Evidently respondent was under the wrong impression – an impression further engendered by said question – that the khat plant is a controlled drug in Malta.

The first Court concluded that respondent “was worried about the khat he was carrying and not the cathine. It would have been a different matter had his intention been the importation of cathine.” The first Court stated further: “From a careful examination of what the defendant told the customs assistant, the Court finds absolutely no shred of evidence that he intended to import cathine or cathinone. What the defendant was concerned about was ‘khat’.” Indeed, what the evidence shows is that all along respondent thought that it was the khat plant which was controlled, and not cathine. So, in the words of the judgement delivered by this Court on the 3rd July 2009 in the names **The Police v. Aweys Maani Khayre**, it does not result that respondent’s mind “was specifically directed to the possession of or trafficking in the drug naturally occurring in the plant.”

Consequently this Court believes that the first Court could have legally and reasonably reached the conclusion that it did after considering all the evidence.

For these reasons:

³ Respondent was here clearly referring to khat and not cathine.

Informal Copy of Judgement

This Court rejects the appeal and confirms the judgement delivered by the first Court.

< Final Judgement >

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