MALTA

QORTI TAL-MAGISTRATI (GHAWDEX) BHALA QORTI TA' GUDIKATURA KRIMINALI

**MAGISTRAT DR.
EDWINA GRIMA**

Seduta ta' l-20 ta' Jannar, 2011

Numru. 68/2008

Il-Pulizija

(Spettur Josric Mifsud)

Vs

KENNETH CUTAJAR ta’ 27 sena bin Emanuel u Lucia nee’ Rapa, imwieled Rabat nhar it-13 ta’ Novembru 1980, residenti fil-fond numru 33, Triq Mattia Preti, Rabat (Ghawdex) u dtentur tal-karta ta’l-identita’ bin-numru 27880(G)

Il-Qorti,

Rat l-imputazzjoni migjuba kontra l-imputat Kenneth Cutajar akkuzat talli f’dawn il-Gzejjer nhar il-25 ta’ Ottubru

2008, gewwa Triq il-Port ghal habta ta'l-erbgha u kwart ta fil-ghodu(04:15hrs),

1. talli bil-hsieb li jaghmel hsara lil Horst Michael Helmut Muller akkuza lil din il-persuna quddiem awtorita' kompetenti b'reat, fil-waqt li kien jaf li din il-persuna hija innocenti.
2. talli fl-istess data, hin, lok u cirkostanzi iddenunzja lill-pulizija ezekuttiva reat li jaf li ma sarx inkella bil-qerq holoq it-tracci ta' reat b'mod li jistghu jinbdew proceduri kriminali sabiex jizguraw li dak ir-reat kien sar.
3. ghamel hsara li jammonta ghal inqas minn mija u sittax-il ewro u sebgha u erbghin centezmu (€116.47) ghad-detriment tal-Pulizija Ezekuttiva.
4. ukoll talli fl-istess jum, lok, hin u cirkostanzi, volontarjament kiser il-bon ordni jew il-kwiet tal-pubbliku b'ghajjat u bil-glied.
5. u fl-ahharnett talli irrenda ruhu recediv ai termini ta'l-artikoli 49, 50 u 289 tal-Kap.9 tal-Ligijiet ta' Malta wara li gie misjub hati b'diversi sentenzi moghtija mill-Qrati ta' Malta, liema sentenzi saru definittivi u ma jistghux jigu mibdula.

Rat id-dokumenti esebiti u l-atti kollha ta' dan il-procediment;

Semghet il-provi;

Semghet lill-imputat jammetti t-tielet u r-raba akkuzi migjuba fil-konfront tieghu, liema ammissjoni giet riaffermata wara li l-Qorti tatu zmien jirrikonsidra l-istess;

Rat il-kunsens tal-Avukat Generali tat-3 ta' Novembru 2008 sabiex dana l-kaz jigi ittrattat bil-procedura sommarja;

Ikkunsidrat:

Illi dan il-kaz beda meta fil-jum indikat fl-akkuza ghal habta tal-4:15 ta' fil-ghodu l-imputat ghamel telefonata gewwa l-Ghassa tal-Pulizija gewwa r-Rabat, Ghawdex fejn huwa allega illi kien hemm persuna vicin ir-restaurant

tieghu gewwa Marsalforn bl-isem L'Aragosta qed tipprova tisirqu. Dina t-telefonata wegbitha il-WPC 121 Mary Spiteri li kienet *duty* bhala *orderely* f'dik il-ghodwa[1]. Wara li dahal dan ir-rapport diversi ufficjali tal-pulizija nizzlu minnufih gewwa Marsalforn sabiex jaghmlu l-istharrig mehtieg. Jidher illi kif huma waslu fuq il-post sabu lill-imputat, li jidher li kien xurban, jiggieled ma' ragel anzjan ta' nazzjonalita Germaniza certu Michael Horst Muller. Fil-fatt il-pulizija ikkonstataw illi dana r-ragel kellu xi griehi fuq wiccu u anke n-nuccali miksur. Huma ippruvaw irazznu lill-imputat li kien piuttost aggressiv maghhom. Gie osservat minn dawn l-ufficjali tal-pulizija illi l-bieb tax-*shutter* tal-hanut in kwistjoni kien imtella xi hames pulzieri minn isfel u meta l-imputat gie mistoqsi kif seta Horst tella' dana x-*shutter*, l-imputat sar iktar aggressiv mal-pulizija tant illi huwa spicca qatta' il-*lanyard* tas-surgent 1040 Grima meta huwa pprova jarrestah u jdahhlu fil-vettura tal-pulizija[2]. L-imputat ittiehed l-Ghassa tar-Rabat fejn inzamm arrestat u mbaghad gie interrogat iktar tard matul il-jum. Fl-istqarrija rilaxxjata minnu, l-imputat jistqarr illi huwa kien jaf illi fil-fatt dana r-ragel Germaniz kien intefa quddiem il-hanut tieghu ghax ma kellux fejn jorqod. (Jidher illi Horst huwa ragel vagabond illi jghix f'kamra f'ghalqa u ma ghandux mezzi finanzjarji biex ighajjex lilu innifsu[3]). Mistoqsi mbaghad x'kienet ir-raguni 'l ghala huwa ggieled ma' dana r-ragel, l-imputat iwiegeb: "Ghax kien jdejjaqni quddiem il-bieb, biex nghid il-verita kollha."[4] Fil-fatt mir-rapport tal-pulizija Dokument JA jirrizulta illi meta l-pulizija accedew fuq il-post l-imputat kien stqarr maghhom: "Jiena sibtu quddiem il-hanut u quddiem il-hanut ma naccetta lil hadd".[5] Minn hawn ghalhekk johrog car x'kienet l-intenzjoni tal-imputat meta huwa cempel l-Ghassa r-Rabat jallega illi dana r-ragel kien qed jipprova jisirqu. L-imputat ried jehles minnu darba ghal dejjem biex

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[1] Ara xhieda ta' WPC 121 a fol.36 u rapport Dokument JA a fol.20

[2] Ara xhieda ta' PC1040 John Grima, PS1233 John Attard, PC1097 Mario Casha, PC61 George Sultana, PC 958 M'Angelo Portellli u PC800 Jason Mercieca a fols,. 14, 18, 23, 24, 26 u 38.

[3] Ara xhieda Spettur Josric Mifsud a fol.49, kif ukoll rapport Dokument JA a fol. 21 fejn jinghad "It turned out that Muller is staying in an old battery in a rural site at Marsalforn, same stated that he has no means to maintain himself and that he eats leftovers from the fields and occasionally the restaurants at Marsalforn give him food."

[4] Ara stqarrija tal-imputat a fol.10 u 11

[5] Ara rapport Dokument JA a fol.21

ma joqghodx imur quddiem il-bieb tal-hanut tieghu kif jidher li donnu kien jaghmel ta' sikwit. L-imputat kien jaf ben tajjeb illi x-*shutter* tal-hanut kien jinsab imtella' mhux ghax kien ipprova itellghu Horst izda ghaliex kienet tithalla imbexxaq mill-haddiema tieghu stess. Illi ghalkemm il-provi kollha jindikaw illi l-imputat kien fi stat ta' sokor meta sehh dana l-incident, madanakollu jidher illi kien jaf ben tajjeb dak li kien qieghed jaghmel ghaliex isostni kemm fil-hin tal-incident kif ukoll iktar tard meta gie interrogat illi l-intenzjoni tieghu kienet wahda u cioe' illi jehles minn Horst ghax kien dejqu jigi quddiem il-hanut u ghalhekk kien ghamel rapport falz fuqu u akkuzah bir-reat ta' serq.

Ikkunsidrat:

Illi l-imputat jinsab akkuzat b'zewg imputazzjonijiet u cioe' dik prevista fl-artikolu 110(2) tal-Kapitolu 9 u cioe' tal-falza denunzja jew is-simulazzjoni tar-reat, u r-reat ikkontemplat fl-artikolu 101 u cioe' dik tal-kalumnja.

<u>Section 101 – Calumnous or False accusation.</u>

Ir-reat tal-kalunja kif previst fl-artikolu 101 tal-Kodici Kriminali titratta dwar informazzjoni, rapport jew kwerela kemm jekk maghmula verbalment jew bil-miktub, liema kalunja hija imsejha bhala verbali u diretta. Dik imbaghad li l-ligi titkellem dwarha fl-artikolu 110(1) hija dwar il-kalunja imsejha indiretta jew rejali. Il-Professur Mamo ighid: "such crime is completed by the mere presentation of the information, report or complaint to the competent authority."

Ghandu jinghad illi mid-dicitura tal-artikolu 101, huwa car li l-unika intenzjoni tal-persuna li hija akkuzata b'dana r-reat hija illi taghmel hsara lil persuna jew persuni illi jigu akkuzati ingustament, kif ukoll illi r-rapport falz jew id-denunja falza trid tkun tali illi abbazi tal-istess azzjoni kriminali setghet tittiehed jew ittiehdet fil-konfront tal-persuna jew persuni falzament akkuzati. F'sentenza moghtija mill-Qorti tal-Appelli Kriminali (sede inferjuri) fis-7

ta’ Novembru 1949 fl-ismijiet Il-Pulizija vs Vincenzo Attard gie deciz:

”Biex ikun hemm ir-reat ta’ falza denunzja hemm bzonn li d-denunzja falza tkun dwar delitt jew konravvenzjoni li jaghtu lok ghal azzjoni kriminali persegwibbli quddiem il-Qorti ta’ Gustizzja Kriminali.”

Ukoll f’sentenza ohra fl-ismijiet Il-Pulizija vs Joseph Seychell (17/10/1997 Appelli Kriminali) inghad: “L-akkuza jew denunzja, ghall-finijiet tal-kalunja ma tirrikjedi ebda formalita partikolari; l-unika haga li hi rikjesta hi li dik l-akkuza jew denunzja issir quddiem awtorita kompetenti, jigifieri awtorita’ li ghandha s-setgha li tipprocedi biex tinvestiga u eventwalment tressaq il-Qorti lil dik il-persuna li tkun allegatament ikkomettiet dak ir-reat.”

Fl-ahharnett f’sentenza ohra tal-Qorti tal-Appelli Kriminali gie deciz:
“Kull ma jirrikjedi l-artikolu 101 (reat ta’ kalunnja) huwa l-att materjali tar-rapport lill-awtoritajiet kompetenti, u l-element formali fis-sens li min ghamel dak ir-rapport kontra persuna fejn akkuzata b’reat, kien jaf li dik il-persuna fil-fatt ma kenitx ghamlet dak ir-reat, bil-konsegwenza naturali li tali agir effettivament iwassal sabiex tigi kagjonata hsara lill-persuna rapportata. Kif dejjem gie ritenut, wiehed huwa tenut dejjem responsabbli ghall-konsegwenzi naturali ta’ dak li intenzjonalment u volontarjament jaghmel.” (Il-Pulizija vs Doreen Zammit – 15/06/2001)

<u>L-artikolu 110(1) tal-Kapitolu 9</u>:

Ir-reat ikkontemplat f’dan l-artikolu tal-ligi huwa meqjus fil-gurisprudenza kontinentali bhala forma ohra ta’ kalunja. Dana peress illi kif inghad iktar ’il fuq filwaqt illi r-reat taht l-artikolu 101 huwa meqjus bhala verbali u dirett, il-kalunja taht dina d-disposizzjoni tal-ligi hija imsejha rejali u indiretta. Il-Professur Mamo ighid hekk fin-noti tieghu:
“The constituent elements of this crime emerge clear from its definition. The material element consists in fabricating

that is, as the law says, falsely causing any fact to exist or appear to exist which may be used as evidence of a criminal offence against an innocent person. The intentional element consists in the intent on the part of the agent to procure that the person be unjustly convicted of or charged with the offence.”

On the other hand, the crime under Section 101 of calumnious accusation known as verbal or direct “such crime is completed by the mere presentation of the information, report or complaint to the competent authority, in the case of this indirect form of calumnious accusation the crime cannot be said to be completed until the fact or circumstance of fact falsely caused to exist or to appear to exist as aforesaid, becomes known to the competent authority.”

Fl-ahharnett mid-dicitura tal-ligi jidher illi dina l-forma ta’ kalunja trid twassal ghal kundanna tal-persuna li hija akkuzata ingustament b’reat abbazi ta’ dawn il-provi foloz li jkunu gew fabbrikati.

<u>Section 110(2) – the simulation of an offence</u>

Dina d-disposizzjoni tal-ligi giet mizjuda fil-kodici taghna permezz tal-Ordinanza IX tal-1911 u giet imfassla fil-maggior parti taghha fuq l-artikolu 211 tal-Kodici Taljan tal-1889. Il-Professur Mamo fin-noti tieghu ghandu dana xi jghid dwar dina d-disposizzjoni tal-ligi:

"The simulation of an offence is considered as a crime for the injury which it does to the administration of justice by misleading it; for the alarm which the news of an offence causes in the public; for the inconvenience and expense to which the officers of justice may be put; for the danger of suspicions and molestations to which law-abiding citizens may be exposed in the attempt to ascertain an imaginary fact. … <u>This crime differs from that of calumnious accusation in as much as in the simulation of offence there is no specific accusation against any determinate person and there is not, therefore, the intent to cause an innocent person to be unjustly convicted or charged</u> … (sottolinjar tal-Qorti). The simulation may be either verbal or direct or real or indirect. The former must consist in a denunciation, that is in an information or report or complaint to the Executive Police: and the crime is completed by the presentation of such information report or complaint, so that the subsequent confession of the untruth would not avail to exclude it. … Finally the <u>denunciation must be made without specifying the supposed offender</u>; otherwise this crime degenerates into that of calumnious accusation."

F'sentenza moghtija mil-Qorti tal-Appell Kriminali (Inferjuri) fl-ismijiet Il-Pulizija vs David Mizzi (16/02/1998) gie deciz:
"Kwantu ghar-reat ikkontemplat fl-artikolu 110(2) – is-simulazzjoni ta' reat – dan, bhal tal-kalunja, jinqasam f'simulazzjoni reali jew indiretta u f'simulazzjoni verbali u diretta. Is-simulazzjoni reali jew indiretta tavvera ruhha meta wiehed bil-qerq johloq tracci ta' reat b'mod li jistghu jinbdew proceduri kirminali sabiex jizguraw li dak ir-reat kien sar. Is-simulazzjonui verbali jew diretta tirrikjedi semplicement li l-agent jiddenunjza lill-Pulizija Ezekuttiva

reat li hu jkun jaf li ma sarx. Ghalhekk element kostituttiv ta’ dan ir-reat hu l-konsapevolezza ta’l-agent li r-reat li hu qed jiddenunzja fil-fatt ma sehhx.”

Illi maghmula dina l-esposizzjoni legali tar-reati li bihom l-imputat jinsab akkuzat johrog car illi l-kaz in dizamina certament ma huwiex il-kaz ta’ simulazjoni reali jew indiretta peress illi minn imkien ma rrizulta illi l-imputat kienet qed jipprova johloq xi tracci ta’ reat jew inkella illi kien qed jipprova johloq b’mod qarrieqi xi provi foloz izda jista’ jigi inkwadrat biss taht ’l hekk imsejha simulazzjoni verbali jew diretta peress illi huwa irrapporta lill-Awtorita’ kompetenti (u cioe’ lill-pulizija) persuna partikolari b’reat u cioe’ bir-reat tas-serq, liema reat igorr mieghu piena karcerarja.

Illi dwar l-akkuza tar-recidiva dina wkoll giet ampjament ippruvata mill-prosekuzzjoni u dana fid-dawl tas-sentenza esebita a fol.29 tal-process bhala Dokument F.

Illi finalment fid-dawl tal-ammissjoni maghmula mill-imputat ghat-tielet u r-raba akkuzi, l-Qorti ma tistax hlief issibu hati ta’ dawn l-akkuzi.

Illi meta tigi biex tikkonsidra l-piena li ghandha tigi inflitta, l-Qorti sejra tiehu in konsiderazzjoni l-fatt illi l-imputat ghandu problema ta’alkohol. Fil-fatt dina l-Qorti kellha diga l-opportunita tesprimi ruhha ghar-rigward ta’ dan il-vizzju tal-imputat li qieghed iwasslu sabiex jikkommetti diversi reati, liema vizzju ghalhekk hemm bzonn li jigi ikkontrollat. Inoltre l-imputat iddispjacih ghall-akkadut u ddikjara li lest li jirrisarcixxi d-danni minnu ikkagjonati.

Ghaldaqstant il-Qorti, wara li rat l-artikolu 49, 50, 101(1)(a), 325(1)(c) u 338(dd) tal-Kapitolu 9 tal-Ligijiet ta’ Malta, filwaqt li tillibera lill-imputat mit-tieni akkuza, issibu hati tal-kumplament tal-akkuzi migjuba fil-konfront tieghu, izda fid-dawl tal-konsiderazzjonijiet hawn fuq maghmula u b’applikazzjoni tal-artikolu 7 tal-Kapitolu 446 tal-Ligijiet ta’ Malta, il-Qorti qed tqieghed lil hati taht Ordni ta’ Probation u dana ghal zmien tlett snin mil-lum.

Il-Qorti twissi lil hati bil-konsegwenzi skond il-ligi jekk huwa ma jobdix l-ordni imposta fuqu llum.

Il-Qorti tordna komunika ta’ dina s-sentenza lid-Direttur tal-Probation skond il-ligi.

< Sentenza Finali >

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