



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

**MAGISTRATE DR.
ANTONIO MICALLEF TRIGONA**

Sitting of the 20 th February, 2012

Number 15/2009

The Police
(Inspector Angelo Gafa)

vs

Joseph Attard and Ilir Pelinku

The Court,

Having seen the charges against accused Attard and Pelinku respective holders of identity cards 371084(m) and 19743(A) with having in Mosta and other places in these Islands on the 16th July 2008 or in the preceding days:

- gave or agreed to give or offered or proposed to another person, directly or indirectly, that such other person should give or agree to give or offer any gift or consideration to Saviour Darmanin, Marsaxlokk FC

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player, as an inducement or reward for doing or from omitting from doing, or for having, after the commencement of the Prevention of Corruption (Players) Act, done or omitted from doing any act which, if done or omitted, would be in contravention of sub article (1) or (2) of same act;

Having seen the Attorney General's articles of law by which the records of the proceedings were transmitted to this Court to decide on the guilt or otherwise of the accused;

Having heard the evidence;

Having heard oral submissions;

Considers:

This case was instigated by a report from the Malta Football Association to the Commissioner of Police which had reported an alleged possible attempt of corruption of the Marsaxlokk goalkeeper in an international UEFA match which Marsaxlokk was playing against the Croatian side NK Slaven Belupo. This report was duly investigated by the prosecuting officer himself who deemed that the persons responsible in this attempt of corruption were the accused. It has to be said from the outset that the attempt did not succeed owing to the fact that the Marsaxlokk goalkeeper refused to be involved. This notwithstanding the charges would subsist even on the mere attempt. In fact the charges are based on paragraph (3) of Article 3 of Chapter 263 which makes any person liable to have committed a corrupt practice " who gives, or agrees to give or offers or proposes to another person, directly or indirectly, that such other person should give or agree to give or offer any gift or consideration to any player or to any official or organiser as an inducement or reward for doing or from omitting from doing, or for having....done or omitted from doing any act which, if done or omitted would be in contravention of " that which the said article also makes applicable on players, officials and organisers of the game of football.

As to the evidence produced in this case it results abundantly clear that on the day prior to the game the Marsaxlokk goalkeeper was approached by accused Attard with the intent, directly or indirectly, to give the Croatian team a three goal advantage. It also results that the goalkeeper was offered, what, in simple language is called a bribe, which was refused. What is important to this Court is that it has been satisfactorily proven that an approach was made with an attempt to induce the Marsaxlokk goalkeeper to accept a corrupt practice as defined by law. This in itself is sufficient to constitute the offence which is the subject of these proceedings. The evidence attesting to this is clear. It comprises of the direct evidence proffered by the prosecution during the course of these proceedings read conjointly with accused's Attard statement, which he had released to the police, and which, consequently, acquires probative evidence, in so far as it corroborates other proven evidence to the extent that it proves the charges against him beyond any reasonable doubt.

Concerning the other accused Ilir Pelinku it is basic at criminal law that neither the prosecution, nor, more so, the Court can rely on a statement released by an accused to the prejudice of any other person. Such a statement is evidence only against who releases it. Nor can the Court now base a conviction solely on a statement released by an accused who was not afforded the right to consult and seek advice from a lawyer prior to his interrogation by the police. In other words, a conviction can only be sustained should other evidence result during the course of the proceedings which if proven as a fact could be taken as corroborative of that statement. According to the prosecution such corroborative evidence exists in the call profiles which have been exhibited. On examination of the said call profiles at folio 36 it transpires that on the day prior to the match accused Attard received two calls on his cell phone the first originating from a land line number which is traceable to accused Pelinku and the other from Saviour Darmanin, the Marsaxlokk goalkeeper, being the person who was approached. The first phone call, in the

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Court's opinion, when seen in the context of these proceedings is by itself sufficient to render the statement made to the police at the investigation stage by accused Pelinku admissible more so in the absence of any explanation by said accused as to the purpose and scope of the phone call.

Consequently, and in the light of what has been stated above, it finds the charge proven against the accused. Having seen Article 3 and 9(1)(a) of Chapter 263 declares them guilty and condemns them each to a fine of 500 Euros and a term of imprisonment each of six months which are being suspended for one year from today by application of Article 28A of the Criminal Code.

The Court has duly explained to the accused their responsibilities according to this judgement.

< Final Judgement >

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