



CRIMINAL COURT

**THE HON. MR. JUSTICE
LAWRENCE QUINTANO**

Sitting of the 9th March, 2012

Number 17/2008

**The Republic of Malta
Vs
Eduardo Navas Rios**

The Court,

Having seen the bill of indictment no. 17/2008 against the accused Eduardo Navas Rios wherein he was charged with:

1) After the Attorney General premised in the First Count of the Bill of Indictment that in October 2006 money laundering investigations were being carried out with regards to certain individuals, concerning large amounts of money transferred to Panama since December two thousand and five (2005) suspected to have totalled to one hundred and fifty thousand Maltese Liri (Lm150,000) equivalent to three hundred forty nine thousand five hundred Euro (€349,500). Initially it

transpired that the recipients of these funds were connected to an arrest which took place following a meeting with a drug courier and moreover the same recipients did not have any provenance for the funds transferred, hence indicating that drug money was being laundered to Panama out of Malta.

In the course of further investigations other persons were investigated, including a certain Simone Sciberras who had a substantial amount of money deposited in her bank account but which owing to her background couldn't have possibly been earned legitimately by her. This sum amounted to approximately twenty eight thousand Malta Liri (Lm28,000), equivalent to approximately sixty five thousand two hundred and forty Euro(€65,240).

Although this suspect attempted to justify the source of these funds, these did not tally with what effectively transpired. It resulted further that Simone Sciberras at the time had a relationship with Eduardo Navas Rios who ironically featured as one of the persons who was also wanted for investigations connected with the money laundering investigations above mentioned. In fact Eduardo Navas Rios hereafter referred to also as the accused, informed the police that he had given the money to his girlfriend so that she could deposit same into her account and this even in the hope of acquiring accrued interest on the sum duly deposited. The money transferred by the accused, which amounted to between twenty and twenty two thousand Maltese Liri (Lm20,000 – Lm22,000) equivalent to between forty six thousand six hundred Euro and fifty one thousand seven hundred Euro (€46,600 - €51,700) was allegedly stolen by the accused from his cousin Georgie Neville

Navas, who was also wanted in connection with the money laundering investigations and which money, according to the accused emanated from highly illicit activities. It resulted also that Domingo Ricardo Duran Navas was another cousin of the accused, who likewise was involved and arraigned in connection with the original illicit transactions being investigated by the police.

It resulted further that following this incident, the accused went to Panama and used this money so as to rebuild his mother's house and started a car-importation business between the United States and Panama. When being questioned, it transpired that the accused had a working permit to work in Malta but upon verification it was established that he had acquired the permit since February two thousand and seven (2007) and hence too short a time to earn that kind of money legitimately, not to mention the nature of his jobs and income which were insufficiently paid to earn such an amount.

Besides further police investigations verified that the accused had carried out other transactions, which took place since January 2006 and which included purchases and transfers of sums of money to Panama, ranging between fifty Maltese Liri (Lm50) equivalent to one hundred sixteen Euro (€116) and eight hundred thirty Maltese Liri (Lm830) equivalent to approximately one thousand nine hundred thirty three Euro and ninety cents (€1933.90).

Hence the accused was arrested for having on the 5th March 2007, and in the preceding months, by several acts even though committed at different times but constituting a violation of the same provisions of law and committed in pursuance of the same design, committed the above offences as well as laundering the money/things stolen in that he intentionally and illegally transferred or converted same in such a manner so as to conceal or disguise the criminal origin thereof when he was fully aware of the nature of the origin of the same. In effect this property was knowingly obtained from criminal activity by the accused.

By committing the abovementioned acts the accused Eduardo Navas Rios rendered himself guilty of carrying out acts of money laundering on the 5th March 2007, and in the preceding months, by several acts even though committed at different times

but constituting a violation of the same provisions of law and committed in pursuance of the same design, by:

- i) converting or transferring property knowing that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;
- ii) concealing or disguising the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- iii) acquiring property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- iv) retaining property without reasonable excuse knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- v) attempting any of the matters or activities defined in the above foregoing paragraphs (i), (ii), (iii) and (iv) within the meaning of Article 41 of the Criminal Code;
- vi) acting as an accomplice within the meaning of Article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii), (iv) and (v).

Wherefore, the Attorney General, in his capacity, accused Rios Eduardo Navas of having on the 5th March 2007, and in the preceding months, by several acts even though committed at different times but constituting a violation of the same provisions of law and committed in pursuance of the same design, rendered himself guilty of carrying out acts of money laundering by:

- i) converting or transferring property knowing that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;
- ii) concealing or disguising the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- iii) acquiring property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- iv) retaining property without reasonable excuse knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- v) attempting any of the matters or activities defined in the above foregoing paragraphs (i), (ii), (iii) and (iv) within the meaning of Article 41 of the Criminal Code;
- vi) acting as an accomplice within the meaning of Article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing subparagraphs (i), (ii), (iii), (iv) and (v).

Demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of not more than thirty years imprisonment or to a fine (multa) not exceeding two million and three hundred and twenty-nine thousand and three hundred and seventy-three Euro and forty cents (€2,329,373.40) or to both such fine and imprisonment, and to the forfeiture in favour of the Government of the proceeds or of such property the value of which corresponds to the value of such proceeds, as is stipulated and laid down in sections 2, 3(1), 3(3) and 3(5) of Chapter 373 of the Laws of Malta, and articles 18, 23, 23B and 533 of the

Criminal Code, or to any other punishment applicable according to law to the declaration of guilty of the accused.

2) After the Attorney General premised in the Second Count of the Bill of Indictment that during the investigations concerning the circumstances indicated in the first count of this Bill of Indictment, the accused himself admitted that the sum of money transferred to his girlfriend for the purpose of deposit, which sum amounted to between twenty and twenty two thousand Maltese Liri (Lm20,000 – Lm22,000) equivalent to between forty six thousand six hundred Euro and fifty one thousand seven hundred Euro (€46,600 - €51,700), was actually taken illegally by the accused himself and against the knowledge and will of Georgie Neville Navas, the cousin of the accused, who was in possession of the said money at the time. He admitted that some time during the weeks prior to the 3rd of May of the year two thousand and six (2006), the accused took the money illegally from a black sports bag belonging to his cousin, which bag was situated at the time of the offence at the apartment of Georgie Neville Navas. It transpired also that the accused was invited to sleep over at his cousin's apartment whenever he felt like. In fact he even had a key to the apartment in question and added that he carried out this offence during the night time i.e. between sunset and sunrise, while his cousin was in his bedroom and without his cousin's knowledge or consent.

By committing the abovementioned acts the accused Rios Eduardo Navas rendered himself guilty of aggravated theft by person, place, time and amount of the thing stolen.

Wherefore, the Attorney General, in his capacity, accused Eduardo Navas Rios of rendering himself guilty of aggravated theft by person, place, time and amount of the thing stolen; demands that the accused be proceeded against according to law, and

that he be sentenced to the punishment of not more than seven years and not less than thirteen months imprisonment, as is stipulated and laid down in sections 261(c)(d)(e)(f), 267, 268(b), 269(g), 270, 279(b), 280(b), 17, 31 and 533 of the Criminal Code, or to any other punishment applicable according to law to the declaration of guilt of the accused.

3) After the Attorney General premised in the Third Count of the Bill of Indictment that at the same time and during the circumstances mentioned as indicated in the first and second counts of this Bill of Indictment, during a search effected on the 22nd March of the year two thousand and seven (2007) at the apartment of the accused situated at Flat 2, Block B5, Triq il-Frejgatina, Qawra, in the course of the investigations at issue, the police found a total of thirty eight bullets known as point two calibre LR (long rifle) situated on the bedside locker in the residence of the accused. No weapon was found in the flat. It further transpired that the accused has no licence to hold such ammunition in his possession.

By committing the abovementioned acts the accused Eduardo Navas Rios rendered himself guilty that on the 22nd March of the year two thousand and seven (2007), and in the preceding months, kept in any premises or have in his possession, under his control any firearm or ammunition without a licence.

Wherefore, the Attorney General, in his capacity, accused Eduardo Navas Rios of rendering himself guilty of keeping in any premises or have in his possession, under his control any firearm or ammunition without a licence; demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of not more than a fine (multa) of not less than six hundred and ninety-eight euro and eighty-one cents (698.81) or to imprisonment for a term not exceeding three months or to both such fine and imprisonment, as is stipulated and laid down in sections 5(1), 51(2) of Chapter

480 of the Laws of Malta and in sections 17, 31 and 533 of the Criminal Code, or to any other punishment applicable according to law to the declaration of guilty of the accused.

Having seen all the records of the case, including those of the compilation of evidence before the Court of Magistrates (Malta) as a Court of Criminal Inquiry;

Having seen today's verdict which is as follows :

- (a) the jury by six votes in favour and three votes against found the accused Eduardo Navas Rios not guilty of the first count of the bill of indictment but guilty of the offence under the first count of the bill of indictment without the offence being continuous;
- (b) the jury by seven votes in favour and two votes against found the accused Eduardo Navas Rios not guilty of the second count of the bill of indictment but guilty of aggravated theft by person, place and amount of the thing stolen;
- (c) the jury by eight votes in favour and one vote against found the accused Eduardo Navas Rios not guilty of the Third Count of the Bill of Indictment.

Now therefore declares Eduardo Navas Rios guilty of only the first two counts in the Bill of Indictment, namely of having:-

1. on the 5th March 2007, and in the preceding months, rendered himself guilty of carrying out acts of money laundering by:

- (i) converting or transferring property knowing that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;

- (ii) concealing or disguising the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- (iii) acquiring property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- (iv) retaining property without reasonable excuse knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- (v) attempting any of the matters or activities defined in the above foregoing paragraphs (i), (ii), (iii) and (iv) within the meaning of Article 41 of the Criminal Code;
- (vi) acting as an accomplice within the meaning of Article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii), (iv) and (v), and this according to the First Count of the Bill of Indictment;

2. during the investigations concerning the circumstances indicated in the First Count of this Bill of Indictment rendered himself guilty of aggravated theft by person, place, and amount of the thing stolen.

3. The Court is acquitting the accused of the Third Count.

The Court notes that the Prosecution and the defence made the following submissions:.

The Prosecution submitted that it is not after the pound of flesh because the accused has a clean conduct sheet and has never had any further trouble with the law. Moreover, he fully co-operated with the police. The law, at the time of the offence of money laundering did not stipulate any minimum. It also submitted that, in connection with the money laundering charge the panel of the jury had not found the accused guilty of a

continuous offence but of a continuing one. However, as to the aggravation of amount in the second count, the Prosecution had indicated article 279(b) of the Criminal Code in the paragraph of the accusation.

The Defence submitted that the actual sum involved was between Lm20,000 and Lm24,000 and also laid stress on the fact that at the time when the money laundering offence was committed there was no minimum of punishment indicated in the law. Furthermore as the money involved in the offence of money laundering, was the money which was derived from the theft, then article 17(h) should apply. The Defence also stressed that the accused has never had any further trouble with the police and that the verdict of the jury was the minimum one required by law. It also added that the aggravation of amount referred to by the Prosecution in the Bill of Indictment referred to the minimum. Finally the defence referred to the case of 'Ir-Repubblika ta' Malta versus Carmen Butler omissis' decided by the Court of Criminal Appeal (Superior) on the 26th February, 2009 where the amount involved was almost identical.'

The Court

(a)in accordance with the Constitution of Malta and Chapter 9 of the Laws of Malta, is applying the law as it stood at the time of the offence;

(b)has considered the submission made by the defence about the application of section 17(h) of Chapter 9. The Court has decided that in this case the theft cannot be considered 'as a mean to an end', that is, as a means to commit the offence of money laundering. Two classic cases which are used to illustrate the application of article 17(h) are these: breaking down the door of a house in order to steal anything from it or to rape a person; damaging a car door in order to steal a radio or any money found inside. In the present case the situation is entirely different. The fact that the theft is an underlying criminal activity does not turn the criminal activity into a means to an end even if the same sum of money stolen is

eventually transferred or in any other way laundered in accordance with 2(1) of Chapter 373. Hence it is rejecting the submission made by defence.

(c) has considered the submission made by the defence with regards to the aggravation of amount. The Court decides that the reference to the aggravation of 'amount' by the Prosecution in the paragraph : 'By committing the abovementioned acts the accused Rios Eduardo Navas rendered himself guilty of aggravated theft by person, place, time and amount of the thing stolen' is enough. One does not expect any further elucidation of what is meant by 'amount' once even the law itself is laconic about this aggravation. An indication of the relevant article is made in the final paragraph where the Attorney General makes the accusation and hence the Court is rejecting this submission.

(d) has considered the case referred to by the defendant and noted the following differences: the jury had asked the Court to consider being lenient with the defendant; that Court had also taken into account that the defendant had found herself in very difficult family circumstances; and that the case dealt with only one charge. So while one feature may be almost identical, there are other circumstances which are not.

The Court has also considered the following:

- (i) The defendant fully co-operated with the police;
- (ii) That the verdict was in its minimum;
- (iii) That the Prosecution is not after its pound of flesh;
- (iv) The defendant has a clean conduct sheet.
- (v) That the jury panel has considered the first count as a continuing one (in Maltese 'permanenti') rather than a continuous one and hence article 18 does not apply.
- (vi) That the law at the time of the offence did not stipulate a minimum.

Having seen articles 2, 3(1), 3(3) and 3(5) of Chapter 373 of the Laws of Malta, sections 5(1), 51(2) of Chapter 480 of the Laws of Malta, and articles 261(c)(d)(e) (f), 267, 268(b), 269(g), 270, 279(b), 280(b), 17(b), 18, 23, 23B, 31 and 533 of the Criminal Code.

Now therefore condemns the said Eduardo Navas Rios to a term of imprisonment of (4) years and (6) six months and to pay a fine (multa) of ten thousand Euros (€10,000), Should the fine not be paid within one year, it shall be converted into a term of imprisonment of one year.

Furthermore, orders the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which he has been found guilty and other moveable and immovable property belonging to the said Eduardo Navas Rios.

And finally orders the confiscation of all the objects exhibited in Court.

< Final Judgement >

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