



COURT OF CRIMINAL APPEAL

**THE HON. MR. JUSTICE
MICHAEL MALLIA**

Sitting of the 17 th May, 2012

Criminal Appeal Number. 25/2010

The Police

Vs

Kaman Ivanov Lazarov

The Court,

Having seen the charges brought against the appellant Kaman Ivanov Lazarov before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having in the months of September 2009 and October 2009 on these islands, where the several acts committed by the offender, even if at different times constitute violations of the same provision of the law, and are committed in pursuance of the same design on these islands, when ordered so by a Court or so bound by contract failed to give to Nataliya Aleksandrovna Medvedeva and/or to his children the sum fixed by that contract or laid down in the

contract as maintenance for her and/or their children, within fifteen days from the day of which according to such order or contract, such sum should be paid.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 18th January, 2010, by which, the Court, after having seen the articles 18 and 338(z) of Chapter 9 of the Laws of Malta, found the said accused guilty as charged but discharged him from any punishment on condition that he does not commit another offence within the period of two (2) months, in accordance with the provisions of Article 22 Chapter 446 of the Laws of Malta.

Furthermore the Court ordered the accused to effect payment of five hundred Euro (€500) to the injured party within one (1) month, in accordance with the provisions of Article 24 Chapter 446 of the Laws of Malta.

The Court explained in clear words the terms of the judgement to the accused.

Having seen the application of appeal filed by appellant on the 28th January, 2010, wherein he requested this Court to “thassar is-sentenza appellata u konsegwentement tilliberah mill-imputazzjoni dedotta kontrih, minn kull piena u htija u, fin-nuqqas, illi tbiddel u tirriforma l-ewwel sentenza billi ma tkkommina ebda piena kontra l-appellant”.

Having seen the records of the case.

Having heard Counsels' submissions during the hearing of the

Now therefore duly considers.

That the grounds of appeal of appellant can be briefly summarised as follows:-

Illi bl-imputazzjoni kif dedotta, kemm bil-Malti kif ukoll fit-traduzzjoni bl-Ingiliz, l-appellant qatt ma seta` jinstab hati illi kkontravjena d-digriet tal-Qorti Civili, Sezzjoni tal-Familja tad-9 ta' Settembru, 2009.

Dana ghaliex il-parti tad-digriet illi tamar dwar il-manteniment tghid testwalment hekk :

Il-Qorti tordna lil missier jghaddi lill-omm kull erba` gimghat is-somma ta' mitejn u hamsin Euro ghal binthom.

Fl-akkuza illi wasslet ghall-kundanna appellata, pero` l-appellant imkien ma huwa mixli illi ma hallasx manteniment lill-omm ghal binthom.

Huwa mixli illi naqas li jhallas lil Nataliya Alexandrovna Medvedeva u/jew lil uliedek mentri se mai l-akkuza kellha tkun rikalkanti l-kliem tad-digriet, jigifieri illi ma hallasx il-manteniment lil martu dovut ghal uliedu.

Jigi sottomess illi l-affidavit ta' PC 593 R. Attard kellu jigi notifikat lill-appellant mhux biss bil-Malti imma anki fil-forma ta' traduzzjoni fil-lingwa Ingliza, haga li ma saritx. Infatti, l-appellant illi huwa ta' nazzjonalita` Bulgara u ma jifhimx bil-Malti, gie notifikat bl-akkuza biz-zewg lingwi, kemm bil-Malti kif ukoll bl-Ingliz, imma mbaghad l-affidavit akkompanjanti l-istess akkuza kellu wkoll jigi notifikat lill-akkuzat bil-lingwa Ingliza. Infatti s-subartikolu 5(1) tal-Kap. 189 jistabilixxi illi :

Meta ghandu jigi notifikat xi att lil xi persuna li r-registratur ikollu raguni li jahseb li titkellem bl-Ingliz, ir-registratur ghandu jara li ssir traduzzjoni tieghu fl-ilsien Ingliz minn ufficjal tar-registru u n-notifika tigi effettwata billi tigi konsenjata kopja ta' l-original u t-traduzzjoni tieghu.

Ma ghandux ikun hemm dubju illi l-affidavit tal-Pulizija huwa att ai termini tas-subartikolu fuq imsemmi, tant huwa hekk illi fuq wara tal-affidavit tingab l-ispjegazzjoni originanti mill-artikolu 360(A)(2) tal-Kap. IX dwar x'ghandu jsir biex wiehed jaghmel mod illi jkun jista` jikkontroezamina lil min halef l-affidavit.

Ma hemmx dubju, lanqas, illi min irrediga l-akkuza kien jaf illi l-appellant ma jifhimx bil-Malti, ghaliex fil-fatt, l-akkuza inharget, kif inghad, f'zewg lingwi.

Allura, jissottometti umilment l-appellant, il-procedura quddiem l-Ewwel Qorti giet ivvizzjata mill-fatt illi dan l-

affidavit ma giex notifikat lill-appellant in forma tradotta bl-Ingiliz.

Mhux biss, imma l-istess affidavit in kwantu att ghandu jkollu anness mieghu l-istess dikjarazzjoni li tinsab fuq wara tal-akkuza, ghaliex is-subartikolu 5(5) tal-kap. 189 jistipula illi :

(5) Kopja bl-ilsien Ingiliz tad-disposizzjonijiet tas-subartikoli (1) sa (4) inkluzi ta' dan l-artikolu ghandha tigi riprodotta jew annessa ma' kull kopja ta' kull att li ghandu jigi notifikat lil xi persuna.

Illi ghalhekk l-affidavit ma giex validament notifikat lir-rikorrenti u ghalhekk il-procedura hija ivvizzjata.

Id-digriet tal-Qorti Civili, Sezzjoni tal-Familja, qatt ma gie notifikat fil-lingwa Ingiliza lill-appellant. L-appellant sar jaf bit-traduzzjoni ta' dan id-digriet biss fis-seduta tat-18 ta' Jannar, 2010 quddiem il-Qorti u qatt qabel.

Illi bla pregudizzju ghall-aggravji suesposti, c-cirkostanzi kollha tal-imputat, finalment, kellhom u ghandhom jittiehdu in konsiderazzjoni. Gara li ffit wara li l-Qorti Civili, Sezzjoni tal-Familja emanat id-digriet taghha tad-9 ta' Settembru 2009, il-lokal li kien ilu zmien jiggstixxi l-appellant, il-Hannibal Bar and Restaurant gewwa San Pawl il-Bahar, safa mahruq fl-intier tieghu, l-appellant allura tilef xoghlu, tilef l-oggetti proprjeta` tieghu illi kienu gewwa l-lokal meta nharaq, u ghadu sal-lum bla xoghol, bil-prospettivi li jista` jkollu ragel ta' 50 sena u li huwa barrani.

Considers :

Appellant and his wife Natalya Aleksandrovna Medvedeva were in the process of separation proceedings by decree given by the Family Court of the 9th of September, 2009 appellant was ordered to pay maintenance to his minor child. Appellant failed to do so and by complaint by Natalya Aleksandrovna Medvedeva the Police instituted proceedings against appellant for breach of a Court order.

It resulted however that soon after the award of the decree above mentioned Hannibal Bar in St. Paul's Bay which used to be run by appellant burnt down completely and appellant was left without any means to support himself or to pay maintenance to his child.

Since however seemed to have settled down because by note verbal of the 16th February 2012 (fol. 56) complainant came before the Court and gave evidence on oath declaring that she had reached an amicable settlement with her ex husband regarding personal and financial relations between them, and that as far as these cases are concerned, she has no further claims against appellant.

Considers :

That when the First Court gave judgement on the 18th January, 2010 the appellant was in the same situation as he is today. That the fire effecting his business had already occurred and no doubt was considered by the Court when it gave judgement.

It is not therefore upto this Court to revoke the discession of the First Court when it comes to the declaration of guilt.

It does however consider that there should be a change effecting the penalty.

The scope of the legislator, when introducing this contravention in the Criminal Code in 1983 (as amended in 1986), was to put pressure on reluctant debtors to honour their obligations and not only to prevent the non observants of orders, decrees or judgements of the Court, orders and decrees that must be observed to the latter or non observants of contractual obligations between married couples.

In this case this scope was reached and that is why the Court considers a revision of the punishment awarded.

The Court notes that appellant was freed under the terms of Article 22 of Chapter 446 of the Laws of Malta on

Informal Copy of Judgement

condition that he does not repeat an offence within two months from the date of judgement and ordered to pay five hundred Euros (€500) within one month.

In view of the pronouncement of guilt by the First Court, the first order should stand but not the payment of five hundred Euros (€500).

In view of the above therefore the Court decides to uphold the appeal in part, reforms the judgement of the First Court in the sense that whilst confirming that part whereby it freed the appellant according to the terms of article 22 of Chapter 446 for the Laws of Malta on condition that he does not commit another offence within a period of two months from today, revokes that part of the judgement whereby appellant was obliged to pay five hundred Euros (€500) to his ex wife Natalya Aleksandrovna Medvedeva.

< Final Judgement >

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