



COURT OF CRIMINAL APPEAL

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

Sitting of the 17 th May, 2012

Criminal Appeal Number. 335/2010

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 on the month of December 2009 on these islands, when ordered so by a Court or so bound by contract failed to give to Nataliya Aleksandrova 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 5th July, 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 and condemned him to one (1) week detention.

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 15th July, 2010, wherein he requested this Court to reverse the judgement herein appealed, failing which, subsidiarily, to vary and reform such judgement by meting a milder punishment considering the facts of the case.

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:-

1. That the prosecution did not prove its case beyond reasonable doubt and did not produce the best evidence which ought to be exhibited in cases of this nature;
2. That subsidiarily, and without prejudice to the above, the copy of the decree exhibited was not an integral copy of such decree, and thus it cannot be considered to be a full copy of such decree;
3. the third ground is addressed towards the severity of the punishment. Subsidiary and without prejudice to the above grounds, it is to be stated that whilst impossibility to pay maintenance as decreed is not per se` a ground which can lead to the discharge of the accused, it should definitely militate in accused's favour when the Court does contemplate the punishment which it is to emanate.

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 5th July, 2010 he appellant was in the same situation as he is today. That the fire affecting 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 discretion of the First Court when it comes to the declaration of guilt.

It does however consider that there should be a change affecting 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.

For these reasons the Court upholds the appeal in part, in the sense that it confirms the judgement of the First Instance wherein it found appellant guilty as charged but reforms the judgement where it condemned appellant to a period of one (1) week detention and instead orders his discharge according to the terms of article 22 of Chapter 446 of the Laws of Malta on condition that he does not commit another offence within two (2) months from today.

< Final Judgement >

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