



CRIMINAL COURT

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

Sitting of the 26th September, 2012

Number 25/2010

**The Republic of Malta
Vs
Touray Sana**

The Court,

Having seen the bill of indictment no. 25/2010 against the accused Touray Sana wherein he was charged with:

1) After the Attorney General premised in the First Count of the Bill of Indictment that on the eleventh (11th) September of the year two thousand and eight (2008) and during the previous months, in these islands and outside these islands of the Republic of Malta the accused Touray Sana conspired with persons in these islands and outside these islands to knowingly, import illegally drugs, namely cocaine. That in order to carry out this plan, the accused Touray Sana had agreed to carry the illegal drugs under the soles of his shoes which he was wearing and under

the soles of a second pair of shoes which were in his luggage, travel to Malta via a flight from Girona, Spain to Malta and after arriving to pass on these drugs to other persons in Malta. The accused would receive a considerable amount of money for such services rendered.

Subsequently on the eleventh (11th) day of September of the year two thousand and eight (2008), the Drug Squad Police together with the Customs Officers were carrying out inspections at the Malta International Airport. During the search, the accused, Touray Sana, was acting suspiciously and by means of further investigations, it resulted that the accused was carrying, knowingly, hidden inside the soles of these shoes an illegal amount of the drug cocaine which was not in accordance with our law.

Fortunately the accused was arrested by the police on the date of his arrival that is on the eleventh (11th) of September of the year two thousand and eight (2008) in the abovementioned circumstances.

In fact it resulted that the illegal drugs carried consisted of cocaine in the aggregate amount of over four hundred and sixty four grams (464.4 grams). The illegal substance found carries the total street value of over thirty five thousand, two hundred and ninety four Euros (€35,294), the previous currency equivalent of over fifteen thousand Maltese Lira (Lm 15,147) and a high purity of nearly fifty percent (49.7%).

By committing the abovementioned acts with criminal intent, Touray Sana rendered himself guilty of conspiracy to trafficking in dangerous drugs (cocaine) in breach of the provisions of the Dangerous Drugs Ordinance.

Wherefore, the Attorney General, in his capacity, accuses Touray Sana of having on the eleventh (11th) day of September of the year two thousand and eight (2008) and in the preceding months, by means of 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, guilty of conspiracy to trafficking in dangerous drugs (cocaine) in breach of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or of promoting, constituting, organising or financing the conspiracy; demands that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to fine of not less than two thousand three hundred and thirty Euro (€2,330) and not more than one hundred sixteen thousand and five hundred Euro (€116,500) and to the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in sections 9, 10(1), 12, 14, 15(A), 20, 22(1)(a)(f)(1A) (1B)(2)(a)(i)(3A)(a)(b)(c)(d) and 26 of the Dangerous Drugs Ordinance and regulation 4 and 9 of the 1939 Regulations for the Internal control of Dangerous Drugs (Legal Notice 292/39), and in sections 18, 20, 22, 23 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 owing to the nature of the circumstances which took place on the eleventh (11th) September of the year two thousand and eight (2008) and during the preceding months, as indicated in the First Count of this Bill of Indictment, it transpired that the accused, wilfully and knowingly, travelled to Malta from Girona, Spain on Ryan Air flight number FR 9012, whilst carrying throughout the entire trip, an illegal drug on his person under the soles of the shoes he was wearing and under the soles of a second pair of shoes which were in his luggage which resulted to be cocaine and which substance is illegal in accordance with our law and which by his own admission the accused was aware that the substance was illegal. The accused gave his full consent to taking the flight concerned, whilst being fully aware of the purpose of his journey and the illegal substance which

he had carried before he boarded his flight so as to bring the same to Malta.

Effectively, if the Drug Squad Police and the Customs Officers failed to notice the accused upon his arrival, the contents of these drugs under the soles of his shoes and those in his luggage would have been transferred to third parties in Malta and would have been trafficked for financial gain. The illegal substance under the soles of his shoes and those in his luggage consisted of cocaine in the aggregate amount of over four hundred and sixty four grams (464.4 grams). The illegal substance found carries the total street value of over thirty five thousand, two hundred and ninety four Euros (€35,294), the previous currency equivalent of over fifteen thousand Maltese Lira (Lm 15,147) and a high purity of nearly fifty percent (49.7%).

The accused was not in possession of any licence or authorisation issued under the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), which authorised or permitted in any way the importation of the dangerous drug concerned by the accused.

Cocaine is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance. Touray Sana was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law.

By committing the abovementioned acts with criminal intent, the accused Touray Sana rendered himself guilty of intending to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when he was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law.

Wherefore, the Attorney General, in his capacity, accuses Touray Sana of having on the eleventh (11th) September

of the year two thousand and eight (2008) 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, guilty of meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when he was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law; demands that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to fine of not less than two thousand three hundred and thirty Euro (€2,330) and not more than one hundred sixteen thousand and five hundred Euro (€116,500) and to the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in sections 2, 9, 10(1), 12, 14, 15(A), 20, 22(1)(a)(1B)(2)(a)(i)(3A)(a)(b)(c)(d), and 26 of the Dangerous Drugs Ordinance and regulation 4 and 9 of the 1939 Regulations for the Internal control of Dangerous Drugs (Legal Notice 292/39), and in sections 17, 18, 20, 22, 23 and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

3) After the Attorney General premised in the Third Count of the Bill of Indictment that having illegally imported on the eleventh (11th) September of the year two thousand and eight (2008) into Malta, the dangerous drug cocaine, as described under the First and Second Count of this Bill of Indictment, Touray Sana, as a consequence of the suspicions raised to the Drug Squad Police and Customs Officers, was searched and was subsequently found to be carrying knowingly and illegally, under the soles of his shoes and under the soles of a second pair of shoes which were in his luggage, cocaine in the aggregate amount of over four hundred and sixty four

grams (464.4 grams) which by his own admission he was aware that the substance was illegal. The illegal substance found carries the total street value of over thirty five thousand, two hundred and ninety four Euros (€35,294), the previous currency equivalent of over fifteen thousand Maltese Lira (Lm 15,147) and a high purity of nearly fifty percent (49.7%). The accused himself admitted that these drugs were intended to be trafficked and which amount is in itself indicative that the illegal substance was too great to be intended merely for personal use.

Cocaine is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance. Touray Sana was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law.

By committing the abovementioned acts with criminal intent, the accused Touray Sana rendered himself guilty of possession of a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) when not in possession of any valid and subsisting import or possession authorization granted in pursuance of the said law, and with intent to supply in that such possession was not for the exclusive use of the offender.

Wherefore, the Attorney General, in his capacity, accuses Touray Sana of having on the eleventh (11th) September of the year two thousand and eight (2008) 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, guilty of possession of a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when not in possession of any valid and subsisting import or possession authorization granted in pursuance of the said law, and with intent to supply same in that such

possession was not for the exclusive use of the offender; demands that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to fine of not less than two thousand three hundred and thirty Euro (€2,330) and not more than one hundred sixteen thousand and five hundred Euro (€116,500) and to the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in sections 2, 9, 10(1), 12, 14, 15(A), 20, 22(1)(a)(2)(a)(i)(3A)(a)(b)(c)(d) and 26 of the Dangerous Drugs Ordinance and regulation 4 and 9 of the 1939 Regulations for the Internal control of Dangerous Drugs (Legal Notice 292/39), and in sections 17, 18, 20, 22, 23 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 that in the sitting of the 20th September, 2012 the accused, in reply to the question as to whether he was guilty or not guilty of all the charges preferred against him under the counts of the Bill of Indictment, stated that he was pleading guilty thereto;

Having seen that this Court then warned the accused in the most solemn manner of the legal consequences of such statement and allowed him a short time to retract it, according to Section 453 (Chap. 9);

Having seen that the accused, after being granted such a time, persisted in his statement of admission of guilt;

Now therefore declares Touray Sana guilty of all counts in the Bill of Indictment, namely of having:-

1. on the 11th September, 2008 and during the previous months in these islands and outside these

islands of the Republic of Malta, by means of 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, guilty of conspiracy to trafficking in dangerous drugs (cocaine) in breach of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or of promoting, constituting, organising or financing the conspiracy; and this according to the First Count of the Bill of Indictment;

2. on the 11th September 2008 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, guilty of meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when he was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law, and this according to the Second Count of the Bill of Indictment;

3. on the 11th September, 2008 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, guilty of possession of a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when not in possession of any valid and subsisting import or possession authorization granted in pursuance of the said law, and with intent to supply same in that such possession was not for the exclusive use of the offender, and this according to the Third Count of the Bill of Indictment;

Having considered local and foreign case law regarding a reduction in the punishment when the accused registers an early guilty plea, thereby avoiding useless work and expenses for the administration of justice (Vide “Ir-Repubblika ta’ Malta vs. Nicholas Azzopardi”, Criminal

Court, [24.2.1997] ; “Il-Pulizija vs. Emmanuel Testa”, Court of Criminal Appeal, [7.7.2002] and BLACKSTONE’S CRIMINAL PRACTICE, (Blackstone Press Limited – 2001 edit.);

As was held by the Court of Criminal Appeal in its judgement in the case “Ir-Repubblika ta’ Malta vs. Mario Camilleri” [5.7.2002], an early guilty plea does not always necessarily and as of right entitle the offender to a reduction in the punishment.

The general rules which should guide the Courts in cases of early guilty pleas were outlined by the Court of Criminal Appeal in its preliminary judgement in the case : “Ir-Repubblika ta’ Malta vs. Nicholas Azzopardi”, [24.2.1997]; and by the Court of Criminal Appeal in its judgement “Il-Pulizija vs. Emmanuel Testa”, [17.7.2002]. In the latter judgement that Court had quoted from Blackstone’s Criminal Practice, (Blackstone Press Limited – 2001 edit. ecc.) :-

“Although this principle [that the length of a prison sentence is normally reduced in the light of a plea of guilty] is very well established, the extent of the appropriate “discount” has never been fixed. In Buffery ([1992] 14 Cr. App. R. (S) 511) Lord Taylor CJ indicated that “something in the order of one-third would very often be an appropriate discount”, but much depends on the facts of the case and the timeliness of the plea. In determining the extent of the discount the court may have regard to the strength of the case against the offender. An offender who voluntarily surrenders himself to the police and admits a crime which could not otherwise be proved may be entitled to more than the usual discount. (Hoult (1990) 12 Cr. App. R. (S) 180; Claydon (1993) 15 Cr. App. R. (S) 526) and so may an offender who , as well as pleading guilty himself , has given evidence against a co-accused (Wood [1997] 1 Cr. App. R. (S) 347) and/or given significant help to the authorities (Guy [1992] 2 Cr. App. R. (S) 24). Where an offender has been caught red handed and a guilty plea is inevitable, any discount may be reduced or lost (Morris [1998] 10 Cr. App. R. (S) 216;

Landy [1995] 16 Cr. App. R. (S) 908) . Occasionally the discount may be refused or reduced for other reasons, such as where the accused has delayed his plea in an attempt to secure a tactical advantage (Hollington [1985] 85 Cr. App. R. 281; Okee [1998] 2 Cr. App. R. (S) 199.) Similarly , some or all of the discount may be lost where the offender pleads guilty but adduces a version of the facts at odds with that put forward by the prosecution , requiring the court to conduct an inquiry into the facts (Williams [1990] 12 Cr. App. R. (S) 415.) The leading case in this area is Costen [1989] 11 Cr. App. R. (S) 182 , where the Court of Appeal confirmed that the discount may be lost in any of the following circumstances : (i) where the protection of the public made it necessary that a long sentence, possibly the maximum sentence, be passed; (ii) cases of 'tactical plea' , where the offender delayed his plea until the final moment in a case where he could not hope to put up much of a defence, and (iii) where the offender has been caught red-handed and a plea of guilty was practically certain"

Having considered that, for purposes of punishment, the First and Second Counts of the Bill of Indictment regarding the crimes of conspiracy and importation respectively, should be absorbed in the offence of unlawful possession of drugs under circumstances which indicate that said drugs were not intended for the exclusive use of the offender, contemplated in the Third Count of the Bill of Indictment, as they served as a means to an end for the commission of the offence under the said Third Count of the Bill of Indictment in terms of Section 17 (h) of the Criminal Code (Chap.9) ;

Having seen articles 2, 9, 10(1), 12, 14, 15A, 20, 22(1)(a)(f)(1A)(1B)(2)(a)(i)(3A)(a)(b)(c)(d), and 26 of the Dangerous Drugs Ordinance (Chap.101); Regulations 4 and 9 of the 1939 Regulations for the Internal Control of Dangerous Drugs (L.N. 292/1939) and of articles 17, 18, 20, 22, 23 and 533 of the Criminal Code (Cap. 9 of the Laws of Malta).

Now, therefore, condemns the said Touray Sana to a term of imprisonment of eight years and three months, and to the payment of a fine (multa) of fifteen thousand Euros (€15,000), which fine (multa) shall be converted into a further term of imprisonment of twelve months according to Law, in default of payment within fifteen days ;

Furthermore condemns him to pay the sum of one thousand, one hundred and ninety seven Euros and twenty six Euro cents (€1197.26) being the sum total of the expenses incurred in the appointment of Court Experts in this case in terms of Section 533 of Chapter 9 of the Laws of Malta;

Should this sum not be paid within fifteen days, then it should be converted into a prison term in accordance with the law.

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 movable and immovable property belonging to the said Touray Sana.

And finally orders the destruction of all the objects exhibited in Court, consisting of the dangerous drugs or objects related to the abuse of drugs, which destruction shall be carried out as soon as possible by the Assistant Registrar under the direct supervision of the Deputy Registrar of this Court who shall be bound to report in writing to this Court when such destruction has been completed, unless the Attorney General files a note within fifteen days declaring that the said drugs are required in evidence against third parties.

< Final Judgement >

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