



COURT OF CRIMINAL APPEAL

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

Sitting of the 20 th September, 2013

Criminal Appeal Number. 65/2013

**Il-Pulizija
Vs
Hasan Djibril Ibrahim**

Il-Qorti,

Rat l-akkuza dedotta kontra l-appellant [detentur tal-karta tal-identita` numru 44475 (A)] quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli meta b'diversi atti maghmulin minnu, ukoll jekk fi zminijiet differenti u li jiksru l-istess disposizzjoni tal-ligi u jkunu gew maghmula b'rizoluzzjoni wahda, bejn Ottubru 2011 u Dicembru 2011, meta hekk ordnat minn xi Qorti jew marbut b'kuntratt naqas li jaghti lil Rita Ogbobor u/jew lil uliedu s-somma fil-gimgha ffissata minn dik il-Qorti jew stipulata bil-kuntratt bhala manteniment ghaliha u/jew ghall-ulied fi zmien 15 il-jum minn dak il-jum li fih skond dik l-ordni jew dak il-kuntratt, ikollha tithallas dik is-somma.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali tat-30 ta' Jannar, 2013, li biha, wara li rat l-artikoli 338(z), 18 tal-Kapitolu 9 tal-Ligijiet ta' Malta, sabet lill-appellant hati u ghaldaqstant ikkundannatu gimhga prigunerija.

Il-Qorti spjegat il-portata ta' din is-sentenza lill-appellant.

Rat ir-rikors tal-appellant minnu pprezentat fil-11 ta' Frar, 2013, li bih talab li din il-Qorti joghgobha tirrevoka u thassar is-sentenza appellata billi tiddikjara lill-appellant m'hux hati tal-imputazzjonijiet dedotti w kwindi tilliberah skond il-ligi. Alternattivament u minghajr pregudizzju f'kaz li dan l-appell ma jintlaqax, dina l-Onorabbli Qorti qed tigi mitluba tirriforma fil-parti tal-piena billi timponi piena aktar ekwu ghall-kaz odjern.

Fliet l-atti kollha processwali.

Rat il-fedina penali aggornata tal-appellant esebita mill-prosekuzzjoni fuq ordni tal-Qorti.

Rat illi l-aggravju tal-appellant jikkonsisti fis-segwenti :-

- a. Illi l-ewwel u qabel kollox l-imputat qed jiddikjara n-nullita` tas-sentenza stante li l-imputat qatt ma gie notifikat bl-akkuza bl-Ingliz. Illi ghalhekk din hi vjolazzjoni tad-drittijiet tieghu fundamentali ghas-smiegh gust. Illi f'dan ir-rigward flimkien ma dan ir-rikors bil-Malti qed jigi ipprezentat rikors bl-Ingliz.
- b. Illi minghajr pregudizzju ghas-suespost, il-partijiet kienu jghixu flimkien fejn bhala rizultat twieled tifel. Illi f'dan ir-rigward l-imputat kien ihallas manteniment fi flus kontanti liema haga issa l-parti leza qed tichad purament biex tivvantagja ruhha.
- c. Illi meta l-parti leza giet mistoqsija certi domandi, ma tantx cahdet bil-qawwa imma sfortunatament l-Ewwel Qorti ma indunatx bin-nuqqas ta' kredibilita` taghha!
- d. Illi apparti mill-kredibilita` qed jirrizulta wkoll il-principju ta' in dubbio pro reo.
- e. Illi s-suespost argumenti m'ghandhomx jigu kunsidrati bhala ezawrenti.

Has considered

According to the records, on the 16th December 2011, Rita Ogbobor filed a complaint at the Qawra Police Station that Ibrahim Hassan Djibril 4475A had failed to give her the due maintenance amounting to 150 Euros for the month of December 2011 according to decree 14978/2011 of the 13th September 2011. (See public deed dated 30th August 2011 in the records of Notary Elsa Bonello – provision about 150 Euros maintenance to rise every year in accordance with the cost of living). (See affidavit by PC 1136 Nathaniel Joseph Cini page 19 and 23).

The records include an affidavit by WPC 264 G.Gatt wherein it is stated that appellant had failed to give Ms Rita Ogbobor the maintenance due for October 2011. (See page 20 and page 22). (See current incident reports dated 18th November 2011 and 16th December 2011- pages 24 and 26).

The Court has heard Rita Ogbobor stating on oath the appellant Djibril Ibrahim Hasan was her partner and that they had signed a contract of maintenance in Maltese though she does not understand the Maltese language. The witness denied having received any maintenance for the month of June 2012 (Appeal 66/13), for the months between October 2011 and December 2011 (Appeal 65/13), May 2012 (Appeal 64/13), and April 2012 (**Appeal Number 63/13**). In December 2011 she was paid 100 Euros and not the full 150 Euros. There is a document to prove that this payment has been effected.

During the cross examination the defence asked the witness whether she had been paid in cash without asking for a receipt. The witness said that the only maintenance payment she had received was the payment in cash made in court during the Court proceedings and this amounted to the 100 Euros she had already testified about. After further questioning by defence lawyer and by the Court the witness confirmed what she had said before. Had she

been paid, she would have stated that she had received the money.

On the other hand, appellant Hasan Djibril Ibrahim testified that he had paid the maintenance in cash. He confirmed that in March 2013 he insisted on having a receipt because he was not trusting her. He affirmed that when, on other occasions, he had paid his partner in cash, there was a witness who could confirm that these payments had been accepted. He affirmed that he had paid for the maintenances due in April, 2012, May 2012, June 2012 and for the maintenance due between October 2011 and December 2011.

Under cross examination, the witness stated that the last time he had paid the maintenance due was in December 2012 when he paid, according to the Prosecution 100 Euros, and, according to the defendant, 150 Euros. The Prosecution pointed out that according to the document he had paid 100 Euros and he then asked when this money was paid. The defendant answered that the payment had been effected in March 2013.

Here appellant's lawyer intervened to clarify matters by stating that the amount that had been paid March 2013 was meant to cover the period July 2012 to November 2012 when the appellant had paid this amount in court.. The Prosecution here insisted that the period in question involved in two of the cases were the months April 2012 and May 2012.

Has considered

The Plea of Nullity

The Defence submitted that as far as case 65/13 was concerned, it was pleading the nullity of the proceedings as the appellant had not been notified in the English language. The Court notes that on page 5 of the court records (13th June 2012) there is a sentence where the defendant asked to have the summons served on him in

English. The Court acceded to his request. In fact, the records reveal the following words:

‘The accused is being notified with the charge in the English Language.’

Moreover, the defence requested an adjournment as the accused had been notified on that day about the charges. The Court acceded to this request and adjourned the case to the 3rd October, 2012.

Therefore there is absolutely no reason why the Court should accept the submission about the nullity of the proceedings.

Hence the Court is rejecting this ground of appeal.

The Plea on the Merits

The defence submits that any doubt about whether the contravention was committed should go in favour of the appellant. First of all, this Court does not disturb any decision of the Court of Magistrates as long as the latter court could have reached that conclusion reasonably and legally. Secondly, the Court, having heard and seen both witnesses, finds the version of Rita Ogbobor more credible. The appellant has fallen behind in his payments time and again. Moreover, it is inconceivable how Rita Ogbobor could go on reporting to the Police the appellant’s failure to pay the maintenance money when this money had been paid according to the appellant. Thirdly, the part payment of 100 Euros instead of 150 Euros also indicates that the appellant was constantly defaulting on his payments. Finally, the appellant says that whenever he paid the maintenance amount in cash, he was always accompanied by a witness. The Court notes that this person never took the witness stand in any of the four cases being examined.

The defence alleges that the defendant had to deal with some medical and employment problems. The Court is not convinced by at all and no evidence has been

provided that the Family Court has varied the original decree in any way.

Hence the Court is rejecting all the other grounds of appeal.

Conclusion

The Court is rejecting the appeal filed by Hasan Djibril Ibrahim but, as this seems to have the first in a series of cases, is reforming the judgement of the 30th January 2013 (Appeal number 65/13 – which refers to the failure to pay the alimony in October and December 2011)) in the names of ‘The Police vs Hasan Djibril Ibrahim’ by confirming that part of the judgment where the Court found him guilty as charged but revoking that part of the judgment by which he was condemned to one week’s detention and, instead of condemning him, is conditionally discharging him for a period of three months in accordance with the provisions of article 22 of Chapter 446 of the Laws of Malta. The Court is warning the appellant that he has to refrain from all infringements of the law during this period. Furthermore the Court orders the accused to effect payment in the amount of 300 Euros (to cover the October 2011 and December 2011 alimony payments) within one month from today in accordance with article 24 of Chapter 446 of the Laws of Malta.

< Final Judgement >

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