



MALTA

COURT OF CRIMINAL APPEAL

THE HON. MR. JUSTICE

MICHAEL MALLIA

Sitting of the 6 th March, 2014

Criminal Appeal Number. 437/2011

Appeal No: 437/2011

The Police

(Sg. Mj. John Engerer)

Vs

Celine Lee Bentley

Omissis

Today the 6th March, 2014,

The Court,

Having seen the charges brought against Celine Lee Bentley, holder of French Passport number 08AB87944 and *omissis*, of having:

In their capacity as directors and/or company secretary and/or judicial representatives of the company/commercial partnership 'Market Handle Limited' (C49546), having its registred address at Market Handle Building, GF Agius De Soldanis Road, Birkirkara BKR 4820, Malta and/or being the person/s responsible and appointed by the said company/commercial partnership to pay outstanding

wages, you have failed to pay the wages due for the period commencing on the 17th May, 2010 up to the 28th May, 2010, amounting to €346.16, you have failed to pay the wages due for the period commencing on the 1st September, 2010 up to the 17th September, 2010, amounting to €450.06, you have failed to pay the statutory bonus due for the period commencing on the 1st July, 2010 and ending on the 17th September, 2010 amounting to €58.46, you have failed to pay the vacation leave due for the period commencing on the 17th May, 2010 and 17th September, 2010, amounting to €138.48, you have failed to pay the weekly allowances for the period commencing on the 17th May, 2010 up to the 17th September, 2010 amounting to €83.88, globally amounting to one thousand and seventy seven Euros and four cents (€ 1077.04) owed to Nathalie Gatt, ex-employee of the above cited company/commercial partnership and whose employment was terminated on the 17th September, 2010.

The Court is respectfully being asked, in accordance with Article 45(1) of Chapter 452 of the Laws of Malta and with Regulation 22 of Legal Notice 247 of 2003, as amended by Legal Notice 427 of 2007, to order the accused to pay the penalties established by law, and in accordance with Article 45(2) of Chapter 452 of the Laws of Malta, to order the accused to pay Nathalie Gatt the amount of one thousand and seventy-seven Euros and four cents (€1077.04) for the reasons specified above.

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature, delivered on the 25th October, 2011, whereby the Court after seeing articles 5, 22, 23, 36, 45, 46 and 47(2) of Chapter 452 of the Laws of Malta and also Regulations 8(1), 8(4) and 22 of the Legal Notice 247/2003 as amended by Legal Notice 427/2007, found Celine Lee Bentley guilty of the charges brought against her and condemned her to a fine of two hundred thirty two euro (€232) and ordered the guilty to pay the sum of four thousand, twenty euros and fifty eight cents (€1077.04) to Nathalie Gatt within a month.

Having seen the appeal application presented by Celine Lee Bentley in the registry of this Court on the 31st October, 2011, whereby this Court was requested to revoke the appealed judgement and consequently acquit the appellant from all charges.

Having seen the acts of the proceedings;

Having seen the updated conduct sheet of the appellant, presented by the prosecution as requested by this Court.

Having seen the grounds for appeal:

1. The amount advertised as wages on by the Department of Employment and Industrial Relations upon Nathalie Gatt's report was not completely due to

the same Nathalie Gatt as it results from the entries of the same department there was a substantial amount, then advertised as pay, namely the amount of € 346.16, which was not due according to a clause in the contract of employment of the same Nathalie Gatt.

2. Moreover, the appellant disagrees with the dates declared as vacation leave by Nathalie Gatt since the appellant contends that she took more than four days vacation leave;
3. Furthermore, it also resulted that there was an amount that said Nathalie Gatt received an amount in cash and that therefore the said amount drawn in the charges brought against the appellant is not really due. It also transpires that the charges brought against the appellant have not been proven to the extent required by law since these do not reflect the truth.
4. Finally, the appellant contends that it was not true that her employment was terminated but she was the one who left in the middle of a working day and in this respect, in her last day of work she did not work all the hours nor gave notice as required under by law. Thus it results that the amount advertised as it appears in the charges against the appellant is not due.

Considers:

That appellant Celine Lee Bentley is a director of the commercial partnership Market Handle Limited having its registered address at Market Handle Building, G F Agius De Soldanis Road, Birkirkara. This company employed some twenty (20) people and was doing good business when on January two thousand and ten (2010) a warrant of seizure was filed against the company and all its movable property was confiscated and removed from the building. One of the employees was Nathalie Gatt who was employed as a receptionist at the front desk. She was first employed by the company on the seventeenth (17th) of May two thousand and ten (2010) and had her employment terminated on the seventeenth (17th) of September two thousand and ten (2010). On termination, however, she was not paid an amount of wages, statutory bonus, vacation leaves and weekly allowances. Nathalie Gatt then reported the matter to the Labour Office who commenced proceedings against appellant.

Informal Copy of Judgement

By judgement given on the twenty fifth (25th) of October two thousand eleven (2011) the Magistrates' Court found appellant guilty as charged, fined her two hundred and thirty two Euro (€ 232) and ordered that within a month appellant pays Nathalie Gatt the sum of one thousand seventy seven Euro and four cents (€1077.04).

Appellant felt aggrieved by this judgement and filed an appeal before this Court claiming that the amounts shown on document at fol 12 are not correct because in the last day of her employment Nathalie Gatt reported for work but after few hours left the office for good never to return. Appellant claimed that once the amounts shown in the charge are not correct the same charge should not be deemed to have been proved and therefore appellant should be discharged from any obligation towards Nathalie Gatt.

Considers:

The Court does not agree with this argument. If appellant feels that the total claimed by Nathalie Gatt is not correct, appellant should have produced a document showing the correct amount as claimed by appellant. In this case we have an inversion of the evidence. A document was filed by the Prosecution showing an amount claimed by Nathalie Gatt. If that document is not contested on the basis of probability, then that document stands. The only evidence supplied by appellant through cross-examining Nathalie Gatt was that on her last day of employment Gatt reported for work but after few hours left for good. No evidence was brought as to how many hours Nathalie Gatt worked on her last day. Therefore this Court believes that that day should be included in the list provided for the basic wages as per document on page 12. What's more, appellant did not request a variation of the amounts awarded by the first Court but just claimed that once the amount was not justified the charge was not proved and therefore she should be discharged from the obligation. This Court does not find this allegation to be true. The amounts shown on page 12 are correct once no evidence was brought forward as to the amount of hours Nathalie Gatt worked on her last day at work.

This Court, therefore, feels that the first Court on the basis of the evidence brought before it could legally and reasonably arrive to the conclusion that it did and therefore this Court should not disturb the discretion of the Magistrates' Court. For these reasons the Court dismisses the appeal and confirms the first judgement.

< Final Judgement >

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