



MALTA

COURT OF CRIMINAL APPEAL

THE HON. MR. JUSTICE

MICHAEL MALLIA

Sitting of the 6th March, 2014

Criminal Appeal Number. 252/2012

Appeal No: 252/2012

The Police

Vs

Celine Lee Bentley

Omissis

Today the 6th March, 2014,

The Court,

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Having seen the charges brought against the accused Celine Lee Bentley, holder of French Passport Number 08AB87944 and *Omissis*, in front of the Court of Magistrates (Malta) as a Court of Criminal Judicature, with having:

In your capacity as director and/or company secretary and/or judicial representative of the company/commercial partnership: 'Market Handle Limited' (C4956), having its registered address at Market Handle Building, GF Agius De Soldanis Road, Birkirkara BKR4850, Malta and/or being the person 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 3rd January, 2011, up to the 28th January, 2011, amounting to €923.08, you have failed to pay the vacation leave due for the period commencing on the 3rd January, 2011 up to the 28th January, 2011, amounting to €85.22 and you have failed to pay the weekly allowance due for the period commencing on the 3rd January, 2011 up to the 28 January, 2011, amounting to €18.64, globally amounting to one thousand, twenty six Euros and ninety four cents, (€ 1026.94) owed to Josephine Camilleri, ex-employee of the above cited company/commercial partnership and whose employment was terminated on the 28th January, 2011.

The court was respectfully 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 Josephine Camilleri, the amount of one thousand, twenty six euros and ninety four cents (€ 1026.94), for the reasons specified above.

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature, delivered on the 15th May, 2012, wherein the Court, after having seen the 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 of 2003 as amended by the Legal Notice 427of 2007, found the accused Celine Lee Bentley guilty as charged and condemned her to pay a fine (*multa*) of two hundred and fifty euros (€250) and

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condemned her to pay the sum of one thousand and twenty six euros and ninety four cents (€1026.94) to Josephine Camilleri within a month.

Having seen the appeal presented by Celine Lee Bentley in the registry of this Court on the 21st May 2012 whereby this Court is requested to cancel and revoke the appealed judgement and subsequently acquit the appellant from all imputations and guilt.

Having seen the acts of the proceedings;

Having seen the updated conducts sheet of the appellant, presented by the prosecution as requested by the Court;

Having seen the grounds for appeal as follows:

1 . The appellant could not have been found guilty that she failed to pay wages, weekly allowance and vacation leave up to the 28th January, 2011. Since, it has been amply demonstrated before the first Honourable Court, the company Market Handle Limited, of which the appellant is director, ceased its operations in mid-January, 2011, when a third party executed a precautionary warrant of seizure and elevated all objects that the company had at its registered office in Birkirkara. This was why all the employees that the company Market Handle Limited had at the time were had their employment terminated in mid-January, 2011. This is acknowledged and accepted by the same employee Josephine Camilleri during her cross- examination. Therefore, the charge against the appellant as deduced, cannot be proven to the extent required by law, but was even contradicted by the same employee Josephine Camilleri. It is not true that she was employed with the company Market Handle Limited until the 28th January, 2011. This resulted before the first Honourable Court that the operation ceased or "closed down" in mid-January, 2011 and therefore the said employee, Josephine Camilleri was incorrect in requesting wages, weekly allowance and vacation leave up to the 28 January, 2011. Therefore, since all the computations contained in the charges drawn against the appellant were based on the assumption that the employee Josephine Camilleri remained employed with the company Market Handle Limited up to the 28th January, 2011, this assumption is

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wrong and consequently all computations are wrong. It also resulted, that the employee Josephine Camilleri was employed with the company Market Handle Limited until the precautionary warrant of seizure was executed in mid-January, 2011 and not up to the 28th January, 2011. It is therefore incorrect that the employee Josephine Camilleri has paid until the 28th January, 2011 when it is clear that the employment was terminated due to the above mentioned circumstances. Therefore the charges as deduced against the appealed have not been proven and the appellant should be acquitted of any imputation and guilt;

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. The company was in business up to the tenth (10th) of January two thousand eleven (2011) when on that date a garnishee order was served on the company and the consignee removed all furniture and appliances from the offices of the company. However, during the term that the company was in business it employed some twenty (20) people. One of these was Josephine Camilleri who was employed between the third (3rd) of January two thousand eleven (2011) and the twenty eighth (28th) of January two thousand eleven (2011). Josephine Camilleri stated on oath that she was present when the garnishee order was served on the company, was told to take personal belongings and leave. All the furniture was removed and no work could be done from the offices of the company. Josephine Camilleri's employment was terminated on the twenty eighth (28th) of January two thousand eleven (2011) but she is claiming outstanding dues as to wages, vacation leave and weekly allowance.

By judgement given on fifteenth (15th) of May two thousand and twelve (2012) the Magistrates' Court found appellant guilty as charged, condemned her to a fine of two hundred and fifty Euro (€ 250) and ordered that she pay Josephine Camilleri the amount of one thousand and twenty six Euro and ninety four cents (€ 1,026.94c) within a month from that day. Appellant felt aggrieved by this judgement and filed

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an appeal claiming that she should not made to pay the amounts due after the serving of the garnishee order on the tenth (10th) of January two thousand eleven (2011). She is claiming that if there was no place of work to return to how can she be made to pay for work that was never done. Josephine Camilleri did not perform any work after the serving of the garnishee and therefore should not be entitled to wages and other dues. Camilleri chose a date to resign on her own initiative and therefore the company is only obliged to pay dues up to the tenth (10th) of January two thousand eleven (2011) when the garnishee order was served.

Considers,

That the total amount due as shown on page 13 of the records of the case is not being contested by the appellant. She is just saying that she should not be made to pay for any amount after the tenth (10th) of January two thousand eleven (2011). This Court, however, feels that if appellant could not operate the company after that date she should have ceased commercial operations immediately and formally discharged all the employees. However, she did not do so, employees were still kept on charge and were being given notices of termination on different dates. In the case of Josephine Camilleri the termination date was set at twenty eighth (28th) January two thousand eleven (2011) and on that day she was not paid the basic wage, vacation leave and weekly allowances which in total amounted to one thousand and twenty six Euro and ninety four cents (€ 1,026.94c). The Court feels that this amount is correct and is due by appellant who cannot hide behind the argument that it should not pay for any work done after the tenth (10th) of January two thousand eleven (2011) because it was precluded from providing any work by Court order. Once appellant did not terminate the employment of its employees on that date, she is legally bound to pay all dues up to the date of termination of employment which in the case of Josephine Camilleri is the twenty eighth (28th) of January two thousand eleven (2011).

This Court therefore feels that the first Court on the basis of the evidence given before it could legally and reasonably arrive to the conclusion that it did, in which

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case, therefore, its discretion should not be disturbed. For these reasons the Court dismissed the appeal and confirms the first judgement.

< Final Judgement >

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