



MALTA

COURT OF CRIMINAL APPEAL

THE HON. MR. JUSTICE

MICHAEL MALLIA

Sitting of the 27 th March, 2014

Criminal Appeal Number. 346/2013

Appeal Nr: 346/2013

The Police

Vs

Hasan Djibril Ibrahim

Today the, 27th March, 2014

The Court,

Having seen the charges brought against Hasan Djibril Ibrahim, holder of Maltese Identity Card No. 44475A, before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having:

For the months of October, 2012, till January, 2013 on these islands, where the several acts committed by the offender, even if at different times, constitute violation of the same provision of the law, and are committed in pursuance of the same design, when ordered so by a court or so bound by contract fails to give to Rita Ogbobor and/or to his children the sum fixed by that contract or laid down in the

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contract as maintenance for her and/his children, within fifteen days from the day on which according to such order or contract, such sum should be paid.

Having seen the judgment meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 8th July, 2013 whereby the Court after seeing articles 338(z) and 18 of Chapter 9 of the Laws of Malta, found the accused guilty as charged and condemned him one month detention. The Court explained in clear words the terms of the judgement to the accused.

Having seen the appeal application presented by Hasan Djibril Ibrahim in the registry of this Court on the 15th July, 2013 whereby this Court was requested:

“tirrevoka s-sentenza moghtija mill-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali u tilliberah mill-akkuza”

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:

“Illi l-aggravju huwa car u manifest u dan jinsab fil-fatt illi l-ewwel Qorti ma ghamlitx bir-rispett kollu apprezzament tajjed tal-fatti kif jirrizultaw mill-provi prodotti. L-appellant kien wera lill-Ewwel Qorti li kien ihallas ghax-xhur ta' Ottubru, Novembru u Dicembru, 2012. Kien gie pprovat li meta mar ihallas il-manteniment ta' Jannar, 2013 inqala incident u kien gie aggredit.”

Considers:

That by deed in acts Notary Dr Enza Debono of the thirtieth (30th) of August two thousand eleven (2011) an agreement was signed between appellant and his wife Rita Ogbobor whereby appellant bound himself to pay maintenance for his son at the rate the rate of one hundred and fifty Euro (€ 150) a month. However, appellant failed to pay for the months from October two thousand and twelve (2012) till January two thousand and thirteen (2013). Rita Ogbobor filed a report with the police who proceeded against appellant and by means of judgement dated eight (8) July two thousand and thirteen (2013) the Magistrates' Court found appellant guilty as charged and condemned him to one month detention.

Informal Copy of Judgement

Appellant felt aggrieved by this judgement and filed an appeal in the Maltese language whereby he claimed that he had in fact paid for the months of October, November and December two thousand and twelve (2012) but when he proceeded to pay the maintenance for January two thousand and thirteen (2013) appellant was set upon after an incident arising with his wife. It seems, however, that during the pendency of this appeal, things got better between appellant and his wife so that by note verbal dated sixteenth (16th) January two thousand and fourteen (2014) Rita Ogbobor declared that she had received the sum of three hundred Euro (€ 300) from appellant and that she did not have any further claims against him as regards this case.

Considers:

That the reasons brought by appellant for not paying maintenance are not legally valid. Whatever the reasons appellant should always have paid maintenance for his son and could never unilaterally decide to withhold payment for whatever reason. Even if appellant was financially in a difficult position he should first request authorization from the competent Court in order to avoid maintenance or else to pay a smaller amount. As it is the agreement between the appellant and his wife still stands and therefore he was bound by that agreement and could not withhold payment. The first Court therefore was legally correct when it found appellant guilty as charged. The Court, however, takes into consideration the fact that appellant paid the aggrieved party the relative amount during the pendance of this appeal in which case, according to various judgements, delivered by this Court, there should be a revision of the punishment awarded in the sense that the custodial punishment should be turned into one of a conditional discharge.

For these reasons the Court acceded to the request, upholds the appeal in part, confirms the first judgement as regards declaration of guilt but varies the punishment and instead of one month detention, frees accused according to the terms of article 22 of Chapter 446 on condition that he does not commit another crime within six (6) months.

< Final Judgement >

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