



MALTA

COURT OF CRIMINAL APPEAL

THE HON. MR. JUSTICE

MICHAEL MALLIA

Sitting of the 26 th March, 2015

Criminal Appeal Number. 59/2015

Appeal Nr: 59/2015

The Police

[Inspector Mario Haber]

Vs

Oredia Isaal

Today the, 26th March, 2015,

The Court,

Having seen the charges brought against Oredia Isaal, holder of Italian Registration No. I01828697, before the Court of Magistrates (Malta) as a Court of Criminal Judicature charged with:

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While having in his possession a Travel document, Identity Card and Residence Permit issued by a competent authority, that is Italy bearing numbers 43629, AU0167397 and I01484492, issued in the name of Husein Mamudu, had transferred this document to another person or received this document which was transferred to him by another person (Cap 61, Sec 3 of the Laws of Malta);

And also charged with having on the same date, time and circumstances made use or attempted to make use of the mentioned documents, issued to another person (Cap 61, Sec 4 of the Laws of Malta);

And also charged with having on the same date, time and circumstances made false return, false statement or false representation to the Principal Immigration Officer (Cap 217, Sec 32(1c) of the Laws of Malta).

Having seen the judgment meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 3rd February, 2015 whereby the Court, after having seen sections 3 and 4 of Chapter 61 of Laws of Malta and section 32 (1) (c) of Chapter 217 of the Laws of Malta, on his admission found the offender Oredia Isaal guilty of all the charges brought against him and condemned him to three (3) months imprisonment.

Having seen the appeal application presented by Oredia Isaal in the registry of this Court on the 16th February, 2015 whereby this Court was requested to reform and vary the abovementioned judgement by confirming the appellant's guilt in relation to all the offences as mentioned in the charge sheet and in the first part of this appeal and by cancelling and revoking that part in which the Court inflicted the punishment of effective imprisonment and condemns the accused to another alternative punishment according to law.

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 of Oredia Isaal:

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The reasons due to which the appellant feels aggrieved by the aforesaid judgement of the Court of Magistrates (Malta) are clear and manifest and simply consist in that the Court of Magistrates' sentence was too harsh in view of the circumstances that led the appellant to commit aforementioned offences. In fact, appellant humbly submits that even though the three months imprisonment which he was condemned to serve fall within the parameters of the law, due to the fact that he is a first time offender and there was no ulterior motive behind the crime, a suspended sentence would have been more appropriate in such case.

Considers:

On the first (1st) of February two thousand fifteen (2015) appellant was apprehended by the police in possession of travel documents issued in the name of another person. On the third (3rd) of February he was charged in Court with being in possession of such a document attempting to make use of this document and of making false statement or false representation to the Principal Immigration Officer. On the first day of the hearing accused pleaded guilty. The Court allowing him sufficient time to reconsider his reply. Accused however insisted on his declaration. The same day the Court proceeded to give judgement, finding the accused guilty as charged and condemning him to a period of imprisonment for three (3) months.

Appellant felt aggrieved by this judgement principally on the basis of the punishment awarded in the sense that being a first time offender pleading guilty at a very early stage and fully co-operating with the police, expected a more lenient punishment, if at all subject to article 28A of the Criminal Code.

Considers:

That apparently, accused did have travel documents but had lost these and since he had to travel to Italy to get a new set of documents it seems that he took delivery of another set of documents belonging to another person expecting to be able to travel to Italy on the basis of such documents. The police inspector in fact testified that appellant did have valid documents to stay in Italy but these documents were not in his possession at the time he was apprehended by the police. So in effect appellant

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fell foul of the law when he tried to use documents belonging to a third party to be able to travel to a foreign country. This fact justified the first Court in finding the accused guilty as charged.

As regards the punishment, the first Court did take into consideration the early guilty plea, that he co-operated with the police, had a clean criminal record and that he did have valid documents which however were not in his possession. This Court adds that travelling with false documents or documents belonging to a third party is a very serious crime indeed and impinges on the security of the State. Previous judgements always imposed an effective prison term when people are found guilty of abusing the system and this Court feels that the Magistrates Court was right when it imposed an effective prison terms.

However, perhaps according to the special circumstances of this case, the Court feels that it should partially accedes to the request of the appellant and reviews the prison term imposed by the first Court.

For these reasons the Court upholds the appeal in part, reforms the judgement of the Magistrates Court in the sense that it confirms the decision regarding the merits of the case where appellant was found guilty of the offences as charged, but reforms the order imposing an effective three month prison term and instead condemns appellant to an effective term of imprisonment of two months.

< Final Judgement >

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