MALTA

COURT OF CRIMINAL APPEAL

THE HON. MR. JUSTICE

DAVID SCICLUNA

Sitting of the 17 th April, 2015

Criminal Appeal Number. 376/2013

The Police

v.

Zeraj Meherad

The Court:

1. Having seen the charges brought by the Executive Police against the said Zeraj Meherad, holder of immigration no. 12AA-058, before the Court of Magistrates (Malta) as a Court of Criminal Judicature, with having:

(1) in June 2013 and the previous and subsequent months Malta, landed or embarked from Malta without being in possession of a passport and not having furnished to the Principal Immigration Officer the prescribed information and such other information as the Principal Immigation Officer may deem proper to require, and this in violation of article 28 of Chapter 217 of the Laws of Malta.

(2) in Malta, under the same circumstances, made use or caused to be made a false return, false statement or false representation and/or furnished the Principal Immigration Officer with false information and this in violation of section 32(1)(c) of Chapter 217 of the Laws of Malta;

2. Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 20th August 2013 whereby that Court, after having seen articles 28 and 32(1)(c) of Chapter 217 of the Laws of Malta, on the said Zeraj Meherad's admission, found her guilty of the charges brought against her and condemned her to three months imprisonment;

3. Having seen the appeal application presented by the said Zeraj Meherad on the 22nd August 2013 whereby she requested this Court to reform the appealed judgement, confirm her guilt, but award a more equitable and fair punishment;

4. Having seen the record of the case; having seen appellant's updated conviction sheet presented by the prosecution as requested by this Court; having heard submissions; having considered:

5. This is an appeal from the punishment awarded to appellant. In her application, appellant states that the punishment awarded is too harsh in the circumstances of this case. She says: "The First Court seemed to miss the point that the appellant has a small baby and prison certainly does not have nursery facilities nor adequate for the needs of the minor child. Although the prison term is within the parameters of the law, the Court could have awarded an alternative punishment to imprisonment. An imprisonment sentence is not binding on the Court and the Court was free to use a variety of alternative punishments."

6. Now, this was a case where appellant pleaded guilty to the charges brought against her on the same day that she was brought before the Court of Magistrates. This Court has had occasion to remark several times that it is not the function of this Court as a Court of appellate jurisdiction to disturb the discretion of the First Court as regards the quantum of punishment unless such discretion has been exercised outside the limits laid down by the law or in special circumstances where a revision of the punishment meted out is manifestly warranted.

7. In its judgement, the first Court in meting out punishment to the accused, considered only "the nature of the offences of which the defendant is being found guilty, her co-operation with the police, and her admission at the earliest stage of these proceedings." This, however, and as accepted by the prosecution

during submissions heard by this Court, is a case where humanitarian considerations have to be made.

8. Appellant arrived in Malta in November 2012. She was in detention for some time and then lived at the Ħal-Far Open Centre for eight months. She sought to join her relatives in Sweden and, so as to be able to leave Malta, she was sent a false document that enabled her to leave Malta and travel to Sweden. She was there for two months before being sent back to Malta. On the 22nd June 2013 she gave birth to a child and, when sentenced by the first Court on the 20th August 2013, not having been granted bail, she ended up at the Corradino Correctional Facilities <u>together with her child</u>. An application for bail was lodged on the 22nd August 2013, bail granted on the 23rd August 2013 and security posted on the 26th August 2013 when she was thus allowed to leave the Correctional Facilities. Since then she has observed all bail conditions scrupulously. Nor has she fallen foul of any of the laws of Malta, as evidenced by her clean conduct record. Christina Zammit, a social worker with the Jesuit Refugee Service, gave evidence during these proceedings, having known appellant for the last few years. She spoke highly of her, describing her as "a very good woman". Appellant now has the opportunity to resettle in the United States with her family and has already undergone a first interview. Appellant was only 22 years old when she was brought before the first Court. She has already been through a lot (including her voyage to Malta, a period in detention, a period living in a container at the Ħal-Far Open Centre, a period in prison with her newborn child) and this Court finds absolutely no justification to separate her from her child. Consequently, this Court finds that there exist special circumstances which make it imperative that the sentence of imprisonment imposed on appellant is not confirmed.

9. For these reasons, the Court grants the appeal, and reforms the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 20th August 2013 in the names **The Police v. Zeraj Meherad** in the sense that, while it confirms the finding of guilt, it is hereby revoking the punishment of three months imprisonment awarded by that Court and instead, in terms of article 22 of Chapter 446 of the Laws of Malta, discharges her for a period of three months on condition that she does not commit another offence within this period of time. This Court, in terms of article 22(3) of said Chapter 446, explained to the offender in ordinary language that if she commits another offence during the period of conditional discharge, she will be liable to be sentenced for the original offence.

< Final Judgement >

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Courts of Justice