



MALTA

**QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI**

MAGISTRAT Dr IAN FARRUGIA LL.D

Illum 15 ta` Settembru 2015

**IL-PULIZIJA
(Spettur Edel Mary Camilleri)**

Vs

ANTHONY-MARIO VELLA

IL-QORTI;

Wara li rat li l-imputat **Anthony-Mario Vella**, detentur tal-karta tal-identita` numru **579855M** gie akkuzat talli fil-21 ta' Dicembru 2000 u x-xhur ta' wara f'dawn il-Gzejjer, fil-kapacita` tieghek ta' Direttur tas-socjeta 'Veltrade Limited' appropriajt, billi dawwart bi profit ghalik jew ghal persuna ohra, is-somma ta' 15,500 Dollari Amerikani migbura minghand Olena Tretyak residenti Pieta` li giet fdata jew ikkunsinnata lilek taht titolu illi jgib mieghu l-obbligu tar-radd tal-haga jew li jsir uzu minnha specifikat, jew minhabba l-professjoni, industrija, kummerc, kariga jew servizz tieghek. Dan bi ksur tal-artikolu 293 u 294 tal-Kap.9 tal-Ligijiet ta' Malta.

Rat l-atti u d-dokumenti esebiti;

Rat il-kunsens ta` l-Avukat Generali tal-21 ta` Gunju 2004 li jinsab *a folio* 4 sabiex din il-kawza tigi trattata u deciza bil-procedura sommarja;

Qieset id-depozizzjonijiet tax-xhieda mressqa f'dan il-procediment, inkluz dik ta' l-imputat innifsu;

Semghet it-trattazzjoni finali tal-ufficjal prosekutur u ta' l-Avukat difensur;

Tippuntwalizza illi dawn l-atti kellhom jigu rikostuwiti wara li kienu gew, flimkien ma processi ohra, severament danneggjati in segwitu ghal hruq li kien hakem l-Awla fejn kienu qed jinzammu;

Ikkunsidrat;

Illi in succinct, il-fatti rizultanti mill-provi mressqa f'dan il-procediment huma s-segwent. L-imputat kellu l-lukanda Travellers' Lodge gewwa Bugibba u kien direttur tas-socjeta' Veltrade Limited li kienet topera mill-imsemmija lukanda. L-imputat kellu jiehu xi flus minghand certu Vladimir Zokhov in konnessjoni ma akkomodazzjoni ta' turisti. Zokhov ma kellux flus biex ihallsu w offra lill-imputat li jhallsu bi fliexken tal-vodka. L-imputat, li kif jidher car mill-provi, kien jiggstixxi n-negozju tieghu b'manjiera konfuzjonali ghall-ahhar, accetta. Biex pero' seta jigi mpurtat dan il-container bil-vodka, bilfors kellu jkun hemm isem ta' malti jew kumpanija maltija. L-imputat offra li l-container jigi mpurtat f'isem il-kumpanija tieghu Veltrade Limited. Zokhov, li ha hsieb din l-operazzjoni, kien importa aktar milli kien necessarju biex jithallas l-imputat.

Wara li gie mpurtat dan il-container, l-imputat skopra li ma setghax jirrilaxxjah ghax ma kellux flus biex ihallas id-dazju. Kien qed jipprova jbiegh minn dan il-vodka biex jehles minnu. F'mument partikolari inqalghet wahda bl-isem ta' Olena Tretyak li riedet tixtri xi vodka. Sar inkontru u jidher li sar arrangament biex din Olena Tretyak tixtri xi numru ta' kaxxi tal-vodka. Kien imdahhal fin-nofs l-imsemmi Zokhov, li kien il-persuna li qed jiehu hsieb din l-operazzjoni kollha peress illi hu ried jigbor il-flus biex ihallas lill-imputat. Saru xi hlasijiet – Olena Tretyak tghid li hallset lill-imputat; l-imputat jghid li effettivament il-flus hadhom l-imsemmi Zokhov. Jidher li Olena Tretyak kienet interessata li tixtri dan il-vodka peress illi l-prezz kien wiehed ragonevoli u kienet qed tipprospetta li taghmel qliegh tajjeb meta tbieghu fis-suq lokali. Jidher car illi t-transazzjoni saret – hi harget il-flus biex tixtri l-vodka liema vodka kienet tezisti gol-container partikolari. Gara izda illi anki hija sussegwentement irrealizzat li biex tohrog

il-vodka mid-dwana, kellha taghmel aktar hlasijiet ta` dazju – fatt li ma ghogobha xejn ghax kien ser ikun detrimental ghall-qliegħ li kienet qed tipprospetta li taghmel.

Dan huwa x-xenarju principali f`dan il-kaz.

Ikkunsidrat;

Minn ezami akkurat tar-rizultanzi processwali din il-Qorti hi tal-fehema li l-prosekuzzjoni f`dan il-kaz – ta` approprijazzjoni indebita - ma rnexxietx skond il-ligi. Indipendentement minn min ircieva l-flus, jekk hux l-imputat jew Vladimir Zokhov, il-fatt kruċjali f`dan il-kaz huwa wiehed specifiku – Olena Tretyak harget xi flus biex tixtri l-vodka; u l-vodka kienet tezisti ghax ittiehdet biex tarah fil-container gewwa d-dwana. L-intenzjoni tagħha li tixtri u li għalhekk harget il-flus, kienet konformi mal-intenzjoni ta` Zokhov u/jew ta` l-imputat li l-vodka ezistenti qed tinbiegħ.

Li allura, sussegwenti għal din it-transazzjoni, Olena Tretyak irrealizzat li għadha trid thallas id-dazju (fatt li jidher li fixkilha hafna meta giet biex tinnegozja din il-vodka), ma jfissirx li l-flus li kienu għadew, kienu għadew bi ksur tad-dispozzjonijiet ta` l-Artikoli 293 u 294 tal-Ligijiet ta` Malta. Din it-transazzjoni kienet, almenu prima facie, tidher wahda legittima, fejn xi hadd qed jixtri u xi hadd qed ibiegħ. Għalhekk għadew il-flus, u fl-ebda hin ma kien hemm xi obbligu li l-flus jintraddu lura. Din il-Qorti hi tal-fehema li kull ma gara f`dan il-kaz hu li Olena Tretyak għamlet zball kbir, ossia għamlet transazzjoni hazina hafna. Effettivament, fid-depozzjoni tagħha, hija tgħid senjatament *a folios 95, 96, 97* :

“ I think that I was mistreated as a companion and I was told a lie about taxes. I was lied about amount of taxes, first of all I was not informed what amount of taxes at all. I would not buy this one dollar seventy five cents if I knew that I had to pay extra three pounds thirty, to get it. I would not do it, I was not informed, but even if it was my fault that I was not even questioned, I given wrong information.....four pound thirty, and then when I needed a sample he refused to release me even sample after I bought all he wanted me to buy extra ten boxes by five pounds and then he stole three out of them.

Parte civile: Mrs. Tretyak, when you went to the police inspector to make the report, was the report made out in writing? Was it written down?

Xhud: It was about four hours of interrogation and in front of me Miss Edele she put in on computer, yes I have a copy, and I saw how she was putting it, I did not bring it with me today.

Qorti: I am exhibiting to the Court as document number seven the statement which I released to the police.

Parte Civile: Now, regarding to the payments which you made to the accused one thousand five hundred, this is US dollars

Xhud: Yes, this is for three hundred boxes, original, and this is deposit for the rest seven hundred boxes, so actually all container.

Qorti: I am exhibiting in Court as document number eight the receipt for the ten thousand, five hundred dollars in respect of the purchase of the first three hundred boxes which I purchased from Mario Vella.

I am exhibiting in Court as document number nine a receipt for five thousand US dollars which amounts to the deposit on the container as I explained in my evidence.

Parte civile: On these documents which you have just exhibited, do you recognize the signatures?

Xhud: This is my signature, this is the signature Mario Vella made in front of me.

*Qorti: I am referring to document number eight;
And on document number nine there is also the signature of Mario Vella.*

Parte civile: If I understood correctly you took the first ten boxes which you had to pay for.

Xhud: Five pounds per each bottle extra.

Parte civile: So the ones you were supposed to be samples you paid again for them.

Xhud: They were not from three hundred. They were from seven hundred which I

Qorti: Not paid, a deposit of five thousand.

Parte civile: And the second ten boxes?

Xhud: Wait a second – they were in a container one thousand something, maybe one thousand one hundred, so if I bought three hundred, then seven hundred deposit, there still were about one hundred boxes which Mario Vella could sell to whoever he wanted. So if he sold me ten boxes from his, it could be, I did not ask from which one, but I bought them extra, they are not included in this price. I paid extra.

Parte civile: How many boxes did you pay extra?

Xhud: Those ten boxes.

Parte civile: Besides those ten boxes which you paid extra, did you pay anymore?

Xhud: Yes I took in one year after, I took ten boxes which I released or included in three hundred boxes.

Parte civile: The rest she never got back.

Xhud: Nothing. Opposite, Mario Vella was asking me all the time ‘What you give me a sample because I have a person from Dubai.’ and I was giving him and he never paid me for such samples.

Parte civile: And the money did you ever get the money back?

Xhud: Never.”.

Dan kollu juri bic-car illi l-kaz kollu kien jikkoncerna transazzjoni civili/kummercali li marret hazin.

Dan huwa wkoll rifless f`dak li jirrizulta *a folio* 167 (domandi u risposti fix-xhieda ta` l-imputat) u senjatament :

“ Pros: Jekk nghidlek li din Olena talbitek kemm-il darba biex tiehu lura l-Vodka u giet ghandek biex tiehu s-sehem taghha u dejjem sibtilha skuza biex ma taghtihiex lura dak li kienet diga hallset ghalih

Xhud: Le le no way

Pros: U l-flus li ghaddietlek kien fuq Vodka, x`ghandek xi tghid?

Xhud: Le l-flus li ghaddiet mhux lili. Lilu, tan-nofs l-iehor, kienu tal-Vodka u xejn iktar. Pero hi kellha zmien xahar biex tmur u taghtih il-kumplament tal-flus lilu halli mbaghad hu jaghtihom lili. U din m`ghamlitux dan. Bieghet 20 jew 30 kaxxa u daqshekk. Hi setghet tmur tehodhom any time. Kienet libera biex tehodhom. Basta thallas id-dazju ghax tad-dwana, is-Sur Peter Grima qalilha li trid thallas LM3 dazju kull flixxun u hi ma kellhiex flus biex thallashom.”.

Dan il-kwadru ta` fatti kif sufficjentement huwa rizultanti mill-atti jinnewtralizza l-allegazzjoni tal-prosekuzzjoni li dan kien kaz ta` approprijazzjoni indebita.

Hemm imbaghad il-kwistjoni ta` l-allegazzjoni tal-prosekuzzjoni li l-imputat iddispona mill-bqija tal-container a detriment ta` l-istess Olena Tretyak. F`dan ir-rigward, il-provi mressqa huma konfuzjonali. X`seta gara mill-bqija tal-vodka li kien hemm gol-container jidher li se jibqa ftit misterjuz. Li hu zgur hu li l-provi huma tali li l-imputat ma jistax jigi addebitat b`dan il-fatt, u cioe` li l-bqija tal-vodka li kien hemm fil-container hareg mill-isfera tal-pussess tad-dwana.

Din il-Qorti hi tal-fehema illi dak kollu li seta gara wara (li effettivament sehhet it-transazzjoni ta` bejgh u xiri meta ghaddew xi flus biex tinxtara l-vodka), mill-vodka

u/jew il-container tal-vodka *de quo*, ma ghandhux influwenza fuq l-ezitu ta` din il-kawza. Il-prosekuzzjoni ma addebitatx lill-imputat bil-ksur tal-ligijiet tad-dwana jew addirittura bir-reati ta` frodi fil-forom differenti tieghu. Jekk kien hemm xi gideb u/jew xi forma ta` ingann, wara t-transazzjoni msemmija, din il-Qorti ma tistax tindirizzah f`din il-kawza. Olena Tretyak, li xorta tibqa vittma, tista titqies sfortunata jew addirittura negligenti fil-mod kif dahlet f`din it-transazzjoni. Anki jekk il-potenzjal li tirkupra dak li harget kien wiehed remot, ir-rimedju ghal Olena Tretyak ma kienx fil-Qrati ta` Gustizzja Kriminali izda fi Qrati ohra ta` kompetenza civili/kummercjali.

Jirrizulta evidenti li l-kwistjoni li nibtet bejn Olena Tretyak u l-imputat u/jew Vladimir Zokhov kienet wahda ta` natura purament civili/kummercjali u l-Qorti hi tal-fehema li effettivament ma kienx hemm lok, *ab initio*, ghall-procediment kriminali.

Decide.

GHAL DAWN IL-MOTIVI L-QORTI ssib u tiddikjara lill-imputat Anthony-Mario Vella mhux hati ta` l-imputazzjoni kif migjuba kontra tieghu u konsegwentement minnha tilliberah skond il-ligi.