Court of Criminal Appeal

Hon. Mr. Justice Dr. Giovanni M. Grixti LL.M., LL.D.

Appeal Nr: 365/2014

The Police

(Inspector Nikolai Sant)

Vs

Milos Peric

Today the 4th of February 2016

The Court,

Having seen the charges brought against Milos Peric, holder of Serbian Passport No: 008575175, before the Court of Magistrates (Malta) as a Court of Criminal Judicature, charged with having:

On these Islands, on 28th August 2013 and in the previous months in these Islands:

1. Had in his possession the drugs (*cocaine*) specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or

otherwise authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (GN 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use, according to a medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations of the Internal Control of Dangerous Drugs (GN 292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;

2. Had in his possession the drugs (*cocaine*) specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (GN 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use, according to a medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations of the Internal Control of Dangerous Drugs (GN 292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta;

3. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant Cannabis in terms of Section 8(d) of Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;

4. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant Cannabis in terms of Section 8(d) of Chapter 101 of the Laws of Malta;

5. Had in his possession the psychotropic and restricted drug (magic mushroom) without a special authorisation in writing by the Superintendent of Public Health, in breach of the provisions of the Medical and Kindred Profession Ordinance, Chapter 31 of the Laws of Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended;

6. Altered or tampered with a passport or used or had in his possession a Bulgarian passport, which he knew to be forged, altered or tampered with, in the name of Evgeniy Dechev Genev bearing passport number 334248172 (Chap. 61, Section 5 of the Laws of Malta);

7. And also with having on the same date, time and circumstances committed any other kind of forgery, or having knowingly made use of any other forged document, in the mentioned documents (Chap. 9, Section 189 of the Laws of Malta).

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature delivered on the 19th September, 2014, whereby the Court after having seen Parts IV and VI, Sections 8(d), 22(1)(a), 22(2)(b)(i) and (ii) of Chapter 101 of the Laws of Malta, Regulations 4 and 9 of GN 292/1939, Sections 40A, 120A(1)(a) and 120A(2)(b)(ii) of Chapter 31 of the Laws of Malta, Regulation 3(1) of Legal Notice 22/1985, Sections 17(b), (f) and (h) and Section 189 of Chapter 9 of the Laws of Malta and Section 5 of Chapter 61 of the Laws of Malta, found the accused guilty of the charges brought against him and condemned him to a term of imprisonment of **twenty (20) months** less any amount of time which during which he may have been detained in preventive custody in connection with the offences of which he has been

found guilty by means of that judgement – **together with a fine of one thousand and five hundred Euro (€1,500)**, payable immediately;

The Court also ordered the realease of mobile phones exhibited as part of Document NS7 and Document NS8 and the amount of six thousand, three hundred and ten Euro (€6,310), exhibited as Documents NS4, NS10, NS11 and part of Document NS9, in favour of appellant for the reasons stated therein. The Court also ordered that the forged passport and the drugs exhibited respectively as Documents NS, NS2, NS3, NS5 and parts of Documents NS7 and NS9 be destroyed in the manner as detailed in said judgement;

Having seen the appeal application presented by Milos Peric in the registry of this Court on the 1st October, 2014 whereby this Court was requested to vary the said judgment where it confirmed the finding of guilt in all the charges, where it ordered the release of the mobile phones seized, where it ordered the release of the monies found in the possession of the applicant, and revoking it where the applicant was condemned to a term of imprisonment of twenty months by applying a lesser and more appropriate punishment;

Having seen the updated conduct sheet of the appellant, presented by the prosecution as requested by this Court.

Having seen the records of the case and heard the submissions by learned counsel to the appellant and the Attorney General;

Considered:

That from a reading of the appeal application, appellant declares that he felt aggrieved by the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature with regard to the punishment meted out and in this regard refers to instances of contradictions in the considerations of the First Court which should have led to a lesser punishment. Appellant also argues that the First Court did not take into account his clean conduct certificate and his full co-operation with the Police when passing judgment. Although these grievances will be dealt with by this Court in due course, it is to be noted that in complying with article 419(1) of the Criminal Code by stating in brief the facts of the case appellant gives an account of an episode during the proceedings where he pleaded guilty following an agreement between defence counsel and the prosecuting officer that he should be sentenced to a term of imprisonment of eight months. In his arguments, however, appellant prays for a lesser punishment without making reference to the "plea-bargaining" agreement reached as aforesaid. In his oral submissions, counsel to appellant then lays emphasis on the "plea-bargaining" arrangement before the First Court. As stated in numerous occasions by this Court, it is not for the Court of Appeal to fish for the grounds of appeal in an application. The application should contain clear grounds and arguments as to why appellant feels aggrieved by judgment of the First Court. In the case under examination, appellant refers to instances within the appealed judgment that should have led the Court to meet out a lesser punishment and only refers to the "plea-bargaining" arrangement as one of the facts of the case before the First Court and not as a ground of appeal;

Considered that prior to any further consideration, the sailent facts of his case are as follows. Appellant was arraigned before the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 30 August 2013. During the sitting of the 7 April, that is the seventh sitting, appellant pleaded guilty to all charges and the following entry was made in the records of the case: "The

parties agree and suggest that the punishment to be inflicted on the accused should amount to 8 months imprisonment and a fine. The Court informed the parties that it will not bind itself by the suggestion made by them". In passing judgment, as has already been stated, the First Court imposed a term of imprisonment of 20 months and a fine of €1500. Now for the sake of clarity, this Court will not be dealing, as it has not been asked to do so, with the aspect of the judgment which should be adhered to the "plea-bargaining" arrangement. Plea-bargaining before the Court of Magistrates as a Court of Criminal Judicature was introduced in our judicial system by Act IV of 2014 and was not open to the parties prior to such date although an unofficial non binding form of "plea–bargaining" was, to a degree, recognized by our Courts as evident in the judgements Il-Pulizija vs Jason Spagnol – Crim App 6.1.2005, Il-Pulizija vs Adil Hassan Mohammed – Crim App 13.7.2012 and Il-Pulizija vs Jean Claude Cassar - Crim App 17.1.2013;

It must be stated *a priori* that in dealing with appeals regarding the punishment meted out by the First Court, it is an established principle that this Court should not override the discretion exercised by that Court unless it is found that the punishment was not within the parameters of the law and that it should have been of a lesser degree. (Ir-Republika ta' Malta vs David Vella – Crim App 14.6.1999, Ir-repubblika ta' Malta vs Eleno sive Lino Bezzina Crim App 24.4.2003). And it is by this principle that this Court shall be guided in determining this appeal;

The first argument adduced by the appellant in this case is that during the proceedings it was abundantly clear that the drugs in question were in minimal quantities. During the sitting of the 18 September 2013 appellant conceded that the substance found in his possession was cocaine and during the sitting of the 7 April 2014 he also conceded that he was in possession of cannabis grass and a restricted and psychotropic drug (magic mushroom) again in minimal quantities. Appellant further argues that in its

considerations regarding the punishment, the Court "was clearly motivated by its own subjective consideration that the amount of cocaine, while not substantial was neither minimal or insignificant". In delivering judgment the First Court paid particular attention to the amounts of drugs involved and stated that although a court expert was not appointed to indicate the weight and purity of the substances, [and understandably due to the plea of guilt prompting such need], "it gave an account of the drugs found in possession of the appellant as detailed in the evidence of Inspector Nikolai Sant during the sitting of the 9 September 2013. Since the law in respect of the graver offences with which appellant was charged, namely the Drugs Ordinance Chapter 101 of the laws of Malta, does not quantify punishment in terms of the quantity of drugs involved but leaves this to the discretion of the Courts, the Courts must necessarily come to a conclusion on the appropriate punishment case by case depending on the circumstances of every such case. The First Court made it more than clear in its considerations that the amount of cocaine, "whilst not substantial, neither can it be considered as minimal or insignificant." This Court is of the opinion that the First Court exercised its discretion in the most logical and learned manner in meting out a punishment which is well within the parameters of the law. This Court further commends the First Court in its considerations when computing the quantum of imprisonment in terms of article 17 of Chapter 9 of the laws of Malta and in so doing explained that imposing a term of imprisonment of 8 months as agreed between the parties would have been less than that prescribed by law;

Appellant also argues that the First Court did not take into account his clean certificate of conduct [*recte.* criminal record] and the fact that he co-operated with the police. Appellant is not correct in this regards as the appealed judgment clearly states: "For the purpose of the punishment to be inflicted, the Court took into consideration on the one hand, the clean criminal record of the accused at the time when he committed the offences with which he is

charged and that although his guilty plea was not filed during the initial stages of these proceedings, yet he cooperated with the police during its investigations".

This Court therefore finds that the discretion exercised by the First Court was within the parameters of the law and that the punishment meted out in the appealed judgment was not one which should have been less than that actually given.

For the above reasons, this Court can not entertain appellant's grievances and therefore dismisses the appeal and confirms the judgment of the Court of First Instance.