



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

MAGISTRATE NATASHA GALEA SCIBERRAS B.A., LL.D.

Case Number: 69/2016

Today, 16th May 2016

**The Police
(Inspector Jonathan Cassar)**

vs

**Mohamed Ibrahim Abdalla
(ID 0122263A)**

The Court,

After having seen the charges brought against the accused Mohamed Ibrahim Abdalla, 19 years of age, son of Ibrahim Abdalla and Halima nee` Yusef, born in Somalia, and residing at 18, Flat 4, Triq il-Pepri, Fgura, holder of Maltese Identity Card number 0122263A;

Charged with having on 6th March 2016 and the previous four months on these Islands:

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

2. 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;
3. Committed an offence whilst being under an operative period of a judgement issued by the Court of Magistrates (Malta) presided by Mag. Dr. A. Micallef Trigona LL.D. on 16th December 2015, which judgement has become absolute.

The Court was also requested to apply Section 533(1) of Chapter 9 of the Laws of Malta as regards the expenses incurred by Court appointed experts.

Having seen the records of the case, including the order of the Attorney General in virtue of subsection two (2) of Section 22 of Chapter 101 of the Laws of Malta and the order of the Attorney General in view of subsection (2) of Section 120A of Chapter 31 of the Laws of Malta, for this case to heard by this Court as a Court of Criminal Judicature;

Having heard the accused plead guilty to the charges brought against him, which plea was confirmed by the accused after the Court in terms of Section 453(1) of Chapter 9 of the Laws of Malta warned him of the legal consequences of such plea and allowed him sufficient time to reconsider it and retract it;

Having heard the parties' oral submissions regarding said punishment.

Considered that:

In view of the guilty plea filed by the accused, the Court cannot but find him guilty of the charges brought against him.

With respect to the punishment to be inflicted as to the first and second charges, the Court took into consideration that the accused cooperated fully with the police, indicating also the third party from whom he had bought the ecstasy pill found in his possession. In this respect, however, although the Prosecution indicated that the accused should benefit from the application of Section 29 of Chapter 101 of the Laws of Malta and its corresponding section in Chapter 31 of the Laws of Malta, the Court notes that Section 29 of Chapter 101 is not applicable in this case, the accused having indicated the supplier of the ecstasy pill found in his possession, who was subsequently arraigned in court on the basis of the cooperation provided by the accused. Indeed in his deposition, Inspector Jonathan Cassar specifically

refers to the arraignment of the said supplier and not to the supplier of the cannabis grass found in the possession of the accused, who provided only vague details in his statement about this latter supplier. Neither is Section 120A(2B) of Chapter 31 applicable in this case, since this provides that the provisions of Section 29 of Chapter 101 are applicable where a person is found guilty of the offences indicated in Section 120A(2A) of Chapter 31, which in turn does not refer to the offence of simple possession of the medicine to which this Chapter applies. Yet as stated above, the Court is taking into consideration that the accused fully cooperated with the police during its investigation.

The Court further took into account that the accused was found in possession of minimal amounts of drugs.

The Court also took into consideration the criminal record of the accused, from which it results that he was found guilty of causing grievous bodily harm and of the contravention under Section 338(ff) of Chapter 9 of the Laws of Malta, in respect of which he was conditionally discharged for a period of one year. A true copy of a judgement dated 16th December 2015 was exhibited by the Prosecution (a fol. 11 of the records), from which it results that the identity card number of the accused in that case is identical to the identity card number of the accused in the present case and the conviction therein constitutes the subject-matter of the third charge. Once the accused committed the offences contemplated in the first two charges during the operative period of the conditional discharge handed down in the judgement of 16th December 2015, the Court must deal with the accused in respect of the breach of such conditional discharge in terms of Section 23 of Chapter 446 of the Laws of Malta.

In dealing with the accused in respect of the offences which were the subject-matter of the said judgement, the Court took into consideration that in terms of Section 23(2) of Chapter 446, it is precluded from placing the accused under a community sanction or making an order as provided in Section 22(1) of Chapter 446 of the Laws of Malta. Furthermore, in terms of Section 28A(7)(c) of Criminal Code, the Court is precluded from imposing a suspended sentence of imprisonment. The Court must therefore impose an effective term of imprisonment in respect of the first charge of which the accused was found guilty by means of the said judgement. For the purpose of punishment with respect to these offences, the Court took into consideration the provisions of Section 17(d) of Chapter 9 of the Laws of Malta and the early guilty plea filed by the accused in that case.

Conclusion

For these reasons, the Court after having seen 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 8(d), 22(1)(a) and 22(2)(b)(ii) of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02 and Section 17(f) of Chapter 9 of the Laws of Malta, finds the accused guilty of the charges brought against him and condemns him in respect of the first and second charges to a **fine (multa) of seven hundred and fifty Euro (€750)**.

With respect to the third charge brought against him, the Court after having seen Section 23 of Chapter 446, finds the accused guilty of the third charge namely of having committed an offence during the operative period of the order of conditional discharge imposed by means of a judgement delivered by this Court as presided by Magistrate Dr. A. Micallef Trigona on 16th December 2015 and after having seen Sections 216, 218, 338(ff) and 17(d) of Chapter 9 of the Laws of Malta, deals with the accused for the offences in respect of which the order for conditional discharge was made by condemning him to **a term of nine (9) months effective imprisonment**, from which one must deduct the period of time in respect of which the accused has been kept in preventive custody in connection with the offences of which he is being convicted by means of this judgement.

Since expert Godwin Sammut had not as yet carried out the analysis of the substances exhibited, the Court is not taking any further note of the request made by the Prosecution in terms of Section 533 of Chapter 9 of the Laws of Malta.

Furthermore, the Court orders the destruction of the substances exhibited as Doc. JC9, once this judgement becomes final, under the supervision of the Registrar, who shall draw up a *proces-verbal* documenting the destruction procedure. The said *proces-verbal* shall be inserted in the records of these proceedings not later than fifteen days from the said destruction. This unless the Prosecution informs the Court, within a week from today, that such substances are to be preserved for the purposes of other proceedings against third parties, in which case, the Registrar shall report to the Court, through a minute, when the said substances are so destroyed.

Natasha Galea Sciberras
Magistrate