



Court of Criminal Appeal

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

Appeal Nr: 408/2015

The Police

(Inspector Jurgen Vella)

vs

Bojanic Srdjan

Sitting of the 18th December, 2017

The Court,

Having seen the charge brought against Bojanic Srdjan, holder of Maltese identification card number 41158A, before the Court of Magistrates (Malta) as a Court of Criminal Judicature as requested by the Commissioner for Revenue: with having on behalf and/or in representation of SJ Hair Studio Limited (C51396) and/or as a registered person with the Director General of Value Added Tax, as per Act of 1998 regarding Value Added Tax (Act. No. XXIII of 1998) and Regulations made by the same Act, on the 13th January 2014 at La Alborada Shop 2 - Main Road - Sliema, failed, either himself or an employee of his or any other person acting on his behalf, to issue

or produce a fiscal receipt by means of a fiscal cash register and/or by means of fiscal receipt books as approved by the Commissioner, which conform with item 10 of the Thirteenth Schedule of the Act, for the payment received for that supply/supplies, and this in breach of item 1, 2, 3 and 10 of the said schedule and articles 51, 77 (a) and (e), 81 and 82 of Act XXIII of 1998;

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature delivered on the 16th September, 2015, whereby the Court found defendant guilty of the charge brought against him and condemned him to a fine of eight hundred Euros (€800);

Having seen the appeal application presented by Bojanic Srdjan in the Maltese language in the registry of this Court on the 17th September, 2015 whereby he requested this court to revoke appealed judgment and acquit him of any guilt and alternatively to reform the said judgment by imposing a more equitable and just punishment;

Having seen the grounds of appeal as presented by the appellant Bojanic Srdjan;

Having heard the witnesses;

Having heard submissions by Counsel to appellant and by the Attorney General;

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;

Considered:

1. That appellant has put forward four grounds of appeal one of which relates to the punishment meted out by the first court. Appellant primarily puts into question his relationship with SJ Hair Studio Limited then argues that the first court failed to consider that the computer system was registering the sales notwithstanding the damage incurred and finally that the charge can never stand due to the fact that appellant had issued a fiscal receipt and that by doing so he effectively paid double the amount of chargeable VAT;
2. The following facts emerge from the evidence adduced. Paul Scicluna, on behalf of the Commissioner of Revenue, apart from confirming a letter to prosecute, also confirmed the authenticity of a copy of a document he exhibited before the first court being an application form for registration with the VAT Department by Srdjan Bojanic as Director of SJ Hairstudio Ltd. A copy of the identity card of Mr Bojanic was also attached to the registration form;
3. VAT Inspector Jonathan Fenech testified that on entering the premises of SJHairstudio he, together with his colleague, requested a Milos Mitrovic and another employee to issue an X-Report from the cash register to verify the daily sales total up to that time,

however the printer was not functioning. They then proceeded to examine the appointments on the computer system and asked Mr. Mitrovic to issue a manual fiscal receipt for the sum total of €127.00 (This manual receipt is exhibited as Dok JF2 in folio 13 and dated 13.01.2014). This receipt is numbered 000001 as it was the first page of the manual receipt book. Appellant then came over to the studio upon the request of Mr. Mitrovic;

4. Appellant testified he is a director of the company and that upon receiving a call from Mr. Mitrovic, "who works for us", he went over to the studio and could see that the printer was stuck. This notwithstanding, the system was recording all the sales, the inspector ascertained this for himself and asked by appellant whether all was good he replied in the affirmative. He also confirmed that no receipts were given to the clients due to the printer malfunction but then retracted by saying that receipts had been given to the clients. Appellant then confirmed the documents exhibited before the first court being a reading of transactions of the 30 January 2014 but printed on the 25 of August 2014 which document shows a total sales of €197.00;

5. From an examination of these facts, the first ground of appeal requires no further consideration since the documentation presented by the prosecution and the declaration of appellant himself proves that he is a director of the hair studio in question;

6. The second and third grounds are closely connected with the request for an issue of a manual receipt when all sales were accounted for through the system. Appellant is not correct in his arguments in that the charge is for having failed to issue a receipt for each and every transaction. The fiscal manual receipt exhibited in the records shows that the manual receipt book was never used

before then. It is of no avail for the appellant to state that cash register receipts were given prior to the breakdown of the printer when he was not in the premises at the time and that the person supposedly issuing such receipts was not presented as a witness to the first court. It is also of no avail to state that VAT was accounted for and paid twice over due to the forced issue of a manual receipt by the VAT Inspector. The documents exhibited by appellant do not show the various transaction, in this case payments tendered by the hairstudio's clients, but a single amount dated 13 January, 2014. This together with the computer readout of the transactions (which does not indicate the amount received for each service) does not exonerate the appellant from his obligation to issue a manual fiscal receipt **for each transaction** when the cash register or printer suffer a breakdown;

7. The conclusion of the first court was legally and reasonably correct and this court finds no reason why it should in any way substitute the discretion exercised by the said court of first instance;

8. The fourth ground of appeal relates to the punishment meted out by the first court and whereas it is an established principle that this Court, as a Court of Criminal Appeal, does not normally substitute the discretion exercised by the first court in administering the appropriate punishment as long as it is meted out within the parameters of the law, this court notes that the fine imposed on the appellant is near to the prescribed minimum. The ground that the fine meted out is excessive and disproportionate can not therefore be upheld.

9. For these reasons, this court rejects the appeal.