THE COURT OF CRIMINAL APPEAL

The Hon. Mr. Justice Aaron M. Bugeja M.A. (Law), LL.D. (melit)

Appeal number – 49/2018

The Police

vs.

Yvonne Charlotte THOMAS

Sitting of the 24th September 2020

The Court,

1. This is an appeal from a judgment delivered by the Court of Magistrates (Malta) on the 2nd February 2018 against Yvonne Charlotte THOMAS, holder of a Maltese identity card number 421911L, who was charged with having, on the 19th April 2017 at about 1245 in Triq Giovanni Curmi, Iklin:

   (i) Uttered insults or threats in violation of section 339(1)(e) of Chapter 9 of the Laws of Malta;

   (ii) In any manner not otherwise provided for in the Criminal Code wilfully disturbed the public good order or the public peace.

2. By means of the said judgment, the Court of Magistrates (Malta), found the accused guilty of all charges proferred against her and after seeing articles 338(dd) and 339(1)(e) of the Criminal Code instead of inflicting punishment the Court imposed a decree under article 383 of the Criminal Code which was attached to the judgment and deemed to form an integral part thereof, and according to which Yvonne Charlotte THOMAS bound herself to keep the peace with Darrin Abela and generally not to disturb the public good order and in case that she failed to fulfil this obligation, she bound herself to pay a penalty of five hundred euro (€500) which obligation was to remain in force for a period of one year.

3. Yvonne Charlotte THOMAS filed an appeal against this judgment whereby she requested this Court to declare the judgment null, void and without effect or subsidiarily in case the first request was not met to cancel and revoke the same judgment where the appellant was found guilty of the charges and to acquit the appellant from all charges and punishment instead, and this on the basis of the following grievances : -

    a. Nullity of the judgment of the Court of Magistrates on account of the fact that instead of inflicting punishment, the Court opted to impose an obligation in terms of article 383 of the Criminal Code instead – without imposing an amount and term of the recognisance as required by article 383 of the Criminal Code in the formal judgment delivered by the Court of Magistrates. The mere reference to the decree in terms of article 383 of the

Criminal Code was not sufficient. This shortcoming effected the validity of the judgment of the Court of Magistrates, which was therefore to be declared null and void.

b. The Court of Magistrates carried out a manifestly erroneous evaluation of the evidence, leading to a decision which was illegitimate, unreasonable and far from safe and satisfactory. The only evidence brought by the Prosecution was the affidavit of PS902 and parte civile Darrin Abela. The Court of Magistrates was faced with two conflicting versions of events. The evidence brought by the appellant emphatically challenged the evidence brought by the Prosecution and therefore the Court of Magistrates could not reasonably and legally find her guilty.

c. Grievance on prescription. The appellant contended that the Court of Magistrates failed to take cognisance of the fact that the Prosecution failed to prove that the appellant was served with the charge sheet. While the alleged offences occurred on the 19th April 2017, the appellant contended that she had received the charge sheet only some time around December 2017. Prosecution brought no evidence to rebut this fact, but merely declared that the appellant was served in due time. However in this case both charges are contraventions and therefore the prescriptive period applicable is that of three months – which had amply passed when the appellant was served therewith.

Considers as follows :-

4. That on the 19th April 2017 at approximately 13:00hrs, the Birkirkara Police Station were informed that an argument had ensued between two individuals in Triq Giovanni Curmi next to Little Owls Nursery. The Police went to the scene where they met the appellant who claimed that she had spoken to one of the builders on the construction site next to her premises in order to ask same whether they were going to conduct any work using the jackhammer and this because of her children.

5. According to the appellant, subsequently the site owner, Darren Abela approached her and started shouting at her using very desprigative language and insults. When Abela was spoken to and duly cautioned he explained that his builders had informed him that appellant had approached them asking about the works being conducted on site on the day since they had a prior agreement. Abela saw appellant approaching her car later on in the day and as he asked to speak to her cordially she proceeded to insult him by stating that he was not a gentleman and that she wished his daughter would turn blind, which words were very hurtful to him.

6. Abela claimed that he did not talk back at her and when Thomas was confronted by this version of events she denied having uttered these words. Subsequently upon taking the witness stand Abela did not deny having uttered some words back at the accused after she commented about his daughter claiming that she had provoked him into so doing whilst adding that he was restraining himself from going any further than that.

7. On the other hand the appellant insisted that the claims made by the parte civile were false and that none of his allegations were true.

8. Both parties were arraigned in Court after which first Court, having deemed evidence of Abela as being more credible and forthcoming decided to acquit parte civile whilst finding appellant guilty of the charges proferred against her.

Considers further : -

9. The appellant raises the plea of nullity of the judgment of the Court of Magistrates whereby she is claiming that the Court's decision failed to indicate the punishment that was to be meted out in case of a conviction. Hence this judgment did not satisfy one of the requisites laid out in article 382 of the Criminal Code which reads as follows:

> **382.** The court, in delivering judgment against the accused, shall state the facts of which he has been found guilty, shall award punishment and shall quote the article of this Code or of any other law creating the offence.

The conclusion of the said judgment reads as follows:

> Upon seeing articles 339(1)(e) and 338(dd) of Chapter 9 of the Laws of Malta and whilst finding her guilty of all the charges, instead of inflicting a penalty the Court is imposing a decree under Article 383 of Chapter 9 of the Laws of Malta which is to form an integral part of this judgement.

10. The grievance relating to the nullity of the judgment did not refer to the facts of the case as was mentioned during the submissions made by the parties during the sitting of the 19th December 2019. It relates to the

alleged failure by the Court of Magistrates to impose a punishment in the judgment finding a person guilty of committing a criminal offence.

11. Article 383 of the Criminal Code reads as follows:

> **383.** (1) The court may, where it deems it expedient, in order to provide for the safety of individuals or for the keeping of the public peace, in addition to, or in lieu of the punishment applicable to the offence, require the offender to enter into his own recognizance in a sum of money to be fixed by the court.
>
> (2) Such sum shall not be less than one hundred and sixteen euro and forty-seven cents (116.47) nor more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) according to the means of the party entering into a recognizance, and the term of the recognizance shall not exceed twelve months.
>
> (3) Where the offender entering into a recognizance is, in respect of the same offence, sentenced to a punishment restrictive of personal liberty, the term of the recognizance shall commence to run from the day on which the said punishment is served or condoned.

12. The Court of Magistrates was clear that it was finding the appellant guilty of all the charges. However instead of inflicting punishment, the Court of Magistrates opted to apply the provisions of article 383 of the Criminal Code.

13. This Court understands different interpretations given to this provision. However in its view this article gives the Court of Magistrates a special legal tool aimed to achieve justice in specific circumstances. While it is true that article 382 of the Criminal Code imposes the ad validitatem duty on the Court of Magistrates to inflict a punishment in case of conviction of a person charged – by

stating *shall award punishment* – on the otherhand, article 383 of the Criminal specifically states that the power to bind over parties may be applied (in such a way that where the court deems it expedient, in order to provide for the safety of individuals or for the keeping of the public peace), **in addition to, or in lieu of the punishment applicable to the offence**. Thus the Court may require the offender to enter into his own recognizance in a sum of money to be fixed by the court.

14. Clearly this is a special provision that derogates from the ordinary rule established by article 382 of the Criminal Code relating to the imposition of the punishment by the Court of Magistrates following conviction.

15. Furthermore, the Law does not clearly state that when the Court of Magistrates decides to apply this special provision, it has to establish the terms of the requirement of the offender to enter into his own recognizance in a sum of money to be fixed by the court speficially in the Court judgment. Indeed that should be the best practice to be followed by the Court of Magistrates as it is ideal to have the said terms of the recognisance specified in the judgment itself. However in this particular case, in the judgment convicting the appellant the Court of Magistrates did specify that it was availing itself of the power to bind over parties in terms of a decree issued under article 383 of the Criminal Code which the Court ordered that it was to be deemed to form an integral part of its judgment.

16. The decree in question is found at fol 11, in the page immediately following the judgment. This decree is drawn in the standard form used by the Registrar, Criminal Courts and Tribunals.[1] It clearly specifies the terms of the obligation undertaken by the appellant and the bond that she bound herself to pay in case she failed to fulfill her obligation. This is also sealed by her signature at the foot of the said decree, that, by order of the same Court was to be deemed forming part of the judgment delivered by it.

17. Therefore while this Court agrees that the Court of Magistrates should have better expressed the terms of the obligation and of the recognisance in the body of the judgment delivered by it – and this as a matter of best practice in order to ensure maximum simplicity in the application of criminal procedure and clarity of the terms of the judgment following conviction in the same document, on the otherhand it cannot agree with the appellant that this "shortcoming" per se leads to the nullity of the judgment of the Court of Magistrates.

18. Consequently this grievance is being rejected.

Considers further : -

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[1]And mistakenly indicating the name of the Magistrate as A Micallef Trigona, when in point of fact, the presiding Magistrate was Dr. Claire Stafrace Zammit, as can be seen from her signature at the foot of the said document.

19. The third grievance relates to the plea of prescription of the criminal action.

20. This grievance proved particularly problematic for this Court. In the appeal application the appellant states that :

> That without prejudice to the above grievances, the appellant humbly submits that the First Court failed to take cognisance of the fact that the prosecution in this case failed to provide prrof of when the appellant was served with the charges;
> That in fact, although the prosecution alleges that the offences allegedly committed by the appellant occurred on the 19th of April, 2017, the appellant delcared that she did not receive any notification of any charges until some time around December 2017;
> That the prosecution brought no evidence to refute this fact but merely declared that appellant had been notifited in time;

21. However this Court saw that the testimony of the parties was not registered and transcribed by the Court of Magistrates and therefore it was not possible for this Court to know with precision what the parties testified before that Court. And in particular this Court has no evidence showing that when the appellant testified before the Court of Magistrates she specifically mentioned, under oath, that she was served with the summons around December 2017.

22. From the minutes of proceedings before the Court of Magistrates at fol 5 : sitting of the 9th January 2018 and fol 6 : sitting of the 2nd February 2018, there is no reference to the fact that the appellant had raised the plea of prescription at that stage, or that, at least, she complained about the fact that she was only served in December 2017 as alleged in the appeal application.

23. While from the minute of the 2nd February 2018 it transpires that the parties made oral submissions, there is no indication as to what submissions were made, let alone what pleas were raised before the Court of Magistrates.

24. From the judgment of the Court of Magistrates it does not transpire that any plea of prescription was raised and decided by it given that the Court of Magistrates simply refers to the issue of credibility of the witnesses. From the records of these proceedings it transpires that at no point was the issue of prescription mentioned before that Court, let alone decided.

25. While it is also true that the plea of prescription can also be raised at appellate stage, this Court finds that the appeal application indicates that this plea was already raised before the Court of Magistrates and this because appellant claims that *the appellant humbly submits that the First Court failed to take cognisance of the fact that the prosecution in this case failed to provide proof of when the appellant was served with the charges.*

26. At any rate, even if this plea was raised at appellate stage, from the testimony of the appellant it does not transpire when she was served with the summons. Once that she raised the plea of prescription she was obliged to prove this plea up to the level of probability. There is a presumption *iuris tantum* in favour of the validity of judicial acts and of service of the summons. If that presumption is not properly rebutted according to the level of

sufficiency of evidence incumbent on the respective parties, that presumption holds and stands.

27. Consequently this grievance is being rejected.

Considers further : -

28. That appellant's second grievance relates to the merits of the case and in particular to the fact that according to her the Court of Magistrates carried out a manifestly erroneous evaluation of the evidence, leading to a decision which was illegitimate, unreasonable and far from safe and satisfactory. The only evidence brought by the Prosecution was the affidavit of PS902 and parte civile Darrin Abela. The Court of Magistrates was faced with two conflicting versions of events. The evidence brought by the appellant emphatically challenged the evidence brought by the Prosecution and therefore the Court of Magistrates could not reasonably and legally find her guilty.

29. First of all this is an appellate Court tasked with the revision of the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature. This Court does not change the analysis of the facts and the law as well as and the decision made by the Court of Magistrates or any discretion exercised by when it appears to it that the Court of Magistrates was legally and reasonably correct. In the judgment delivered by the Court of Criminal Appeal in its Superior Jurisdiction in the case ***Ir-Repubblika ta' Malta vs***

Emanuel ZAMMIT[2] it was held that this Court makes its own detailed analysis of the record of the proceedings held before the Court of first instance in order to see whether that Court was reasonable in its conclusions. If as a result of this detailed analysis this Court finds that the Court of first instance could not reasonably and legally arrive at the conclusion reached by it, then this Court would have a valid, if not impelling reason, to vary the discretion exercised by the Court of first instance and even change its conclusions and decisions.

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[2] 21st April 2005. See also, inter alia, ***Ir-Repubblika ta' Malta vs Domenic Briffa***, 16 th October 2003; ***Ir-Repubblika ta' Malta vs Godfrey Lopez*** and ***Ir-Repubblika ta' Malta v. Eleno sive Lino Bezzina,*** 24th April 2003, ***Ir-Repubblika ta' Malta vs Lawrence Asciak sive Axiak*** 23rd January 2003, ***Ir-Repubblika ta' Malta vs Mustafa Ali Larbed***; ***Ir-Repubblika ta' Malta vs Thomas sive Tommy Baldacchino***, 7th March 2000, ***Ir-Repubblika ta' Malta vs Ivan Gatt***, 1st December 1994; ***Ir-Repubblika ta' Malta vs George Azzopardi***, 14th February 1989; ***Il-Pulizija vs Andrew George Stone***, 12th May 2004, ***Il-Pulizija vs Anthony Bartolo***, 6th May 2004; ***Il-Pulizija vs Maurice Saliba***, 30th April 2004; ***Il-Pulizija vs Saviour Cutajar***, 30th March 2004; ***Il-Pulizija vs Seifeddine Mohamed Marshan*** et, 21st Octuber 1996; ***Il-Pulizija vs Raymond Psaila et***, 12th May 1994; ***Il-Pulizija vs Simon Paris***, 15th July 1996; ***Il-Pulizija vs Carmel sive Chalmer Pace***, 31st May 1991; ***Il-Pulizija vs Anthony Zammit***, 31st May 1991.

In ***Ir-Repubblika ta' Malta vs Domenic Briffa*** it was further stated:

> Kif gie ritenut diversi drabi, hawn qieghdin fil-kamp ta' l- apprezzament tal-fatti, apprezzament li l-ligi tirrizerva fl- ewwel lok lill-gurati fil-kors tal-guri, u li din il-Qorti ma tiddisturbahx, anke jekk ma tkunx necessarjament taqbel mija fil-mija mieghu, jekk il-gurati setghu legittimament u ragonevolment jaslu ghall-verdett li jkunu waslu ghalih. Jigifieri l-funzjoni ta' din il-Qorti ma tirrizolvix ruhha f'ezercizzju ta' x'konkluzjoni kienet tasal ghaliha hi kieku kellha tevalwa l-provi migbura fi prim'istanza, imma li tara jekk il-verdett milhuq mill-gurija li tkun giet "properly directed", u nkwadrat fil-provi prodotti, setax jigi ragonevolment u legittimament milhuq minnhom. Jekk il- verdett taghhom huwa regolari f'dan is-sens, din il-Qorti ma tiddisturbahx (ara per ezempju Ir-Repubblika ta' Malta v. Godfrey Lopez u r-Repubblika ta' Malta v. Eleno sive Lino Bezzina decizi minn din il-Qorti fl-24 ta' April 2003, Ir-Repubblika ta' Malta v. Lawrence Asciak sive Axiak deciza minn din il-Qorti fit-23 ta' Jannar 2003, Ir-Repubblika ta' Malta v. Mustafa Ali Larbed deciza minn din il-Qorti fil-5 ta' Lulju 2002, ir-Repubblika ta' Malta v. Thomas sive Tommy Baldacchino deciza minn din il-Qorti fis-7 ta' Marzu 2000, u r-Repubblika ta' Malta v. Ivan Gatt deciza minn din il-Qorti fl-1 ta' Dicembru 1994).

30. In the ordinary course of its functions, this Court does not act as a court of retrial, in that it does not rehear the case and decide it afresh; but it intervenes when it sees that the Court of Magistrates, would have mistakenly assessed the evidence or wrongly interpreted the Law - thus rendering its decision unsafe and unsatisfactory. In that case this Court has the power, and indeed, the duty to change the decision of the Court of Magistrates or those parts of its decision that result to be wrong or that do not reflect a correct interpretation of the Law.

31. Furthermore as has been stated in the judgment delivered by this Court, as differently presided, in the names ***Il-Pulizija vs. Vincent Calleja*** of the 7th March 2002, this Court, as a court of revision of the judgment of the Court of Magistrates does not make a new evaluation and assessment of the facts of the case before the Court of Magistrates, but limits itself to its analysis as to whether the evaluation and assessment of the facts of the case before the Court of Magistrates were "*unsafe and unsatisfactory*".

32. This Court, as a court of revision, cannot substitute the decisions of the Court of Magistrates by its own decisions unless the decisions of the Court of Magistrates are clearly *unsafe and unsatisfactory*. If this Court sees that the Court of Magistrates could, legitimately and reasonably arrive at its conclusions based on the evidence and legal arguments produced before that Court, then this Court cannot change these conclusions of the Court of Magistrates – even if this Court, as a Court of Appeal could have arrived at a different

conclusion than that reached by the Court of Magistrates based on the same evidence, facts and legal arguments.

Considers further : -

33. That as far as the first charge is concerned it is clear that the Court of Magistrates made an analysis of the testimony of the witnesses – including the parte civile and the appellant. The Court of Magistrates clearly decided according to it parte civile Darren Abela was more credible and convincing in his testimony. He was deemed to be sincere enough to relate the words that he said to the appellant.

34. It is true that the testimony of the appellant and the parte civile were the main evidence in this case. But according to article 637 of the Criminal Code : -

    Any objection from any of the causes referred to in articles 630, 633 and 636, shall affect only the credibility of the witness, asto which the decision shall lie in the discretion of those who have tojudge of the facts, regard being had to the demeanour, conduct, andcharacter of the witness, to the probability, consistency, and other features of his statement, to the corroboration which may beforthcoming from other testimony, and to all the circumstances ofthe case:

    Provided that particular care must be taken to ensure that evidence relating to the sexual history and conduct of the victim shall not be permitted unless it is relevant and necessary.

35. Furthermore article 638 of the Criminal Code states as follows : -

    638.(1) In general, care must be taken to produce the fullestand most satisfactory proof available, and not to omit theproduction of any important witness.

> (2) Nevertheless, in all cases, the testimony of one witness ifbelieved by those who have to judge of the fact shall be sufficientto constitute proof thereof, in as full and ample a manner as if thefact had been proved by two or more witnesses.

36. Moreover according to the case ***Il-Pulizija vs Joseph Thorne,***[3] not all conflicts in the evidence produced automatically lead to the discharge or acquittal of the person charged. In case of conflict of evidence, the Court must assess the evidence produced in the light of the provisions of article 637 of the Criminal Code and to conclude which witness to believe or which part of his testimony to believe or not to beleive.

37. Moreover, according to Mr. Justice William Harding in the case ***Il-Pulizija vs Joseph Peralta*** decided by the Criminal Court on the 25th April 1957, a court of criminal jurisdiction had to be **sure** about the accused's guilt only based on evidence that proved his guilt beyond a reasonable doubt.

38. Furthermore, the same learned judge clearly held that in line with the principles mentioned above relating to the functions of this Court as a court of revision, this Court did not overturn judgments of the Court of Magistrates capriciously. But it had to give due weight to the assessment and evaluation of the evidence made by the Court of Magistrates on account of the fact that by Law, it is the Court that is primarily entrusted with the assessment and

[3] Decided on the 9th July 2003 by this Court presided by Mr. Justice Joseph Galea Debono.

evaluation of the evidence. The demeanour of a witness is a very important factor which has to be noted by the Court of Magistrates.[4]

39. In the case ***Il-Pulizija vs Lorenzo Baldacchino*** decided by the Criminal Court on the 30th March 1963, Justice Harding stated that *great weight should be attached to the finding of fact at which the judge of first instance has arrived" (idem, p. 700)*, because *he has had an opportunity of testing their credit by their demeanour under examination.*

40. In view of the above, this Court concludes that on the basis of the assessment made by the Court of Magistrates, that Court could legitimately and reasonably arrive at the conclusion that the words uttered by the appellant constituted the contravention mentioned in article 339(1)(e) of the Criminal Code.

Considers further : -

41. That the second charge proferred against the appellant was that of breach of the peace, namely the contravention committed by whosoever in any manner not otherwise provided for in the Criminal Code wilfully disturbed the public good order or the public peace.

[4] Powell, On Evidence, p. 505.

42. In this particular case the parte civile testified that :

Darren Abela: Threatened no. I didn't feel threatened but I felt very hurt cause those words should have never been said, if she referred to me I would have understood but not my daughter, seeing specifically my daughter a week before hand in hand, outside the site, she has never seen my daughter before and she specifically wanted to press the right buttons.

43. In the case ***Il-Pulizija vs Rocco D'Alessandro*** decided by this Court, presided by Mr. Justice Lawrence Quintano it was stated as follows:-

Minħabba li l-ewwel imputazzjoni hija kusr volontarju tal-bon-ordni jew tal-paċi pubblika, il-Qorti qed tirreferi għassentenza 'Il-Pulizija versus Michael Camilleri et' tas-27 ta' Frar 2008 tal-Qorti tal-Appell Kriminali kif preseduta mill-Imħallef Dr.David Scicluna. F'dik is-sentenza nsibu dan li ġej dwar in-natura ta' din il-kontravenzjoni.

'Issa, kif gie spjegat fl-Appell Kriminali fl-ismijiet 'Il-Pulizija v. Paul Busuttil' deciz fit-23 ta' Gunju 1994:
"Skond gurisprudenza kostanti tal-Qrati tagħna, dan ir-reat javvera ruħu meta jkun hemm dak li fil-common law Ingliża kien jissejjah 'a breach of the peace'. Din l-ekwiparazzjonita' dana r-reat mal-kunċett Ingliz ta' 'a breach of the peace' tirrisali għal zmien Sir Adriano Dingli li proprju f'kawza deciza minnu fl-10 ta' Gunju, 1890, fl-ismijiet 'Ispettore Raffaele Calleja v. Paolo Bugeja et.,' kien qal hekk:
'Che il buon ordine e la tranquillita` pubblica sta nella sicurezza, o nella opinione ferma della sicurezza sociale, - nel rispetto dei diritti e dei doveri sia degli individui in faccia all'autorita` pubblica, sia degli individui stessi fra loro, e ogni atto che toglie o diminuisce la opinione della sicurezza pubblica, o della sicurezza individuale, e` violazione dell'ordine pubblico, indipendentemente dalla perpetrazione di altro reato'(Kollez. Vol. XII, p. 472, 475).1 Vol. LXXVIII.v.277.

A skans ta' ħafna repetizzjoni, din il-Qorti tagħmel referenza għall-ġurisprudenza miġbura fl-artikolu intitolat 'Calleja v. Balzan: Reflections on Public Order' pubblikat fil-Vol. X ta' The Law Journal - Id-Dritt (University of Malta, Autumn 1983) pagna 13 et seq., u specjalment pagni 28 sa 31. B'zieda ma' dak li hemm f'dak l-artikolu wiehed jista' jghid li r-reat ta' 'breach of the peace' fil-ligi Skoċċiza jirrikjedi wkoll ċertu element, imqar f'ammont żgħir hafna, ta' allarm. Fi kliem McCall Smith u Sheldon, fil-ktieb tagħhom. 'Scots Criminal Law', Edinburgh, Butterworths, 1992):
'The essence of the offence is the causing of alarm in the minds of the lieges. This alarm has been variously defined by courts. In Ferguson v. Carnochan

(1889) it was said not necessarily to be 'alarm in the sense of personal fear, but alarm lest if what is going on is allowed to continue it will lead to the breaking of the social peace'. Alarm may now be too strong a term: in Macmillan v. Normand (1989) the offence was committed when abusive language caused 'concern' on the part of policemen at whom it was directed' (p.192).

Naturalment huwa kwazi impossibbli li wieħed jiddeċiedi aprioristikament x'jammonta jew x'ma jammontax f'kull kaz għar-reat ta' ksur volontarju tal-bon ordni u l-kwiet talpubbliku. Kif jgħid awtur ieħor Skoċċiż, Gerald H. Gordon, fit-test awtorevoli tiegħu 'The Criminal Law of Scotland' (Edinburgh, 1978):
'Whether or not any particular acts amount to such a disturbance is a question of fact depending on the circumstances of each case, and strictly speaking probably no case on breach of the peace can be regarded as an authority of general application' (p.985, para. 41- 01).

U aktar 'il quddiem l-istess awtur jghid:
'T. Although it has been held not to be a breach of the peace merely to annoy someone, such annoyance could amount to a criminal breach of the peace if the circumstances were such that it was calculated to lead to actual disturbance' (p. 986, para. 41-01).

Fl-Appell Kriminali fl-ismijiet Il-Pulizija v. Joseph Spiteri deciz fl-24 ta' Mejju 1996, din il-Qorti diversament presjeduta żiedet tgħid hekk:
"Il-Qorti hawnhekk tixtieq tippreciza a skans ta' ekwivoċi li l-kuncett ta' 'breach of the peace' kif abbraccjat fl-Iskozja huwa aktar wiesa' minn kif gie interpretat mill-qrati Inglizi. Fi kliem Jones u Christie fil-ktieb taghhom 'Criminal Law' (Edinburgh, Sweet & Maxwell, 1992), b'referenza għal-liġi Skoċċiża in materja:
'While the major part of the criminal law of Scotland could indeed be expressed in some facile, breach-of the-peacetype phrase, such as 'doing things (or refraining from
doing things) which cause, or could reasonably cause alarm or disturbance', this would lead inevitably to complete uncertainty as to what exactly the law did prohibit. At present there is considerable uncertainty as to what breach of the peace itself properly covers; and it would thus be most unwelcome to extend that uncertainty by enlarging the scope of breach of the peace at the expense of other, fairly well defined offences. But this is, of course, something of a vicious circle. It is precisely because breach of the peace has become so ill-defined that it has proved possible for it to stray into fields occupied by other offences. The only way to halt this process is for breach of the peace to be defined in a clearer and more limited fashion than is currently the case. Regrettably, however, there is little indication that this is likely to be so' (p. 295).

Il-kuncett Ingliz ta' 'breach of the peace' li, kif ingħad, il-Qrati tagħna jidher li fil-massima segwew, gie spjegat mill-Professur A.T.H. Smith fil-ktieb tiegħu 'Offences Against Public Order' (London, Sweet & Maxwell, 1987) hekk:
'Because of the association between 'peace' and 'quiet', there is a natural tendency to suppose that a breach of the peace is 'any behaviour that disturbed or tended to disturb the tranquillity of the citizenry'. But if any legal expression is a term of art, breach of the peace is one of them. Recently the courts have refined the concept, and established very clearly that it is allied to harm, actual or prospective, against persons or property. The leading mo dern authority is undoubtedly the decision of the Court of Appeal in Howell T. Watkins L.J. said:
'T. Even in these days when affrays, riotous behaviour and other disturbances happen all too frequently, we cannot accept that there can be a breach of the peace unless there has been an act done or threatened to be done which either actually harms a person, or in his presence his property, or is likely to cause such harm, or which puts someone in fear of such harm being done' (p.182).

Minn dana kollu din il-Qorti tara li, bħala regola, ikun hemm il-kontravvenzjoni kontemplata fil-paragrafu (dd) ta' l-art. 338 tal-Kap. 9 meta jkun hemm għemil volontarju li minnu nnifsu jew minħabba c-cirkostanzi li fihom dak l-għemil iseħħ inissel imqar minimu ta' inkwiet jew thassib f'moħħ persuna (li ma tkunx l-akkużat jew imputat) dwar l-inkolumita` fiżika ta' persuna jew dwar l-inkolumita` ta' proprjeta`, kemm b'rizultat dirett ta' dak l-għemil jew minħabba l-possibilita` ta' reazzjoni għal dak l-għemil. Naturalment dawn iċ-ċirkostanzi jridu jkunu tali li oġġettivament inisslu l-imsemmi nkwiet jew tħassib.'

Il-Qorti kkwotat minn din is-sentenza 'in extenso' għaliex l-ispjegazzjoni mogħtija tista' tgħin biex il-Prosekuzzjoni tkun tista' tiddeċiedi aħjar meta għandha tagħti din l-imputazzjoni u meta le.

Minn dan il-każ jirriżulta li l-prinċipju li Qorti għandha ssegwi biex tar jekk kienx hemm ksur tal-ordni pubbliku huwa jekk mill-atti jirriżultax xi għemil volontarju li minnu nnifsu jnissel xi minimu ta' inkwiet jew tħassib f'moħħ persuna dwar l-inkolumita' fiżika ta' persuna jew proprjeta'.

44. Clearly, from the testimony of the parte civile himself, there was not evidence of any voluntary act committed by the appellant that in itself brought at least a minimum of fear in the mind of the parte civile that that the appellant was going to do or threaten to do

an act that actually harms a person, or in his presence his property, or is likely to cause such harm, or which puts someone in fear of such harm being done.

45. Consequently the Court of Magistrates could not legitimately and reasonably arrive to its conclusion to convict the appellant of the contravention of breaching the peace.

Decide

Consequently, this Court upholds the appeal of Yvonne Charlotte Thomas in parte, and therefore : -

a. It confirms that part of judgment where the Court of Magistrates found the appellant guilty of the first charge;
b. It revokes that part of the judgment where the appellant was found guilty of the second charge brought against her and for the abovementioned reasons this Court declares the appellant not guilty of the second charge and therefore aquits her from the said second charge;
c. It revokes the sentence imposed by the Court of Magistrates as indicated in the judgment and in the decree issued by it at fol 11 which was deemed to form an integral part of the said judgment;
d. And consequently given that the appellant was acquitted from the second the charge, but this Court confirmed her conviction in relation to the first charge; and given that this Court cannot impose a punishment *in peius*; consequently this Court, after having seen

article 383 of the Criminal Code, decides that in this case it deems it expedient, in order to provide for the safety of individuals and Darren Abela in particular, in lieu of the punishment applicable for the offence mentioned in the first charge, requires the appellant Yvonne Charlotte THOMAS to enter into her own recognizance in the sum of two hundred and fifty euros (€250) for a period of six months from the date of this judgment.

Aaron M. Bugeja
Judge