



THE COURT OF CRIMINAL APPEAL

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

Appeal number – 412/2017

The Police

vs.

VALCHEV Valcho Stoychev

Sitting of the 18th February 2021

The Court,

1. This judgment relates to an appeal lodged from a judgment delivered by the Court of Magistrates (Malta) on the 18th October 2017 against VALCHEV Valcho Stoychev, holder of a Maltese identity card number 17172A, who was charged with having as a registered person with the Commissioner for Revenue, as per Act XXIII of 1998 and regulations made there under, as established during a surprise inspection which was carried out on the 16th of March 2016 failed to issue or produce a fiscal receipt by means of a fiscal cash register or fiscal receipt books which conform with Item

10 of the Thirteenth Schedule to the Act for the payment received on the 2nd July 2015 for services rendered to the Courts of Justice.

2. By means of the said judgment, the Court of Magistrates (Malta) as a court of criminal judicature, after having seen the charge brought against the accused, and after considering that the defendant appellant received the sum of €69.88 (by means of a cheque dated 2nd July 2015) for translation services rendered during the course of criminal proceedings he did not issue a fiscal receipt before the 16th March 2016 and only after an inspection carried out by VAT inspectors and after being requested to do so by the said VAT inspectors, held that in terms of Chapter 406 of the Laws of Malta every registered person was obliged to issue a fiscal receipt for professional services rendered immediately after the payment was effected even if that payment was not entire or correct amount due. Consequently that Court found the defendant appellant guilty and condemned him to a fine of seven hundred euro (€700).

3. VALCHEV Valcho Stoychev filed an appeal from this judgment whereby this Court was requested to revoke the judgment appealed from and acquit the appellant and in the event that this Court still confirmed against the appellant to reform the punishment meted out by the Court of Magistrates (Malta) so that it reflects the circumstances of this case. The appellant's grievances can be synthesised are as follows :

(1)The Court of Magistrates (Malta) could not have found him guilty of the charges brought against him on account of the fact that the charges were based on Act XXIII of 1998 which was amended several times such that due to these numerous amendments, that Act XXIII of 1998 did not even provide for item 10 of the Thirteenth Schedule which forms part of the

charge against the appellant; the Court of Magistrates (Malta) could not spontaneously apply the provisions of Chapter 406 of the Laws of Malta when the appellant was specifically charged with very specific offences against a specific Act XXIII of 1998. The summons summoned the appellant to state why he should not be convicted of breaching SPECIFIC legal provisions indicated in the summons.

(2) Without prejudice to the above, the appellant believed that he did not fail to commit a fiscal receipt in this case. He gave a reasonable excuse entitling him not to be charged with the offences indicated in the charge sheet which excuse should have led him to be acquitted of the charge proffered against him. He also provided evidence and documents justifying why he did not provide a receipt immediately.

(3) In the appellant's view the Court of Magistrates (Malta)'s judgment and findings do not conform with the principles of natural justice as the judgment lacked the motivation and clarity required by law. That judgment did not provide reasons why the appellant breached the laws mentioned in the said judgment. This was due to the fact that the charges levied against the appellant referred to alleged breaches committed after the introduction of Act XXIII of 1998 and the law which the appellant was convicted of did not contemplate the punishment of seven hundred euro (€700). Article 77 of Act XXIII of 1998 provided for a fine multa expressed in Maltese Liri.

(4) The Value Added Tax Act was amended every year – sometimes even more than once a year between its enactment and the date of the alleged incident in this case. The charges brought against the appellant were not made on the provisions of the Value Added Tax but on Act XXIII of 1998. Consequently this judgment breached the human rights of the appellant since he was not granted a fair hearing and that no penalty should be more severe than that specifically provided by law.

(5) Even the punishment that was imposed was harshly unjust as it was based on legal provisions and practices applicable to criminal processes wrongly resulting in a harsh punishment.

(6) This case was also not proven beyond a reasonable doubt and hence the appellant should not have been found guilty by the Court of Magistrates (Malta).

Considers

4. 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 findings of fact, legal conclusions and the decisions made by the Court of Magistrates 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***¹ 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.

¹ 21st April 2005. See also, inter alia, ***Ir-Repubblika ta' Malta vs Domenic Briffa***, 16th 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 Ascjak 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 October 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 tiddesturbahx, 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 ghalha 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 tiddesturbahx (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 Ascjak 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).

5. 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 findings and decisions of the Court of Magistrates or those parts of its decisions that result to be wrong or that do not reflect a correct interpretation of the Law.

6. Two very important articles of Maltese Law of Evidence, articles 637 and 638 of the Criminal Code, provide as follows :

637. Any objection from any of the causes referred to in articles 630, 633 and 636, shall affect only the credibility of the witness, as to which the decision shall lie in the discretion of those who have to judge of the facts, regard being had to the demeanour, conduct, and character of the witness, to the probability, consistency, and other features of his statement, to the corroboration which may be forthcoming from other testimony, and to all the circumstances of the 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.

7. Furthermore, article 638 of the Criminal Code states that:

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

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

8. These principles have been confirmed, time and again in various judgments delivered by this Court.² Moreover as it was held in *II-Pulizija vs Joseph Thorne*,³

mhux kull konflitt fil-provi ghandu awtomatikament iwassal ghall-liberazzjoni tal-persuna akkuzata. Imma l- Qorti, f' kaz ta' konflitt fil-provi, trid tevalwa l-provi skond il-kriterji enuncjati fl-artikolu 637 tal-Kodici Kriminali w tasal ghall-konkluzzjoni dwar lil min trid temmen u f' hix ser temmnu jew ma temmnux'.

9. This jurisprudence also shows that the main challenge faced by Courts of Criminal Jurisdiction is the discovery of the truth, historical truth, behind every *notitia criminis*. Courts of Criminal Jurisdiction are legally bound to decide cases on the basis of direct and indirect evidence brought before them. But evidence and testimony produced in criminal trials do not necessarily lead the Court to the discovery of the historical truth. A witness may be truthful in his assertions as much as he may be deceitful. Unlike a mortal witness, circumstantial evidence cannot lie. But if this evidence is not univocal, it may easily deceive a Court of Criminal Jurisdiction thus leading it to wrong conclusions.
10. A Court of Criminal Jurisdiction can only convict an accused if it is **sure** that the accused committed the facts constituting the criminal offence with which he stands charged, and this on the basis that the Prosecution would have proven their case on a level of sufficiency of evidence of proof beyond a reasonable doubt. Courts of Criminal Jurisdiction need only to be **sure** of an accused's guilty;

²*II-Pulizija vs Joseph Bonavia* per Judge Joseph Galea Debono dated 6 ta' November 2002; *II-Pulizija vs Antoine Cutajar* per Judge Patrick Vella, decided on the 16th March 2001; *II-Pulizija vs Carmel Spiteri* per Judge David Scicluna, decided on the 9th November 2011; *Ir-Repubblika ta' Malta vs Martin Dimech*, Court of Criminal Appeal (Superior Jurisdiction), decided on the 24th September 2004.

³ Deciza fid-9 ta' Lulju 2003 mill-Qorti tal-Appell Kriminali Sede Inferjuri ippreseduta mill-Imħallef Joseph Galea Debono.

they do not need to be absolutely sure of his guilt. But if a Court of Criminal Jurisdiction is sure⁴ of an accused's guilt, then it is obliged to convict and mete out punishment in terms of Law. These principles relating to the level of sufficiency of evidence were also expressed by Mr. Justice William Harding in the appeal proceedings ***II-Pulizija vs Joseph Peralta*** decided on the 25th April 1957 as being at the basis of a conviction reached by a Maltese Court of Criminal Jurisdiction.

11. However if Defence Counsel manage to propound sound factual and legal arguments such that, on a balance of probabilities, manage to create a reasonable doubt in the mind of the Court as to the guilt of the accused, then the Court of Criminal Jurisdiction is obliged to acquit the accused.
12. Maltese Law primarily entrusts the Court of First Instance with the exercise of analysis and assessment of the evidence of the case. The Court of Magistrates is one such Court. That Court is normally best placed to make a thorough assessment of the evidence brought before it as it would have, most of the time, physically lived through those proceedings, and also being able to make a proper assessment of the witnesses who would have testified before it, thus making full use of the criteria mentioned in articles 637 and 638 of the Criminal Code.
13. But even where, for some reason, the Court of Magistrates would not itself have heard the witnesses, the law still entrusts that Court with the primary analysis and assessment of the facts of a

⁴ ***R v Majid***, 2009, EWCA Crim 2563, CA at 2.

case as well as the eventual decision on the guilt or innocence of the accused. On the otherhand, the Court of Criminal Appeal is a court of second instance, entrusted with the analysis of whether, on the basis of the evidence and legal arguments submitted, the Court of Magistrates could legally and reasonably arrive at the conclusions reached in its judgment.

14. The Court of Criminal Appeal does not disturb the conclusions reached by the Court of Magistrates lightly or capriciously. In the case ***II-Pulizija vs Lorenzo Baldacchino*** decided by the Criminal Court on the 30 th March 1963 by Mr. Justice William Harding it was held as follows : -

Ma hemmx bżonn jinghad li l-komportament tax-xhud (*demeanour*) hu fattur importanti ta' kredibilita (ara Powell, On Evidence, p. 505), u kien, ghalhekk, li inghad mill-Qrati Inglizi segwiti anki mill-Qrati taghna, illi "great weight should be attached to the finding of fact at which the judge of first instance has arrived" (idem, p. 700), appuntu ghaliex "he has had an opportunity of testing their credit by their demeanour under examination".

15. To recapitulate, in ***II-Pulizija vs. Vincent Calleja*** decided by this Court on the 7th March 2002, the Court of Criminal Appeal, as a court of revision of the sentence of the Court of Magistrates does not pass a new judgment on the facts of the case but makes its own independent evaluation and assessment of the facts of the case in order to see whether the decisions reached by the Court of Magistrates were "*unsafe and unsatisfactory*". This Court does not substituted the decision of the Court of Magistrates unless that decision is deemed "*unsafe and unsatisfactory*". If this Court finds that on the basis of the evidence and legal arguments submitted to it the Court of Magistrates could legally and reasonably arrive at its conclusions mentioned in its judgment, then this Court does not vary the conclusions reached by that Court : – even if this Court, as a

Court of Criminal Appeal could have arrived at a different conclusion to that reached by the Court of Magistrates had it been tasked with the same role.

Considers further

16. That it transpired that the appellant was the director of Multinational Tourism and Trade Limited which provided interpretative services to various public and private entities including the Law Courts. This position of the appellant as director of that company is found in the documents that were produced by the witnesses to the Prosecution (as can be seen at fol 7). It does not transpire that before the Court of Magistrates the appellant contested the fact that he was really a director of that company. Indeed the appellant does not contest that the fiscal receipt was issued by him on behalf of that limited liability company on the 16th March 2016 as can be seen on fol. 20.

17. He does not even raise a specific grievance on this aspect in his appeal application – though he somewhat tries to hint to this during the course of his legal counsel's oral submissions. However as it was decided by this Court in its superior jurisdiction in the case ***Ir-Repubblika ta' Malta vs. Mark Pace*** of the 7th November 2002:

Qabel xejn din il-Qorti ma tistax ma tirrimarkax dwar il-hames paragrafu ta' l-aggravji li permezz tieghu l-appellant ippretenda li seta' jittratta aggravji ohra li ma semmiex fir-rikors ta' l-appell. Hija gurisprudenza ormai pacifika li l-Qorti ta' l-Appell ma tistax tiehu konjizzjoni ta' ragunijiet ta' l-appell, ossia aggravji, li ma jkunux gew imsemmija fir-rikors ta' appell. Dan johrog car minn dak li jipprovdi s-subartikolu (1) ta' l-artikolu 505 tal- Kodici Kriminali li tali rikors "ghandu jkun fih il-fatti tal-kawza fil-qosor imma cari, ir-raguni ta' l-appell (enfazi tal-Qorti) u t-talba tal-appellant.

18. Moreover, as was held by this Court as differently presided in the case **The Police vs. Pier Massa** of the 28th March 2012 :

8. Now, article 82(1) of Chapter 406 of the Laws of Malta provides that “where anything is done or omitted to be done by a body of persons, the provisions of this Part shall apply as if such thing were done or omitted to be done by every director, manager or other principal officer of that body of persons: provided that a director, manager or other principal officer of a body of persons shall not be guilty of an offence in virtue of this subarticle if he proves that he was unaware and could not with reasonable diligence be aware of such act or omission and that he did everything within his power to prevent that act or omission.” In the judgement delivered by this Court differently presided on the 12th December 2002 in the names *Il-Pulizija v. Victor Sant*, it was held:

“Kif gie ritenut minn din il-Qorti diversament preseduta fl-Appell Kriminali ‘Il-Pulizija vs. Emanuel Scerri’ [30.3.00], li kien jittratta ksur tal-ligi identiku pero` taht l-Att XII tal-1997, ‘meta xi haga ssir jew tonqos milli ssir - f’dan il-kaz ma nghatatx ricevuta - minn persuna li tkun qed tagixxi ghan-nom ta’ persuna registrata, ghandu jitqies bhallikieku dik il- haga tkun saret jew naqset milli ssir sew minn dik il- persuna l-ohra kif ukoll mill-persuna registrata. Il- persuna registrata, pero`, tista’ tezimi ruhha minn din ir-responsabilta` vikarja JEKK TIPPROVA, IMQAR FUQ BAZI TA’ PROBABBILITA` (enfasi ta’ din il-Qorti) jew (a) li ma kinitx taf u li ma setghetx b’diligenza ragonevoli tkun taf b’dak l-eghmil jew nuqqas, jew (b) li tkun ghamlet kull ma setghet taghmel sabiex izzomm milli jsir dak l-eghmil jew nuqqas.’ Mela l- persuna registrata trid tkun hi li tipprova dawn ic-cirkostanzi u dan almenu fuq bazi ta’ probabbilita` - li hu l-kriterju tal-prova impost fuq l-akkuzat fil-kamp penali, fejn hu tenut li jipprova xi haga jew fejn hu jaghzel li jipprova xi haga. Dan il-kriterju gie addottat bl-istess kliem fid-dispozizzjoni tas-subartikolu (1) tal- artikolu 82 ta’ l-Att Dwar it-Taxxa fuq il-Valur Mizjud (Kap.406) citat mill-istess appellant odjern.

19. It transpires that on the 22nd June 2015, the appellant had rendered a service to the Courts of Justice for which he was paid €69.88. This payment was made by cheque dated the 2nd July 2015, after that the respective Court had issued a voucher which was then processed by the Court Registry in favour of the appellant.

20. However, it was also proven beyond a reasonable doubt that despite this cheque being issued in July 2015, no fiscal receipt was issued by the appellant, on behalf of the said company, before the 16th March 2016 and this only after appellant provided same during an inspection carried out by VAT inspectors and only after being asked to do so by them.
21. These facts were not contested by the appellant; however he is claiming that the sum at issue represented a net amount which should have been paid to him and therefore it excluded the VAT due on the said amount which should have been topped up over and above the amount that was sent to him via the cheque dated 2nd July 2015. This meant that the amount that was paid to him was less than what was actually due to him given that he would have had to deduct the VAT element from the said cheque amount. In fact, according to the appellant, he had taken up the matter with the Court administration and he was awaiting resolution on the matter and payment of proper amount before issuing fiscal receipt.
22. However during the same time appellant was requested to pay an administrative fine to the VAT Department and this despite the fact that according to appellant he had explained the situation to them. It was then that he decided to contest the matter before the Court of Magistrates (Malta) where however the case was not decided in this favour.
23. On the other hand, according to the evidence tendered before this Court, the VAT inspectors were informed about the appellant's alleged lack of fiscal receipt issue by the Courts of Justice administration. After that the VAT Department conducted the

necessary verifications, they confirmed that appellant had in fact failed to issue the relative fiscal receipt for the services rendered to the Courts of Justice on that particular instant. Moreover, the VAT inspector had no recollection of the dispute about the proper amount due to him as abovementioned as being raised by the appellant.

Considers further

24. The appellant claims that the Court of Magistrates (Malta) could not have found him guilty of the charges brought against him on account of the fact that the charges were based on Act XXIII of 1998 which was amended several times such that due to these numerous amendments, that Act XXIII of 1998 did not even provide for item 10 of the Thirteenth Schedule which forms part of the charge against the appellant; the Court of Magistrates (Malta) could not spontaneously apply the provisions of Chapter 406 of the Laws of Malta when the appellant was specifically charged with very specific offences against a specific Act XXIII of 1998. The summons summoned the appellant to state why he should not be convicted of breaching SPECIFIC legal provisions indicated in the summons.

25. The summons read as follows : -

For as a registered person with the Commissioner for Revenue as per Act XXIII of 1998 and regulations made thereunder, during a surprise inspection which was carried out on 16th March 2016, it resulted that you failed to issue or produce a fiscal receipt by means of a fiscal cash register or fiscal receipt books, which conform with Item 10 of the Thirteenth Schedule of the Act, for the payment received on the 2nd July 2015 for the services rendered to the Courts of Justice, and this in breach of items 1, 2, 3 and 10 of the said schedule and articles 51, 77(a) and (e), 81 and 82 of Act XXIII of 1998.

26. This text is preceded by the personal details of the appellant and are followed by an intimation applicable in the event that he fails to adhere by the contents of the summons. These parts are not being contested by the appellant.

27. According to article 360(2) of the Criminal Code:

the summons shall contain a clear designation of the person summoned and a brief statement of the facts of the charge together with such particulars as to the time and place as it may be necessary or practicable to give. It shall also contain an intimation that, in default of appearance, the person summoned shall be arrested by warrant of the court and arraigned on such day as may be stated in the warrant'.

28. Moreover in the criminal appeal proceedings **Il-Pulizija vs. Brain Camilleri et** decided by this Court it was held :

Kif kostantement deciz mill-Qrati taghna, dak li hu rikjest mill-prosekuzzjoni fit-tnedija tac-citazzjoni hu li tindika fiha l-fatti li dwarhom l-imputat hu mitlub jidherquddiem il-Qorti fid-data u hin indikati. Mhux mehtieg li l-imputazzjonijiet ikunu redatti fil-kliem testwali tal-ligi u fic-cirkustanzi din l-eccezzjoni giet respinta. Infatti l-qorti irrimarkat li l-fatti naturalment riedu juru b'mod car ir-reat li tieghu il-persuna tkun imputata, igifieri b'mod li l-imputat ikun jaf ta' liema reat jew reati qed ikun akkuzat u ghal liema reat jew reati irid iwiegeb kif irrizulta f'dan il-kaz.⁵

29. Hence it is clear from the wording of the provision and from local jurisprudence that the legal provisions applicable to the case need not even be quoted and neither need there be specific reference to the articles at law when referring to the purpose of the summons as long as the appellant can make out what he is being called to answer in court.

30. Moreover, Act XXIII of 1998 is fundamentally the Value Added Tax Act, also known as Chapter 406 of the Laws of Malta, which

⁵ Decided by the Court of Criminal Appeal on the 4th April 2016 and presided over by Mr. Justice Giovanni Grixti, ref. 529/14.

represents the relevant law in order to address the case at issue. The argument put forth by the appellant that this Law suffered various amendments throughout the years is of no consequence in that all Laws start off from an Act of Parliament bearing a particular number and year. However these Laws are then grouped together in Chapters of the Laws of Malta, being given a unique number. There is nothing irregular with the reference that was made by the Prosecution to Act XXIII of 1998 in that it refers to the Value Added Tax Act, that has obviously to be read by reference to its temporal application on the day when the alleged breach would have occurred.

31. Hence there is no irregularity in the manner in which the Court decided the case vis-à-vis the provisions applied and the charge as brought in the summons issued against appellant. Moreover, all the provisions quoted by the Court of Magistrates (Malta) and which are also reflected in the summons, existed at the time when the offence purported against the appellant was allegedly committed by him.

32. Furthermore, Article 51 of Chapter 406 of the Laws of Malta was substituted by Act X of 2003 and remained unchanged ever since. Article 77 was amended by Act 15 of 2016 however the amendment did not affect this case given that the amount of tax allegedly endangered in this case was less than €100. Article 81 was amended by Act II of 2009 and Article 82 was substituted by Act X of 2003 and both articles were unchanged ever since. Moreover item 10 of the Thirteenth Schedule was amended by Legal Notice 65 of 2015 so that the item now reads as follows :

10. (1) Every person who is supplied with forms of fiscal receipts by the Commissioner shall account for all such forms by keeping in his possession, and producing at the request of the Commissioner, all unused forms, and by keeping one copy and producing to the Commissioner another copy of all receipts drawn out on such forms and of all cancelled forms.

(2) Copies of used and cancelled forms of fiscal receipts supplied by the Commissioner shall be delivered to the Commissioner as soon as possible after the booklet or other form of binding in which the fiscal receipts have been supplied has been fully used or at such other date as the Commissioner may require.

(3) Every person who issues fiscal receipts on forms approved by the Commissioner or in a manner approved by the Commissioner, shall account for all such receipts in such manner as may be directed by the Commissioner, and for this purpose the Commissioner may give such directions regarding the processing, recording and storing of the receipts and of the information to be given therein as he may deem appropriate.

(4) Any person who fails to account for a fiscal receipt in the manner prescribed in this item shall be presumed, unless the contrary is proved, to have failed to account for a taxable supply.

33. Actually the appellant was charged with having failed to issue or produce a fiscal receipt by means of a fiscal cash register or fiscal receipt books which conform with item 10 of the Thirteenth Schedule to the Value Added Tax Act. So in this case it was not the fact that the receipt issued by the appellant did not conform to the item 10 that was prosecuted by the very fact that no fiscal receipt at all was issued by the appellant.

34. Therefore the Law as it stood on the days and months during which the alleged breach of the Value Added Tax Act provisions was sufficiently clear and sure. There is nothing in the law or in the summons that suggest any uncertainty. The applicable legal provisions referring to the breach in the summons were existent at the time when the offence was committed, the summons would be a valid one, as was in fact the case here. Consequently, the preliminary grievances raised to this effect are being rejected.

Considers further

35. That in the course of his appeal, the appellant also laments about the fact that the Court of Magistrates (Malta) failed to substantiate its findings with adequate motivation. The Court agrees with the appellant that ideally all judgments delivered by the Court of Magistrates should be adequately motivated. In this particular case, even though expressed briefly, the Court of Magistrates (Malta) did provide the reasons why it was convicting the appellant – and these reasons were also mentioned by this Court in its first part of this judgment when quoting the judgment of the Court of First Instance appealed from. However, strictly at law, article 382 of the Criminal Code - which regulates the ad validitatem requirements for judgments delivered by the Court of Magistrates – does not require that Court to motivate its convictions or acquittals.

36. So the Court of Magistrates (Malta) in this case not only adhered entirely to the wording of the law, but actually provided more information than was necessary in order to satisfy same in that the Court gave an explanation, although brief, in order to justify its findings. If the appellant deems that these were not satisfactory to him, does not render them invalid.

37. Consequently this grievance is also being rejected.

Considers further

38. The appellant does not really contest the facts of this case; indeed his main argument on the merits lies with the fact that

according to him, he did not fail to commit a fiscal receipt in this case. He gave a reasonable excuse entitling him not to be charged with the offences indicated in the charge sheet which excuse should have led him to be acquitted of the charge proffered against him. He also provided evidence and documents justifying why he did not provide a receipt immediately.

39. This means that the appellant does in fact confirm that a fiscal receipt was not readily issued by the company for which he worked and for which he was registered as Director. The contention however lies with the fact that as per what appellant described, he refrained from issuing a fiscal receipt on the amount which he was paid for since the computation conducted - which he assumed included VAT - was not correct and that following verification from his end, transpired to have been omitted entirely from VAT computation.

40. He added also that he took up the matter with the Registrar of Courts and was awaiting feedback from them so that he would be guided accordingly but, in the meantime, he was called in for a meeting with the VAT department (described by them as a surprise inspection) with regards to this pending issue where he proceeded to explain to them the reason why he had not issued a fiscal receipt to the Law Courts with regards to this particular service.

41. It is also clear from the evidence brought that part of what appellant was claiming was not confirmed by testimony of the VAT inspector in the sense that his justification was not being confirmed by them. The Inspector claims that he did not recall such a claim,

adding also that they acted on the instructions of the Law Courts who reported this breach to them.

42. If this Court were to put the issue of credibility of this testimony aside for a moment, it appears from the wording of the applicable law, particularly that indicated under item 10 of the Thirteenth Schedule - which was in fact referred to in the summons brought against appellant as well as by the Court of Magistrates (Malta) in the judgments appealed from - a receipt should be issued immediately upon receipt of payment by whoever is registered to do so.

43. There is no exemption when the scenario purported by the appellant ensues. This may sound too draconian for the appellant and that is why he felt so aggrieved. But, given the fiscal nature of this law, and the fact that it is strict liability based, irrespective of his noble intentions, and irrespective of the sound explanations which he could have given to the VAT Department, it is clear that as the Law stands, the appellant was duty-bound to issue the receipt upon payment - even if the amount was not accurate or correct. Then he had the right to contest the amount after that the receipt is issued. The legislator's interest here is the collection of revenue – value added tax in this context. Any dispute between those entrusted with its collection and those burdened with its payment does not affect the taxman. The fiscal receipt has to be issued, of course without prejudice to any rights the person effecting the payment might have in relation to the person effecting the payment to him.

44. It is also clear from the facts of this case that the appellant issued the fiscal receipt only when the VAT inspectors instructed

him to do so on the 16th March 2016 despite the fact that he was paid by the law Courts by means of a cheque dated the 2nd of July 2015 which is less than one month after the service was provided (22nd June 2015). From the Magistrates' case notes it transpires that during cross examination the appellant had declared before that Court that the "cash" was probably deposited in Bank in August 2015. Therefore once payment was effected to the appellant, and once it was accepted and the cheque encashed, even though there was a dispute with the Courts of Justice about the actual amounts that he should have received, the appellant could not put his duty to issue the fiscal receipt on hold until the Courts of Justice entertained his claim, rightful or otherwise.

45. Consequently, this Court opines that the Court of Magistrates could have reasonably and legally found against the appellant in this case.

Considers further

46. That the appellant claims also that in his view the Court of Magistrates (Malta)'s judgment and findings do not conform with the principles of natural justice as the charges levied against the appellant referred to alleged breaches committed after the introduction of Act XXIII of 1998 and the law which the appellant was convicted of did not contemplate the punishment of seven hundred euro (€700). Article 77 of Act XXIII of 1998 provided for a fine multa expressed in Maltese Liri.

47. This really is a grievance affecting the punishment meted out in this case. According to the appellant, the fine imposed upon him in the amount of seven hundred euro (€700) was excessive, particularly with a view to the circumstances of the case and to what the appellant refers to as a breach of his fundamental human rights.
48. It is to be clarified that this Court will refrain from delving into any issue, real or imaginary relating to the constitutionality of the case on account of the fact that this is a court of criminal justice and therefore constitutional issues are not within the remit of this Court.
49. As to the quantum of the punishment, the wording of article 77 of the Chapter 406 of the Laws of Malta, in the event of the breach committed by the appellant, namely that falling under sub-paragraph (a) & (e) of the same provision, the minimum fine which may be imposed is in fact that of seven hundred euro (€700). Therefore the Court of Magistrates (Malta) imposed this punishment in its minimum even though that Court found the appellant guilty under article 77(a) and (e) of Chapter 406 of the Laws of Malta.
50. This Court cannot therefore afford any further reduction. Moreover, the reasons explained by the appellant, this Court cannot consider them as extraordinary reasons as may be entertained under the provision of Article 21 of the Criminal Code given that article 83(4) of Chapter 406 of the Laws of Malta excludes the possibility of this Court from applying article 21 of the Criminal Code in favour of an appellant.
51. Hence even the grievance concerning the punishment imposed is being rejected by this Court.

Decide

Consequently, for the above-mentioned reasons the Court rejects all the grievances put forward by the accused, and confirms the judgment of the First Court.

Aaron M. Bugeja
Judge