

COURT OF MAGISTRATES (MALTA)

AS A COURT OF CRIMINAL JUDICATURE

MAGISTRATE

DR. CLAIRE L. STAFRACE ZAMMIT B.A, LL.D.

The Police

(Inspector Angelo Gafá)

VS

Zia Ul Noor

Comp. No: 660/2012

Today 30th May 2022

The Court;

Seen charges against the accused Zia Ul Noor, holder of identity card number 28968(A):

Having been charged for having in these Islands, in October 2011 and preceding months and years, by means of several acts, even if at different times, that constituted violations of the same provision of the law, and committed in pursuance of the same design, by means of violence or threats, including abduction, or deceit or fraud, or misuse of authority, influence or pressure, trafficked a person of age for the purpose of exploiting that person in the production of goods or provision of services;

For having also in the same period, location and under same circumstances, used violence in order to compel Pakistani national Haroon Majeed Mughal (ID 54577A) and Nepalese Chet Bada Hadr (ID 33283A) to do, suffer or omit anything, succeeding to attain your end;

For having also in the same period, location and under same circumstances, as the employer of Nepalese Chet Bada Hadr (ID 33283A) and Pakistani National Shaukat Ali Khan (ID 68761A)

whole-time, part-time or otherwise under a definite or indefinite contract or on probation, failed to inform the Employment and Training Corporation of such employment;

For having also in the same period, location and under same circumstances, as the employer, contravened or failed to comply with any recognised conditions of employment prescribed by a national standard order or by a sectoral regulation order or collective agreement, or with any provisions of the Employment and Industrial Relations Act, Chapter 452 of the Laws of Malta, or any regulations made thereunder;

For having also in these Islands, on the 18th March 2011 and preceding months and years, by means of several acts, even if at different times, that constituted violations of the same provision of the law, and committed in pursuance of the same design, taken in employment, or given work to Nepalese Chet Bada Hadr (ID 33283A), who was not an exempt person and was not in possession of a license granted to him for the purpose of such employment or work under the provisions of the Immigration Act, Chapter 217 of the Laws of Malta;

For having also in the same period, location and under same circumstances, as the person responsible from SH Catering Services Limited (C34725) or other companies, operators of restaurants styled as Bombay Palace and China Village, employed Nepalese Chet Bada Hadr (ID33283A), who is not a citizen of Malta when the said Chet Bada Hadr was not in possession of a work permit;

For having also in these Islands, in January 2011 and preceding months and years, by means of several acts, even if at different times, that constituted violations of the same provision of the law, and committed in pursuance of the same design, received passports transferred to you by other persons;

For having also in the same period, location and under the same circumstances, without intent to steal or to cause any wrongful damage, but only in the exercise of a pretended right, of your own authority, compelled another person to pay a debt, or to fulfill any obligations whatsoever, or disturbed the possession of anything by another person, or in any other manner unlawfully interfered with the property of another person.

The Court was requested to apply *mutatis mutandis* the provisions of Article 5 of the Prevention of Money Laundering Act, Chapter 373 of the Laws of Malta, as stipulated in Article 23A(2) of Chapter 9 of the Laws of Malta and in the case of guilt, to apply the provisions of Article 23B of Chapter 9 of the Laws of Malta.

Having seen all acts of the proceedings and submissions by both parties;

Having seen note of the Attorney General dated 11th April 2017. Whereby the Articles of the Law under which guilt is being sought were listed and these are:–

- 1) Article 248A(1)(2) of the Criminal Code, Chapter 9 of the Laws of Malta;
- 2) Article 251(1)(2) of the Criminal Code, Chapter 9 of the Laws of Malta;
- 3) Article 85 of the Criminal Code, Chapter 9 of the Laws of Malta;

- 4) Article 45 of the Employment and Industrial Relations Act, Chapter 452 of the Laws of Malta;
- 5) Article 32(1)(b) of the Immigration Act, Chapter 217 of the Laws of Malta;
- 6) Article 3(b) of the Passaports Ordinance, Chapter 61 of the Laws of Malta;
- 7) Regulations 3(a), 7 and 10 of Manpower Records (Commencement or Termination of Employment) Regulations, 1993, Subsidiary Legislation 110/1993;
- 8) Article 5 of the Money Laundering Act, Chapter 373 of the Laws of Malta;
- 9) Articles 17, 18, 23, 23A, 23B, 23C, 31 and 533 of the Criminal Code, Chapter 9 of the Laws of Malta.

After read out the Articles of the Law, the accused Zia Ul Noor gave his consent that these proceedings be tried summarily against him.

Having considered

Heard the testimony of Inspector Angelo Gafá wherein he recounted how the proceedings initiated in that on the eighth (8th) of March of the year two thousand and eleven (2011), he had attended a meeting with the General Consul of Pakistan and a certain Haroon Majeed Mughal where the latter reported a number of allegations against the accused. He alleged that between the years two thousand and five (2005) and two thousand and seven (2007), he was working as a waiter in a hotel in Pakistan wherein he was approached by his former manager to work in Malta in an Indian restaurant that is the property of the accused and by the name of Bombay Palace. He was requested to pay the sum of two thousand Euros (€2,000) to cover travel expenses and visa. Mughal alleged also that after two months he was working there, the accused had kept his passport and was not given his wages where the accused had told him that since he had already spent the amount of fifteen thousand Euros (€15,000) for visa expenses and if he wanted to be paid the salary he would have to fork out thirteen thousand Euros (€13,000) or have a reduced salary until he sets off the amount.

Mughal also explained to the Inspector that he then asked the accused to let him go and he did so and returned back to Pakistan after deducting the travel expenses. He also stated that the accused had kept his ID Card and gave it to someone else to use it. He also stated that in the year two thousand and ten (2010) he decided to return to Malta where he had intended to apply for political asylum. He also stated that upon his arrival he found the accused together with his brother and another man and they immediately took him into their car against his will and took his passport. Mughal then begged the accused to let him stay in Malta and not deport him to another country and according to him the accused accepted him to work for him once again with a little salary. He also stated that the accused had good connections with the Immigration Department at the Police Force and if he did something wrong he would have him deported. He mentioned the name of Inspector Mario Haber who was a close friend of Zia Ul Noor.

Mughal also reported to Inspector of another person from Nepal by the name of Cuet Khatri who had been working for accused for the previous five (5) years and that he had been overstaying in Malta

for three (3) years. The Inspector confirmed that this Nepalese worker had in fact his work permit expired in the year two thousand and seven (2007). He also stated that this Nepalese worker was subsequently given refugee status in two thousand and eleven (2011) but his status did not show that he was working with the accused.

The witness testified also that when the police found Khatri, he confirmed that he was working for accused with his work undeclared, and he was being paid a very low salary and that his passport was kept by the same accused. He also stated that the accused had helped him get refugee status and that he never expected anything in return. He also confirmed to him that he often used to see a number of police officers eating at the restaurants owned by accused namely Inspector Mario Haber and PC 1509 John Darmanin.

The witness claimed that following these investigations and after confirming that the conditions of these workers should have been far better according to law, he proceeded to arrest the accused Zia Ul Noor where he refused legal assistance and he released a

statement. He basically denied all Mughal's allegation save that he retained his passport since he did not want him to flee to another country but when he had asked him for it he immediately gave it to him. The accused confirmed that he knew Inspector Mario Haber and that he used to dine in his restaurant but he always paid the bill even though he used to treat him with a bottle of wine as he used to do with all important people that used to dine at his restaurant. He also denied the allegations regarding Nepalese chef Khatri.

Inspector Gafá also stated that he had interrogated the police officers mentioned but they strongly denied the allegations even though some of them confirmed they know the accused and they dine in his restaurants.

Heard the testimony of Haroon Mughal whereby he confirmed that he had first arrived in Malta in the year two thousand and eight (2008) to work in hospitality in a restaurant in Marsascala owned by the accused. He stated that the salary had to be that of seven hundred and sixty Euros (€760) per month. He stated also that after two months working for accused he expected to be paid but

instead accused gave him two hundred and sixty Euros (€260) since he had applied for work permits which had costed him fifteen thousand Euros (€15,000). He confirmed that when he arrived in Malta the accused took all his documents. He also stated that the accused used to threaten him that he will be deported if he did not work for him.

Mughal confirmed that he worked in the restaurant owned by accused for eleven (11) months until he left once again for Pakistan in two thousand and nine (2009) wherein he was given back his passport and a flight ticket and this deducted once again from his salary.

He confirmed that when he was working for accused his times were from eleven in the morning to three in the afternoon and then again from six in the afternoon till midnight every day.

He confirmed that he returned back to Malta to request asylum in two thousand and ten (2010) where he found the accused, his brother and nephew at the airport waiting for him and they took his luggage and his passport and went to Sliema at the restaurant

Bombay Palace. He confirmed that he started to work for accused again and was paid a salary of two hundred and seventy Euros (€270) and down to hundred Euros (€100) a month to cover other expenses. He explains that after he was not receiving payments for wages by accused, he went to the Jesuit Refugee Services also told them that he had overheard a conversation by accused's brother claiming that someone is going to be deported. Witness claimed that since he believed that they were talking about him he enquired with Emirates whether there was a ticket in his name and they confirmed that there was (Dok HM1). He stated that he was later given his passport from Refugee Commissioner given to him by Inspector Mario Haber.

Under cross-examination witness confirmed that whilst working for Zia Ul Noor he was free to go wherever he wanted and he had access to mobiles, internet etc. and that accused used to pay for lodging, food and bills.

Dr. Amanda Poole presented the Memorandum and Articles of Association of SH Catering Company Services (C34725) marked as Document AP1.

Inspector Edel Mary Camilleri testified how a report at the Qawra Police was lodged (Dok EC1) in the year two thousand and eight (2008) by three Pakistani nationals that they had trouble to get paid their wages by the accused. She recalls that she had directed them to settle the matter civilly with accused and that no criminal action was deemed to be taken against accused.

PL Quentin Tanti on behalf of Malta Tourism Authority confirmed that Bombay Palace and China Village at Gzira could not be traced on the database. As regards the accused he was a licensee in Rogor Indian Restaurant in Bugibba on behalf of Pack Malta Limited. Also accused was a licensee in Noor's Asian Speciality at the Malta International Airport on behalf of DH Catering Services Limited. As regards E China Restaurant the licensee was a certain Anthony Scicluna and the accused a substitute.

The Court also heard the testimony of Shaukat Ali Khan where he confirmed that he worked for accused at China Village in Gzira and Bombay Restaurant and that he has no work permit.

Bada Hadr Chet gave evidence on oath stated that he came to Malta in the year two thousand and five (2005) after paying the sum of one thousand Euros (€1,000) to his agent by the name of Babla. He stated that his agent took his passport and he didn't know if he gave it to accused. He stated that he used to work part-time for accused and he used to get paid sometimes sixty (60), seventy (70), eighty (80) or even hundred (100) Euros. Then after a while he started working full time and paid thirty five Euros (€35) per day. He stated that accused used to pay his rent.

The witness confirmed that before he had a work permit. Under cross-examination he confirmed that he had his passport in hand and that when Inspector Gafá made him sign the delcaration he had not read it. He confirmed he knew Haroon Mughal because he worked with him but couldn't say why he had complained about.

Joseph Saliba on behald or ETC testified about Chet Bada Hadr, Khan and Haroon Mughal and exhibited their employment history (Dok. JS1 – JS9).

Mariella Grech from the Citizenship and Expatriate Affairs testified about the work permit of Baha Hadr Chet that in the year two thousand and eleven (2011) they had first application for residence permit and they issued it until nineteenth (19th) March two thousand and fourteen (2014). She testified about another person whose name was not clear and she stated that he had a permit till February two thousand and fourteen (2014). As regards Haroon Mughal she declared that they first received a residence permit on the basis of employment in the year two thousand and eight (2008) extended till two thousand and ten (2010). A second application was made on the basis of subsidiary protection valid till January two thousand and fourteen (2014).

The Refugee Commissioner **Mario Guido Friggieri** testified that Mr Chet had a refugee status which was the highest type of protection one can get, Mr Haroon was a beneficiary of subsidiary protection and Mr Han was a beneficiary of temporary humanitarian protection. He confirmed that he had received Mr Haroon's passport from the Immigration Department after he had applied for asylum. He presented a document which was marked as document MF1.

The Court also heard the testimony of Tony Schembri representing ETC and to testify regarding work permits in relation to Bada Hadr Shet, Sakata Ali Khan and Haroon Mughal. He stated that these papers were submitted by his colleague Joseph Saliba. He confirmed that he knew the accused because from the year two thousand and five (2005) and two thousand and nine (2009) he was responsible for the running of the Employment and Licensing Unit in Hal Far and he recalls having recommended Mughal Haroon for a work permit. Then it is the Board who decides if to go ahead with the recommendation and issue permit not him.

Under cross examination the witness confirmed that he was never asked by accused to perform any favours that were in line with his duties.

Dr. Katrine Camilleri from the Jesuit Services gave evidence and stated that from research she made in their records it appeared that Haroon Mughal approached their office in the late two thousand and ten (2010) and sought assistance on employment related issues and a few weeks later on the third (3rd) of January two thousand and eleven (2011) he contacted her colleague

Nicolette Busuttil and informed her that he was afraid that his employer was about to arrange to send him back to Pakistan because he had heard a conversation where this was referred to. Therefore they applied for asylum for him and was eventually granted international protection.

Heard also testimony of Anthony Cassar who used to be the Consul of Pakistan during the years of one thousand nine hundred and ninety nine (1999) and two thousand and thirteen (2013). He stated that Mr Haroon approached him in the year two thousand and eleven (2011) complaining about Mr Noor and he sent this complaint to the Commissioner of Police. The witness exhibited one letter marked as Document AC1. He confirmed that he tried to settle the issue amicably between Haroon and Noor. He also stated that Mr Haroon was complaining that he was not treated well by accused and when witness told him that he would help him to speak to Noor he insisted that he wanted to go to police.

Mark Sultana confirmed that while he worked at the Expatriates Office in the Police he got to know the accused where very often he would ask to process papers for Pakistani nationals who wished to

work in Malta and this was part of his job. Then the competent authorities would grant the permit or refuse it. He confirmed that the accused never asked for favours in line of his duties.

Paul Fleri Soler from Emirates Airlines testified that Mr Mougall had bought a ticket online and this was paid by credit card. This was done by VISA by the number 47882531 6866 8999 and it expired on 02/13. He stated that he had booked it for the third (3rd) of January two thousand and eleven (2011) but he never showed up and then he rebooked for the ninth (9th) of January on the same route and he still did not show up. He stated that a refund was given to the same credit card holder.

Then the Court heard the testimony of **Inspector Mario Haber** whereby he confirmed that he knew the accused through his job since the latter used to apply for visas and work permits. He confirmed that he went to eat at his restaurants. He denied having eaten at the accused's restaurants for free and he does not go there very often, maybe four (4) times a year.

He declared also to know Mougale Haroun whereby he had conducted an inspection in an English language school and arrested five (5) Indian nationals, one of which was Mougale's girlfriend. He had in fact issued removal order for them. He also recalled one time when the accused had gone to his office to report that Mr Mougale had absconded from his flat and even from work. He took the report and also took Mr Mougale's passport. He had informed his superiors, and also the refugee commissioner. Once he discovered that he had applied for a refugee status he stopped the report. He recalls that Mr Mougale was one of the trusted persons of the accused so he was surprised to know that he had absconded. He believes Mougale had an issue with him because of the removal order of his girlfriend and because he knew that he was looking for him to issue a removal order for him as well.

Upon cross examination he confirmed that he used to give tips to Mr Mougale when he used to go to the accused's restaurant to eat and that he never was asked by Mr Zia Ul Noor for favours which went out of his duty.

Lastly the Court heard the testimony of Zia Ul Noor who confirmed that when Inspector Angelo Gafá arrested him he immediately told him that he was going to be charged even before hearing his statement. He also confirmed that Inspector Gafá used to go and eat at his restaurants with his girlfriends.

During his interrogation he recalls that Inspector Gafá was being very abusive, by shouting and banging on the table and he was kept arrested for eleven (11) hours even though he was co-operating fully with him. He recalls that Gafá was accusing Mario Haber, Mark Sultana, and the ambassador.

He also confirmed that he did used to keep the passports of his workers but because they always wanted to go to other European countries so he would tell them that if they wanted to go to Pakistan he would give them their passports.

He says that he got Mr Mougall to work for him as a waiter. He used to pay his wages and used to pay for lodging, breakfast and lunch. He confirmed that he did not do any work contracts, he used to fill up all their applications, he used to make requests to the ETC to

issue work permits as he was eligible to bring foreign workers due to speciality. He got the permit for Mougale and visa in two thousand and eight (2008).

He confirmed that Mougale was shifting from his restaurant in Marsascale and Sliema working full time then part time. He recalls that he had started stealing money from the restaurant. He also stated that at one point Mougale wanted to go to Pakistan since he had problems there because his father had shot someone and he gave him his passport. He had even bought the ticket for him to go to Pakistan. Then he returned to his job after a year. He confirmed that he never deducted anything from the wages which all his workers used to benefit from a minimum wage working forty (40) hours a week.

On the incident where Mougale had said that accused was waiting for him at the airport he denied all these accusations by rebutting that it was Mougale who came to him begging to be taken again and since the accused still had a valid permit for him to work he offered him to live in the staff room and to work there again but he did not want to work with him again.

As regards Inspector Mario Haber he stated that he never ate at his restaurants for free and that he used to come with his family to dine.

He stated that allegations like this were often done because he employed a lot of foreigners and some of them used to go to other countries like Italy so they used to invent these accusations. He also stated that Inspector Gafá was very rude to him, he recalled one time when he arrested one of his workers and he was very aggressive. He also recalled when Inspector Gafá used to come and dine at his restaurants and never pay.

Then ex Inspector Ivan Cilia testified that in two thousand and eight (2008) there was a complaint from a Pakistani national against the accused and he thought there was no case against him. At that time he was stationed at the Economic Crimes Unit.

Ex Inspector Antoine Cilia took the witness stand and declared that he had investigated Zia Ul Noor about alleged ill-treatment of workers. When he sent his personnel to investigate nothing was proven. In fact his personnel spoke to all the workers of Zia Ul Noor

and they all denied ill-treatment and that they were being paid less. This was the year two thousand and nine (2009).

HAVING CONSIDERED

That in criminal proceedings, the prosecution needs to prove its case beyond reasonable doubt. As the Italian author Manzini puts it in his book Diritto Penale (Vol. III, Kap. IV, pagina 234, Edizione 1890):

“Il così detto onero della prova, cioè il carico di fornire, spetta a chi accusa – onus probandi incumbit qui osservit”.

It is a basic fundamental principle in criminal proceedings that for the accused to be found guilty he has to be found guilty beyond reasonable doubt. Reference is here being made to Court of Appeal judgment dated 7th September 1994 in the names Police vs. Philip Zammit et where it was stated:

“li mhux kull icken dubju huwa bizzejjed sabiex l-imputat jigi ddikjarat mhux hati, izda hemm bzonn li “dubju jkun dak dettat mir-raguni”.

In fact in the judgment of the same Courton the 5th December 1997 in the names Police vs. Peter Ebejer the Court of Criminal Appeal reminded that the level of proof that prosecution needs to reach is that level that does not leave any room for reasonable doubt. In other words, what the Magistrate needs to conclude, after analysing all evidence brought forward, to be morally convinced from those facts that the prosecution need to prove.

To that effect that Court cited from Lord Denning in the case Miller vs. Minister of Pension – 1974 – 2 ALL ER 372 where it was stated that:

“Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility

in his favour, which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt, but nothing shall of that will suffice".

These proceedings are primarily related to the issue of human trafficking covered by Article 248A of Chapter 9 of the Laws of Malta.

That it is an accepted fact that, for the purposes of this case, one has to look at this provision as it stood following the amendments introduced by Act VII of 2010 and prior to those introduced by Act XVIII of 2013. This stated:

"(1) Whosoever, by any means mentioned in sub article (2), traffics a person of age for the purpose of exploiting that person in:

- 1. a) the production of goods or provision of services;*
or
- 2. b) slavery or practices similar to slavery; or*
- 3. c) servitude; or*

4. *d) activities associated with begging; or*
5. *e) any other unlawful activities not specifically provided for elsewhere under this sub-title, shall, on conviction, be liable to the punishment of imprisonment for a term from two to nine years.*

For the purposes of this sub article exploitation includes requiring a person to produce goods and provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety.

(2) The means referred to in sub article (1) are the following:

1. *a) violence or threats, including abduction;*
2. *b) deceit or fraud;*
3. *c) misuse of authority, influence or pressure;*
4. *d) the giving or receiving of payments or benefits to achieve the consent of the person having control over another person.”*

That it is evident from this provision that the constituent elements of this offence are the following: (i) trafficking a person of age; (ii) by any of the means mentioned in sub article (2) of article 248A; and (iii) for the purpose of exploiting that person. The first two elements constitute the material element of the offence whereas the third element constitutes the formal element of the offence. With regard to the first element, article 248E gives a detailed definition of the phrase "*traffics a person*". With regard to the second element, sub article (2) provides an exhaustive list of the means that should be used for this offence to arise. With regard to the third element, the law requires a specific intention defined as "*the purpose of exploiting that person*". Sub article (1) provides a non-exhaustive list of what exploitation could consist of.

In these proceedings, what transpired from the acts and evidence produced, that the only evidence that refers to this offence was that tendered by Haroun Mougale whereby all other evidence does not even remotely indicate the commission of the crime of human trafficking by the accused.

As stated correctly by defence in its written submissions, Mr Mougali was not in any way detained by the accused. He came to Malta through another unidentified person and started to work for the accused in his restaurants. He is quoted in saying that the accused paid for his bills, food and lodging. He also stated that he was free to move around and had even access to internet and computer.

The Court is not convinced about the credibility of the principal witness Haroun Mougali and this for the fact that although he complains of this treatment by the accused, yet again he came back to Malta when he went back to Pakistan. If he really was ill-treated and not paid sufficiently by accused, why did Mougali come back to Malta knowing that Malta is a small island and knowing that the accused would surely get to know of his return. His version of events is truly not convincing and this Court is of the opinion that Mougali had ulterior motives when he orchestrated the story.

As regards the issue that the accused gave bribes to persons of power for the issuing of visas etc., no proof from prosecution was tendered in this regard. On the contrary the witnesses brought

forward by prosecution strongly denied such behaviour and no other evidence even though circumstantial was brought forward.

As regards the charges relating to Chet Bada Hadr (ID 33283A) these were also not equally proven as the evidence tendered especially regarding employment did not refer to him but to someone else with a similar name, namely Chet Bahadur Khatri (ID 157706W) and when this witness was brought to Court to testify he did not confirm the allegations made against the accused.

As regards Shaukat Ali Khan (ID68761A) it results from the acts of the proceedings and from his employment history produced by representative of ETC that the latter never worked for the accused or his companies but for some other restaurants not linked to the accused but when the police found him in the premises of the accused he was only a trainee in the restaurant of the accused and therefore not yet employed by him.

With regard to the seventh (7th) charge it is being submitted that the wording of this charge is too generic and does not specify the passports of which persons were being kept by the accused and

in any case the prosecution failed to prove that the accused was being transferred passports of other people.

As regards the eighth (8th) charge that of pretended rights, this Court heard the testimony of the accused whereby he conceded the fact that he used to keep the passports of his employees for the sole reason that these came to Malta and did not want them to go to other European countries and leave him stranded. However they were free to leave back to Pakistan where they were tendered back their passports in order to leave.

The law on pretended rights is governed by Article 85 of the Criminal Code which states:-

“85. (1) Whosoever, without intent to steal or to cause any wrongful damage, but only in the exercise of a pretended right, shall, of his own authority, compel another person to pay a debt, or to fulfil any obligation whatsoever, or shall disturb the possession of anything enjoyed by another person, or demolish buildings, or divert or take possession of any water-course, or in any

other manner unlawfully interfere with the property of another person, shall, on conviction, be liable to imprisonment for a term from one to three months:

Provided that the court may, at its discretion, in lieu of the above punishment, award a fine (multa)."

The Court of Appeal in its Criminal Jurisdiction in the case by the names Police vs Joseph Bongailas, (Dec 22/10/2001) stated:

"L-Artikolu 85 tal-Kodici Kriminali li jittratta dwar ir-ragion fattasi, bl-ewwel rekwizit tieghu, kjament iqis bhal agir kriminali kull att ta' xi hadd li jfixkel lil xi haddiehor fil-pussess ta' xi haga li qed igawdi. L-imsemmi artikolu, ghalhekk, jittutela l-pussess tal-haga u mhux necessarjament ukoll il-propjeta' taghha. Il-kelma pussess, ghalhekk, tinkludi l-uzu jew dgawdija ta' dik il-haga.

Li hu importanti, ai fini ta' l-Artikolu 85 tal-Kap. 9, dejjem riferibbilment ghall-ewwel element kostituttiv

tieghu huwa jekk effettivament sa dik in-nhar li sar dan l-allegat att ta' spoll mill-appellant, kellhomx il-kwerelanti l-pussess, ossija l-uzu u/jew id-dgawdija tal-fond in kwistjoni."

This because:

"id-dispozizzjoni tal-ligi li tikkontempla r-reat ta' raggion fattasi hija ntiza biex il-privat li jippretendi xi drittijiet ma jissostitwix l-azzjoni tieghu ghal dak tat-tribunal meta jista' jirrikorri lejhom. Hi gusta jew le l-pretensjoni tieghu, hu ma jistax minn rajh jezercita dawk id-drittijiet li hu jippretendi li ghandu".

Also the same Court in the case Police vs Denise Caruana (Dec 30/11/2016 EG) it was argued that:

"Din il-Qorti tibda biex tghid li r-reat kontemplat fl-Artikolu 85 tal-Kodici Kriminali ma hux intiz biex jissostitwixxi l-azzjonijiet rivendikatorji jew xort' ohra li bihom dak li jkun jikseb ir- rikonoxximent tad-drittijiet

*tieghu fi jew fuq proprjeta`, mobbli jew immobbli. L-
Artikolu 85 huwa intiz biex dak li jkun ma jiehux il-ligi
b' idejh, u ghalhekk l-iskop wara din id-disposizzjoni -
bhad- disposizzjonijiet fil-kamp civili dwar l-actio spoli
- huwa li tipprotegi l-istatus quo."*

Therefore it is clear that by the accused's own admission that he used to keep the passports of his employee, including that of Mougil Haroun in the period stated in the charges, is good enough evidence of the commission of this crime. The fact as accused stated in his testimony, he used to keep their passports so that they do not go in another European country is not a valid excuse at law and even if they decide to go back to their country it was given back, the offence of pretended right was committed just the same. The eventual resitutation of the document does not nullify this offence.

On the above basis and after seeing Article 85 of Chapter 9 of the Laws of Malta finds the accused **Zia Ul Noor** guilty only of the eighth (8th) charge brought against him and by virtue of Article 22 of Chapter 446 frees him on condition that he does not commit

another offence within six (6) months from today whilst acquitting him from all other charges since they were not proven.

Additionally the Court orders the revocation *contrario imperio* of the decree for freezing of assets of the accused dated 11th February 2013 made under Article 23A(2) of Chapter 9 of the Laws of Malta and Article 5 of Chapter 373 of the Laws of Malta.

Finally, explained in simple words the repercussions if such order is not complied with.

Dr. Claire L. Stafrace Zammit B.A, LL.D.
Magistrate