



The Court of Criminal Appeal

His Honour the Chief Justice Mark Chetcuti

The Hon. Mrs. Justice Edwina Grima

The Hon. Mr. Justice Giovanni Grixti

Sitting of the 25th January 2023

Bill of Indictment No: 6/2021

The Republic of Malta

Vs

Ahmad Aziz

The Court,

1. Having seen the bill of indictment bearing number 6 of the year 2021 filed against appellant Ahmad Aziz before the Criminal Court, wherein he was charged with having in the Maltese Islands on the 3rd of May 2018 and in the preceding months and years, by several acts committed by him, even if at different times, which constitute violations of the same provision of the law, committed in pursuance of the same design:

- i. With criminal intent, by means of any false designation, or by means of any unlawful practise, or by the use of any fictitious name, or the assumption of any false designation, or by means of any deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, made gain, to the detriment of the government of Malta which does not exceed five hundred euro (€500).
- ii. With criminal intent, of having made to the prejudice of any other person any other fraudulent gain.
- iii. With criminal intent of having committed forgery of any authentic and public instrument or of any commercial document or private bank account, by counterfeiting or altering the writing or signature, by feigning any fictitious agreement, disposition, obligation, or discharge in any of the said instruments or documents after the formation thereof, or by any addition to or alteration of any clause, declaration or fact which such instrument or document were intended to contain or prove.
- iv. With criminal intent of knowingly made use of false acts, writings, instruments, or documents.
- v. With criminal intent of having other than a public officer or servant acting with abuse of authority, falsely made or issued a declaration or certificate.
- vi. With criminal intent of knowingly made use of falsely issued declarations or certificates by a person other than a public officer or servant acting with abuse of authority.
- vii. With criminal intent of having, in order to gain any advantage or benefit for himself or others, in any document intended for any public authority, knowingly made a false declaration or statement or gave false information.

- viii. With criminal intent of having been dismissed, interdicted or suspended and having due notice thereof, continued in the exercise of his office or employment.
- ix. With criminal intent of knowingly making any false statement in any application or recommendation in connection with the issue or renewal of a passport.

2. Having seen the preliminary plea filed by accused Ahmad Aziz.

3. Having seen the application filed by accused Ahmad Aziz on the 10th of August 2022 wherein he requested that:

- i. Applicant should be granted permission not to sign anymore in any police station.

- ii. Applicant should be issued with his Maltese passport.

4. Having seen the reply of the Attorney General of the 12th of August 2022 wherein an objection was filed to the requests put forward by accused.

5. Having seen the decree of the Criminal Court of the 23rd of August 2022 wherein the Court acceded to the first request, however dismissed the second request.

6. Having seen the appeal application filed by accused Ahmad Aziz wherein he is requesting:

- a) "That this Honourable Court revokes that part of the decree of the first court where it rejects the prayer of the appellant not to issue Maltese passport of the appellant after passing more than 4 and half years when parallel criminal and civil proceedings are going on against accused person with the same alleged facts when the matter is time-barred, double jeopardy and there is a breach of several fundamental and human rights of appellant and Maltese courts have no jurisdiction over alleged offences. The appellant should be returned his Maltese passport."

- b) "That this Honourable Court of Criminal Appeal allows this appeal, that this honourable court of criminal appeal declares that the first court breached the right to a fair hearing to expunge the Annex AA90, AA91 and AA92 in support of the accused person's application for the amendment of his bail conditions."

c) “Appellant should be given remedy in breach of his legal rights.”

7. Having seen the documents attached to the appeal application filed by applicant Ahmad Aziz.

8. Having seen the reply of the Attorney General of the 24th of August 2022 wherein it is requested that the appeal application by Ahmad Aziz be rejected.

9. Having heard oral submissions by the parties.

10. Having seen all the acts of the case.

Considers,

11. That appellant has registered his objection to a decree given by the Criminal Court and this in relation to a request filed by him asking for a variation of his bail conditions and demanding an authorisation for the issuance of a Maltese passport in his favour, in which decree the Criminal Court acceded to his first request but denied the second one. It is appellant’s firm view, that a refusal by the Criminal Court to authorise the issuance of a Maltese passport in his favour breaches his fundamental human rights, the Prosecution’s criminal action resulting in double jeopardy, such action being also time-barred, and on these grounds, he is requesting this Court to revoke that decision.

12. The Attorney General objects to appellant’s demand claiming that such a request is procedurally null at law, since no appeal lies *pendente lite* from an interlocutory decree delivered by the Criminal Court which does not stop the continuation of the case, and this in terms of article 415(1) of the Criminal Code. Also, the Attorney General objects to the filing of documents by appellant together with his appeal application and asks the Court to expunge the same from the records of the appeal.

Regarding the merits of the appeal the following objections are registered:

i. that the wording of the appeal application is identical to the wording of the application filed before the Criminal Court, appellant thus omitting from mentioning any grievance he has with regard to the said decree.

ii. Any alleged breach of appellant's fundamental human rights may not be addressed by this Court and consequently the Criminal Court's decision to expunge the documents attached to his application apart from being in line with procedural law did not breach appellant's rights.

iii. With regards to appellant's request for the issuance of a Maltese passport, the Attorney General reiterates that appellant's travel and identification documents are withheld by the Court during criminal proceedings pending against him and this according to law, so as to ensure that appellant does not abscond or fail to appear when ordered by the Court and thus obstruct the course of justice. This procedure applies to all persons accused of a criminal offence before the courts of criminal justice irrespective of the nationality of the person accused.

Considers:

13. That, appellant filed an appeal from a decree delivered by the Criminal Court in connection with a request made by him to obtain a Maltese passport, which request was denied by the said Court. He bases this request not only on an alleged violation of his human rights to freedom of movement and other civil rights, but also delves into the merits of the case, citing the testimony of witnesses who in his opinion attest to his innocence. He further laments that the Criminal Court also breached his right to a fair hearing when it ordered the removal, from the acts of his application, of the documents, he had filed to support his request.

14. Now upon being arraigned in court charged with various crimes relating to the offences of fraud and forgery, accused was granted bail, and as a guarantee for the observance of the bail conditions, he was forbidden from leaving the country without obtaining prior authorisation by the Court. Accused, however, is of the opinion that such restriction to his liberty and freedom of movement constitutes a violation of his fundamental human rights.

15. The Attorney General, however, puts forward a preliminary plea arguing that an appeal from an interlocutory decree such as that given by the Criminal Court to which

appellant is finding objection, cannot be entertained by this Court, since at law no appeal may be filed from such decisions.

16. That, the Court will first and foremost address the plea of nullity of the appeal application put forward by the Attorney General, since if upheld this will necessarily impinge on the outcome of this appeal. The Attorney General relies, in his plea, on the provisions of article 415(1) of the Criminal Code, which section of the law is found under Book Second, Part One, Title II, sub-title III of the Code, entitled **“Of Appeals from Judgments of the Court of Magistrates as Court of Criminal Jurisdiction.”** This section of the law is not rendered applicable to this Court of Appeal in its superior jurisdiction, since it falls outside the parameters of article 512(1) of the Criminal Code, which does not mention article 415 as being one of the sections of the law which regulate the workings of this Court. Consequently, the Attorney General is basing his plea of nullity on a wrong disposition of law.

17. This having been said, however, the Court will not discard this plea without examining the powers of this Court in its superior jurisdiction and whether an appeal from a decree demanding a variation in bail conditions can be entertained at this stage of the proceedings. The powers vested by law in this Court of Criminal Appeal are laid out in articles 497 to 515 of the Criminal Code, wherein the legislator regulates those instances where both the Attorney General and the person accused may file an appeal to this Court. An appeal lies by both parties from a judgment relating to the preliminary plea raised by the person accused mentioned in articles 449(1)(a)(b)(c)(d) and (g) of the Code and from any decision regarding the admissibility of evidence. After a judgment on the bill of indictment, then the accused may appeal from any finding of guilt. However, no appeal lies from any decision regarding a variation in the decree granting bail to accused authorising him to obtain a passport and travel outside Malta, as requested by appellant. This procedural argument has already been dealt with by this Court in the case below cited and this Court concurs with those conclusions:

“13. Il-kompetenza ta’ din il-Qorti hi arginata bid-dispożizzjonijiet tal-artikoli 497 sa 515 tal-Kodiċi Kriminali u b’mod partikolari b’dak li jipprovdi

l-artikolu 499 tal-istess Kodiċi. Dak l-artikolu jipprovdi li jista' jsir appell minn sentenza tal-Qorti Kriminali lil din il-Qorti fuq talba ta' l-Avukat Generali jew ta' l-akkużat 'minn kull decizjoni mogħtija wara l-qari ta' l-att ta' l-akkuża' u dan 'fuq kull waħda mill-eċċezzjonijiet imsemmija fl-artikolu 449(1)(a), (b), (c), (d), u (g) u minn kull decizjoni fuq l-eċċezzjoni ta' inammissibbiltà ta' provi'. Tista' tappella wkoll lil din il-Qorti skont l-artikolu 500(1) 'Persuna misjuba hatja fuq att ta' akkuża'. Għalhekk il-kompetenza ta' din il-Qorti sabiex tisma' u tiddeciedi appelli li jsirulha tippostula decizjoni li tkun ingħatat wara l-qari ta' att ta' akkuża fuq xi waħda mill-eċċezzjonijiet imsemmija fl-artikolu 449(1)(a)(b)(c)(d) u (g) tal-Kodiċi Kriminali jew decizjoni fuq l-eċċezzjoni ta' inammissibilita' ta' provi jew persuna misjuba hatja fuq att ta' akkuża. L-appell odjern ma hux minn decizjoni li ingħatat fuq xi waħda mill-eċċezzjonijiet msemmija u anqas minn xi decizjoni fuq l-eċċezzjoni ta' inammissibilita' ta' provi u l-appellant ċertament anqas hu persuna misjuba hatja. Għalhekk ma jirrizultax li din il-Qorti għandha kompetenza tiddeciedi dan l-appell.

“14. Fil-kors tat-trattazzjoni orali quddiem din il-Qorti l-appellant permezz tal-konsulent legali tiegħu għamel riferenza għal dak li jipprovdi l-artikolu 415 tal-Kodiċi Kriminali sabiex jipprova jislet argument *a contrariu sensu* li appelli minn digriet interlokutorji huma wkoll ammessi meta d-digriet interlokutorju in kwistjoni jkun iżomm il-kawża milli titmexxa 'l quddiem. Huwa sottometta li d-decizjoni appellata li ddiferiet il-ġuri sine die effettivament kienet tali li żżomm il-ġuri milli jimxi 'l quddiem u għalhekk kienet appellabbli. Apparti l-kunsiderazzjoni jekk differiment ta' kawża *sine die* tinkwadraw bħala decizjoni li żżomm il-kawża milli timxi 'l quddiem dak li hu determinant, iżda, huwa li l-artikolu citat mill-appellant jinsab fis-sub-titolu tal-Kodiċi Kriminali intestat 'Fuq l-Appelli mis-Sentenzi tal-Qorti tal-Maġistrati bħala Qorti ta' Ġudikatura'. Kjarament, għalhekk ma hux applikabbli għall-appell ta' illum li huwa appell minn decizjoni tal-Qorti Kriminali. Anqas jista' b'xi mod dak l-artikolu jiġi estiż b'analogija għal appelli lil din il-Qorti minn decizjonijiet tal-Qorti Kriminali tenut kont tal-fatt li d-dispożizzjonijiet relevanti li jirregolaw il-kompetenza ta' din il-Qorti ma jipprovdux għal tali appell lil din il-Qorti minn decizjonijiet bħal dawk imsemmija fl-artikolu 415 tal-Kodiċi Kriminali u 'mhux lecit u li l-Qorti tikkonferixxi dritt ta' appell meta l-legislatur ma jkunx ta dan id-dritt¹.”

18. Furthermore, from an examination of articles 574 et. seq. of the Criminal Code, dealing with the Institute of Bail, it is evident that no appeal lies from any decision which grants or rejects a request for bail and from any decision granting variations to

¹ Ir-Repubblika ta' Malta vs Mario Camilleri App.Sup., deciza 26/04/2012; *vide* also The Republic of Malta vs Neslon Mufa App.Sup. deciza 14/02/2013

the said decrees from any court, be it the Inferior Court of Magistrates or the Criminal Court, with accused person granted the right to request bail at any stage of the proceedings, and on more than one occasion, and also the right to request any variation to the decree granting bail should there be any change in circumstances justifying such a change, such decisions, however, not being subject to appeal.

19. Having thus premised, it is evident that the powers of this Court of Criminal Appeal are limited to those granted to it by law and cannot be extended to deal with the present request brought forward by appellant. Suffice it to say however, that even were this Court to decide to consider the grievances put forward by appellant, even these fall outside the remit and competence of this Court since they impinge first and foremost on the merits of the case, which has still to be decided by the Criminal Court, and furthermore, all matters dealing with alleged violations of human rights fall within the jurisdiction of the Constitutional Court, and not of this Court.

For these reasons the Court declares the appeal null and void, abstains from taking further cognisance of it, and orders that the records be remitted to the Criminal Court for the case to proceed according to law.

The Chief Justice Mark Chetcuti

Mrs. Justice Edwina Grima

Mr. Justice Giovanni Grixti