



MALTA

COURT OF CRIMINAL APPEAL

**HON. JUDGE
JOSEPH GALEA DEBONO**

Sitting of the 30 th April, 2003

Criminal Appeal Number. 3/2003

**The Police
(Inspector Ian J. Abdilla)
(Inspector Sandro Zarb)
Vs
Antonio Fernando Galvao Falamino**

The Court,

Having seen the charges proffered against the accused in the Court of Magistrates (Malta) as a Court of Criminal Judicature whereby he was charged with having on these Islands, on the 5th October, 2002 and the previous days in various parts of Malta, by means of several acts committed by the offenders, even if at different times, which acts constitute violations of the same provisions of the law:

1) For having forged any sedule, ticket, order or other document whatsoever, upon the presentation of which any payment may be obtained, or any delivery of goods

effected, or a deposit or pledge withdrawn from any public office or from any bank or other public institution established by the Government, or recognized by any public act of the Government, and for having knowingly made use thereof of any of the instruments specified above, and this in breach of Sec. 167 and 169 of Chapter 9 of the Laws of Malta;

2) For having committed forgery of any authentic and public instrument or of any commercial document or private bank document, by counterfeiting or altering the writing or signature, by feigning any fictitious agreement, disposition, obligation or discharge, or by the insertion of any such 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 instruments or documents were intended to contain or prove, and for having knowingly made use of any of the false acts, writings, instruments or documents mentioned above, and this in breach of Sec. 183 and 184 of Chapter 9 of the Laws of Malta;

3) For having gained any advantage or benefit for themselves or others, shall in any document intended for any public authority, knowingly made a false declaration or statement, or gave false information, and this in breach of Sec. 188 of Chapter 9 of the Laws of Malta;

4) For having, by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other 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 a gain which exceeds LM50 but does not exceed LM1,000.00 to the detriment of Bank of Valletta plc, H.S.B.C. plc, and other persons and entities, and this in breach of Sec. 18, 308, 309, 310 of Chapter 9 of the Laws of Malta;

5) For knowingly having received or purchased any property which has been stolen, misapplied or obtained by means of any offence, whether committed in Malta or abroad, or knowingly took part, in any manner whatsoever

in the sale or disposal of the same, and this in breach of Sec. 334 of Chapter 9 of the Laws of Malta;

6) And also for knowingly being in possession of a passport whether issued to him by a competent authority or not, transferred such passport to any other person; or received a passport transferred to him by any other person, and this in violation of Article 3 of Chapter 61 of the Laws of Malta;

7) For having during the same period, forged, altered or tempered with, or used or had in his possession passports issued by the United Kingdom of Great Britain and Northern Ireland which he knew to be forged, altered or tempered with and this in violation of Article 5 of Chapter 61 of the Laws of Malta;

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature dated 16th. December, 2002 , whereby appellant was found guilty and convicted as charged and condemned to a term of imprisonment of twelve months from which period there is to be deducted the period which he had spent in preventive custody and whereby he was also declared to be a prohibited immigrant and ordered his removal from these islands , after he serves his time in prison and whereby the Court also ordered that the mobile phone , the piece of paper and all the cash seized by the Police in respect of these crimes were to be forfeited in favour of the Government of Malta

Having seen the appellant's application of appeal dated 27th. December, 2002 , wherein he requested that this Court to confirm the judgement of the Criminal Court of Magistrates (Malta) as a Court of Criminal Judicature of the 16th. December, 2002, in virtue of which he was convicted of the charges preferred against him and to revoke such judgement where, in virtue of same, he was condemned to a period of twelve months imprisonment, in order that a more appropriate punishment might be inflicted on him.

Having noted the Prosecution's plea of the nullity of the application of appeal on the grounds that the appeal should have contained a request for the judgement to be varied, once that there was no appeal from the appellant's conviction but only from the punishment inflicted by the First Court and therefore the requirement laid down by section 419 of the Criminal Code had not been observed, and also the nullity of the application of appeal since the suspension of the execution of the judgement of the Court of Magistrates was not requested as soon as the judgement was delivered and that moreover the application filed by applicant on the 27th December, 2002 cannot be seen as a request for the suspension of the execution.

Having heard the submissions of Counsel on this point in the course of today's sitting

Having considered;

That the Advocate General's plea is based on the fact that appellant should have requested this Court to vary or reform the judgement of the First Court before requesting that it be confirmed in the part convicting the appellant and that it be reversed or revoked in the part sentencing him to twelve months imprisonment.

The Court makes reference to the case law quoted with regard to this point in other cases decided today namely "Police vs. Paul Farrugia" and "The Police vs. David Buttigieg", in which it made reference to prevailing case law on the matter, particularly to the judgement in Criminal Appeal : "The Police vs. Joseph Galea" [30.6.1995] per V. De Gaetano J., wherein it was held that from an examination of case law regarding the nullity of the application of appeal, it had come to the a number of conclusions, first and foremost that, as a general rule, section 419 (1) of the Criminal Code, which lays down that the application of appeal should contain a request for the reversal or the variation of the judgement has been "very strictly and rigidly interpreted" and secondly that

such an issue can even be raised by the Court of Criminal Appeal “ex officio”.

In the above quoted case , the Court of Criminal Appeal had also reviewed other leading cases on this matter namely : “La Polizia vs. Ernesto Laiviera”, 18.10.1930 ; Vol. XXVII , iv. P.829; “La Polizia vs. Carmelo Carabott et” 8.11.1933, Vol. XXVIII, iv. P.205; “The Police vs. Francis Saviour Zammit Cutajar” , Crim.App.. 23.1.1971; “The Police vs. Carmelo Farrugia et.” Crim.App. 11.11.1976 ; “The Police vs. Carmelo sive Lino Scicluna” , Crim.App. 1.9.1977; “The Police vs. Victor Anthony Camilleri et” , 26.4.1985; “The Police vs. Anthony Zammit” 1.10.1960 Vol. XLIV , iv. P.940 ; “The Police vs. Richard Vincenti Kind” , Crim. App. 16.9.1972 ; “The Police vs. Carmelo Agius” Crim. App. 14.10.1972; “The Police vs. Emmanuel Bonnici” , Crim. App. 5.10.1990; “The Police vs. Joseph Desira” 18.3.1972 ; “The Police vs. Crusifix Buttigieg “, 18.3.1972 and “The Police vs. John Vella Chritien”, Crim. App. 6. 5. 1972.

That it has also been held that the best procedural formula that should be followed in the drafting of an application of appeal in the case of a request for the variation of a judgement is that in the first place the appellant should request the Court to vary the judgement , then he should request the Court to confirm the part of the judgement that is not being appealed from ; then , in the third place, he should request the Court to reverse the part of the judgement he intends to appeal from and finally this should be followed by the request as to how the judgement should be varied such as for example that appellant should be acquitted of a particular charge or that the punishment inflicted upon him should be reduced or varied . (Criminal Appeal “The Police vs. Joseph John Agius” 9.4.2003)

That as has been held by V. De Gaetano J. (now Chief Justice) in the Criminal Appeal “The Police vs. Jesmond Farrugia” (13.2.2001), when the request should manifestly have been one for the variation of the judgement but instead appellant requested the reversal of the judgement

, the application of appeal is null on the basis that it lacks the element required by sub-paragraph (c) of Subsection (1) of Section 419 of the Criminal Code.

That in the light of the above the application of appeal does not follow the prescribed form and this defect cannot be remedied at this stage and this Court has no alternative but to declare the application null.

The Court further observes that in any case the appeal could not be upheld in view of the fact that from the records of the case it results that appellant had in fact acquiesced to and accepted the sentence inflicted upon him by the First Court as he had not requested the suspension of the execution of same when it was delivered but had actually started serving his prison sentence before filing the present appeal and the First Court was no longer competent to grant his request to appeal which was only filed by him eleven days later as was decided by this Court in Criminal Appeals : “The Police vs. Mario Mifsud (5.5.1994) ; “The Police vs. Moses Bugeja et.” (28.1.1994) ; “The Police vs. Frangisk Borg” (18.1.1941 (Vol. XXXIII, iv. P.391) , “The Police vs. Karl Gialanze” (17.5.1994) ; “The Police vs. F. Micallef (5.7.1994) ; “The Police vs. Francis Scicluna “ (20.1.1995) ; “The Police vs. Carmel Attard (30.6.1995), “The Police vs. Victor Vella (6.1.2003) and “The Police vs. Emmanuel Sammut” (30.1.2003)

For the above stated reasons the Court upholds the plea of nullity raised by the Prosecution and declares the appeal null as it has not satisfied the requirement laid down in section 419 (1) (c) of the Criminal Code as regularly and constantly interpreted in case law and precedent of this Court and because appellant had renounced to his right to appeal when he had not requested the suspension of the execution of the judgement immediately upon its delivery by the First Court and had in fact acquiesced to same by starting to serve his prison sentence .

Informal Copy of Judgement

Accordingly This Court abstains from taking any further cognisance of this appeal .

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