



MALTA

**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.
MIRIAM HAYMAN**

Sitting of the 2 nd May, 2003

Number. 599/2000

**The Police
(Inspector Martin Sammut)**

vs

**Edward Joseph O'Connor
37 years old, son of Edward and Mary nee Lynch,
born in London UK on 07.07.1963,
residing 10, Primrose Court, Barnaba St,
Bugibba, bearer of passport number 700919540,
Holder of Maltese ID Card Number 15587 A.**

The Court,

Having seen the charges brought against the accused, accused with having on these islands on 26 August, 2000 and a few days before, in Bugibba, Qawra, Sliema, St Julians and other several places in Malta, with several acts committed in different times, which constitute violations of the same provisions of the law, and committed in pursuance of the same design,

(1) without the permission of the Minister, not being an authorized dealer, in Malta, and being a resident, outside Malta, bought or borrowed any gold or foreign currency from, or sold or lent, any gold or foreign currency to, any person other than an authorized dealer, and this in breach of article 4(1) of Chapter 233 of the Laws of Malta,

(2) without the permission of the Minister, not being an authorized dealer, in Malta did several acts which involved, was in association with or was preparatory to buying or borrowing any gold or foreign currency from, or sold or lent any gold or foreign currency to, any person outside Malta, and this in breach of article 4(2) of Chapter 233 of the Laws of Malta,

(3) Not being an authorized dealer, who was in possession of or control over any gold or foreign currency in Malta, and as a resident, who was in possession of or control over any gold or foreign currency outside Malta, did not offer the gold or foreign currency or caused it to be offered for sale to an authorized dealer, and this in breach of article 5 of Chapter 233 of the Laws of Malta,

(4) Without the permission of the Minister, imported into or exported out of Malta any notes or coins which are or have at any time been legal tender in Malta and this in breach of article 11(1) of Chapter 233 of the Laws of Malta,

(5) Without the permission of the Minister, exported out of Malta any gold or foreign currency and this in breach of article 11(2) of Chapter 233 of the Laws of Malta,

And further more I charge him in the name of the Comptroller of Customs, for having on 26 August, 2000, at Malta International Airport, whilst on point of departure

from Malta on Flight Number BA 6937 to London UK, had been found in possession of and/or under his control an amount of monies and one article of yellow metal as listed in Seizure notice 35/00 which amount of monies was not covered by the necessary permits/documents for exportation and this in breach of Section 60(f) (g) and section 62 (l) of the Customs Ordinance, Chapter 37 of the Laws of Malta.

The Court was requested, that apart from awarding the appropriate punishment as prescribed by law, order the forfeiture of the exhibited items.

Having seen that accused pleaded not guilty to the same

Having seen the note of the Attorney General wherein were transmitted the sections of the Law under which an offence might result, being;
sections 4(1)(2), 5, and 11(1)(2) of chapter 233,
sections 60(f)(g) and 62(1) of chapter 37
sections 18, 31, 20, 17(b) and 533 of chapter 9.

Having heard in this regard the accused declare that he had no objection to these proceedings.

Having heard all oral submissions and seen all acts of the case.

Considers;

That it has transpired from the facts adduced that accused was stopped at airport and monies of foreign currency, dollars and sterling, were found in his hand luggage. On the commencement of a body search, accused voluntarily tendered to the authorities other monies he was carrying on his body. A golden bracelet was also seized from the accused. (see in this regard seizure note Dok M3 and confiscation note Dok KC1).

Accused released two statements on being questioned by the police on the 26 and 27 of August, Dok EJC and Dok

EJC1. In both statements accused on being asked from whom he had borrowed the confiscated monies, answered that he was not in a position to give out the names in view of the fact that various people were involved. He also declared that he was not in a position to give out the names because he did not know who gave him which amounts. Asked why he was in possession of such monies, accused in both statements also tendered the same version being that he had borrowed the monies for the purpose of acquiring a Mini Bus Van in Malta. However as it later transpired considering the necessary permits and the acquisition of a garage, accused realized that the borrowed sum would not suffice. Thus he had decided to return the borrowed money to the people from whom it was borrowed in England. Accused also admitted to having acquired the money originally in sterling and after arriving in Malta to having changed quite a lot of the borrowed sterling into Maltese lira. (Dok EJC1). Accused also admitted to having changed the Maltese lira back into Sterling and when not enough Sterling was available he acquired Dollars. He converted these monies in bucket shops. Asked why he had not converted the money in an authorised licensed bureau, he answered that the commission was too much although he did not exclude that he had effected same changes in such bureaus in the sense that he had changed small bills into larger ones.

In his first statement accused stated that he had been living in Malta for seven years. In the second statement he further added that besides returning the borrowed money, his intention of returning back to England, albeit for a short stay, was also to make arrangements to bring his daughter to live with him in Malta.

Be it also stated at this stage that accused is married to a Maltese national and is the bearer of a Maltese Identity Card. It also transpires from his evidence viva voce that he has his normal residence in Bugibba with his wife, as indicated by himself to the prosecuting officer when a search in such residence was purported to be effected.

The accused also gave evidence viva voce.

It must be stated that in front of the Court Mr O'Connor firmly confirmed the reasons given in his statement as to why he was in possession of the foreign monies, that is the intention to acquire a Mini Bus with the same money, the realization that the sum in hand was not sufficient, the intention to return the sum back to England. In fact he confirmed the contents of both statements except for one major salient point; the origin of the monies.

Viva voce the accused offered the version that it was his brother who on his request “ ..if he can, because I know he has friends who have money, if he could somehow get me the money and he agreed so I went to England, not only for the money...” fol 86. He continues saying with reference to his brother “And he arranged the debt and I’d arrange with my brother...” Asked whether he knew from whom his brother had acquired the money, accused answered that it was only now that he was aware of such a fact, this being the reason why in his statement he had affirmed that he did not know where the money was coming from.

Accused was at length asked about the procedure he chose to adapt in changing the borrowed money. In fact ex admissis accused acquired the total amount in sterling, arrived with it in Malta in this denomination. Once on the island he started changing the same into Maltese currency, then once he realized the mini bus project was not going to work, started to change back the money into sterling or dollars with the intention of taking the money out of Malta again. Thus under cross examination he answered ;” ..when I bought the money here I was 100% sure I was going to have a minibus within a week or two. The cheapest one that came along and everything was OK, I would be happy and the money would have been spent. But then it got worse and worse and I thought I’ve already changed this amount of Maltese, English money to Maltese. By the way, the Exchange rate was very good at the moment and if you change so much money you get

a little bit extra from these bucket shops. So I was pinching that few extra quid” (fol 122).

Asked why he had not opted to transfer the money through normal bank transfers, such as swift, accused explained that such transfers would have cost him money he could not afford due to exchange control rates. (fol 111 and fol 120)

In support of his version, accused brought forward the evidence of his brother John Christopher O'Connor and Stephen Peal the later being the person from whom the money was borrowed.

John C.O'Connor stated that he had borrowed the money from a certain Stephen Peal, which money he intended to give to his brother. This he did on his own initiative. He further stated that his brother the accused did not know of this dealing and he surprised him when he (accused) went to England. O'Connor said he borrowed the amount of 23,000 Sterling. The witness also stated that it was he who was to repay the loan to Peal and that he had previously been loaned money by Peal. This witness also stated that today he is paying the loan money back to Peal on monthly installments. Asked whether there was any reason for his brother to return back the unused money he answered in the negative. He also said that he had received the money in cash form and thus saw no reason to transfer the money to his brother through a bank as his brother was actually present in England.

Stephen Peal stated that he had lent money to John O'Connor on more than one occasion. He recalled an occasion when in June he lent John the sum of twenty three thousand Sterling. He stated that he had withdrawn that sum from the bank. He confirmed that the money borrowed was being paid back to him by John. Peal also confirmed a document previously exhibited by defence counsel, a fol 82, which he stated was proof of the withdrawal he effected with the bank as to the monies in question. The handwriting on the said document denotes the denomination of the monies withdrawn.

Considers.

That it transpires that accused was not in possession of any permission under the Exchange Control Act

Section 4(1) of chapter 233 states that “no person,shall in Malta, and no residentshall outside Malta, buy or borrow any gold or foreign currency from, or sell or lend any gold or foreign currency to, any person other than an authorised dealer”

It is primarily noted that defense in its note of submissions misquoted sub article 1 of article 4 of Chapter 233, in that the law reads except for an authorised dealer no person in Malta and no resident outside Malta buy borrow etc any gold or foreign currency.

Now if the Court is to believe accused’s version that he did not himself actually borrow any money from any person outside Malta, then obviously that part of the abovementioned section concerning monies borrowed, is totally inapplicable to his case. Notwithstanding the fact that the Court has some difficulty in understanding why the accused refrained from coming out with a clear explanation as to the origin of the money in his statements, yet the Court is comforted by the fact that he did hold to the same story as to why he had acquired the money and the reason why he chose to return it. Therefore in so far as the accused was not the person who borrowed the money, till that point the Court is in agreement with defense counsel’s written submission. So is the Court in agreement with regards to the question relating to the gold bracelet and thus considers that no offence under this section has been committed in this regard.

However the law is clear in stating that no person shall in Malta ...buy or borrow...sell or lend... any ...foreign currency to, any person other than an authorized dealer.

Defence elucidated that a fol 32 that is in accused's statement, no reference was made as to his changing foreign currency to Maltese currency at unauthorized dealers. In that respect defence might be correct in that at that moment accused was speaking about other exchanges, that is, from Maltese currency into foreign currency. However viva voce, the accused admitted to the first type of exchange herein referred to as above cited. In fact a fol 122 accused went as far as stating that he had changed the foreign money into Maltese at the so called bucket shops adding in his words "pinching a few extra quid" through the same transaction because the exchange rate was favourable. This is certainly tantamount to the prohibition abovementioned of any person in Malta selling/buying foreign currency from unauthorised dealers.

Defence counsel also argued that no evidence has been brought that these bucket shops are not authorized dealers, it is the opinion of this court that "these bucket shops" to use the same words of the accused found as he describes them in tourist areas are so called and favoured specifically because they carry no license and do dish out favourable exchanges besides their convenience due to there proximity in tourist areas.

Thus in this respect there has been a definite transgression of section 4 of chapter 233 of the Laws of Malta.

With regards section 4(2) of the said chapter, which reads that no person shall in Malta .. to any person outside Malta, one immediately realizes that it is inapplicable to the case in question, in view of the fact that even if accused purported to borrow any foreign currency, such was done outside Malta. Besides any foreign currency sold was so done in Malta.

The crime contemplated under this section is therefore not applicable to the case under examination.

Section 5 of chapter 233 again speaks of every person who has possession of control or over..in Malta and of every resident who has possession of or control over ...outside Malta. In this regard reference has been made by defense to L.N.9 of 1973 wherein it was argued that in view of the fact that accused is not a resident as is being held by prosecution, therefore through Regulation 9 of the said legal notice he is exempt of the word of section 5 of the main legislation.

This exemption referred to by the defence refers to non residents. Whether accused is a resident or not is subject to the interpretation of evidence; Mr O'Connor said in his evidence that he is not entitled to vote in the Maltese General Elections because of the fact that he is not a resident. It is the opinion of the Court that section 57 of the Constitution should be read also in conjunction with the other elements thereunder established. The Court in this regard agrees with the prosecution that defence is not distinguishing between nationality and residence.

Furthermore Mr O'Connor has admitted not only to living in Malta, in fact besides owning a house in U.K., he has established a house in our island with his wife, sought also to acquire a mini bus in Malta to aid his financial position, has been living here for a period of seven years. Moreover if one looks at his second statement one finds that Mr O'Connor stated that except for the last three weeks he had not travelled, therefore not even to U.K., for a period of two or three years. Furthermore in support of the fact that accused has established residence in Malta, he also stated in his second statement that he had every intention of bringing his daughter to live with him in Malta. Thus the opinion of the Court that Mr O'Connor has today established residence in the Maltese islands, therefore he has transgressed the provisions of 5 of chapter 233.

Section 11(1) of chapter 233 speaks of importation into and export out of Malta of any notes or coins which are or have at any time been legal tender in Malta. Section 11(2)

speaks of the prohibition to export gold or foreign currency.

In relation to the offence contemplated under the first subsection, it is definitely proven beyond reasonable doubt that accused did import into Malta foreign currency. This was done as admitted on the tenth of August. He was detained from exporting the equivalent sum on the 26th of August of the same year at the airport after the authorities were informed of his intentions. As premised correctly by the defence council the actual charge reads "...on the 26 August 2000 and a few days before". Thus defence though clearly misquoting the year of importation contends that the same date falls outside the parameters of the charge. However although admittedly the mentioned charge could have been more precisely worded it must be remembered that accused admitted to this importation and that this importation did happen a few days before.

Section 11(2) of the same chapter prohibits the export of gold and foreign currency by any person except with the therein stated permission.

The proviso to article 11 exempts from the therein contemplated prohibition non residents travellers who can show that the gold or foreign currency was originally brought in Malta. The Court has in this regard already expressed its opinion about Mr O'Connor's residential status. In this regard it must also be stated that the regulation to which defense refers to (5(2) L.N.9, 1973) in the case of non-residents is identical in its wording to the proviso just considered therefore likewise not applicable. On the other hand the same regulation also speaks of foreign currency which in case of a resident, he has lawfully held or acquired. Considering that the Court is dealing with Mr O' Connor as a resident, still the exemption reserved to residents is inapplicable in view of the fact that it has already been established when

examining the previous, sections that the foreign currency was not lawfully held.

The last two sections under examination are 60(f)(g) and 62(1) of chapter 37 of the laws of Malta.

At the outset of this examination it is immediately premised that section 62(1) does not exist under the said chapter.

On the other hand section 60 speaks of forfeiture of goods found in the conditions described in sub paragraph f and g “

Criminal law being in its nature restrictive in interpretation, then this argument not put into question, the Court cannot understand the applicability of section 60(f) to this case. Albeit a means of transportation, however a plane does not fall within the definition given to the word vessel in section 2 of chapter 37.

On the other hand the applicability of section 60 (g) is dependent on the manner in which the monies in question were found. The said section speaks of goods whose exportation is prohibited and are found in any package produced to any officer of customs as containing goods not so prohibited. Inspector Sammut tendered evidence that the accused was stopped and after a search was conducted in his luggage he was found to be in possession of the monies in question, besides voluntarily tendering others he had on his person. P.C. Gordon Borg the person who apparently discovered the monies in the hand luggage was not in his evidence illuminative about the actual search, in fact the constable only answered to the questions put to him.

It does transpire that the police effected a surprise search on the accused and he did not, as are the requisites of the section under examination, produce any package to any custom officer allegedly containing goods whose

importation is not prohibited. Therefore the section examined is not applicable to the case under examination.

The Court considering the above premised after having seen sections 4, 5, 11 of chapter 233, 18, 31, 20 17 of chapter 9 finds the accused guilty of the same.

Considers with regards to the forfeiture of the monies under section 23 of Chapter 9 that it cannot not comment about the fact that accused was always consistent about the reason why the money was borrowed. On the other hand there is a clear inconsistency between evidenced tendered by accused brother in that the loan was a surprise for his brother and what was in fact stated by the accused that he had approached his brother to fix the said loan. However the prosecution has failed to prove albeit of the mentioned in consistency that it was the accused who is directly responsible for the loan in question, whereas on the other hand to a level of probability the defence did convey the probable situation that it was and is accused's brother who to date is responsible for the loan.

This distinction has been made by the Court solely due to the requested applicability of section 23 of chapter 9. The Court feels that surely accused's brother can be considered as participant to the crime under examination. After hearing John O Connor as corroborated by Peal state that to date he is responsible for the repayments of the said loan, holds that one can even believe that the brother was the sole person responsible for this situation.

On the other hand in the Attorney General's note no mention was made of section 42 of chapter 233. In view of the discretion granted to the Court under this section and though the participation of accused's brother is ex admissis obvious but it does not clearly transpire if he did induce the accused to actually import the monies as effectively happened. The Court thus feels that this doubt should militate against the forfeiture of the monies in question.

Informal Copy of Judgement

Seen also accused's conviction sheet, considering all the circumstances of the case, seen the above mentioned articles under chapter 233 and chapter 9, condemns the accused to one year imprisonment suspended for 2 years after having seen Section 28A of Chapter 9.

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