



## **COURT OF CRIMINAL APPEAL**

**HON. MR. JUSTICE  
DAVID SCICLUNA**

Sitting of the 10<sup>th</sup> September, 2004

Criminal Appeal Number. 71/2004

**The Police**

**vs**

**Sebastian Salomo**

The Court,

Having seen the charges proffered against the appellant before the Court of Magistrates (Malta), whereby he was charged with having on these Islands, on the 10<sup>th</sup> March, 2004, and two months before this date:

(a) had in his possession the resin obtained from the plant *cannabis*, or any other preparation of which such resin formed the base in terms of section 8(a) and (d) of Chapter 101 of the Laws of Malta;

(b) and also that on the 10<sup>th</sup> March, 2004 at around 1530 hours at the Malta International Airport, Gudja, imported or brought into Malta resin obtained from the plant *cannabis* in terms of section 7 of Chapter 101 of the Laws of Malta for personal use;

Having seen the judgement of the Court Of Magistrates (Malta) as a Court of Criminal Judicature delivered on the 11<sup>th</sup> March, 2004, whereby the accused, having admitted to the charges brought against him, was found guilty as charged and placed under the supervision of a probation officer to be appointed by the Director responsible for the provision of probation services, and this for a period of two months from the date of said judgement;

Having seen the application of appeal of the appellant Attorney General, filed on the 23<sup>rd</sup> March 2004, whereby he requested this Court to change and reform the judgement appealed in the sense that, while confirming the declaring and finding of guilt of accused as charged, it proceeds to revoke and quash that part of the judgement whereby accused was put under probation as specified in the judgement and, instead, to inflict punishment as prescribed by law;

Having seen all the records of the proceedings;

Having heard the submissions made by Doctor Anthony Barbara on behalf of appellant and Doctor Joseph Giglio on behalf of accused;

Having considered:

Appellant's grievance, as clearly expressed in his application of appeal, consists in a wrong application of a fundamental point of law when it put accused under probation for a period of two months. According to section 7 of Chapter 446, when a Court makes a probation order the period to be specified in the order cannot be less than one year and more than three years. Consequently, the appellant submits, through this wrong application of law, the same Court placed accused under probation in manifest breach of the law.

This Court is satisfied that appellant is completely right on this point. Indeed, section 7 of the Probation Act, 2002 (Chapter 446 of the Laws of Malta) states specifically:

**"(1) The Court may, subject to the provisions of the following subarticle, instead of sentencing the offender, make a probation order, that is to say, an order requiring the offender to be under the supervision of a probation officer for a period to be specified in the order of not less than one year and not more than three years."**

Consequently the Court of Magistrates was incorrect when it inadvertently placed accused under probation for a period of only two months. This in fact has not been contested by the defence in any way. Defence submissions revolve mainly on the practicality or otherwise of having a probation order in the circumstances of the case, in particular in view of the fact that the accused does not reside in Malta and that he works in foreign countries.

While the Court comprehends these submissions, it does not believe that the reasons put forward in any way make it impossible for arrangements to be made so that when the accused is in Malta, he has meetings with the probation officer assigned to him. After all, although the Court of Magistrates fixed an incorrect period for the running of the probation order, it obviously had reason to believe that accused did require a period of supervision in view of the fact that the drugs in question were for his personal use. Furthermore, the nature of the drugs (*cannabis* resin - *cannabis* often being referred to as "a gateway drug") means that if accused in any way has the beginnings of a drug problem or, at least, is misinformed about the problems of drug abuse, a period of supervision may be useful to rectify the situation.

For these reasons:

The Court accedes to the appeal and reforms the judgement delivered by the Court of Magistrates in the

Informal Copy of Judgement

names **The Police vs Sebastian Salomo** on the 11<sup>th</sup> March 2004 by confirming the declaring and finding of guilt of the accused as charged and revoking that part of the judgement whereby accused was placed under a probation order for a period of two months and instead places him under a probation order for a period of one year from today. A copy of this judgement is to be notified forthwith to the Director responsible for the provision of probation services.

**< Final Judgement >**

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