



MALTA

COURT OF CRIMINAL APPEAL

**HON. MR. JUSTICE
DAVID SCICLUNA**

Sitting of the 4th February, 2005

Criminal Appeal Number. 13/2005

The Police

v.

Dmitry Damirovic Makhmudov

The Court,

Having seen the charge proffered against the said Dmitry Damirovic Makhmudov before the Court Of Magistrates (Malta), whereby he was charged with having on these Islands on the 6th January 2005 at about 1900 hours in Valletta committed theft of clothing valued at Lm73.96 to the dteriment of Springfield Company Limited;

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature of the 21st January 2005 whereby, following a plea of guilty being registered, the said Dmitry Damirovic Makhmudov was

Informal Copy of Judgement

found guilty as charged and condemned to a period of eight days imprisonment;

Having seen the application of appeal of the appellant Dmitry Damirovic Makhmudov filed on the 28th January 2005 whereby he requested that this Court revokes and annuls the said judgement and declares him not guilty of the said charge;

Having seen the records of the proceedings;

Having heard the evidence;

Having heard the submissions made by Doctor Cedric Mifsud on behalf of the appellant and Doctor Anthony Barbara on behalf of the Attorney- General;

Having seen the preliminary plea raised by the Attorney General at the sitting of the 3rd February 2005 in the sense that the application of appeal is null and void since no request for the suspension of execution of the judgement was made by appellant;

Having considered:

Appellant's grievance lies in the fact that he is stating that although the appealed judgement was delivered on the basis of a guilty plea, he did not in fact register such plea. However this Court is first called upon to decide the plea raised by the Attorney General, that is to say the plea alleging the nullity of the application of appeal as a result of appellant's failure to request the suspension of execution of the judgement.

There is no contestation of the fact that no request for the suspension of execution of the judgement delivered by the Court of Magistrates in respect of appellant was in fact made. The position at law is quite clear. Article 416(1) of the Criminal Code states:

"The party convicted who is not in custody for the offence of which he has been convicted may, on

making, even orally, a declaration that he desires to enter an appeal against the judgement, obtain from the inferior court a stay of execution of the judgement, provided he gives sufficient security in terms of article 577(1) to appear at the proceedings before the superior court when called upon by such court"

Our Courts have constantly held that the failure to request the suspension of execution of a judgement is equivalent to acquiescence and such acquiescence is contrary to the will to appeal¹. Doing something, during the period established for filing an appeal, which shows that he is accepting the judgement as delivered, is equivalent to such acquiescence. Now, one of the characteristics of the criminal process under our system is that, unless otherwise stated in the judgement, a judgement is enforceable as soon as delivered². Article 665 of the Criminal Code indeed states:

"Subject to the provisions of article 28A [relating to suspended sentences of imprisonment] and the provisions of this Code relating to the payment of pecuniary penalties, every decision shall be enforceable as soon as delivered".

In the Criminal Appeal **II-Pulizija v. George Cefai** decided on the 23rd April 1997, cited with approval in the Criminal Appeal **II-Pulizija v. Jesmarjoe Abela** decided on the 28th October 2004, it was argued that article 416(1) and article 665 considered together necessarily mean that a request to appeal should be made as soon as judgement is delivered as that is the only way in which the immediate enforcement of a judgement may be suspended.

¹ See, for example, Criminal Appeals **II-Pulizija v. Mario Mifsud**, 5th May 1994; **II-Pulizija v. Moses Bugeja et**, 28th January 1994; **II-Pulizija v. Frangisk Borg**, 18th January 1941 (Vol. XXXIII.iv.391).

² See, for example, Criminal Appeals: **II-Pulizija v. Karl Gialanze**, 17th May 1994; **II-Pulizija v. Francis Micallef**, 5th July 1994; **II-Pulizija v. Francis Scicluna**, 20th January 1995; **II-Pulizija v. Carmel Attard**, 30th June 1995.

In the case before this Court it is evident that appellant not only did not request the suspension of execution of judgement but even allowed himself to be accompanied to the Corradino Correctional Facility so as to serve his sentence. His greatest preoccupation, after judgement was delivered, was that he be not removed from Malta as he was following a course here. At the Correctional Facility he was apparently informed that he could appeal from the judgement delivered and he chose to do so in particular because of the fact that a removal order in fact had been or was to be issued against him by the Principal Immigration Officer consequent to the said judgement and because he was insisting (and as results from his statement made to the investigating officer) that all that he was admitting to in fact was to being with the person who in fact had stolen some clothes and that he himself did not participate in any way in the crime.

However, his application of appeal was filed on the 28th January 2005, that is to say when he had already served almost seven days of his sentence, and a request to this Court to hear the case with urgency was filed on the 1st February 2005, three days after he had served such sentence.

In these circumstances, therefore, and in view of what was said above, it is clear that the application filed by appellant on the 28th January 2005 is null and void.

For these reasons:

The Court accedes to the plea raised by the Attorney General, declares the appeal null and avoid and consequently abstains from taking further cognisance of the appeal.

< Final Judgement >

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