



MALTA

## **COURT OF CRIMINAL APPEAL**

**HON. MR. JUSTICE  
DAVID SCICLUNA**

Sitting of the 11 th May, 2005

Criminal Appeal Number. 75/2004

**The Police**

**v.**

**John Beirne**

The Court,

Having seen the charge proffered against the accused in the Court of Magistrates (Malta) as a Court of Criminal Judicature that is to say that on the 21<sup>st</sup> January 2003 and during the following weeks, at Malta, when so ordered by the Civil Court (Sekond' Awla) with decree issued on the 17<sup>th</sup> September 2002 he failed to give his wife Joanna Beirne, the sum of two hundred Malta liri (Lm200) each week fixed by the court as maintenance for her and for his

Informal Copy of Judgement

child Sean Beirne within fifteen days from the day on which, according to such order, he should have paid such sum;

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature dated 12<sup>th</sup> March 2004 whereby the said Court found the accused guilty as charged and condemned him to a period of seven (7) days detention;

Having seen the appellant John Beirne's appeal dated 24<sup>th</sup> March 2004 whereby he requested that this Court cancels and revokes the said judgement and orders that a not guilty verdict be registered and consequently that he be freed from all guilt and punishment; subordinately, in the eventuality that this Court refuses the appeal as regards guilt, that it reforms the punishment ensuring that it is more appropriate in the circumstances;

Having heard the evidence;

Having heard the submissions made by counsel for the prosecution and counsel for the defence;

Having considered:

Appellant lists the grounds of appeal as follows:

1. That the Court of Magistrates as a Court of Criminal Judicature misinterpreted the facts of the case when it declared that a writ of summons was filed within the prescribed period stipulated by Law;
2. That, without prejudice to the above, the Court of Magistrates as a Court of Criminal Judicature did not base itself on an article of law when it stated that the decree was still valid; it actually went against that which was written in the decree;
3. That the appellant followed *ad litteram* the Court decree which, by finding that it was still *in vigore* was clearly misleading;
4. That, without prejudice to the above, even if the appellant were to be found guilty of the charges brought

against him, the punishment inflicted was disproportionate, given the circumstances of the case.

This Court wishes to point out, first of all, that for the purposes of the penal action contemplated in paragraph (z) of article 338 of Chapter 9, it is irrelevant when the writ of summons was filed or whether an extension of the original decree has been granted. And as was held in **II-Pulizija v. Raymond Cutajar**<sup>1</sup>, it is also irrelevant whether a writ of summons has in fact been filed. Once the order contained in said decree was not expressly revoked or otherwise altered, and saving evidence of a reconciliation or of a judicial declaration that the decree in question is null, the order for payment of maintenance remains valid for the purposes of the said paragraph (z) of article 338 of the Criminal Code<sup>2</sup>.

In the aforequoted decision in the names **II-Pulizija v. Raymond Cutajar**, this Court further held that in proceedings brought under the said paragraph (z) of article 338 of the Criminal Code, the prosecution had to prove: (i) that a Court decree was given ordering the payment of maintenance (by producing a legal copy of said decree, as in the present case, or if it was a judgement, by producing a copy of such judgement); and (ii) that such maintenance was not paid within fifteen days from the day on which, according to the decree, it should have been paid. It was up to the accused then to prove, if he wished, on a basis of probability, that the decree had been revoked or altered or declared null by a competent Court, or that there had been a reconciliation.

The first three grievances of the accused are consequently rejected.

Appellant's last grievance relates to the punishment inflicted which he deems excessive.

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<sup>1</sup> Court of Criminal Appeal, 2<sup>nd</sup> September 1999.

<sup>2</sup> See, for instance, the following decisions by the Court of Criminal Appeal: **II-Pulizija v. Mario Mallia**, 8<sup>th</sup> May 1998; **II-Pulizija v. Lawrence Cilia**, 10<sup>th</sup> March 1995; **II-Pulizija v. Carmelo Farrugia**, 23 ta' Jannar 1998.

As has been retained in **II-Pulizija v. Publius Said**<sup>3</sup>, the legislator's primary aim when introducing this contravention some years ago was to bring pressure to bear on persons who would be reluctant to pay maintenance to their dependents and not simply to punish them for not having observed Court decrees which are always to be obeyed and scrupulously observed.

In the present case, appellant and his wife entered into a contract of personal separation on the 13<sup>th</sup> March 2005, that is during the pendency of these proceedings. Moreover, during the last sitting of the 6<sup>th</sup> April 2005 a declaration was entered into the records of the case to the effect that in so far as these proceedings are concerned all arrears of maintenance have been paid. It would thus appear that "the legislator's primary aim" has been achieved and that therefore punishment should be moderated.

For these reasons:

This Court reforms the judgement given by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 12<sup>th</sup> March 2004 in the names **The Police v. John Beirne** and, while confirming it in so far as it found appellant guilty as charged, it revokes it in so far as it condemned appellant to a period of seven days detention and instead condemns appellant to the payment of a fine (*ammenda*) of Lm25.

**< Final Judgement >**

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<sup>3</sup> Court of Criminal Appeal, 9<sup>th</sup> July 2003