MALTA

QORTI TAL-MAGISTRATI (GHAWDEX) BHALA QORTI TA' GUDIKATURA KRIMINALI

MAGISTRAT DR.
CONSUELO-PILAR SCERRI HERRERA

Seduta tat-2 ta' Gunju, 2005

Numru. 602/2004

The Police

(Inspector Maurice Curmi)
vs

AKIKO TARATANI ZEITLIN

The Court having seen that the accused **AKIKO TARATANI ZEITLIN** daughter of Susamu and Heroliv Teratani, born on the 13th October 1953 and residing at 45, Triq il-Blata, Gharb, Gozo, in possession of identity card number 23093A, was arraigned before her and charged with the following:-

1. In Gozo when writing under the pseudonym 'Ykarai Uada' by means of an article entitled 'living in Gozo – Real Estate In Gozo' published on the world wide web, for over the last several months, with the object of

destroying or damaging the reputation of Joseph Cauchi from Gharb, offended him by words, gestures or by any writing or drawing, or in any other manner, and this in violation of article 353 of the Criminal Code.

2. By means of the same article, published or distributed in Malta, by the means in Article 3 of the Press Act, as therein defined, or by means of any broadcast, libelled Joseph Cauchi from Gharb by imputing specific facts to him in such a way as to injure his character and reputation and this in violation of Article 11 of the Press Act.

In case of a guilty verdict the court was requested to order the accused to publish the judgement, or a comprehensive summary thereof in the same language as the original, and with the same prominence, on the same medium, free of charge and this on the same day immediately following that on which judgement is given in terms of Article 20 of the Press Act

The Court heard the defence lawyers state that primarily the writ of summons in question is null and void because it is a citation without a private instance and section 258 of Chapter 9 and section 31 of Chapter 248 specifically lay down that the offences which have been imputed to the accused can only be prosecuted on private instance.

Secondly, the defence is pleading that section 252 of Chapter 9 cannot apply in view of sub section (1) of section 256 of the same Chapter 9.

Thirdly, the defence is pleading the lack of jurisdiction of this court in view of the fact that no proof has been submitted that the incriminating article was either authored or published in a web site hosted in Malta and thus this case does not fall within the competence of the Maltese Courts as per section 5 of Chapter 9.

In the first sitting of the 11th January 2005 the complainant requested an adjournment to be able to file a note of

submissions on the issues raised by the defence during the same sitting of the 11th January 2005.

On the 9th of February 2005 the complainant filed his note of submissions and during the sitting of the 3rd March 2005 the accused declared that she had been notified with such note and made reference to the pleas she raised in the previous sitting above mentioned

Both the accused and the complainant Joseph Cauchi requested the Court to give a preliminary decision on the pleas raised in the first court sitting by the accused.

The Court thus is faced with three preliminary pleas which have to be addressed before it proceeds further to hear evidence on the merits of the case. However, it cannot deal with them in the same order that they were raised because a plea of jurisdiction has to be dealt with first – *in limine litis*, because should it result that this court has no jurisdiction than this same court will not proceed further with the merits.

It transpires from a careful examination of sub sub-section (1) (a) of Article 5 of the Criminal code that a Criminal action may be prosecuted in Malta (in this case Gozo) against any person irrespective of his nationality or domicile, who commits an offence in Malta, or on the sea in any place within the territorial jurisdiction of Malta.

Consequently, in view of this general Article, this Court does not agree with the defence in raising this plea of lack of jurisdiction simply on the basis that that there is no proof that the alleged incriminating article (exhibited in these proceedings by the complainant in his testimony of the 11th January 2005)was authored or published in a web site hosted in Malta.

It results in a satisfactory manner to the Court from the evidence given by the complainant that the two articles he exhibited in these proceedings were downloaded from the internet by his goodself after he was told by a number of

people in Gharb state that somebody had written about him describing his as a fraudulent person.

Thus, the court feels in no unclear terms that the offence in question, and that is the one relating to defamation would be committed not in the country were the web site is hosted and consequently where the article was written but in the place were the person felt defamed with such article.

In this case it appears that Joseph Cauchi was in Gozo surfing the internet and came across these articles which he downloaded and thus the moment this site was located and the article was read in Gozo means that the crime was executed in Gozo and consequently it would follow that the Gozo Courts have jurisdiction and thus this Court in its present jurisdiction is rejecting this preliminary plea raised by the defence.

With regards to the second plea in particular that dealing with the nullity of the writ because the citation has no private instance, the court took note of the submissions presented by the complainant and realized that the complainant did not deal with this plea correctly. The complainant dealt with the matter as if the proceedings were not instituted by the complainant and moreover he did not renounce to such action within the four days prescribed by law. This is not the case under review.

The Court feels that it is opportune at this stage to make reference to Article 373 of Chapter 9 which provides the following:-

" *As regards offences within the jurisdiction of the Court of Magistrates, the prosecution shall lie with the injured party or with the persons mentioned in article 542 on behalf of such party, where proceedings cannot be instituted except on the complaint of the injured party:*

Provided that if the offence in respect of which no prosecution may be instituted except on the complaint of the injured party, is aggravated by public violence or is

accompanied with any other offence affecting public order, or if, in the absence of any such circumstances, the injured party shall fail to institute proceedings and shall not have expressly waived the right to prosecute within four days from the commission of the offence, it shall be lawful for the Executive Police ex officio to institute proceedings in respect of the offence."

In the note of submissions of the complainant reference is made to the proviso of this section 373 mentioned above and believes it to be applicable to the case under examination. He in fact makes reference to the judgement given by the Court of Criminal Appeal in the names **Il-Pulizija vs Anthony Zammit et** decided on the 2/02/1957. This case dealt with proceedings being taken by the police after the complainant failed to institute proceedings himself. This with all respect is not the matter under examination because the complainant took action so much so that he even confirmed on oath his kwerela.

This Court is of the opinion that the proviso of section 373 has no application in this regard,not only because the complainant never renounced to his right of action but also in view of what was decided in the judgement given by the Constitutional Court in the names **Il-Pulizija vs l-Onorevoli Dr. Joseph Brincat u Marie Louise Coleiro** decided on the 5th of October 1992. This later judgement held that in those cases which deal with defamation this proviso should have no applicability in that the four day period cannot be used in cases of defamation.

The legislator intended that these cases as indicated in section 373 can be prosecuted by the complainant, so that the same complainant would be able to file an appeal should the case be decided against him and consequently his appeal would be independent from that made by the Attorney General on behalf of the Executive Police in those cases which had the police prosecuting. In this case unlike what was contested in the case **Police vs Rose Mary Pengally** decided by the Court of Criminal Appeal on the 29th April 1009 the accused is contesting the

legality or otherwise of such proceedings being prosecuted by the Executive Police In this later judgement the court held:-

*"Il-prosekuzzjoni kienet qed titmexxa mill-Pulizija Esekuttiva, kif jidher kemm mill-komparixxi (Tahrika ta' kawza tal-Pulizija u mhux Tahrika ta' kawza privata'kif ukoll mill-'okkio' tal-kawza.Presumilment il-pulizija kienet qed tagixxi skond il-proviso tal-artikolu 373 tal-kodici kriminali. L-imputata ma kkontestatx quddiem il-Qorti Inferjuri r-ritwalita tal-proceduri hekk imexxija mill-Pulizija Esekutiva. (*ara f'dan ir-rigward ukoll **Il-Pulizija vs Pietru Cutajar** deciza mill-Qorti tal-Appelli Kriminali nhar 12 ta Settembru 1996)."

In a similar court case decided by the same Court of Crminal Appeal in the names **Il-Pulizija vs Joseph Sciberras u Maria Lourdes Sciberras** decided on the 20th January 1997, the court held the following:-

"*Il-Qorti thossha fid-dover tirrimarka li ma tistax tifhem kif f'din il-kawza inghatat sentenza fl-ismijiet il-Pulizija (Spettur Simon Bonaci) vs Joseph Sciberras u Maria Lourdes Sciberras". Din kienet kawza ta' libel, fuq il-kwerela tal-parti leza, u kif, jidher mill-komparixxi, inbdiet b'tahrika ta' kawza privata. Skond il-ligi – Artikolu 31 tal-kap 248 u Artikoli 373 u 374 tal-kodici Kriminali – il-prosekuzzjoni kellha titmexxa kif effettivament jidher li tmexxiet, mill-kwerelant b'mod li l-pulizija Esekuttiva ma kienitx parti fil-kawza."* (Vide ukoll **Il-Pulizija vs Philippa Farrugia** decisa mill-Qorti tal-Appelli Kriminali deciza nhar 6 ta' Dicembru 1995.)

Another judgement which reflects on the merits of this case is that in the names **Il-Pulizija vs Raymond Sultana** decided by the Court of Criminal Appeal on the 11th July 1997 which held the following:-

"Qabel xejn, din il-Qorti thossha fid-dover li, ghal darb'ohra tigbed l-attensjoni ta' kull minn hu koncernat, li permess li din il-kawza inbdiet b'tahrika, ossia citazzjoni, ta' kawza privata (u dan peress li r-reat ipotizzat hu ta'

kompetenza original ital-Qorti tal-Magistrati bhala Qorti ta' Gudikatura Kriminali u li ghalih hi mehtiega l-kwerela tal-parti leza, u ma kienux jikkonkorru c-cirkostanzi imsemmija fil-proviso tal-Artikolu 373 tal-Kap 9), il-prosekuzzjoni f'din il-kawza kellha titmexxa mill-parti leza (Artikoli 4(2), 373, 374 tal-kap 9)u s-sentenza tinghata fl-ismijiet tal-partijiet, cioe "Alfred Zammit vs Raymond Sultana."

In these circumstances in view of the above it is the opinion of this court that this case should have been instituted by the complainant Joseph Cauchi as complainant against the present accused, and consequently considers the adopted procedure as incorrect and therefore upholds the plea of the defence.

The Court in view of what was decided above, does not feel that it should enter into the merits of the third plea raised by the defence since it considers these proceedings null and void and thus abstains from taking further cognizance of this case and declares that the names of this case should not have been 'The Police vs Akiko Taratani Zeitlin' but 'Joseph Cauchi vs Akiko Taratni Zeitlin'.

< Sentenza Finali >

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