



MALTA

CRIMINAL COURT

**HON. MR. JUSTICE
JOSEPH GALEA DEBONO**

Sitting of the 16 th February, 2006

Number 3/2004

The Republic of Malta

Vs

Omissis

And

Susan Jayne Molyneaux

The Court,

Having seen the bill of indictment no. 03/2004 against the accused omissis and Susan Jayne Molyneaux wherein they were charged with:

1) After the Attorney General premised in the First Count of the Bill of Indictment that from investigations conducted by the Malta Police, in the light of a tip-off to the effect that a couple arriving on a transit flight from Spain were planning to bring in drugs some time in August, two thousand and three, there began to emerge a clear picture in which it resulted that indeed, during the period of a number of weeks prior to the 11th August, 2003,

omissis and Susan Jayne Molyneaux had conspired and agreed between them, together with another unknown person abroad who had been exporting drugs to Malta every month for the last fifteen years, to involve themselves in dealing in, and trafficking in drugs.

That not only had they agreed, but they had also concurred on the means to be employed in the realization of said conspiracy. The means to be employed were quite simple: omissis had to call in an apartment in a complex in Spain, take hold of a luggage in which were concealed drugs, destined for someone who lived in Saint Julians, get paid, go back to Spain and deliver the money to said unknown person. For all his involvement, omissis was to be paid a twenty thousand Sterling commission in Spain on August seventeenth, and two thousand Maltese Liri in commission by the Maltese buyer and some spending money. On her part, Susan Jayne Molyneaux, omissis's girlfriend, had to accompany him to Malta so that he would look less suspicious, although she did not specifically know that drugs were to be imported illegally into Malta, but merely thought and was convinced that something against the law was to be imported into Malta (such as money in order to evade tax on currency).

That by committing the above mentioned acts with criminal intent, omissis and Susan Jayne Molyneaux rendered themselves guilty of conspiracy to trafficking in dangerous drugs in breach of the provisions of the Dangerous Drugs Ordinance and the Medical and Kindred Professions Ordinance.

Wherefore, the Attorney General, in his aforesaid capacity, accused omissis and Susan Jayne Molyneaux of being guilty of having, with another one or more persons in Malta, and outside Malta, conspired for the purpose of committing an offence in violation of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), and the Medical and Kindred Professions Ordinance (Chapter 31), and specifically of importing and dealing in any manner in cocaine and Ecstasy Pills, and of

having promoted, constituted, organized and financed such conspiracy.

Demanded that the accused be proceeded against according to law, and that each one of them be sentenced to the punishment of imprisonment for life and to a fine of not less than one thousand Maltese Liri (Lm1000), and of not more than fifty thousand Maltese Liri (Lm50,000), and the forfeiture in favour of the Government of the entire moneys, immovable and movable property in which the offence took place as described in the bill of indictment, even if such moneys and property would have passed into the hands of third parties, and even if the said moneys, movable property or immovable property are situated in any place outside Malta, as is stipulated and laid down in sections 9, 10(1), 12, 14(1)(5), 15A, 20, 22(1)(a)(f)(1A)(1B)(2)(a)(l)(3A)(c)(d), 22(f) and 26(1)(2) of the Dangerous Drugs Ordinance (Chap.101), together with sections 120A(2)(a)(l), 2(A)(2B) and 121A(1)(2) of Chapter 31, and in sections 17(b), 20, 22, 23 and 533 of the Criminal Code, including the issue of a Removal Order with respect to accused in terms of sections 5(2)(b) and 15 of the Immigration Act, or to any other punishment applicable according to law to the declaration of guilty of the accused.

2) And after the Attorney General premised in the Second Count of the Bill of Indictment that on Monday, the eleventh of August of the year two thousand and three, omissis and Susan Jayne Molyneaux arrived in Malta from Spain. With him, that is to say omissis, and well hidden in a suitcase he was carrying, there were two packets of substance, having the appearance of gift-wrapped packages, later analysed to be cocaine, with a net weight of over three kilogrammes and a high percentage of purity.

That an unknown person in Spain had himself hidden the cocaine in that manner while still in Spain. On the day in question, and during the last preceding days, omissis and Susan Jayne Molyneaux had meant to import and bring into Malta, that amount of cocaine in order that it be

passed on to third persons in Malta with the aim of selling and dealing in it locally.

That cocaine is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance. Neither of omissis and Susan Jayne Molyneaux was in possession of any valid and subsisting import authorization granted in pursuance of said law.

That by committing the above mentioned acts with criminal intent, omissis and Susan Jayne Molyneaux rendered themselves guilty of the importation of a dangerous drug into Malta.

Wherefore, the Attorney General, in his aforesaid capacity, accused each of omissis and Susan Jayne Molyneaux of being guilty of meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drug Ordinance, when neither was in possession of any valid and subsisting import authorization granted in pursuance of said law.

Demanded that each of the accused be proceeded against according to law, and that he and she be sentenced to the punishment of imprisonment for life and to a fine of not less than one thousand Maltese Liri (Lm1000) , and of not more than fifty thousand Maltese Liri (Lm50,000), and the forfeiture in favour of the Government of the entire moneys, immovable and movable property in which the offence took place as described in the bill of indictment, even if such moneys and property would have passed into the hands of third parties, and even if the said moneys, movable property or immovable property are situated in any place outside Malta, as is stipulated and laid down in sections 2(1), 4, 9, 10, 12, 14, 15A, 20, 22(1)(a)(1B)(2)(a)(i)(3A)(d), 22E and 26(1)(2) of the Dangerous Drugs Ordinance (Chap. 101) and in sections 23, 17(b) and 533 of the Criminal Code, including the issue of a Removal Order with respect to

accused in terms of sections 5(2)(b) and 15 of the Immigration Act, or to any other punishment applicable according to law to the declaration of guilty of the accused.

3) And after having premised in the third Count of the Bill of Indictment that on Monday, the eleventh of August of the year two thousand and three, omissis and Susan Jayne Molyneaux arrived in Malta from Spain. With him, that is to say omissis, and well hidden in a suitcase he was carrying, there were two packets of substance, having the appearance of gift-wrapped packages, later analysed to be the designer drug Ecstasy Pills, with a net amount of seven thousand and one hundred pills.

That an unknown person in Spain had himself hidden the Ecstasy Pills in that manner while still in Spain. On the day in question, and during the last preceding days, omissis and Susan Jayne Molyneaux had meant to import and bring into Malta, that amount of Ecstasy Pills in order that they be passed on to third persons in Malta with the aim of selling and dealing them locally.

That Ecstasy Pills, or rather the designer drug known as MDMA (methylenedioxymethamphetamine), are a dangerous drug restricted and controlled under the provisions of Part A, Third Schedule, of the Medical and Kindred Professions Ordinance. Neither of omissis and Susan Jayne Molyneaux was in possession of any valid and subsisting import authorization granted in pursuance of said law.

That by committing the above mentioned acts with criminal intent, omissis and Susan Jayne Molyneaux rendered themselves guilty of the importation of a dangerous drug into Malta.

Wherefore, the Attorney General, in his aforesaid capacity, accused each of omissis and Susan Jayne Molyneaux of being guilty of meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (Ecstasy), being a drug restricted and

controlled under the provisions of Part A, Third Schedule, of the Medical and Kindred Professions Ordinance, when neither was in possession of any valid and subsisting import authorization granted in pursuance of said law.

Demanded that each of the accused be proceeded against according to law, and that he and she be sentenced to the punishment of imprisonment for life and to a fine of not less than one thousand Maltese Liri (Lm1000), and of not more than fifty thousand Maltese Liri (Lm50,000), and the forfeiture in favour of the Government of the entire moneys, immovable and movable property in which the offence took place as described in the bill of indictment, even if such moneys and property would have passed into the hands of third parties, and even if the said moneys, movable property or immovable property are situated in any place outside Malta, as is stipulated and laid down in sections 2(1), 120A(2)(a)(I), (2A)(2B), and 121A(1)(2) of Chapter 31, and in sections 17(h), 20, 22, 23 and 533 of the Criminal Code, including the issue of a Removal Order with respect to accused in terms of sections 5(2)(b) and 15 of the Immigration Act, or to any other punishment applicable according to law to the declaration of guilty of the accused.

4) And after having premised in the Fourth Count of the Bill of Indictment that having, on the 11th August, 2003, and on the days preceding that date, imported into Malta the dangerous drug cocaine in breach of the provisions of Chapter 101 of the Laws of Malta, as described under the second count, omissis was immediately shadowed and monitored by the Malta Police, even because the latter had every reasonable suspicion that he was not acting alone in the importation and trafficking of drugs.

Thus, as soon as omissis entered the arrivals building at the Malta International Airport, he checked in at the Immigration desk on his own and, thereafter, his luggage was opened with drugs being found in a suitcase which omissis told police was his.

Blocks of cocaine (three kilos in weight in all) were found in the luggage of omissis.

That it became obvious, now, that omissis was in possession and in control of the dangerous substance cocaine under such circumstances denoting that such possession and control was not for his exclusive use, even because it resulted that this drug was destined to be handed over for dealing to someone in Saint Julians.

That cocaine is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance. Omissis was not in possession of any valid and subsisting import or possession authorization granted in pursuance of said law.

That by committing the above mentioned acts with criminal intent, omissis rendered himself guilty of the offence of possession of a dangerous drug (cocaine) with intent to supply.

Wherefore, the Attorney General, in his aforesaid capacity, accused omissis of being guilty of knowingly having been in possession of a dangerous drug (cocaine) specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance, when not in possession of any valid and subsisting import or possession authorization granted in pursuance of said law; so, however, that such offence was under such circumstances that such possession was not for the exclusive use of the offender.

Demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than one thousand Maltese Liri (Lm1000), and of not more than fifty thousand Maltese Liri (Lm50,000), and the forfeiture in favour of the Government of the entire moneys, immovable and movable property in which the offence took place as described in the bill of indictment, even if such moneys and property would have passed into

the hands of third parties, and even if the said moneys, movable property or immovable property are situated in any place outside Malta, as is stipulated and laid down in sections 2(1), 4, 9, 10, 12, 14, 15A, 20 22(1)(a)(1B)(2)(a)(i)(3A)(d), 22E and 26(1)(2) of the Dangerous Drugs Ordinance (Chap. 101) and Regulation 8 of the 1939 Regulations for the Internal Control of Dangerous Drugs (Legal Notice 292/39), and in sections 20, 22, 23, 17(b) and 533 of the Criminal Code, including the issue of a Removal Order with respect to accused in terms of sections 5(2)(b) and 15 of the Immigration Act, or to any other punishment applicable according to law to the declaration of guilty of the accused.

5) That after having premised in the Fifth count of the Bill of Indictment that always as a result of the stopping and search effected by the Police on the 11th August, 2003, at the Malta International Airport and on the person and effects of omissis, the latter was found to be knowingly in possession of some seven thousand and one hundred Ecstasy Pills. Again, as with regard to cocaine, these Pills were destined to be handed over to someone in Saint Julians immediately upon his existing the International Airport.

That ecstasy Pills, or rather the designer drug known as MDMA (methylenedioxymethamphetamine), are a dangerous drug restricted and controlled under the provisions of Part A, Third Schedule, of the Medical and Kindred Professions Ordinance. Omissis was in possession of any valid and subsisting import authorization granted in pursuance of said law.

That by committing the above mentioned acts with criminal intent, omissis rendered himself guilty of the offence of possession of a dangerous drug (Ecstasy Pills), with intent to supply.

Wherefore, the Attorney General, in his aforesaid capacity, accused omissis of being guilty of knowingly having been in possession of a dangerous drug (Ecstasy Pills) being a drug restricted and controlled under the

provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance, when he was not in possession of any valid and subsisting import or in possession of an authorization granted in pursuance of said law; so, however, that such offence was under such circumstances that such possession was not for the exclusive use of the offender.

Demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than one thousand Maltese Liri (Lm1000), and of not more than fifty thousand Maltese Liri (Lm50,000), and the forfeiture in favour of the Government of the entire moneys, immovable and movable property in which the offence took place as described in the bill of indictment, even if such moneys and property would have passed into the hands of third parties, and even if the said moneys, movable property or immovable property are situated in any place outside Malta, as is stipulated and laid down in sections 120A(2)(a)(I), (2A)(2B), and 121A(1)(2), and 120A(1)(f)(2)(a)(I) of the Medical and Kindred Professions Ordinance, Chapter 31, and in Legal Notices 22/85 (regulation 10(2)), 70/88 and 183/99, as well as in sections 22A, 22B, 22E, 27, 28, and 30 of the Dangerous Drug Ordinance, Chapter 101, and in sections 17(b), 20, 22, 23 and 533 of the Criminal Code, including the issue of a Removal Order with respect to accused in terms of sections 5(2)(b) and 15 of the Immigration Act, or to any other punishment applicable according to law to the declaration of guilty of the accused.

Having seen and examined all the record of the compilation of evidence against the accused;

Having seen the preliminary pleas filed by the accused on the 2nd. April, 2004;

Having seen this Court's decision of the 27th. April, 2004, whereby, in terms of sections 46 (3) of the Constitution of Malta and Section 4 (3) of Chapter 319, it referred the

issue raised in the fourth and fifth pleas of accused, in so far as they can be construed to imply that section 26 (2) of Chapter 101 of the Laws of Malta is in breach of section 39 of the Constitution of Malta and Article 6 of the European Convention of Human Rights, to the First Hall of the Civil Court, to be determined according to Law.

Having seen the decision of the Civil Court, First Hall dated 12th. October, 2004;

Having seen the judgment of the Constitutional Court dated 1st. April, 2005, declaring that, in the instant case, the fundamental right to a fair trial, as guaranteed by section 39 (1) of the Constitution and by Article 6 (1) of the European Convention, is likely to be contravened in relation to accused by the application of subsection (2) of Section 26 of the Dangerous Drugs Ordinance (Chap.101) as at present in force and, consequently sent back the record of the proceedings to this Court with a direction that this Court and any other Court of Criminal Justice which may subsequently deal with the case, is to ignore the words "*of any other law*" in subsection (2) of subsection 26, if called upon to apply or interpret that subsection and ordered that a copy of its judgment be forthwith transmitted by the Registrar to the Speaker of the House of Representatives in accordance with section 242 of the Code of Organisation and Civil Procedure (Chap.12)

Having seen the Note filed by the Attorney General on the 13th. February, 2006 whereby, in terms of article 433 (2) and 600 (1) of the Criminal Code, he withdrew the Bill of Indictment in this case.

Having seen that according to section 600 (1) of the Criminal Code, it is lawful for the Attorney General to withdraw an indictment which he may have filed, provided that this is done before the accused pleads to the general issue of guilty or not guilty and, in any such case, all further proceedings shall be stayed and the accused shall be discharged.

Informal Copy of Judgement

Now therefore, orders that all further proceedings against accused Susan Jayne Molyneaux be stayed and that she be discharged.

< Final Judgement >

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