



COURT OF CRIMINAL APPEAL

**HON. MR. JUSTICE
DAVID SCICLUNA**

Sitting of the 1 st January, 1900

Criminal Appeal Number. 23/2005

The Police

v.

Peter O'Haka

The Court,

Having seen the charges brought against the appellant Peter O'Haka before the Court of Magistrates (Malta) as a Court of Criminal Judicature that:

- a) On the 7th March 2004 at St. George's Road St. Julian's corner with St. Andrew's Road St. Julian's at about 2.30 p.m. committed an offence against decency or morals in a public place or in a place exposed to the public;

b) On the 14th June 2003 at about 14.30 hrs. at St. Julian's Police Station laid before the Executive Police an information regarding an offence knowing that such offence has not been committed;

c) On the 14th June 2003 and months afterwards at the Electoral Office (Identity Cards Section) at Valletta, made a false oath before the authorised officer by Law to administer oaths, submitted such oath to obtain a public document (identity card);

d) Whilst knowingly he was in possession of two identity cards, failed to inform without delay any authorised officer;

e) During the past months with intent deceived, contravened provisions of Section 11 and subsection 1 of section 12 of Chapter 258 of The Laws of Malta, made false statements to the authorised officer of the Identity Cards Act knowing the same were false as per section 14 (2) (a), (b) of Chapter 258 of the Laws of Malta;

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 26th January 2005, whereby the appellant Peter O'Haka was not found guilty of the second charge and acquitted therefrom but was found guilty of the first, third, fourth and fifth charges and was conditionally discharged in terms of section 22 of Chapter 446 for a period of two years in respect of the third, fourth and fifth charges and was condemned for a term of one (1) month imprisonment and to a fine (multa) of one hundred and sixty seven Maltese liri (Lm167) in respect of the first charge, the fine (multa) having to be paid within two (2) months from the day of the judgement and if any part of it remains unpaid, the balance should be converted into one day imprisonment for every five Maltese liri (Lm5) which remain still unpaid;

Having seen the application of appeal filed by appellant Peter O'Haka on 1st. February 2005, wherein he requested this Court to reform the judgement delivered by the Court of Magistrates dated 26th January 2005, in the

sense that whilst this Court confirms the acquittal of the applicant for the second charge, acquits him also from the third, fourth and fifth charges, and in all cases reduces the punishment imposed by the first Court and this subject to all such provisions as this Court may deem necessary;

Having seen the records of the case and the documents exhibited;

Having heard submissions made by the prosecution and the defence;

Having considered:

That appellant's grievances relate to the finding of guilt by the First Court in respect of the third, fourth and fifth charges brought against him and these necessitate a reappraisal of the facts of the case. In carrying out such reappraisal, this Court noted that while the First Court clearly found appellant guilty of the third charge - which states that appellant made a false oath in breach of section 108(1)(2) of the Criminal Code, and this "on the 14th June 2003 and months afterwards" - in its judgement that Court refers to the fact that an affidavit was made by appellant on the 5th February 2002. Indeed the evidence tendered by W.P.C. 153 Dorothy Attard, the police officer who is authorised to administer oaths at the Identity Cards office, specifically states that appellant took only one oath with regard to stolen or lost I.D. cards, and she in fact exhibited a copy of this affidavit dated 5th February 2002.

Consequently appellant could not have been found guilty as charged in respect of the third charge which refers to a date and period in time which postdates the oath taken by more than sixteen months.

With regards to the fifth charge, the First Court clearly linked the finding of guilt in breach of section 14(2)(b) of Chapter 258 of the Laws of Malta to the occasion when appellant made a false affidavit. However, this charge refers to what appellant was alleged to have done "during the past months". Seeing that the affidavit was made over

two years before he was actually charged, clearly the charge as brought against him cannot stand and he should therefore have been acquitted therefrom.

In respect of the fourth charge, the First Court concluded that appellant was guilty of this charge as it believed that he was aware that he was holding more than one identity card. It also stated in its judgement that it was convinced that "this was not a case of simply forgetting where one has put one's ID card". That Court reached this conclusion after considering all the evidence submitted before it, after having had the opportunity to regard "the demeanour, conduct and character of the witness[es], to the probability, consistency and other features of [their] statements[s], to the corroboration which may be forthcoming from other testimony, and to all the circumstances of the case" (section 637 of Chapter 9). And this Court, having examined the evidence anew, finds no valid reason to disturb the conclusion which the First Court reached and therefore confirms the finding of guilt in respect of the fourth charge, that is to say that appellant is guilty of being in breach of subsection (3) of section 12 of Chapter 258 of the Laws of Malta. In this respect the punishment applicable is that as provided for in subsection (1) of section 14 of said Chapter 258, that is to say a fine (*multa*), in lieu of which a conditional discharge in terms of section 22 of Chapter 446 cannot be granted¹.

Another grievance put forward by appellant is in respect of the punishment meted out to him of imprisonment and a fine in respect of the first charge. He says that since the incidents occurred he has had a child from his fiancée` and is now expecting a second child, that now more than ever he needs to work to be able to sustain a family and that the punishment imposed constitutes an excessive hardship.

This Court sympathises with appellant's family and is aware that the meting out of punishments such as those

¹ It is to be noted that the First Court had correctly applied section 22 of Chapter 446 in view of the fact that it had found appellant guilty also of the third and fifth charges in respect of which the prescribed punishment is that of imprisonment.

in question could create difficulties for them. However, this is all the result of appellant's irresponsible behaviour and the reasons mentioned by him cannot be taken into consideration for the purpose of alleviating punishment. Furthermore, it must be pointed out, these proceedings initiated against appellant on the 8th March 2004 did not even deter him from repeating the same type of offence on the 8th January 2005 as evidenced by his updated conviction sheet wherefrom it results that on the 11th February 2005 he was convicted for having on that day at St. Augustine Street, St. Julian's within the area of Bay Street Complex at about 20.15 hrs. committed an offence against decency or morals in a public place or in a place exposed to the public.

Consequently this Court finds no reason to uphold appellant's grievance regarding the punishment inflicted.

For these reasons:

Decides by reforming the judgement delivered by the Court of Magistrates as a Court of Criminal Judicature on the 26th January 2005 in the names **The Police v. Peter O'Haka** by revoking it insofar as it found appellant guilty of the third and fifth charges and insofar as it discharged him conditionally for a period of two years in terms of section 22 of Chapter 446 of the Laws of Malta, and instead finds him not guilty of the third and fifth charges and acquits him therefrom, confirms said judgement insofar as it found appellant guilty of the fourth charge, that is to say that while he was in possession of more than one identity card issued in respect of him failed to produce such cards to the authorised officer and surrender to him such one or more of the cards as that officer shall require, and after having seen subsection (3) of section 12 and subsection (1) of section 14 of Chapter 258 and section 17(f) of Chapter 9 of the Laws of Malta condemns appellant to the payment of a further fine (*multa*) of fifty Maltese liri (Lm50), further confirms said judgement insofar as it found appellant guilty of the first charge, that is to say that on the 7th March 2004 at St. George's Road, St. Julian's corner with St. Andrew's Road St. Julian's at

about 2.30 p.m. he committed an offence against decency or public morals in a public place or in a place exposed to the public, and condemned him to imprisonment for a period of one month and to the payment of a fine (*multa*) of one hundred and sixty seven Maltese liri (Lm167). The total fine (*multa*) of Lm217 is to be paid within two months from today, and if any part of it remains unpaid, the balance is to be converted into one day's imprisonment for every five Maltese liri (Lm5) remaining unpaid. Finally, in view of the fact that it would appear that appellant keeps repeating the same offences, this Court strongly recommends that the Director of the Corradino Correctional Facility immediately provides him with the care of a psychologist and/or a psychiatrist.

< Final Judgement >

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