



MALTA

**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL INQUIRY**

**MAGISTRATE DR.
JOSEPH A. APAP BOLOGNA**

Sitting of the 4th August, 2006

Number. 206/2006

COURT OF MAGISTRATES (MALTA)
As a Court of Criminal Inquiry
(In this case as a Court of Committal)

Sitting presided over by Magistrate
Dr Joseph Apap Bologna BA LL D

The Police
(Inspector Noel Cutajar)
(Inspector Raymond Aquilina)

VS

Lewis Muscat

Today the 04th of August 2006

THE COURT

Having seen the “Authority to Proceed” issued by the Minister of Justice and Home Affairs on the 9th of March 2006 which is to be found attached to these acts on pages 77 and 82 and from which order it appears that the Government of the United States of America is requesting the extradition of Lewis Muscat, hereafter to be known as “The person” as described in the said order and who is accused in this country with the crimes described therein.

Having seen the schedule marked “X” attached to the above mentioned document and which is to be found on page 78 et seq ibid.

Having seen the warrant of arrest and issued by this Court on the 1st of March 2006 (Page 8 et seq ibid).

Having heard, under oath, Inspectors Raymond Aquilina and Noel Cutajar who brought in front of this Court “the person” and requested the same Court that it proceeds in accordance with Chapter 276 of the Laws of Malta.

Having seen the examination of the person (page 3 ibid);

Having seen all the documents and acts exhibited during these proceedings;

Having heard the witnesses produced as well as seen its previous decrees;

Having heard the parties;

Having considered

That, as can be seen from the record of proceedings in regard to the sitting held on the 4th of April 2006 (Page 26 and 127 ibid), learned counsel for the defence, on behalf of the person stated that his line of defence in these proceedings would include the following:

1. The alleged offences are not extraditable according to law for the reasons stipulated therein.

That in this regard, it is to be pointed out that two other lines of defence were proposed by the person. These however have already been decided by this Court as can be seen from the decrees given on the 10th of May 2006 (Page 232 to page 234 of the acts).

That in regard to the remaining plea, as stated above, the person is alleging that the offences in question are not extraditable.

Having considered

That from the legal point of view the following is to be stated:

a) Article 8 of Chapter 276 of the Laws of Malta states that an offence is to be considered as extraditable if it is one for which a person can be extradited to the requesting state in accordance with the arrangement between this state and the requested state and if it results that in accordance with the law of the requesting state, the offence or offences are subject to imprisonment for a period of twelve months or more. In regard to the case in question, reference is to be made to Government Notice 403/35 wherein Article 3 specifies and lists the offences for which extradition is to be allowed to take place on a reciprocal basis, between Malta and the United States of America.

b) Moreover, extradition is also to be granted for participation in any of the crimes listed in the above mentioned Article 3 "... provided that such participation be punishable by the laws of both the Contracting Parties".

c) Article 8 of Chapter 276 of the Laws of Malta furthermore says that the act or omission that constitute the offence or offences under examination must also amount to an offence or offences if committed in Malta. In this regard it is stated in Halsbury's Laws of England. Second edition, page 527 that "it is to be observed that extradition is claimed on a state of facts and not upon the name of the crime". In fact article 8 (2) of the same Law states specifically that in determining whether an offence falls within the requirements of subarticle 1(a) and

(b), the description of the offence shall not be regarded as material if the offences under the Law of Malta and that of the requesting state are substantially of the same nature.

Having considered

That after reference was made to the legal points relevant to the plea under examination, this Court examined the evidence produced to see whether it results from the same evidence, that the person is being charged with an offence of offences that are extraditable in accordance with the law as above stated.

In regard to the charges against the person, these in short refer to violent indecent assault on the person of a minor under the age of eleven (vide the certificate of birth attached to the acts on page 110) and which occurred during the period of the 23rd June 2003 and the 28th November 2005 as described in detail in the above mentioned “Schedule X” (Pages 78 to 81 of the acts). In regard to the evidence produced to substantiate the request for the extradition of the person, this consists namely of an affidavit as well as various “attachments”, (Vide page 14 et seq ibid), giving a detailed outline of the investigations carried out in the Requesting State in regard of the case in question. On page 71 one also finds “attachment 4” and “attachment 5” consisting of a video containing an interview made to the alleged victim as well as two compact discettes. In regard to these documents, this Court nominated an expert (vide page 75 ibid) so that these can be viewed by this Court as well as for the necessary downloading. In this regard, reference is to be made to the record of the proceeding on page 119 et seq ibid as well as to what was stated and exhibited by this expert on page 122 and page 125 of the acts.

Further evidence was produced, as can be seen on pages 95 to page 110 of the acts. In this regard, this Court examined the evidence mentioned, only in part in regard to the above mentioned video cassette, in order to determine whether the offence, or offences, under examination would amount to an offence, or offences,

under the Laws of Malta and this in accordance with Article 8 of Chapter 276 of the Laws of Malta as referred to above. In this regard, this Court has to refer to the following Articles of the Criminal Code:

- a) Article 198 which refers to rape, as therein defined, together with Article 201 (a) which states that rape, as well as any other violent indecent assault, are always to be deemed violent if committed on a minor who is under the age of twelve years.
- b) Article 203 (1) which refers to corruption of minors, together with the proviso (a), which refers to the aggravating circumstances when this crime is committed on the person or in the presence of a minor under the age of twelve years or by violence.
- c) Article 207 which refers to violent indecent assault and is subject to the punishment of three months up to one year imprisonment.
- d) Article 18 which stipulates the punishment to be awarded in continuous offences.

From the above it is clear and evident that:

- i) If the person committed, in Malta, the offence, or offences, with which he is being charged in the requesting state, he would face charges vis-a-vis and under the above cited Articles (Vide also Article 15 (a) of Chapter 276 of the Laws of Malta).
- ii) The offence, or offences, with which the person is being charged in the requesting state correspond in substance with the above cited Articles and this in accordance with all the provisions of Article 8 (“substantially of the same nature”).

Therefore this Court is convinced, both legally and morally that the plea under examination cannot be adhered to and accepted by the same Court.

Having considered

That as results from the record of these proceedings, the person is in no way contesting what is commonly known as “a prima facie case to answer”. This in fact refers to Article 15 (3)(a) of the same law and in a few words

means that this Court has the duty to examine all the evidence produced in front of it and to see that the same evidence is sufficient to justify and warrant that the person whose extradition is being sought can be put on trial for the offence and offences under examination and, without in any way deciding the merits of the case, come to the conclusion that a reasonable jury, properly directed, could accept it (the evidence) and find a verdict of guilty. In other words, the evidence must be such “.. as to cause him to form the opinion that the accused is probably guilty (“ Regina vs Latta”..... as quoted in the “The Police vs Anthony Cassar” decided on the 23rd of October 1978).

That this Court complied with the duty imposed on it by the law and analysed the same evidence mentioned above from this aspect and it arrived at the clear and serene conclusion that the person has a clear case to answer in the Court of the Requesting State.

In view of the above and for the above reasons, the Court orders that the Person, Lewis Muscat, be kept in custody in order to await his return and his extradition to the United States of America. Moreover, the Court having seen Article 16 of Chapter 276 of the Laws of Malta is informing the Person that he cannot be extradited before the lapse of fifteen (15) days from the date of this Order and that he can appeal from the decision to the Court of Criminal Appeal. The Court is also informing The Person that if he feels and thinks that any of the provisions of Article 10 (1) and (2) have been contravened or that any provision of the Constitution of Malta or of the European Convention Act has been, or is likely to be contravened, in violation to his Person, as to justify a reversal, annulment or modification of this Order of Committal, he has the right to apply for redress in accordance with Article 41 of the Constitution of Malta or of the European Constitution Act as the case may be.

Informal Copy of Judgement

< Final Judgement >

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