MALTA

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

MAGISTRAT DR.
JACQUELINE PADOVANI

Seduta tas-26 ta' April, 2005

Numru. 3/2005

PULIZIJA
SPETTUR ANGELO GAFA’
VS
OMISSIS

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat Omissis, ta’ omissis sena, bin omissis, imwieled omissis, residenti fi omissis, detentur tal-karta tal-identita’ bin-numru omissis, u akkuzat talli f’dawn il-Gzejjer, f’diversi xhur fis-sena 2004 u fis-snin ta’ qabel, b’diversi atti maghmulin fi zmenijiet differenti li jiksru l-istess dispozizzjoni tal-Ligi, u li gew maghmula b’rizoluzzjoni wahda, fic-Centru tas-Sahha tal-Furjana, fil-kapacita’ tieghu ta’ ufficjal jew impjegat f’amministrazzjoni pubblika, jew impjegat tal-Gvern jew mal-Gvern, sew jekk kellu jew ma kellux jedd li jesigi flus jew hwejjeg ohra bhala salarju tad-dmirijiet tieghu, jew akkont tal-Gvern jew ta’ stabbiliment pubbliku, taht il-libsa tal-kariga tieghu, esiga dak li l-ligi ma tippermettix, jew

izjed minn dak li tippermetti l-ligi, jew qabel iz-zmien li jmiss skond il-ligi:

Kif ukoll talli fl-istess perjodu u cirkostanzi, b’mezzi kontra l-ligi, jew billi ghamel uzu ta’ ismijiet foloz, jew ta’ kwalifiki foloz, jew billi nqeda b’qerq iehor, inganna jew billi wera haga b’ohra sabiex iggieghel titwemmen l-ezistenza ta’ intraprizi foloz, jew ta’ hila, setgha fuq haddiehor, jew ta’ krediti immaginarji, jew sabiex iqanqal tama jew biza’ dwar xi grajja kimerika, ghamel qliegh ta’ mitt Lira Maltin (Lm100) ghad-dannu tal-pazjenti Victor Dimech minn Santa Venera, Marlene Licari mill-Furjana, Simon Spiteri mill-Imsida u Joseph Schembri miz-Zurrieq.

Il-Qorti giet mitluba sabiex f’kaz ta’ htija, barra li tinfliggi l-pieni stabbiliti mill-ligi, tapplika l-provvedimenti ta’ l-Artiklu 119 tal-Kap 9 tal-Ligijiet ta’ Malta.

Semghet ix-xhieda bil-gurament.

Rat id-dokumenti esebiti, l-atti kollha tal-kaz.

Rat il-kunsens tal-Avukat Generali u tal-imputat sabiex il-kaz jigi trattat bi procedura sommarja.

Semghet l-ammissjoni tal-imputat.

Semghet it-trattazzjoni tal-partijiet.

Ikkunsidrat:-

Illi fuq l-istess ammissjoni tieghu, il-Qorti ssib lill-imputat hati skond l-akkuza. Illi ghar-rigward ta’ din il-piena, il-Qorti rat u ezaminat it-trattazzjoni dettaljata tal-partijiet.

Illi l-Ufficjal Prosekutur hu tal-fehma illi sikkome l-imputat huwa “public officer”, u in vista tal-akkuzi li ghalihom ammetta, l-applikabilita’ tal-Artiklu 119 tal-Kap 9, u cioe’ l-interdizzjoni perpetwa fuq l-imputat hija mandatorja.

Id-Difiza irribadiet illi l-Artiklu 25 tal-Kap 446 jaghti lil din il-Qorti l-fakulta’ ta’ piena ta’ “conditional discharge”,

“community service order” jew “combination order” fejn l-interdizzjoni ma tigix reza applikabbli ghall-kaz, u dana dejjem skond il-Ligi.

Ikkunsidrat:-

Illi l-Artiklu ndikat huwa l-Artiklu 25 tal-Kap 446 li jipprovdi:

“ (1) Subject as hereinafter provided, a conviction for an offence for which an order is made under this Act placing the offender on a community sanction or discharging the offender absolutely or conditionally shall be deemed not to be a conviction for any purpose whatsoever other than:
(a) the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the foregoing provisions of this Act, and
(b) in the case of a public officer, the purposes or any disciplinary proceedings which may be taken against or any disciplinary punishment which may be imposed upon, such public officer in consequence of any such conviction or of any of the facts constituting the offence;

provided that where an offender, being not less than eighteen years of age at the time of the conviction of an offence for which he is placed on a community sanction or conditionally discharged as aforesaid, is subsequently sentenced for that offence, the provisions of this subarticle shall cease to apply to the conviction.

(2) without prejudice to the foregoing provisions of this article, the conviction of an offender who is placed on probation, on a community service order, on a combination order or discharged absolutely or conditionally as aforesaid shall in any event be disregarded for the purposes of any enactment which imposes or authorises any interdiction, disqualification, disability or other penalty upon convicted persons.”

Illi jekk wiehed jezamina b’mod hafif id-dicitura ta’ dan l-Artiklu, wiehed ikollu l-impressjoni illi meta non sitratta ta’ public officer, u meta Qorti ssib htija f’reat illi mieghu

jimporta l-interdizzjoni, l-istess Qorti tkun tista’ tapplika piena taht il-probation act u tali piena ma tkunx ikkunsidrata bhala conviction, u allura ma jiskattawx il-konsegwenzi ohra ta’ htija bhal per ezempju interdizzjoni, inkapacita’ etc.

Illi meta wiehed pero’ jistudja fil-profondita’ il-proviso tal-Artiklu 25(1), wiehed jinduna illi meta ufficjal pubbliku jingieb quddiem il-Qorti u jigi sentenzjat **wara** li jkunu ga ttiehdu passi dixxiplinarja fuq l-istess ufficjal pubbliku, u wara illi huwa jkun ga ha l-piena dixxiplinarja, “the provisions of this subarticle shall cease to apply to the conviction”.

Il-mens legis huwa evidenti u cioe’ illi l-imputat m’ghandux jiehu piena doppja u cioe’ jircievi l-hruxija tal-passi dixxiplinarji u piena konsegwenti fic-civil, u mbaghad jircievi wkoll l-akbar hruxija ta’ piena inflitta fil-Kamp Kriminali u cioe’ l-interdizzjoni generali perpetwa, u dana biss f’dawk il-kawzi pjuttost specjali fejn il-Qorti jidhrilha illi c-cirkostanzi tar-reat fih innifsu u d-dannu ghas-socjeta’ mhuwiex wiehed gravi hafna.

Illi f’dan il-kaz, il-“profitt” illi ghamel l-imputat, kien ta’ mitt Lira (Lm100). Illi ta’ dan l-imputat diga’ ha l-punizzjoni taht ic-civil u tilef l-impjieg tieghu, addirittura wara snin ta’ servizz. Illi di piu’, ir-reat gie kommess fi sfond ta’ turbulenza kbira f’relazzjoni matrimonjali u fi sfond ta’ mard serju. Illi dan huwa precizament it-tip ta’ kaz fejn il-Qorti ghandha tikkunsidra piena taht il-“probation act”, u dana mhux biss il-ghaliex piena karcerarja jew piena ta’ prigunerija sospiza mhijiex indikata fic-cirkostanzi tal-imputat, izda wkoll minhabba illi l-applikazzjoni mandatorja tal-interdizzjoni perpetwa tkun piena kompletament disproporzjonata ghal l-entita’ tar-reat kommess u l-eventwali dannu ghas-socjeta’.

Illi ghaldaqstant, il-Qorti waqt li ssib lill-imputat hati skond l-akkuza, u wara li rat Artiklu 112, 113, 308, tal-Kap 9, u l-Artiklu 25(1)(b) u proviso, (2) u l-Artiklu 22 tal-Kap 446, u tilliberah bil-kundizzjoni li ma jaghmilx reat iehor fi zmien

sentejn, u tordna li l-interdizzjoni ma tigix reza applikabbli fil-konfront tal-imputat.

NB: L-isem tal-imputat mhux qed jigi ppublikat fuq ordni tal-Qorti.

< Sentenza Finali >

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