



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

**MAGISTRATE DR.
JACQUELINE PADOVANI**

Sitting of the 16 th October, 2007

Number. 412/2005

POLICE
INSPECTOR CARMELO ABDILLA
INSPECTOR IAN J ABDILLA
VS
SONG ZEHAO

The Court,

Having seen the charges brought against the accused Song Zehao, of 23 years, son of Song and Shi, born in Liaoning, China, on the 11th May 1982, and residing at 56, Flat 20, Victor Denaro Street, Imsida, and holder of Chinese passport number G 05648387; and charged with having, in these Islands, on February 2005, and in the preceding months:

(a) by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power,

influence or credit, or to create the expectation or apprehension of any chimerical event, shall make any gain to the prejudice of another person, made a profit of approximately three thousand (3000) euros, to the detriment of Chen Hua, Kangrong Chen, Feng Lin, Wumin Xue, Hongmei Yu, Chaoyan Lin, Link School of English and other persons, and this in breach of Articles 308, 309 and 310 of Chapter 9 of the Laws of Malta;

(b) and, misapplied, converted to his own benefit or to the benefit of any other person, anything which had been entrusted or delivered to him under a title which implies an obligation to return such thing, or to make use thereof for a specific purpose, from money which amount to three thousand (3000) euros or more, which money belonged to Chinese nationals mentioned and other persons, and this in breach of Article 293 and 310 of Chapter 9 of the Laws of Malta;

(c) and else, in order to gain any advantage or benefit for himself or others, in any document intended or any public authority, knowingly made a false declaration or statement, or gave false information, and this in breach of Article 188 of Chapter 9 of the Laws of Malta.

Having heard the evidence tendered on oath;

Having seen the record of the proceedings;

Having seen the Articles of Law, cited by the Attorney General on the 25th of August 2005, under which this Court may pronounce itself as to the guilt or otherwise of the accused.

Having seen the note in the record of the proceedings of the 20th September 2005, where the accused had no objection on being adjudicated by this Court.

Having heard the oral submissions of the parties;

Considers:-

From the evidence proffered by Inspector Carmelo Abdilla, the Sliema Police Station received a report from

the Head Master of an English language school, that is, Roger De Gaetano, on behalf of diverse Chinese students to the effect that the accused, known as Peter, had demanded and taken five hundred (500) euros from each of the five Chinese students mentioned in his report, in order to have a number of visas issued from Ireland.

In his statement, the accused stated that he had attended a school of English language, where he met several Chinese students. He told the Police that he had asked for five hundred (500) euros from each student to facilitate their visas being issued from Ireland, and thus, enable them to work in that country after their staying in Malta. The accused in his statement, stated that **he handed over all the said money to another Chinese, by the name of Gang Ni, who was the person who masterminded the scheme, of which he had no knowledge. In fact, criminal proceedings were brought against Gang Ni, and the same Gang Ni admitted to all charges brought against him, and was sentenced and deported to China.**

Inspector Carmelo Abdilla stated that the accused, who was also known as Peter, in fact was the middle man. Inspector Abdilla also exhibited documents A1-A6, from page 23-28, which were the letters used to defraud the Chinese students.

Indeed, the Chinese students Feng Lin (at page 21-33), Hongmei Yu (at page 34-36), Xue Wumin (at page 38-44), all recounted the facts cited in the evidence of Inspector Abdilla.

PS 266 Stefan Decelis, at page 48 et seq, confirmed that he effected a search in the accused's premises, where the computer of the accused and hard drives were seized. He exhibited the same in Court, together with his report, document PS.

Roger De Gaetano, confirmed the report he made to the Police, at page 99 et seq.

WPC 133 Anthea Attard confirmed the statement released by the accused.

Inspector Helga Debono, in her evidence of the 20th September 2005, confirmed the facts cited by Inspector Abdilla, **and stated that the accused did not admit to having misappropriated any of the funds of the Chinese students, but informed the Police of Gang Ni, another Chinese national, who took the money himself, and that he had only acted as an interpreter for this transaction. Inspector Debono stated that the accused had said he had done this without any consideration at all, and that he had been stupid and had been duped by Gang Ni.**

The second statement of the accused was exhibited and marked as document HD.

WPC 103 Marcelle Mifsud confirmed her presence in the statement released by the accused.

In her second testimony, Inspector Helga Debono stated that the amount of money alleged having been passed to the accused was to the tune of three thousand (3000) euros.

In cross-examination, PS 266 Stefan Decelis, computer analyst attached with the Police Force, confirmed that with regards to images contained in Appendix B of his report, (and reproduced at pages 66-80), that the Police, in their search, **found no computer scanner present in the premises.**

PS Decelis also stated that **at first** he believed that these images found stored in a sub-folder on the computer, had been received by the accused when accessing his e-mail account, and that they had been attached to his e-mail. **However, he discounted this hypothesis. Indeed, PS Decelis confirmed that these documents were found on the computer of the accused, only because another person using the accused's computer and another e-mail address affected the download of the documents.**

Deliberates:-

The evidence of this case shows that the accused, in his statement, as well as far back on the 6th June 2005, during the first hearing, vehemently denied that he appropriated any of the moneys that were given to him by the Chinese students, who needed the visas from Ireland. The accused ascertained that all such moneys were handed over to Gang Ni. The accused also stated that he had been naïve to get embroiled in this matter, for he was really acting only as an interpreter on behalf of Gang Ni, and the Chinese students.

This evidence was confirmed by PS Decelis, computer analyst attached to the Police Force, with the findings and analysis that he found on the computer of the accused. Indeed, PS Decelis stated that the images and the documentation found on the computer of the accused, were in fact not downloaded by accessing the internet, or by having been received on his e-mail, **but rather that a third person in fact had accessed his computer.**

The Court examined in detail the submissions made by the Defense on the 24th May 2007, **and cannot but accept the inexorable logic of the conclusions of the Defense.**

Indeed, Article 308 of Chapter 9 of the Laws of Malta provides:

'Whosoever, by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, shall make any gain to the prejudice of another person, shall, on conviction, be liable to imprisonment for a term from seven months to two years.'

Article 293 of Chapter 9 of the Laws of Malta provides:

'Whosoever misapplies, converting to his own benefit or to the benefit of any other person, anything which has been entrusted or delivered to him under a title which implies an obligation to return such thing or to make use thereof for a specific purpose, shall be liable, on conviction, to imprisonment for a term from three to eighteen months: Provided that no criminal proceedings shall be instituted for such offence, except on the complaint of the injured party.'

It is evident, even from a cursory examination of the said Articles, that two of the cardinal elements of both charges brought against the accused are inexistent. Primarily, the accused did not in fact appropriate the moneys given by the Chinese students for himself, but pass them on to Gang Ni. The cooperation of the accused with the Police, in fact, was instrumental, indeed crucial, in the proceedings that the Police initiated against Gang Ni, who admitted to all charges. The Prosecution did not show the Court any paper trail of the moneys allegedly received which could, in any way, rebut the accused's assertions.

Moreover, the Prosecution did not prove beyond reasonable doubt, that the accused intended to defraud any of the five Chinese students. In fact, the evidence proffered by the Prosecution itself, especially having regard to the testimony of PS Decelis and his report document PS, shows the exact opposite.

In these circumstances, the Court has no alternative but to declare the accused not guilty of the charges brought against him and acquits him of the same.

< Final Judgement >

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