



COURT OF CRIMINAL APPEAL

**HON. MR. JUSTICE
DAVID SCICLUNA**

Sitting of the 17th September, 2008

Criminal Appeal Number. 352/2005

The Police

v.

Andreas Wilhelm Gerdes

The Court,

Having seen the charge brought against the said Andreas Wilhelm Gerdes before the Court of Magistrates (Malta) as a Court of Criminal Judicature that when so ordered by the Court [*recte*: in breach of the contract of separation] he failed to pay his wife Bettina Vossberg and his minor children Maximilian and Alexander the stipulated sum [as maintenance during the month of June];

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 14th December 2005 whereby the action against the

Informal Copy of Judgement

said Andreas Wilhelm Gerdes was declared as prescribed;

Having seen the application of appeal filed by the Attorney General on the 27th December 2005 wherein he requested that this Court revokes said decision, finds the said Andreas Wilhelm Gerdes guilty and applies the punishment prescribed by law;

Having seen that respondent was only notified on the 4th February 2008;

Having seen that respondent failed to appear for the sitting of the 27th June 2008;

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

Having heard submissions made by the prosecution and the defence;

Having considered:

Appellant's ground of appeal lies in the fact that the first Court decided the case in the absence of the person charged and without giving the prosecution the opportunity to produce evidence of the interruption of prescription. Now, from the records of the case there is no doubt that when the first Court decided the case on the 14th December 2006 respondent was not present. This is clearly stated in the record.

In a similar case in the names **Il-Pulizija v. Carmelina Braddick Southgate** decided on the 19th May 1997¹, this Court said:

“Il-preskrizzjoni tidderima l-meritu tal-kawza u l-liberazzjoni li ssegwi minn tali preskrizzjoni hi decizjoni ta’ liberazzjoni bhal decizjoni ta’ liberazzjoni bbazata fuq nuqqas ta’ provi. Tali decizjoni ma tistax,

¹ Vol. LXXXI.iv.178.

fis-sistema taghna, tinghata minn Qorti ta' Prim'Istanza fl-assenza ta' l-imputat jew akkuzat (hliet fil-kazijiet ikkontemplati fl-artikoli 374(b) u 524 tal-Kodici Kriminali). Issa, huwa veru li skond gurisprudenza kostanti ta' din il-Qorti l-assenza ta' l-imputat jew ta' l-akkuzat mill-Qorti fil-gurnata li tinghata s-sentenza, hliet fil-kaz meta jkunu applikabli d-disposizzjonijiet ta' l-artikolu 374(b) u 524 imsemmija, iggib bhala konsegwenza l-inezistenza totali kemm tas-sentenza appellata kif ukoll tas-smigh tal-kawza li ppreceda u ddetermina dik is-sentenza (ara f'dan is-sens *Il-Pulizija vs Zakarija Calleja*, 18 ta' Novembru 1976; *Il-Pulizija vs Carmelo Debono*, 1 ta' Dicembru 1977; *il-Pulizija vs Stephen Caruana*, 24 ta' April 1986; *Il-Pulizija vs George Fava*, 31 ta' Mejju 1984; *Il-Pulizija vs Anthony Magri*, 6 ta' Dicembru 1984; *Il-Pulizija vs Anne Debono et*, 28 ta' Lulju 1988; *Il-Pulizija vs Emanuel Mifsud*, 11 ta' Lulju 1994; *Il-Pulizija vs Sharon Zammit u Philip Zammit kontestwalment* (App. 153/94), 7 ta' Settembru 1994; u *Il-Pulizija vs Saviour Spiteri*, 25 ta' Awissu 1995, kollha decizjonijiet ta' din il-Qorti), izda, kif gie osservat ukoll fis-sentenza ta' din il-Qorti ta' l-20 ta' Ottubru 1995 fl-ismijiet *Il-Pulizija vs Michael Mifsud et al*, dan japplika biss meta jkun hemm 'smigh' tal-kawza. F'dan il-kaz, il-kawza ma jistax jinghad li qatt bidet tinstema' peress li l-imputata (l-appellata odjerna) qatt ma dehret il-Qorti, altrimenti jkun ifisser li Qorti tkun tista' tiddeciedi l-kawza u tillibera jew issib htija, minghajr ma taghti liz-zewg partijiet fil-kawza l-opportunita` li jipprezentaw il-kaz taghhom. Fil-kaz in dizamina l-Ewwel Onorabli Qorti inkorriet f'zewg zbalji: iddeterminat il-meritu tal-kawza fl-assenza ta' l-imputata u ddeterminatu minghajr ma tat l-opportunita` lill-prosekuzzjoni li ggib il-prova ta' l-interruzzjoni tal-preskrizzjoni skond l-artikolu 693(1)(2) tal-Kodici Kriminali.”

The case in issue is identical to the situation that presented itself in the case **Il-Pulizija v. Carmelina Braddick Southgate**. On the 14th December 2005, respondent was not present before the first Court, the

prosecution did not have the notice of summons and that Court declared the criminal action against the person charged as being prescribed. In terms of what was said in the **Southgate** case, the first Court here too decided the case in the absence of respondent and failed to grant the prosecution the opportunity to produce evidence of the interruption of the prescriptive period. Consequently the first Court's decision has to be and is hereby being annulled.

As to the question of interruption of the prescriptive period, this Court gave the prosecution the opportunity to produce the relative notice of summons. The prosecution did so on the 18th July 2008. However, this Court deems it expedient that the parties to the case be given the opportunity to make their submissions as to whether the prescriptive period should be deemed as having run or not as well as to submit all evidence they may deem necessary.

For these reasons:

The Court hereby revokes the appealed judgement and declares it to be null and void and, in terms of article 428(3) of Chapter 9 of the Laws of Malta, orders the continuation of proceedings.

< Partial Sentence >

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