



COURT OF CRIMINAL APPEAL

**THE HON. MR. JUSTICE
JOSEPH GALEA DEBONO**

Sitting of the 10 th December, 2009

Criminal Appeal Number. 398/2009

The Police

Vs

Donna Maria Agius

The Court,

Having seen the charges brought against the appellant Donna Maria Agius before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having on the 21st July, 2009 between 1700 hrs and 1900 hrs, when ordered by a Court or bound by a contract to allow access to her husband Ronald Agius for her son, refused without just cause to give such access.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 26th October, 2009, by which, after that Court had

seen articles 338(II) of Chapter 9 of the Laws of Malta, found the appellant guilty and condemned her to a term of one (1) week detention.

Having seen the application of appeal filed by appellant on the 2nd November, 2009, wherein she requested this Court to reverse, revoke and annul the appealed sentence by not finding the appellant guilty of the charge proffered against her and acquitting her from the said charges and from the punishment inflicted and alternatively by varying the same judgement with reference to the punishment inflicted.

Having seen the records of the case.

Having seen that the grounds of appeal of appellant, can be briefly summarised as follows:-

1. that the appealed judgement is null and void and has no effect at law as the said judgement is not in conformity with the requisites listed *ad validitatem* in article 382 of Chapter 9 of the Laws of Malta as the same Court in delivering judgement against the appellant, did not state the facts of which the appellant has been found guilty, and in awarding punishment did not quote the relative article of the Code;
2. that the charge brought against the appellant could have never resulted and this in the light of the evidence heard by the First Court;
3. that whilst it is not being contested that the punishment inflicted is one within the parameters of the law, however, when one considers the circumstances of the case in question, the said punishment is definitely an exaggerated. One must keep in mind the facts of the case in question and the fact that the child himself refused to see his father. The appellant currently holds the care and custody of the minor child Kyle and the fact that the appellant could spend a week in detention could be harmful to the minor psychologically and physically as the appellant does not have anyone to take care of the minor child who is under her care and custody.

Informal Copy of Judgement

Having heard the evidence of Ronald Agius at today's sitting;

Having heard oral pleadings by learned Counsel;

Now duly considers;

That the first ground of appeal referring to the nullity of the judgement of the Court of First Instance is manifestly unfounded in fact and in law because the judgement is in full compliance with the requirements of article 382 of the Criminal Code in that it does state the offence of which appellant was being found guilty by express reference to the charge proffered against her and it also duly mentions the article of the law (Art. 338 (II) of the Criminal Code) under which she was found guilty. Accordingly this ground of appeal is being dismissed.

Having considered the evidence tendered before this Court, this Court is convinced that this case is the result of the ongoing pique between appellant and her estranged husband regarding rights of access to their minor child, a pique that has already landed the parties in Court on previous occasions.

Having seen the minute entered in the records of the case whereby Counsel for the appellant has limited his appeal to the punishment inflicted by the First Court and withdrew his other grounds of appeal

Having seen the Minute whereby Ronald Agius declared that since the date of the alleged offence there has been no further repetition of similar incidents and that therefore in the circumstances he was not insisting on the punishment of detention

Having seen the Minute whereby Prosecuting Counsel has declared that it would leave any decision as to the punishment in the hands of this Court in view of these developments.

Having Considered that :

Since the 21st. July, 2009, there has not been any repetition of similar incidents regarding the granting of access to the minor child and in order not to exasperate further the situation between the child's parents, in such a way which can only harm the minor child by seeing his mother being dragged to prison at his father's insistence, deems fit to vary the punishment inflicted by the First Court.

For these reasons this Court is upholding the appeal only in so far as it concerns the punishment inflicted by the court of first instance in that it is varying said judgement by confirming it where it found the appellant guilty as charged and by revoking it where it condemned appellant to a term of one week's detention and instead, in accordance with article 22 of Chapter 446 of the Laws of Malta discharges her on condition that she does not commit another offence within three (3) years from today.

< Final Judgement >

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