



CRIMINAL COURT

**THE HON. MR. JUSTICE
MICHAEL MALLIA**

Sitting of the 24 th November, 2010

Number 6/2010

**The Republic of Malta
Vs
Rachyd Clement Vitae Antrim Curiel**

The Court,

Having seen the bill of indictment no. 6/2010 against the accused Rachyd Clement Vitae Antrim Curiel wherein he was charged with:

1)After the Attorney General premised in the First Count of the Bill of Indictment that on the nineteenth (19th) day of October of the year two thousand and eight (2008) and during the previous days RACHYD CLEMENT VITAE ANTRIM CURIEL decided to start dealing, offering, supplying and exporting drugs illegally into the Maltese Islands in agreement with others.

In fact on the dates abovementioned, the accused RACHYD CLEMENT VITAE ANTRIM CURIEL conspired and agreed with another person, a certain Mr. D, to illegally deal in and export from the Netherlands to the Maltese Islands a quantity of the drug cocaine (421.71 grams). RACHYD CLEMENT VITAE ANTRIM CURIEL agreed with Mr. D also about the route (Amsterdam, Netherlands to Malta) and/or packing and/or means of concealment (body packing of capsules filled with the drug cocaine) and/or the means of transport (air travel) which was to be used in order for this quantity of drugs to be illegally brought and imported into Malta and this in order for the said drugs to be eventually dealt with illegally within the Maltese Islands. For this task the accused was to receive a monetary compensation of one thousand five hundred Euros (1,500). The accused agreed and planned with the said Mr. D, that upon his arrival in Malta he would meet at the Malta International Airport a certain Mike, deliver this drug cocaine consignment to Mike and Mike would then pay the accused the agreed sum of money. In execution of these pre-concerted plans RACHYD CLEMENT VITAE ANTRIM CURIEL agreed to provide all the necessary assistance for this illegal activity to take place, which activity causes untold harm to Maltese society and an illegal financial gain to the accused, which financial gain was at the basis of this conspiracy.

In execution of these pre-concerted plans, before going to the airport, RACHYD CLEMENT VITAE ANTRIM CURIEL met Mr. D in his home in the Netherlands and while there RACHYD CLEMENT VITAE ANTRIM CURIEL agreed to insert, and actually inserted thirty-two (32) capsules in his body (some through his mouth and some through his anus towards his rectum) and another eleven (11) capsules in his underwear for a total of forty three (43) capsules. These forty-three capsules were filled with the illegal drug cocaine.

On the 19th October 2008, RACHYD CLEMENT VITAE ANTRIM CURIEL boarded the Air Malta flight KM 395 leaving from Amsterdam, Netherlands destination Malta, carrying these forty- three capsules filled with the drug

cocaine. On this date the accused arrived in the Maltese Islands carrying in his body these forty-three capsules filled with drug cocaine

RACHYD CLEMENT VITAE ANTRIM CURIEL was not authorized to be in possession of or import such dangerous drugs in terms of Law.

However before the accused managed to leave the Malta International Airport towards his destination in Malta he was stopped by the Customs Officials, who managed to intervene in due time before this amount of drugs managed to reach its intended final destination in the Maltese Islands to the respective consignee of the said drugs. The Customs Officers at the Malta International Airport affected a search on the person of RACHYD CLEMENT VITAE ANTRIM CURIEL due to his suspicious behavior and found in his underpants eleven (11) capsules filled with the drug cocaine and subsequently they decided to inform the Malta Police Force. The Malta Police Force invited the accused to submit himself to an x-ray of his abdomen at the Mater Dei Hospital. Following this examination, it transpired that RACHYD CLEMENT VITAE ANTRIM CURIEL was carrying inside his body other thirty - two capsules. As a total these forty – three capsules (thirty-two found in his body and eleven found in his underwear) were filled with circa 421.71 grams of the drug cocaine with its purity calculated at 46%, (as determined later by the Court appointed expert). This consignment of drugs was the subject matter of the abovementioned conspiracy. The total street value of this drug as determined by the Court appointed expert ranges from twenty eight thousand two hundred and fifty four Euros and fifty seven cents (€28, 254.57) to forty-four thousand one hundred and ninety five Euros and twenty one cents (€44, 195.21).

The drug cocaine is scheduled as per Part 1 of the First Schedule of the Dangerous Drugs Ordinance;

By committing the abovementioned acts with criminal intent, RACHYD CLEMENT VITAE ANTRIM CURIEL

rendered himself guilty of conspiracy to trafficking in the dangerous drug cocaine in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accused RACHYD CLEMENT VITAE ANTRIM CURIEL of being guilty of having, on the nineteenth (19th) day of October of the year two thousand and eight (2008) and during the previous days with criminal intent, with another one or more persons in Malta, or outside Malta, conspired for the purpose of selling or dealing in drugs (cocaine) in the Maltese Islands against the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or by promoting, constituting, organizing or financing such conspiracy, and demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand four hundred and sixty-eight euro and sixty-seven cents (€116,468.67) and the forfeiture in favour of the Government of Malta the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in articles 2, 9, 10(1), 12, 22(1)(a)(f)(1A)(1B)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22(A), 24A, and 26 of the Dangerous Drugs Ordinance and of articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

2)After the Attorney General premised in the Second Count of the Bill of Indictment that within and during the same context of place, time, facts and circumstances mentioned in the preceding count of this bill of indictment, that is to say on the nineteenth (19th) day of October of the year two thousand and eight (2008) and during the previous days, **RACHYD CLEMENT VITAE ANTRIM**

CURIEL decided to export from the Netherlands a quantity of the drug cocaine to be imported to the Maltese Islands.

While in the Netherlands RACHYD CLEMENT VITAE ANTRIM CURIEL met with a certain Mr. D and agreed that this drug cocaine consignment was to be transported from Amsterdam, Netherlands to Malta by air transport. On the 19th October 2008 the accused inserted thirty-two capsules in his body (some from his mouth and some from through his anus towards his rectum) and eleven (11) in his underpants; these forty-three (43) capsules were filled with the drug cocaine. The accused later boarded flight Air Malta KM 395 leaving from Amsterdam, Netherlands destination Malta, carrying these forty-three capsules filled with the drug cocaine on and in his body. On this date this flight arrived and landed in Malta. RACHYD CLEMENT VITAE ANTRIM CURIEL was not authorized to import such dangerous drugs in terms of Law. The accused therefore managed to knowingly and illegally import in the Maltese Islands forty-three capsules containing the drug cocaine.

However before RACHYD CLEMENT VITAE ANTRIM CURIEL managed to leave the Malta International Airport towards his final destination in Malta, he was intercepted by the Customs Officers who affected a search on the person of the accused and found in his underpants eleven (11) capsules filled with the drug cocaine and subsequently he was referred to the Police. The Police invited RACHYD CLEMENT VITAE ANTRIM CURIEL to submit himself to an x-ray of his abdomen at the Mater Dei Hospital from where it transpired that the accused was carrying inside his body other thirty two (32) capsules. As a total these forty – three capsules (thirty-two found in his body and eleven found in his underwear) were filled with circa 421.71 grams of the drug cocaine with its purity calculated at 46%, (as determined later by the Court appointed expert).

The drug cocaine is scheduled as per Part 1 of the First Schedule of the Dangerous Drugs Ordinance;

By committing the abovementioned acts with criminal intent, RACHYD CLEMENT VITAE ANTRIM CURIEL rendered himself guilty of importing or exporting, or cause to be imported or exported, or take any steps preparatory to importing or exporting, any dangerous drug (cocaine) into or from Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accused RACHYD CLEMENT VITAE ANTRIM CURIEL of being guilty of having, on the nineteenth (19th) day of October of the year two thousand and eight (2008), with criminal intent, imported or exported, or cause to be imported or exported, or taken any steps preparatory to importing or exporting, any dangerous drug (cocaine) into or from Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, and demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand four hundred and sixty-eight euro and sixty-seven cents (€116,468.67) and the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in articles 2, 9, 10(1), 12, 14, 15A, 22(1)(a)(1B)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22(A), 24A, and 26 of the Dangerous Drugs Ordinance and of articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

3)After the Attorney General premised in the Third Count of the Bill of Indictment that within and during the same context of place, time, facts and circumstances mentioned

in the preceding counts of this bill of indictment, that is to say on the nineteenth (19th) day of October of the year two thousand and eight (2008) and during the previous days, RACHYD CLEMENT VITAE ANTRIM CURIEL agreed to export from the Netherlands a quantity of the drug cocaine to be imported to the Maltese Islands. While in the Netherlands, RACHYD CLEMENT VITAE ANTRIM CURIEL agreed with a certain Mr. D to transport on his person and inside his body a drug cocaine consignment from Amsterdam, Netherlands to Malta by air transport. RACHYD CLEMENT VITAE ANTRIM CURIEL inserted thirty-two capsules in his body (some from his mouth, and some through his anus towards his rectum) and other eleven (11) capsules in his underwear. These forty- three capsules contained the illegal drug cocaine. On the 19th October 2008, RACHYD CLEMENT VITAE ANTRIM CURIEL boarded flight Air Malta KM 395 leaving from Amsterdam, Netherlands destination Malta, carrying these forty- three capsules filled with the drug cocaine. On this date this flight arrived and landed in Malta. RACHYD CLEMENT was therefore knowingly and illegally in possession of forty-three capsules containing the drug cocaine while in the Maltese Islands which drug was found under circumstances denoting that it was not intended for his personal use.

However before RACHYD CLEMENT VITAEANTRIM CURIEL managed to leave the Malta International Airport towards his final destination in Malta, he was intercepted by the Customs Officers who affected a search on his person and found in his underpants eleven (11) capsules filled with the drug cocaine and they referred him to the Police. The Police invited RACHYD CLEMENT VITAE ANTRIM CURIEL to submit himself to an x-ray of his abdomen at the Mater Dei Hospital from where it transpired that the accused was carrying inside his body other thirty-two (32) capsules. As a total these forty – three capsules (thirty-two found in his body and eleven found in his underwear) were filled with circa 421.71 grams of the drug cocaine with its purity calculated at 46%, (as determined later by the Court appointed expert).

The drug cocaine is scheduled as per Part 1 of the First Schedule of the Dangerous Drugs Ordinance;

Consequently by committing the abovementioned acts with criminal intent, RACHYD CLEMENT VITAE ANTRIM CURIEL rendered himself guilty of being in possession of a dangerous drug (cocaine) as specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta when he was not in possession of an import or an export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorized to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use, according to a medical prescription as provided in the said regulations and this in breach of the 1939 Regulations of the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and which drug was found under circumstances denoting that it was not intended for his personal use.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accused RACHYD CLEMENT VITAE ANTRIM CURIEL of being guilty of having, with criminal intent, of being in possession of a dangerous drug (cocaine) as specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta when he was not in possession of an import or an export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorized to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorized by the Internal Control of Dangerous Drugs Regulations

(G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use, according to a medical prescription as provided in the said regulations and this in breach of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and which drug was found under circumstances denoting that it was not intended for his personal use, and demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand four hundred and sixty-eight euro and sixty-seven cents (€116,468.67) and the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in articles 2, 9, 10(1), 12, 22(1)(a)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22(A), 24A, and 26 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and of regulations 2, 9 and 16 of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939) and of articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

Having seen all the records of the case, including those of the compilation of evidence before the Court of Magistrates (Malta) as a Court of Criminal Inquiry;

Having seen the joint application filed by the Attorney General and the accused in the course of today's sitting, whereby, after declaring that in the event that the accused was filing a guilty plea to the charges brought forward in his regard in the above referred to Bill of Indictment, requested that the punishment to be awarded should consist of a term of imprisonment of eight (8) years and the imposition of a fine of four thousand five hundred

Euros (€4,500) together with the other sanctions and consequences that are prescribed by law for the above conviction in terms of the provisions of the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta, including the confiscation of any monies and movable and immovable properties of the accused.

Having seen that in today's sitting the accused, in reply to the question as to whether he was guilty or not guilty of the charges preferred against him under the three counts of the Bill of Indictment, stated that he was pleading guilty thereto;

Having seen that this Court then warned the accused in the most solemn manner of the legal consequences of such statement and allowed him a short time to retract it, according to Section 453 (Chap. 9);

Having seen that the accused being granted such a time, persisted in his statement of admission of guilt;

Now therefore declares *Rachyd Clement Vitae Atrim Curiel* guilty of all three counts in the Bill of Indictment, namely of having:-

1. on the 19th October, 2008 and during the previous days with criminal intent, with another one or more persons in Malta, or outside Malta, conspired for the purpose of selling or dealing in drugs (cocaine) in the Maltese Islands against the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or by promoting, constituting, organizing or financing such conspiracy, and this according to the First Count of the Bill of Indictment;

2. on the 19th October, 2008 and this according to the Second Count of the Bill of Indictment; with criminal intent, imported or exported, or cause to be imported or exported, or taken any steps preparatory to importing or exporting, any dangerous drug (cocaine) into or from Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, and this according to the Second Count of the Bill of Indictment;

3. on the 19th October, 2008, with criminal intent, of being in possession of a dangerous drug (cocaine) as specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta when he was not in possession of an import or an export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorized to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use, according to a medical prescription as provided in the said regulations and this in breach of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and which drug was found under circumstances denoting that it was not intended for his personal use, and this according to the Third Count of the Bill of Indictment.

Having considered all the circumstances of the case, this Court is satisfied that the combination of sanctions and measures requested by the prosecution and the accused are those which it would have been lawful for it to impose upon conviction for the offences to which the accused has pleaded guilty and that it does not have cause to order the trial of the cause to be proceeded with or to reject said request for any other reason.

Having considered the guilty plea of the accused after the Court explained to him in clear terms the consequences of his request, now proceeds to pass the sentence indicated to it by the parties as aforesaid.

Having seen articles 2, 9, 10(1), 12, 22(1)(a)(f)(1A)(1B)(2)(a)(i) and proviso (aa)(3A)(a)(b)(c)(d)(7), 22(A), 24A, and 26 of the Dangerous Drugs Ordinance (Chap.101); Regulations 2,

Informal Copy of Judgement

9 and 16 of the 1939 Regulations for the Internal Control of Dangerous Drugs (L.N. 292/1939) and Sections 17, 23, 23A, 23B, 23C and 533 of the Criminal Code ;

Now therefore condemns the said Rachyd Clement Vitae Antrim Curiel to a term of imprisonment of eight (8) years, and to the payment of a fine (multa) of four thousand five hundred Euros (€4,500), which fine (multa) shall be converted into a further term of imprisonment of twelve months according to Law, in default of payment ;

Furthermore condemns him to pay the sum of one thousand, two hundred and seventy one Euros and fifty one cents (€ 1271.51) being the sum total of the expenses incurred in the appointment of court experts in this case in terms of Section 533 of Chapter 9 of the Laws of Malta;

Furthermore, orders the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which he has been found guilty and other moveable and immovable property belonging to the said Rachyd Clement Vitae Antrim Curiel.

And finally orders the destruction of all the objects exhibited in Court, consisting of the dangerous drugs or objects related to the abuse of drugs, which destruction shall be carried out by the chemist Mario Mifsud, under the direct supervision of the Deputy Registrar of this Court who shall be bound to report in writing to this Court when such destruction has been completed, unless the Attorney General files a note within fifteen days declaring that said drugs are required in evidence against third parties.

< Final Judgement >

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