



**COURT OF CRIMINAL APPEAL**

**THE HON. MR. JUSTICE  
LAWRENCE QUINTANO**

Sitting of the 23<sup>rd</sup> January, 2012

Criminal Appeal Number. 66/2011

**The Police**

**Vs**

**Kaman Ivanov Lazarov**

The Court,

Having seen the charges brought against the appellant Kaman Ivanov Lazarov [holder of identity card number 28164(A)] before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having between the 30<sup>th</sup> October 2010 and the 1<sup>st</sup> December 2010 where the several acts committed by the offender, even if at different times, constitute violations of the same provision of the law, and are committed in pursuance of the same design on these islands, when ordered so by a Court or so bound by contract failed to give to Nataliya Aleksandrovna Medvedeva and/or to their children the sum fixed by that contract or laid down in the contract as maintenance for

Informal Copy of Judgement

her and/or their children, within fifteen days from the day on which according to such order or contract, such sum should be paid.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 31<sup>st</sup> January, 2011, by which, the Court, after having seen Articles 338(z) and 18 of Chapter 9 of the Laws of Malta, found the said accused guilty as charged and condemned him to one (1) week detention.

Having seen the application of appeal filed by appellant on the 9<sup>th</sup> February, 2011, wherein he requested this Court to reverse the judgement herein appealed, failing which, subsidiarily, to vary and reform such judgement by meting a milder punishment considering the facts of the case.

Having seen the records of the case.

That the grounds of appeal of appellant, can be summarised as follows:-

That the appellant's wife has not filed following the decree of the Civil Court Family Section authorising her to so do, the sworn application for judicial separation, nor has she requested and been awarded extensions of such term for the filing of the sworn application.

That the copy of the decree exhibited *animo ritirandi* was not an integral copy of such decree, and thus it cannot be considered to be a full copy of such decree.

That whilst impossibility to pay maintenance as decreed is not per se` a ground which can lead to the discharge of the accused, it should definitely militate in accused's favour when the Court does contemplate the punishment which it is to emanate.

Having heard the wife of the appellant declaring that she was forgiving his failure to pay maintenance which were due according to the writ.

Having heard the appellant testifying on oath about the financial difficulties he had at the time indicated in the writ

Having seen also both the original of an agreement (produced in court animo ritirandi) signed between the parties before a notary in which appellant and Mrs Lazarov laid down the conditions to regulate relations between them.

#### Considers

That, first of all, in spite of the forgiveness the charge still stands once the maintenance due for the dates appearing in the writ was not paid. Moreover, the proceedings were conducted by the Executive Police and the complaint was not withdrawn by complainant within the time specified in section 373. Moreover, any time lapse regarding the filing of a further application in connection with civil proceedings has absolutely nothing to do with the criminal charge as civil and criminal proceedings are distinct and independent of one another and no evidence was produced that the maintenance decree of the court had been varied by the competent court. Moreover, the impossibility of being able to pay maintenance is no excuse at all.

#### Concludes

That the Court, after taking into consideration all the evidence heard today 23<sup>rd</sup> January 2012 is reforming the judgement by the Court of Magistrates (Malta) delivered on the 31<sup>st</sup> October 2011 by confirming the said judgement as far as the Court found the appellant guilty but is reforming the judgement in so far as it imposed a one week's detention on appellant and instead of this detention is condemning the appellant to pay a fine (ammenda) of €58.

**< Final Judgement >**

Informal Copy of Judgement

-----END-----