



COURT OF CRIMINAL APPEAL

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

Sitting of the 15th July, 2013

Criminal Appeal Number. 10/2013

The Police

Vs

Ferhat Demir

The Court,

Having seen the charges brought against the appellant Ferhat Demir [identity card no. 39023 (A)] before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having between the 8th March 2012 and April 2012 on these islands, 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, when ordered so by a Court or so bound by contract fails to give to Nadine Demir and/or to his children the sum fixed by that contract or laid down in the contract as maintenance for her and/or his 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 9th January 2013, by which, the Court, after having seen articles 338(z), 18 of Chapter 9 of the Laws of Malta, and after having seen the accused admit the charges brought against him, which admission was confirmed by him after having been given due time to reconsider in accordance with the law, found accused guilty as charged and condemned him to a term of three (3) weeks imprisonment.

The Court explained in clear words the terms of the judgement to the accused.

‘Rat ir-rikors tal-appellant minnu pprezentat fil-21 ta’ Jannar 2013 li bih talab li din il-Qorti jogħgobha tilqa` dan l-appell fis-sens illi tirriforma s-sentenza appellata fil-parti tal-piena, billi minflok tinfliggi piena aktar ġusta u ekwa għall-każ odjern.’

Having seen all the acts and documents of the case.

Having seen the appellant’s Conviction sheet produced by the Prosecution

Having seen that the grounds of appeal are the following:

‘Illi l-Ewwel Onorabbli Qorti ma ħaditx in kunsiderazzjoni l-fatt li l-esponenti rreġistra ammissjoni bikrija, u ma ħeliex hin prezzjuż ta’ l-Ewwel Onorabbli Qorti.

Illi fit-tieni lok, sussidjarjament u mingħajr preġudizzju, b’riferenza għall-piena inflitta l-esponenti jirrileva illi fiċ-ċirkostanzi hija waħda ċertament esaġerata għal akkuża kif dedotta fil-konfront ta’ l-esponenti. F’dan ir-rigward, mingħajr preġudizzju għal premess, l-appellanti jagħmel referenza għas-sentenza Il-Pulizija vs Stephen Spiteri (Qorti tal-Appelli Kriminali 22.09.1993), il-kunċett ta’ “crime does not pay” m’għadux applikabbli fiż-żminijiet ta’ illum. Illum il-ġurnata l-iskop ta’ piena mhux biss dak ta’

deterrent jew retribuzzjoni, iżda ta' riabilitazzjoni, u l-esponenti umilment jirrileva li fil-każ odjern, il-Qorti tal-Magistrati ma ħaditx in konsiderazzjoni ta' dan il-prinċipju. L-esponenti umilment jirrileva li l-piena inflitta mill-Qorti tal-Magistrati (Malta) hija wahda eccessiva u harxa, tenut kont ta' l-akkuża prodotta fil-konfront ta' l-esponenti, u partikolarment tenut kont ta' l-ammissjoni bikrija da parti ta' l-esponenti, quddiem l-Ewwel Onorabbli Qorti. L-esponenti huwa persuna ta' karattru tajjeb, ma għandux kondotta refrattarja, u tenut kont iċ-ċirkostanzi tal-każ, piena karċerarja ma hijiex wahda idonea.'

Has considered

First of all the appellant should have used the English Language in his appeal application as the proceedings before the Court of Magistrates were in English and the judgment itself was written in the English Language.

Strictly speaking, according to established case law, this appeal application is null because applicant has not used the same language used in the proceedings before the Court of Magistrates.

However, the Court is still going to examine the merits of the case to avoid any injustice at the appeal stage and, in particular, in line with a decree given by the Criminal Court in October 2011 about the use of the appropriate language in court proceedings.

The Court heard Nadine Curmi Dimech state on oath that the defendant owes her son €250 as maintenance as he has settled €700. According to the witness, this sum is due in connection with this appeal and with appeal number 9 of 2013.

The defendant submits that at the time when the maintenance was due he was unemployed. Moreover, as he is a foreigner, it is difficult for him to find work. He also submits that the Court of Magistrates failed to take into consideration his filing of a guilty plea at the earliest stage

possible. Finally, he submits that the judgment is rather harsh.

Has considered

(a) That the defendant was summoned to appear in Court for his failure to abide by his maintenance commitments for more than one occasion as the writ refers to more than one date.

(b) That this is not the first time that the defendant was summoned to answer for similar charges as his conviction sheet amply shows.

(c) That strictly speaking the punishment inflicted by the Court of Magistrates is within the parameters of the Law as section 18 of Chapter 9 applies.

However, the Court notes that a considerable part of the outstanding maintenance allowance has been paid though there is still part of it pending. The fact that the appellant was unemployed at the time is no excuse at all. As long as the amount indicated in the maintenance decree stands and is not varied by the competent court, that sum remains due and section 338(z) of Chapter 9 applies.

Having heard Nadine Curmi Dimech state that all the balance by way of maintenance has been paid; in the circumstances, the Court is partly acceding to the request of the appellant by reforming the judgment in the following manner: (a) It is confirming that part of the judgment where the defendant was found guilty as charged; (b) it is reforming the judgment by reversing that part of it where the Court condemned the appellant to a period of three weeks' imprisonment and instead it is condemning him to pay an accumulative fine / amenda amounting to Euro 120.

Informal Copy of Judgement

< Final Judgement >

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