



COURT OF CRIMINAL APPEAL

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

Sitting of the 21 st October, 2013

Criminal Appeal Number. 431/2012

The Police

Vs

**Chantelle Ciantar
Omissis**

The Court,

Having seen the charges brought against the defendant Chantelle Ciantar [holder of I.D. card no. 368289 (M)] before the Court of Magistrates (Malta) as a Court of Criminal Judicature with having in their capacity as directors and/or company secretaries and/or judicial representatives of the commercial partnership MC2 Software Ltd (C 50591), having its registered address at 27, Grognet Street, Mosta, Malta, and/or being the persons responsible and appointed by the said commercial partnership to pay outstanding wages, they

have failed to pay part of the wages due for the period commencing 27th September 2011 and ending on 19th October 2011, amounting to €487.38, vacation leave due for the period commencing 27th September, 2011 and ending on 19th October, 2011 amounting €44.93 and part of the weekly allowance due for the period commencing 27th September 2011 and ending on 19th October 2011 amounting to €14.80, globally amounting to five hundred and forty seven Euros and eleven cents (€547.11) owed to Jennifer Elmer (I.D 0248475M) ex-employee of the above-cited company and whose employment was terminated on 19th October 2011.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 18th September 2012, by which, the Court, after having seen Articles 5, 22, 22(2), 23, 45, 46 and 47(2) of Chapter 452 of the Laws of Malta and Regulations 8(1), 8(4), 8(5) and 22 of the Legal Notice 247 of 2003, as amended by the Legal Notice 427 of 2007.

The Court decided to apply Article 46 of Chapter 452 of the Laws of Malta and acquitted accused Chantelle Cutajar.

Having seen the application of appeal filed by appellant Attorney General on the 9th October 2012, wherein he requested this Court to declare the judgement and proceedings of the case null and void and consequently after hearing the evidence afresh against both co-accused proceeds to a fresh finding of guilt and inflicts a fresh punishment against the said co-accused in accordance with the law.

Having seen the records of the case.

Having heard Counsels' submissions during the hearing of the 25th June, 2013.

Now therefore duly considers.

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That the grounds of appeal of appellant consist of the following :

The charges were presented in the English language when no order was given to do so according to law.

That the sitting of the 18th September 2012 was entirely in the Maltese language even though once again no clarity was established as to the predominant use of the Maltese language.

That the sentence delivered on the 18th September 2012 was in the English language.

That the law is clear that the predominant language to be used in a court of law in Malta is Maltese unless specifically stated otherwise in the acts of proceedings and that all charges, court records and sentence are to be in one language only and unless declared otherwise in the Maltese language.

It is also to be noted that the records of the proceedings do not confirm the appointment of translators from the Maltese to the English language therefore implying that the accused were not following the case in a language in which they clearly understand which is in breach of their rights.

That the second aggravation consists in that the charges were issued against two parties – Chantelle Ciantar and Mohit Hemant Asarpota.

However, the judgement is solely against the accused Chantelle Ciantar who was acquitted whilst in the case of the co-accused Mohit Hemant Asarpota no judgement was given.

That the judgement is clearly defective in that the Court could not give a judgement against one co-accused but completely omit to give judgement against the other co-accused.

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That therefore it is evidently clear that the procedures in Court and the Court judgement are defective factually and legally and are not legally valid.

Has considered

The First Ground of Appeal – The Language Used.

The Court notes that the charge sheet was drawn up in the English Language. Moreover, the affidavit by Ms Astrid Cassar Pace, a representative of the Registrar of Companies is in English and Maltese. On the other hand, the affidavit of Mr Christina Borg, an ETC representative, appears in Maltese only.

The record of the proceedings of the 18th September 2012 is in Maltese. The judgement is in English while the Note of Appeal of the Commissioner of Police is in Maltese. Finally appeal application is in English.

It is true that in the past judgements about the use of language were more formalistic. In one particular case, the appeal of the Attorney General was thrown out because it had been filed in Maltese and not in English which was the language of the proceedings. However, the Court of Criminal Appeal changed direction in the case 'Police versus Andriy Petrovych Pashkov'¹ and rejected an appeal to annul the extradition proceedings before the Court of Magistrates as the latter Court had used two languages – Maltese and English – and not one only.

The Court notes that in this case the charge had been drawn up in English, that probably one of the defendants (who did not turn up in court) was an English-speaking person while the name of the employee who claimed that she had not been paid her salary suggests that she could understand the English language. Of course, some of these details cannot be completely

¹ Criminal Appeal Number 203/2009 10th September 2009

verified as no record was kept of what was said on the witness stand by the four witnesses who testified.

Moreover, there is no record in the proceedings of any decree given by the Court about the language to be used during the hearing.

At this point the Court is referring to the following decree given by the Criminal Court on the 4th October, 2011 in connection with Bill of Indictment Number 51/201 'The Republic of Malta vs Adele Marianna Creta' where the question of the appropriate language to be used arose:

'11. The Court is examining the most recent decision, that of the 10th September 2009 (Il-Pulizija versus Pashkov) decided by His Honour the Chief Justice in the Court of Criminal Appeal (Inferior) because this particular judgement deals with a submission which is very close to the request made in the application being examined. This judgment dealt with an extradition case where appellant had submitted that the Language of the Court was Maltese but the proceedings had been conducted in the English language barring what was written down in the records of the case. The defendant appeared to have a sound knowledge of the English language when he was making a statement to the Police but once he appeared in Court he declared that he knew neither Maltese nor the English Language. The Court apparently did not have an interpreter who could translate from Maltese into Ukrainian and appointed an interpreter to translate from Ukrainian into English and vice versa.

12. The Court decided that the procedure adopted by the Court of Magistrates did not lead to any nullity of the proceedings or to the inadmissibility of any testimony given before the First Court.

13. It appears from the above judgement that the Court of Criminal Appeal (Inferior) is adopting a more pragmatic approach in submissions about the use of language during the proceedings even if the decree of the Court of Magistrates does not follow the provisions of Chapter 9 or

of Chapter 189. If one reads the rest of the judgment, one realises that the Court laid great stress on the fact that the person whose extradition was being sought could understand the language of the proceedings and dismissed the plea about the hybrid nature of the proceedings though such hybridisation is not in conformity with our system.

14. In her submissions the applicant stresses the 'public order' characteristic of section 516(1) of Chapter 9. The defence lawyer also referred to the language question and to the historic moment when Maltese substituted the Italian language as the language of the Court.

15. The Court has examined this submission in the light of the above judgment and also after carefully analysing paragraphs (b) and (c) of section 3 of Chapter 189 which read as follows:

'(b) where of two or more persons charged together one or more is or are Maltese-speaking and one or more is or are English-speaking and all the Maltese-speaking persons so charged make a declaration in the records of the court consenting to the proceedings being conducted in the English language, or where none of the parties is either a Maltese-speaking person or an English-speaking person, the court may order that the proceedings be conducted in the English language;

(c) where of two or more persons charged together one or more is or are English-speaking and none of the others is Maltese-speaking, the court shall order that the proceedings be conducted in the English language;

16. A close reading of paragraph (b) reveals that if Maltese speaking persons make a declaration that English may be used where other persons who are charged with them are English-speaking, then the Court may decree that proceedings should be conducted in English.

17. Paragraph (c) is even more telling. One would expect the legislator to lay down that the Maltese language should be used in the context where some of the persons charged are neither English speaking nor Maltese speaking while some are English speaking. Instead, the legislator opted for the use of the English Language.

18. The Court concludes that by 1965, when Chapter 189 was enacted, less than one year when Malta became independent, the Legislator was already being flexible to avoid protracted proceedings and interpretation fees. In fact, a simple declaration by the Maltese-speaking accused that they do not object to the use of the English language was considered enough by the Legislator for the Court to order that the proceedings should be in the English Language. So it is difficult for this Court to accept the plea of public order when the law expressis verbis is taking a more practical approach to the resolution of the problem. Chapter 189 is a special law and was enacted after section 516 of the Criminal Code. Hence it should prevail. The aim of Chapter 189 is to make the life of English speaking persons easier and not to create nullities. In fact, the word 'nullity' does not appear in any article of this law.'

So, after considering the case 'Il-Pulizija versus Pashkov', and the last two paragraphs of section 3 of Chapter 189, in spite of the hybrid nature of the proceedings and the absence of a decree identifying the language to be used during the proceedings, the Court is deciding that there is no reason to uphold the Attorney General's appeal on this ground.

The second ground of appeal – The judgement was given against one defendant.

Has considered

The charge sheet carries the names of two defendants and the judgment carries the same two names.

The record of the sitting held on the 18th September 2012 indicates that only one defendant appeared because Mohit Hemant Asaporta was not in the court room when summoned. However, no note of service was filed in court and the presiding Magistrate ordered that the police official responsible for the service of the summons had to appear at the next sitting to explain why he had not abided by the order of the court.

Then the Court went on to hear the witnesses present and delivered the judgment in so far as Miss Chantelle Cutajar was concerned. One sentence in the record states:

‘The judgment was delivered in so far as Chantelle Cianter is concerned. This defendant has been acquitted. The last sentence of the judgment also indicates that the judgment only concerns Chantelle Cutajar.

The Court has not come any request by the Prosecution for the separation of proceedings. Nor do the records show any order of the Court for the separation of such proceedings.

In a judgment of the Criminal Court of Appeal in its Superior Jurisdiction that

‘In our system, the separation of proceedings is a procedural measure which depends entirely on a request to be made by the Attorney General. Neither the Criminal Court nor the Court of Magistrates has any discretion about this matter.’²

Case law shows that the Maltese Courts have always followed this procedure in ordering the separation of proceedings: (a) First a request by the Prosecution for such a separation; (b) A decree of the Court ordering such proceedings.³

² The Republic of Malta vs Carmel Attard 26th April, 2001.

³ Vide: ‘Il-Pulizija vs Joseph Aquilina’ of the 15th January 2004; ‘Il-Pulizija verus Zarb Nazzareno’ of the 15th Janaury 2004; ‘Ir-Repubblika ta’ Malta versus Roberto Conte’ of the 10th January 2008; ‘Il-Pulizija vs Silvio Zammit’ tas-7 ta’ Lulju 2011 (presided by Magistrate Grixti); ‘Repubblika ta’ Malta verus J.Vella 17th July 2003.

Such a decree is essential for two reasons:

(1) One can immediately identify which defendant/s is/are going to appear in the proceedings and in the judgement of the court;

(2) The possibility of a co-accused testifying against another co-accused once there is a final judgement convicting or acquitting one of them.

In this case, the Court appreciates that the presiding Magistrate wanted to make the best use of his time by, at least, hearing the witnesses and deciding the case against one of the defendants.

Unfortunately, without this decree the judgement becomes defective as once the Court did not give a decree of separation of proceedings, the other defendant was still technically part of the same proceedings.

For this reason, the Court is upholding the second ground of appeal of the Attorney General.

Conclusion

The Court is rejecting the Attorney General's first ground of appeal; is upholding the second ground of appeal and is therefore declaring that the judgement delivered on the 18th September, 2012 is null and void. The Court is ordering that the case be referred to the Court of Magistrates to be heard again. Any decree either about the language to be used or / and, if necessary, about any separation of proceedings, should be included in the records. Finally, it is strongly recommended that the testimony of the various witnesses is recorded.

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< Final Judgement >

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