



**COURT OF CRIMINAL APPEAL**

**HIS HONOUR THE CHIEF JUSTICE  
SILVIO CAMILLERI**

**THE HON. MR. JUSTICE  
DAVID SCICLUNA**

**THE HON. MR. JUSTICE  
JOSEPH ZAMMIT MC KEON**

Sitting of the 5 th November, 2013

Number 23/2012

**The Republic of Malta**

*versus*

**Molt and  
Bafford, born in  
Huntsville, Alabama, USA, on the  
24th May 1986 and residing at  
Flat  
Apartments, St.  
George`s Road, St. Julians, holder  
of US Official Passport No.  
820426800 ;**

**Rodney Andrew Molt, aged 25  
years old, son of Rodney  
Laura nee**

*and*

**Ana-Maria Beatrice Ciocanel,**  
**aged 23 years old,**  
**daughter of**  
**Dimitru Ciocanel and Gabriela**  
**nee Bradis, born in Bucharest,**  
**Rumania, on the 5th March**  
**1989 and residing at**  
**Flat 10a, Havana**  
**Apartments, St. George`s Road,**  
**St. Julians, holder of Rumanian**  
**ID card No. 662819**

**The Court :**

1. This is an appeal from a judgement delivered by the Criminal Court on the 5<sup>th</sup> December 2012 in respect of the preliminary plea raised by appellant Ana-Maria Beatrice Ciocanel. The appeal was lodged on the 10<sup>th</sup> December 2012.

2. Appellant and co-accused Rodney Andrew Molt were charged, by means of a Bill of Indictment filed by the Attorney General on the 29<sup>th</sup> August 2012, of having on the 5<sup>th</sup> March 2011 and in the preceding months **(1)** rendered themselves guilty of conspiracy to traffic in dangerous drugs in breach of the provisions of the Medical and Kindred Professions Ordinance (Chapter 31 of the Laws of Malta) or of promoting, constituting, organising or financing the conspiracy **(2)** rendered themselves guilty to bring or causing to be brought into Malta in any manner whatsoever a dangerous / psychotropic drug (Mephedrone) being a drug specified and controlled under the provisions of Part A, Third Schedule, of the Medical and Kindred Professions Ordinance (Chapter 31 of the Laws of Malta) when they were not in possession of any valid and subsisting import authorisation granted in pursuance of the said law **(3)** rendered themselves guilty of selling or otherwise dealing

in an illegal substance (mephedrone) without a licence by the Minister responsible for Health or without being authorised by these Rules or by authority granted by the Minister responsible for Health to supply the drug mentioned (Mephedrone) or without being in possession of an import or export authorisation issued in accordance with law, and without being licenced or otherwise authorised to manufacture the drug or without a licence to procure the same **(4)** rendered themselves guilty of possession of a dangerous / psychotropic drug (Mepedrone) being a drug specified and controlled under the provisions of Part A, Third Schedule, of the Medical and Kindred Professions Ordinance (Chapter 31 of the Laws of Malta) when not in possession of any valid and subsisting import or possession authorization granted in pursuance of the said law, and with intent to supply in that such possession was not for the exclusive use of the offenders.

**3.** By means of a note of pleas of the 24<sup>th</sup> September 2012, appellant pleaded :

*1. That the trial against her cannot proceed at this juncture of the proceedings as her main witness in her defence is Andrew Rodney Molt who is currently co-accused with her under the same bill of indictment. Thus at this point in order to safeguard accused`s right to a fair trial there should be ordered the separation of suits between co-accused and accused Ana-Maria Beatrice Ciocanel`s trial be set for hearing only upon the definite termination of the proceedings against her co-accused Andrew Rodney Molt.*

**4.** By means of a decree of the 24<sup>th</sup> September 2012, the Criminal Court ordered service on the Attorney General of the said note of pleas with a time limit of two days to enter a reply.

5. The Attorney General filed a reply on the 26<sup>th</sup> September 2012. After referring to Art 594 of the Criminal Code, the Attorney General submitted that it was up to him to decide whether to propose or not a separation of causes, and therefore depending on whether or not co-accused Rodney Andrew Molt would admit to the charges proffered against him, the Attorney General would consider accordingly his position.

6. By means of its judgement delivered on the 5<sup>th</sup> December 2012, the Criminal Court dismissed appellant's plea after considering :

*That the note of accused Ciocanel is not really a plea but a request to have the accused trial separate from that of co-accused Andrew Molt since is her principle witness and as co-accused his evidence would have no bearing on her trial.*

*This request is being made on the basis of Art 594 of the Criminal Code that authorises such separation of trials, however, only at the request of the Attorney General. The Court cannot of its own accord order a separation of trials, but may only do so upon the demand of the Attorney General. During the hearing of this case, the Attorney General has made it quite clear that he does not intend to make such a request in which case the trial has to proceed as originally filed.*

7. By means of a note filed on the 5<sup>th</sup> December 2012, Ana-Maria Beatrice Ciocanel gave notice of appeal. The appeal itself was filed on the 10<sup>th</sup> December 2012.

8. Appellant stated his grievance as follows :

*That the manner in which the Attorney General exercised his discretion as to how to present the bill of indictment against the two accused in this case is tantamount to a negation to a fair trial fought out in*

*equality of arms as such discretion was exercised in such a way as to deny applicant of her main witness in her defence. Following the setting up of the preliminary plea by applicant, the Attorney General failed to give a valid reason as to why prosecuting the two accused in such a manner would be preferable in the interests of justice, an omission which in light of the fact that applicant is alleging a breach of her right to a fair trial in these circumstances cannot be ignored or put aside simply by finding refuge in terms of Section 594 of Chapter 9 of the Laws of Malta that separation of proceedings may only be ordered by the court upon the Attorney General's request.*

*It is applicant's humble opinion that in a situation such as the present one, given that the Attorney General failed to provide a reasonable justification as to why prosecuting both accused with one indictment would be more beneficial in the interests of justice (and possibly as to why at no point did he consider requesting the separation of proceedings subsequent to the setting up of the pleas by applicant to remedy the situation) especially in the light of the fact that applicant is declaring that she is being denied the opportunity to set up the best defence possible in her case, then it would be the Court's prerogative to take such remedial steps in order to prevent the breach or possible breach of the fundamental human rights of applicant as alleged.*

*It is in light of the above that applicant is reserving her right to proceed before the Courts of Constitutional jurisdiction for a remedy and just satisfaction should the need arise.*

**9.** After having taken due notice of the oral submissions made by appellant and the Attorney General at the hearing of the 2<sup>nd</sup> May 2013, the following are the views of this Court.

**10.** In the first place, the entire thrust of the appellant's plea before the first court as well as in the appeal application is to the effect that the Attorney General's

decision to accuse her jointly with Rodney Andrew Molt on the same indictment means that the appellant has been denied her main witness *viz.* the co-accused Rodney Andrew Molt. In this respect the Court notes that although the appellant declared the co-accused Rodney Andrew Molt as a witness in her defence (witness number 9 in her list of witnesses fol. 20) the first court was never called upon to give a decision on the issue of the admissibility of Rodney Andrew Molt as a witness in the accused's defence and no such decision was delivered by the first court. The issue of the admissibility of Rodney Andrew Molt as a witness in the appellant's defence is therefore simply not before this court and this court is not being called upon to give a decision on the matter. The only issue before this court is the one decided by the court of first instance, namely that according to law it is only the Attorney General who may demand separate trials for the several co-accused on the same indictment. That is the decision against which an appeal has been filed and the revocation of which is being sought by the appellant in her appeal application.

**11.** The first court came to the conclusion that the appellant's note of pleas is not really a note of defence pleas but is effectively a request to have the appellant's trial separate from that of the co-accused Andrew Molt. In his appeal application the appellant does not contest the first court's construction of the accused's note of pleas and she has not raised any grievance in this respect. The appellant's only grievance consists essentially in a repetition of what is contained in her note of pleas before the first court..

**12.** Since the first' court's construction of the accused's note of pleas that it is in effect a request for a separate trial for the two co-accused has not been contested by the appellant this court cannot do otherwise than confirm the decision appealed from for the following reasons.

**13.** Article 594 of the Criminal Code states as follows :

*The court may also, upon the demand of the Attorney General, order a separate trial for each accused, when two or more are joined in the same indictment.*

**14.** This provision of law is clear and unequivocal. *Motu proprio* the court has no right whatsoever to order a separate trial for each accused, when two or more are joined in the same indictment unless there *is* the demand of the Attorney General. There is no provision of the law which vests the court with the authority to order a separate trial on the demand of the accused. If a demand is submitted by the Attorney General, then the court may order a separate trial. If not, then the court cannot act of its own motion. In the case under scrutiny, the Attorney General did not make a demand to the effect aforesaid and therefore the first court may not order a separate trial of each of the persons co-accused jointly on the same indictment. The court has no authority to question the reasons why the Attorney General chooses to accuse two or more persons jointly on the same bill of indictment.

**15.** Moreover, to the extent that the plea raised by the appellant before the Criminal Court is represented by the appellant as a plea on a point of fact in consequence of which the trial should not take place at the time (article 449(f) of Cap. 9), the plea as so represented is ill-conceived. The joinder of two persons in the same bill of indictment can never be a fact in consequence of which the trial should not take place because such joinder of two or more persons in the same indictment to be tried at the same trial is explicitly sanctioned by the law itself (article 591 Cap. 9). This is the case especially in the light of what has already been said that after such joinder separate trials may be ordered by the Court only on the demand of the Attorney General.

**15.** In so far as the appellant's considerations with constitutional implications are concerned these were raised in support of her demand for the revocation of the decision appealed from and not with the view of obtaining a reference of a constitutional question in terms of article

46(3) of the Constitution. So much so that the appellant limited herself to reserving her right to proceed before the courts of constitutional jurisdiction for a remedy and just satisfaction should the need arise. Indeed the issues raised by the appellant in this regard are based on the mistaken premise that she has been denied her main witness *viz.* the co-accused Rodney Andrew Molt. As pointed out earlier in this judgment, however, the said Rodney Andrew Molt has been declared by the appellant as a witness in her defence and no decision has been delivered by the Criminal Court on the admissibility or otherwise of the said witness because the same court has not been called upon to do so. The appellant's considerations of a constitutional nature, therefore, at least at this stage, do not arise. Furthermore it is a well established principle that as a rule questions relating to fair trial are to be addressed upon an assessment of the trial as a whole and that it is only at the conclusion of such trial that a proper assessment of whether there has been a fair trial can be made.

**16.** For these reasons the Court dismisses the appeal entered by Ana-Maria Beatrice Ciocanel from the judgement of the Criminal Court of the 5<sup>th</sup> December 2012 and orders that the record be forthwith sent back to that Court for the case to proceed according to law.

**< Final Judgement >**

-----END-----