



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.
MIRIAM HAYMAN**

Sitting of the 19 th November, 2013

Number. 470/2009

**The Police
Inspector Victor Aquilina**

VS

**Richard Alistair Cranston, son of John and Joan nee'
Hollingtale, born in the United Kingdom on the 30th
May, 1967, residing at 20, Kingsway, Geerrards Cross,
Bucks, United Kingdom, holder of UK Passport
540487406;**

The Court;

Having seen charges brought against the above-mentioned **Richard Alistair Cranston** who was charged of having on the 13th May, 2009, and during the previous months, in these Islands:

a. Had in his possession the drugs (cocaine) 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 (GN292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs was 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 (GN 292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;

b. And also of having had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof), the whole of any portion of the plant Cannabis in terms of Section 8(d) of Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;

c. Also of having had in his possession the resin obtained from the plant Cannabis or any preparations of which such resin formed the base in terms of Section 8(a) of Chapter 101 of the Laws of Malta;

d. And also of being a recidivist after being sentenced for an offence by a judgment which has become absolute, which sentence was issued by the Tribunale di Catania on the 19th December, 2006.

Seen that charges being read, accused entered a non-guilty plea.

Seen Attorney General's Order and Counter Order under Chapter 101 of the Laws of Malta.

Seen all the evidence produced of which the Court will proceed to summarize in order to examine the facts presented.

Inspector Victor Aquilina testified about a warrant of search and arrest executed against the accused on board the yacht named 'Tweela' berthed at Manoel Island, and which according to him was that property of Richard Cranston. After police officers found cannabis and cocaine (suspected to be so at this time), Cranston was taken in custody and brought to his office, where he released a statement after the relative caution being administered, as evidenced also by PC 599 Clive Mangion. The statement was thus exhibited as Dok VA a folio 30. To be noted that this was taken in 2009, therefore prior to the legal assistance amendments. Mr Cranston at the time was forty-one (41) years of age, and had a clean Maltese conviction sheet (exhibited a folio 10).

Various police officers involved in the search and arrest tendered evidence – WPS 127 Carmen Gauci, PS 579 Antoine Micallef, PS 1086 Johann Micallef, and PC 213 Nicolai Borg.

They all testified that the search on the mentioned yacht resulted in finding an electronic scale found by PC 213 Nicolai Borg. In the accused's bedroom a black pouch was found containing two blocks of white substance, a plastic bag with suspected cannabis grass, and a ball surrounded with brown plastic also suspected to contain cannabis grass. PS 1086 also testified that in the accused's pocket was a packet of tobacco also containing a brown substance suspected to be cannabis grass.

A Magisterial Inquiry was conducted due to results of these findings and relative experts were appointed as resulting from the proces-verbale exhibited a folio 34 of the proceedings. Photos of this seizure were taken and

duly exhibited by PS 644 Evan Camilleri and PS 612 Theo Vella (report Dok TV folio 485).

Pharmacist Mario Mifsud concluded, after analyzing the substance found, that:

a. Traces of Tetrahydocannabinol (THC) and Cocaine were detected on the electronic balance that was in exhibit 200/09/02;

b. The block of brown substance that was in exhibit 200/09/02, the net weight of which was 04.98grams, was found to be Cannabis resin. The purity of the block of brown substance for the substance THC, was found to be circa 08.4%;

c. What seemed to be crushed leaves and pressed leaves that were in exhibit 200/09/01, the total net weight of which was 36.55 grams, were found to be crushed and pressed leaves of the Cannabis plant. The average purity of the crushed and pressed leaves for the substance THC, was found to be circa 12.3%. The plants and resin of the Cannabis plant are scheduled under the Dangerous Drugs Ordinance, Chapter 101, Section 8 of the Laws of Malta, while the substance THC is scheduled under The Medical and Kindred Professions Ordinance, Chapter 31, Third Schedule, Part A of the Laws of Malta;

d. The two blocks of white substance that were in exhibit 200/09/01, the total net weight of which was 58.46 grams, were found to contain Cocaine. The average purity of the two blocks of white substance for the substance cocaine was found to be circa 27.3%. The substance Cocaine is scheduled under the Dangerous Drugs Ordinance, Chapter 101, Part 1 of the Laws of Malta;

e. Total retail price (2006) of drugs found:

Drugs	Weight – g	Price per gram - €	Retail price - €
Cannabis resin	04.98	06.41	0031.92
Cannabis herb	36.55	13.00	0475.15
Cocaine	58.46	76.00	4,442.96
		Total	4,950.03

Dr Joe Mifsud on his part presented a compodium of assets and liabilities of the accused (folio 171); whilst Mr Joseph Mallia, appointed for this purpose of comparing accused's palm and finger prints with those lifted by PC 1525, reported negative results (folio 206 – 220).

A judgment handed against the accused by the Procura della Repubblica, Tribunale di Salerno, was exhibited by Inspector Jesmond Borg.

Dr Robert Sultana was also appointed to translate into the English language the proces-verbale above-mentioned, already drawn in the Maltese language; and into the English language the Italian judgment above-mentioned. The translations were exhibited at folio 244 of the records of the case and were marked Dok RS1. The judgment shows that Mr Cranston – the accused, was found to be in possession of illicit substances and was awarded for four(4) years imprisonment, and a fine(multa) of eighteen thousand Euros(€18,000). He was further interdicted from Public Office for five(5) years. Judgment was handed down by the Tribunale di Catania, on the 19th December, 2006.

Accused chose to tender evidence viva voce. He testified that he had been in Malta for ten(10) years and that he was a yacht captain. He confirmed that he owed a yacht. He also confirmed that he was found in possession of fifty(50) grams of cocaine in his cabin, saying that it was for his own consumption. He added that he consumed this on a daily basis – two(2) or three(3) grams, therefore he had stored a two(2) weeks' supply. He explained that he kept such a supply not to have to purchase the substance daily. He also confirmed that present during the police search was his girlfriend and one crew mate; and also that the drug was kept and this found in the bedside table in the cabin. He explained that he chartered the boat for approximately five hundred Euros(€500) daily and that his boat was chartered regularly especially during the summer time, whereas in winter he was kept by his girlfriend. He answered in cross-examination that he paid

one thousand Euros(€1,000) for the cocaine. He confirmed that he also occasionally smoked marijuana. He agreed with the Prosecuting Officer that on the day of the search, twenty-eight(28) grams of cannabis were also found – both drugs for personal use. He confirmed that he bought the drugs from a bar in Paceville, as also that when doing so he carried the scales with him. He also confirmed that he had previously been tried in Sicily regarding cocaine. He continued to testify (out of his own choice the second time), that he bought his yacht 'Tweela' in 2000, for which he sold his property. He came to Malta on this vessel and used it for a successful chartering business.

He also now added that he was much into sports, and goes regularly to the gym. He spoke about friends he made - also related to yachts, such as a certain Chris Calleja and a Jesmond. He mentioned that he was introduced to Yvonne McKinnon and built a relationship with her. They helped each other with their respective businesses as she runs a restaurant. He described her as being controlling and that she had introduced him to the world of cocaine, thus his sports and fitness went downhill. He explained that the drugs were first used socially, then the habit escalated. He explained that they both had excess money and they spiraled out of control.

About his mentioned friends, he said that Yvonne McKinnon scared them off and that they were anti-drugs. He described that his relationship with Yvonne as one being bound by drugs. He reaffirmed that the drugs found were his and that the substance would be used by him and his girlfriend. He however denies possession of what he called the leave drugs; but accepted sole possession for the raza, and that the cocaine belonged to him and Yvonne. He now evidenced that even Yvonne bought cocaine.

He also indicated places and a person he purchased drugs from, but offered very scarce information, though he insisted he was trying to help Inspector Victor Aquilina, but the attempts at such help had failed due to him being double crossed.

He further evidenced to the Court that due to the drug situation, he was also forced to sell his boat - that is his lifetime dreams, and was heavily indebted.

Christopher Calleja, witness to the Defense, testified that he had known the accused for ten(10) years, and also knew his family well. He described accused as a person mad about sports; very sport orientated with a passion for sailing. He further added that on having met Yvonne – the girlfriend, he advised accused to drop her immediately because she did not look right. He described her as a “crazy nutcase” (folio 366). He said that in the last three(3) years to keep away from the girlfriend he hardly met the accused. He opined that after Richard started living with Yvonne, he spiraled downwards, often drunk and gone astray.

David Carter, also accused’s friend, testified that he knew accused at school and that accused for ten(10) years worked in thier family business – a golf and country club. He described him as diligent, trustworthy, and ended up as a senior manager in this business. He also testified that he had lent accused the sum of fifty thousand pounds (£50,000) to complete the purchase of a yacht, correcting that he invested in the vessel with the accused. This transfer and investment was done on a hand-shake. He described Richard as a non-smoker and a non-drinker. He said that in summer months he would receive the sum of four thousand pounds (£4,000) from the chartering business. He explained that accused had met his above-mentioned girlfriend – a possessive, domineering and jealous individual, and her influence resulted - according to him, in Richard not answering telephone calls. He said that he stopped visiting the boat with his family because of the going ons on this boat. He recalled a situation where after dinner on the boat, the girlfriend Yvonne produced a bag of cocaine and tipped it on the table in front of him and his wife. He also explained that after the profits from chartering dried up due to bad management by the accused, blaming again Yvonne, he had come over to discuss the matter with accused and found him in the

presence of unsavory characters who told him that they now owned the boat due to debt incurred by Richard. He recalled various occasions where he saw accused and the girlfriend taking drugs.

Jesmond Galea Enriques testified that he also had known accused for twelve (12) years. They socialized together. He also explained that he had advised Richard to drop Yvonne, and added her friends were of a questionable character.

Asked if Richard had ever told him of the drugs found on the boat, he answered in the negative.

Considers:

As above-premised, accused also released a statement. Defense briefly argued that this was inadmissible due to the fact that it was taken without the right of legal assistance being offered to accused. Frankly, the Court does not agree with this line of defense, due to the age of the accused and more so that he has already been condemned for a drug related offence!! And this in the light of recent Constitutional developments in this regard.

The Court however, is only going to make a slim reference to the statement, just in commenting that therein accused admitted to buying cocaine, cannabis grass and cannabis resin.

Considers:

The main line of defense forwarded by the accused, was that he possessed drugs for personal use, negating also that he used resin, attributing the possession of the grass solely to Yvonne, as he found such to be strong; and owning or possessing the cocaine together, buying the drug with his or her money.

Defense clearly attributed these habits developed by the accused to the girlfriend Yvonne. Accused and his friends labeled this woman as an evil incarnate, demonizing her character to justify accused's actions. Maybe defense has

conveniently forgotten that he was previously already condemned for drug-related offences in Italy. Really and truly accused is not as gullible and vulnerable as he tried to portray himself to the Court!!

Accused in his viva voce testimony (although contrasting with his above-mentioned admission in his statement to buying the three drugs), evidenced that he and Yvonne bought the drugs together with regards to the cocaine, saying that *"I would go in myself (in the bar) to buy it, because I would go into a gentlemen's toilet to purchase the drugsShe (Yvonne) would be at the bar waiting. The money would be mine, herself dependingeither or ours. We did not really have a strict issue about the money at the time."* (folio 356). He admitted to possessing the resin and the loose leaf, then changing his version and attributing the possession of the leave to Yvonne because he testified *"....I was unaware of the seriousness of the charges and I took the responsibility at the time of all the drugs which had been kept on the boatI took responsibility for it."* (folio 357)

To be noted that this correction with regards to the cannabis leaves was offered when he chose to take the stand the second time!!!

Certainly, there is no doubt in the mind of the Court, that the accused has no one to blame for his predicament but himself. He has repeatedly involved himself in and with drugs, not having learnt a valuable lesson the first time he was apprehended and arraigned. If his girlfriend was so domineering and forceful, he certainly well accommodated her by actually presenting himself to purchase the drugs!!

Ex admissis, the drugs were certainly not acquired for personal use. The Court refers to a judgment handed down by the Criminal Court of Appeal, per Judge Dr Vincent De Gaetano, in the names "The Police vs Russel Bugeja", dated 12th June, 2008, where the learned Judge established that the drug acquired has to consumed (i) in the same place and together with the acquirer, therefore

establishing an element of “commonness” that is the acquisition with intention to share.

The Court is of the opinion that though the drug was not consumed in the men’s toilet, were accused admitted to buying it, it was certainly acquired with the intention to share.

The Judge continues to amplify that under our Law, anyone who shares drugs acquired for his own use “supply” can avoid the mandatory prison penalty of having done so in small and isolated cases (The Police vs Marco Galea, 5th May, 2008, Criminal Appeal)

The Court here is not however faced with a minimal one off occasion. Ex admissis accused recalls that this habit was an on-going situation between him and his girlfriend, a long-standing vice to the extent that they also had no qualms in showing it off to their friends!!

The Court, premised the above, finds the accused guilty as charged, this after having seen Articles 8 and 9 of Chapter 101 of the Laws of Malta, First Schedule to Chapter 101 of the Laws of Malta; Sections 22(1B) and 22(2)(b) of Chapter 101 of the Laws of Malta; GN 292/1939; Regulation 9 of S.L.101.2002.

With regards to the penalty to be imposed, the Court will agree with Defense that no proof of recidivism was offered, however again ex admissis accused admitted to having been tried for drug-related offences – cocaine, in Sicily (folio 343). Therefore, the Court is of the opinion that an effective incarceration punishment is adequate, considering also the amounts of drugs frequently bought and shared, and condemns Richard Alistair Cranston to the effective term of imprisonment of two(2) years; and to the fine (multa) of €6,000 (six thousand Euros).

Also condemns accused to the payment of all experts’ fees involved, after having seen Article 533 of Chapter 9 of the Laws of Malta, to the sum of €2,597.05.

Informal Copy of Judgement

Orders the destruction of all the drugs exhibited and therefore communicates this judgment to the Registrar of Criminal Courts, having exhibit number KB191.2009.

< Final Judgement >

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