



MALTA

COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR.
NATASHA GALEA SCIBERRAS

Sitting of the 19 th September, 2014

Number. 460/2013

The Police

(Inspector Nikolai Sant)

vs

Milos Peric

The Court,

Having seen the charges brought against Milos Peric, aged 29, son of Bratislav and Javorka nee` Misic, born in Serbia on 28th December 1983, residing at No. 6B, Wismayer Building, Birkirkara Hill, St. Julian's and holder of Serbian Passport No 008575175;

For having on these Islands, on 28th August 2013 and in the previous months in these Islands:

1. Had in his possession the drugs (*cocaine*) specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation 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 authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (GN 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were 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;
2. Had in his possession the drugs (*cocaine*) specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation 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 authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (GN 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were 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;

3. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or 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;
4. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant Cannabis in terms of Section 8(d) of Chapter 101 of the Laws of Malta;
5. Had in his possession the psychotropic and restricted drug (magic mushroom) without a special authorisation in writing by the Superintendent of Public Health, in breach of the provisions of the Medical and Kindred Profession Ordinance, Chapter 31 of the Laws of Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended;
6. Altered or tampered with a passport or used or had in his possession a Bulgarian passport, which he knew to be forged, altered or tampered with, in the name of Evgeniy Dechev Genev bearing passport number 334248172 (Chap. 61, Section 5 of the Laws of Malta);
7. And also with having on the same date, time and circumstances committed any other kind of forgery, or having knowingly made use of any other forged document, in the mentioned documents (Chap. 9, Section 189 of the Laws of Malta).

Having heard the evidence and having seen the records of the case, including the order of the Attorney General in virtue of subsection two (2) of Section 22 of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) and subsection two (2) of Section 120A of the Medical and Kindred Professions Ordinance (Chapter 31 of the Laws of Malta), as well as the consent of the Attorney General in terms of Section 370(4) of Chapter 9 of the Laws of Malta, for this case to heard by this Court as a Court of Criminal Judicature;

Having heard the accused plead guilty to the charges brought against him, during the sitting held on 7th April 2014, which admission was confirmed by the same accused even after the Court, in terms of Section 453(1) of Chapter 9 of

the Laws of Malta, warned him of the legal consequences of that admission, and allowed him sufficient time to re-consider his reply, and to change it;

Having heard the parties' suggestion about the punishment to be inflicted as well as oral submissions regarding said punishment.

Considered that:

In view of the guilty plea filed by the accused in respect of the charges brought against him and on the basis of the evidence brought forward by the Prosecution, the Court cannot but find the accused guilty of the charges brought against him.

Considerations on Punishment

For the purpose of the punishment to be inflicted, the Court took into consideration on the one hand, the clean criminal record of the accused at the time when he committed the offences with which he is charged and that although his guilty plea was not filed during the initial stages of these proceedings, yet he cooperated with the police during its investigation.

On the other hand, the Court took into consideration the serious nature of the offences with which the accused has been charged and the nature and quantity of the substances found in the possession of the accused. Although no court expert was appointed to indicate the weight and purity of the said substances, yet from the evidence given by Inspector Nikolai Sant during the sitting held on 9th September 2013¹ (as well as by other witnesses brought by the prosecution), it results that the accused was found in possession of the following:

¹ A fol. 41 *et seq* of the acts of these proceedings.

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- i. Several small packets containing a white substance suspected to be cocaine – PC 99 Mario Portelli states that there were 9 packets² and this is also confirmed by the accused in his statement³;
- ii. Three pieces of *cannabis* grass;
- iii. A plastic bag containing circa 17 grams of white substance suspected to be cocaine;
- iv. A small plastic bag containing a white substance suspected to be cocaine.

During the sitting held on 18th September 2013, the defence agreed that the substance found in the possession of the accused was cocaine. Furthermore, during the sitting held on 7th April 2014, the defence also agreed that the accused had *cannabis* grass and a restricted and psychotropic drug (magic mushroom) in his possession. As regards these latter two substances, the parties agreed that the relative quantities were minimal.

As regards the amount of cocaine found in the accused's possession, however, the Court notes that this consisted of an amount which whilst not substantial, neither can it be considered as minimal or insignificant. Within this context, the Court considered also the suggestion made by the parties as to the punishment to be inflicted, namely that of imprisonment for a period of eight months and a fine, in respect of which the Court declared that it was not considering itself bound. Indeed, taking into consideration that the minimum punishment prescribed by law in respect of the offences contemplated in the first, third and sixth charges amounts to six months imprisonment and that by application of Section 17(b) of Chapter 9 of the Laws of Malta, the minimum punishment which the Court may apply in respect of the offences contemplated in such charges amounts to ten months imprisonment, the punishment suggested by the parties is clearly inappropriate.

However, for the purpose of the punishment to be inflicted, the Court has applied the provisions of Section 17(h) of Chapter 9 of the Laws of Malta so that it has deemed the offence contemplated in the second charge as having

² A fol. 53 of the acts.

³ A fol. 6 of the acts.

been designed for the commission of the offence contemplated in the first charge and the offence contemplated in the fourth charge as having been designed for the commission of the offence in the third charge. The Court has also applied the doctrine of the formal or ideal concursus in respect of the sixth and seventh charges brought against the accused so that it has dealt with the violation of these provisions of law as one single offence and is thus subjecting the accused to the graver punishment, namely that contemplated for the offence in the sixth charge. Furthermore, the Court has also applied the provisions of Section 17(b) of Chapter 9 in respect of the first, third and sixth charges brought against him and the provisions of Section 17(f) of Chapter 9 in respect of the fine that shall be imposed in respect of the first, third and fifth charges.

As regards the monies found in the possession of the accused and exhibited in the acts of these proceedings as Documents NS4, NS10, NS11 and part of Document NS9, amounting in total to six thousand, three hundred and ten Euro (€6,310), the Court notes that although the circumstances in which these were found were highly suspicious, yet it has not been proved beyond a reasonable doubt that these monies were perceived from drug-related activities. The documents exhibited by the accused indicating that he had borrowed the sum of ten thousand Euro (€10,000) from his mother, who had just sold some land during the previous month, does shed a degree of doubt in his favour, as to the provenance of the said monies. The Court also notes the declaration made by the Prosecution during the sitting held on 7th April 2014, that it found no objection to the release of the said monies in favour of the accused.

Conclusion

For these reasons, the Court, after having seen Parts IV and VI, Sections 8(d), 22(1)(a), 22(2)(b)(i) and (ii) of Chapter 101 of the Laws of Malta, Regulations 4 and 9 of GN 292/1939, Sections 40A, 120A(1)(a) and 120A(2)(b)(ii) of Chapter 31 of the Laws of Malta, Regulation 3(1) of Legal Notice 22/1985, Sections

17(b), (f) and (h) and Section 189 of Chapter 9 of the Laws of Malta and Section 5 of Chapter 61 of the Laws of Malta, finds the accused guilty of the charges brought against him and condemns him to **twenty (20) months effective imprisonment** – from which term one must deduct any time prior to this judgement, during which the person sentenced has been kept in preventive custody in connection with the offences of which he has been found guilty by means of this judgement – **and a fine of one thousand and five hundred Euro (€1,500)**, which must be paid by the person sentenced immediately.

Since no evidence has been brought forward indicating that the mobile phones seized from the possession of the person sentenced were used in the commission of the offences of which he is being found guilty, the Court is ordering the release of the said phones exhibited as part of Document NS7 and Document NS8 in favour of said person.

As regards the monies found in his possession and exhibited in the acts of these proceedings as Documents NS4, NS10, NS11 and part of Document NS9, amounting in total to six thousand, three hundred and ten Euro (€6,310), for the reasons above stated, the Court orders the release of the said monies in favour of the person sentenced.

The Court also orders that the forged passport and the drugs exhibited respectively as Documents NS, NS2, NS3, NS5 and parts of Documents NS7 and NS9 are destroyed, once this judgement becomes final, under the supervision of the Registrar, who shall draw up a *proces-verbal* documenting the destruction procedure. The said *process-verbal* shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

< Final Judgement >

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