



MALTA

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

**MAGISTRATE DR.
MIRIAM HAYMAN**

Sitting of the 3 rd March, 2015

Number. 379/2011

**The Police
Inspector Pierre Grech**

VS

**OMISSIS;
Ana-Maria Beatrice Ciocanel holder of Romanian identity
card number RD662819;**

The Court;

Seen charges proffered against the above-mentioned mentioned **Ana-Maria Beatrice Ciocanel**, who was charged

of having on these Islands and outside these Islands, on the 5th March, 2011 and during the preceding months:

- a. Together one another one or more persons in Malta or outside Malta, conspired for the purposes of selling or dealing in a psychotropic and restricted medicine (mephedrone) in Malta against the provisions and in breach of Article 120A of the Medical and Kindred Professions Ordinance and the Regulations for the Control of Medicines, LN 22/1985 or promoted, constituted, organised or financed the conspiracy;
- b. Also of having imported or caused to be imported psychotropic and restricted medicine (mephedrone) without due written authorisation from the Superintendent of the Public Health, in breach of the Medical and Kindred Professions Ordinance, Chapter 31 of the Laws of Malta, and the Regulations for the Control of Medicines, LN 22/1985 as amended;
- c. Also of having dealt, sold, distributed or offered to deal, sell or distribute psychotropic and restricted medicine (mephedrone) without due authorisation, in breach of the Medical and Kindred Professions Ordinance Chap 31 of the Laws of Malta and the Regulations for the Control of Medicines, LN 22/1985 as amended;
- d. Also of having had in her possession the psychotropic and restricted medicine (mephedrone) without due written authorisation from the Superintendent of Public Health, in breach of the Medical and Kindred Professions Ordinance, Chap 31 of the Laws of Malta, and the Regulations for the Control of Medicines, LN 22/1985 as amended, which drug was found in such circumstances indicating that the possession was not for her exclusive use.

Seen that accused answered that she was not guilty as charged.

Seen the Order and Counter Order issued by Attorney General under Chapter 31 of the Laws of Malta.

Heard and seen all evidence brought and submitted.

On this part, **Inspector Pierre Grech** testified that Customs Officials had intercepted a parcel sent from Prague suspected to contain a drug substance. The addressee of the said parcel was a certain Rodney Andrew Molt. The witness also testified that a certain Ana-Marie Beatrice Ciocanel resided with the mentioned Molt. Inspector Grech also testified that after consulting with the Inquiring Magistrate, a controlled delivery was effected, therefore creating a decoy parcel to be delivered. Thus he explained that PC 760 Saliba posed as a postman and proceeded with the delivery of the said parcel at the residential address of the addressee. The parcel was in fact successfully delivered as was later evidenced by PC 760 Saliba.

Inspector Pierre Grech testified that accused was in fact - after the relative searches conducted in the residence she shared with Molt resulted in positive finding of further substances, taken to Headquarters and there questioned by the Inspector who then exhibited the statement released by the accused as Dok AMBC. He further exhibited the conduct sheet of accused as Dok AMBC1. He further exhibited Ciocanel's refusal to have a private consult with legal council before the interrogation.

In the said statement she said that she had the intention of marrying her boyfriend Andrew and going to settle in the States. Asked if she abused of drugs, she implied in the affirmative, stating however that she took legal drugs, saying she took these occasionally. The drugs she took she mentioned to be sensation and magic, ones bought from a shop in Romania.

She recognised the bag of Flower Magic found by the police in her bedroom stating that these were the drugs she referred to as legal drugs, ones she had obtained online. With regards to the white powder delivered to the flat she shared with her boyfriend Andrew - the parcel already mentioned, she stated that the white powder therein contained was like magic, legal stuff. She confirmed she had ordered the bags, the magic bags. She said she had placed such orders twice. She insisted it was her boyfriend Andrew who had ordered the parcel received, as she was abroad and returned on the fourteenth of February. She denied ever selling cocaine or ecstasy, insisting she (together with her boyfriend) just sold the legal stuff. She insisted that they gave this stuff to their friends against money just to have fun together and with the idea of any business venture there from. She said that a Magic Bag cost around fifteen Euros (€15). With regards to a bag allegedly containing cocaine found in her residence, she denied that it contained such substance and insisted that the rolled money papers were used for the taking of the Magic substance.

Shown green and pink pills found, she insisted she had never seen these in her house. She suggested that they were steroids. She answered she had never seen any ecstasy in her house.

She reiterated that she never told the Sergeant that she sold legal drugs for parties. She insisted the drugs were legal and

found in Romanian shops. She insisted she never sold or gave drugs to anyone. She explained that she did not sell drugs in the street or clubs. She ordered the drugs just to have fun amongst friends. She explained she placed the order and the others gave her money, that they were two to three girls involved in this, her Romanian friends.

The process verbal drawn up with respect to the finding of these substances was presented as evidenced in the proceedings.

Thus **Godwin Sammut** nominated in the Inquiry concluded:

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- a. **Cocaine** was found in the swabs taken from the spoon which is in the exhibit labelled as 083_11_03. Cocaine is controlled by Chapter 101 of the Laws of Malta under the First Schedule of Part I;
- b. **Cocaine** was found in the extracts from the white powder which is in the exhibit labelled as 083_11_03. The total weight of the white powder is **0.41 grams**, and the purity of cocaine in the white powder is approximately **30%**. Cocaine is controlled by Chapter 101 of the Laws of Malta under the First Schedule of Part I;
- c. According to the Malta National Report 2007 which is the last report submitted by Malta to the EMCDDA, the prices in Euros per gram of cocaine is €76. The total weight of cocaine in this case was 0.41 grams which gives a value of €31.16;
- d. **Mephedrone** was found in the extracts taken from the white powder which are in the exhibits labelled as

*083_11_01 and 083_11_03. The total weight of the white powder is **506.17 grams**. Mephedrone is controlled by Chapter 31 of the Laws of Malta under Part A of the Third Schedule.”*

Under cross-examination he testified that ten packets were found containing mephedrone. He also added that this drug had no street value, and with regards to the weight of the cocaine he further added that mixed therewith was the substance caffeine, adding to the total weight of 0.41 grams.

He confirmed that besides the packets containing mephedrone, he found the existence of other substances cocaine and caffeine, a packet containing lidocaine, another containing mitoline. He confirmed that rolled money notes were found and packets labelled as Flower Magic Powder which contained the mythaline dioxile and which was not controlled.

He also mentioned six packets containing Mephedrone, a spoon with traces of cocaine, white powder containing cocaine and caffeine.

PS 1086 Johann Micallef and **WPC 136 Ciantar** were both involved in the search effected at accused's residence.

Sergeant Micallef testified that together with PC 10 he proceeded on the 10th of March, 2011 to the Customs Offices, where a packet containing suspected substance was found. He was there met by Customs Official Vincent Agius who handed him over a brown envelope containing another envelope inside which were four (4) plastic packets containing white powder. The receiver addressee of the said parcel was an Andrew Molt and the contents of the parcel were described

as “aromatherapy beads”. He testified that he passed the said parcel to Inspector Grech.

The following day, he added, at about 2.30pm, they delivered the parcel after having changed the contents thereof. The delivery was successful, as this was in fact delivered to a certain Andrew Molt.

He further added that this Molt was found together with the accused. He further stated that together with WPC 136, accused was taken to her bedroom where the witness gave her the rights and explained to her that they were Drugs Squad personnel. Accused here informed her that she and her boyfriend (previously co-accused) had ordered the parcel together through internet, and that the contents thereof were not illegal.

He further added that WPC 136 commenced the search and extracted from the bedside drawer thirty-eight (38) black sachets which had written on them “magic flower”. Accused insisted with them that the substance was not illegal. She also told them that the last they had sold thereof was in December. He added electronic scales were found in the bedroom. Beatrice also told the Sergeant, as he testified, that they had ordered the amount of three-hundred (300) grams so that they could share the substance with friends with no profit.

Under cross-examination he agreed that accused had explained the substance found as legal. He confirmed that Beatrice also told them that they had two orders placed of this substance from two different suppliers.

He also testified that accused had told them that she travelled frequently and that she had been in Malta for the past ten days to two weeks prior to her arrest.

WPS 136 Charlene Ciantar testified that PC 10 had delivered a parcel similar to the one seized from the post office to the residence of accused who lived there with a certain Andrew Molt. She evidenced that together with PS 1086 they proceeded together with accused to the bedroom and there identified themselves as Drugs Squad Police, adding that PS 1086 also informed accused of her rights. This Police Sergeant further added that accused informed them that the package received earlier in the day was ordered by her and her boyfriend and that the substance therein contained was legal.

This witness further added that she found in the bedside table thirty-eight (38) small black packets. Here Ciocanel informed her that the packets contained the same white substance they had received earlier in the day. She insisted that all was legal and they were sold to friends as party pills. Electronic scales were also found in the bedroom. The witness continued to testify that on their way to the Depot, accused answered PS 1086 with regards to the amount of the white substance. She answered that there was about five hundred (500) grams; also that they bought in such a big amount because it cost less. She informed that they sold to their friends at the same price bought from the supplier.

Under cross-examination the witness said that with reference to the little black packets found which contained pills, Ciocanel had informed them that these were legal and obtainable from shops, and used as party pills.

She confirmed that Ciocanel had also informed them that the contents of the parcel and those of the black sachets were similar in contents.

She confirmed that Ciocanel had informed them that she had returned to Malta on the fourteenth of February, 2011, and that she had ordered the parcel together with her boyfriend.

PS 1036 Jonathan Pace testified that he heard the accused on her way to being accompanied to Floriana General Headquarters, inform PS 1086 and WPC 186 Ciantar that they were doing nothing illegal and that they just sold drugs in clubs. He further later said he did not know what accused was talking about. He insisted that Ciocanel kept reiterating that there was nothing illegal, and that they – she and Molt, sold drugs in clubs.

PC 760 Christopher Saliba testified that he impersonated a postman and on the 5th, March, 2011 delivered a parcel at Triq il-Mithna, Attard. He said he knocked at the door and Mr Andrew Molt answered and declared that it was his parcel. He exhibited two stickers signed by Mr Molt.

PC 10 Trevor Cassar Mallia deposed that on the 4th of March, 2011, on Inspector Grech's instructions, together with PS 1086 he proceeded to the Malta Post in Marsa, and collected a package which contained an envelope containing four (4) bags containing white powder. The four (4) bags were taken over by Godwin Sammut.

The witness however said he kept the two envelopes. He further added that he went back to General Headquarters and replaced four (4) bags of white powder with a different white

powder. He said that on the 5th of March, the parcel was delivered to Andrew Molt.

He added that a few minutes after the parcel was delivered, they (the police) gained access to the residence and in the presence of accused and her boyfriend effected a search in the kitchen. Witness testified he seized blue pills from the kitchen unit; also blue and pink pills; packaging of a parcel and bag containing white powder; and another small bag also containing white powder. The envelope just delivered was also seized.

PC 1348 Joseph Campbell testified that he was also involved in this controlled delivery and search in the residence and the finding of the substance therein.

Ronald Azzopardi, a Post Office official, testified that on the 4th of March, 2011, whilst performing some scans on various parcels, came across a parcel seemingly having a powder substance.

The parcel was checked by the Senior Officer Vince Agius. Mr Agius, examining a parcel whose declaration read “*Aromatherapy Beads*”, discovered on opening it that it contained four (4) packets of white powder substance. After conducting tests on this substance which gave a positive result to cocaine and amphetamine test, the police were thus informed. These tests were also witnessed by another Post Parcel Officer Francis Schembri who was present for the referred occasion as he testified.

Accused tendered evidence under oath voluntarily. She said she had arrived in Malta on February, 14th - a couple of weeks before her arrest, but she had been to Malta several times

before – three to four times due to her work as a club dancer. She said her first visit here was in 2010 and got to know her boyfriend from a club. Because she travelled frequently due to her work, she described her relationship with him as a long distance relationship. Viva voce she changed what she said in her statement that she really wanted to leave Malta and had no intention of staying till June or July, but intended, as was her new version presented, to depart in two weeks time, due to the fact that she just had had surgery and was due for stitches removal in March. This was scheduled for the 10th of March. She exhibited documents purporting to illustrate a nose and augmentation plastic surgery dated 20th January, 2011, and post-op examinations thereafter dated 28th January. She thus explained that because of this operation, including an augmentation she already underwent, she was planning to leave Malta in two (2) weeks time.

She also confirmed that once in Malta on the 14th of February, she checked in at the Hilton Hotel because, though partnered with Andrew, she preferred her own intimacy. She said she and Andrew passed Valentine's Day together at the said Hotel. She then spent another night at the Tropicana and after being persuaded to move in with Andrew, she testified she proceeded to go live with her boyfriend. She explained that her remuneration as a dancer would be of four to five thousand (4,000 – 5,000) a month.

She corrected what she had declared in her statement about as aforesaid her date of departure and that she had known Andrew for six (6) months, not had been so living with him. She explained that she could not have been living with Andrew for that length of time because she had had a contract in Glasgow, Scotland, and was in Romania in January. Thus she explained she spent the Christmas period in Scotland;

went to Romania from January till the 14th of February; come to Malta on the fourteenth of February intending to leave by the 10th of March.

Therefore she concluded she had been living with Andrew Molt for about two (2) weeks and a half. She also testified that two nights prior to her arrest she had been kept at Mater Dei Hospital due to her attempting to commit suicide. She explained that she had done this due to fights with Andrew once she discovered he was taking drugs. She thus swallowed anxiety pills. Though she went back to Andrew's place, on discharging herself, she testified she intended to leave soon.

She also stated that initially in the search she had not realised what was going on. She now stated that she found about the parcel through and from Inspector Pierre Grech.

Asked about the Magic Powder she was repeatedly referring to, she answered it was a herbal ethno-botanic substance made totally from plants found in Scotland in tanning salons. She assimilated it to caffeine, energy giving.

She testified that she was anti-drugs as she had a healthy lifestyle. She explained that she used the mentioned substance due to the late hours she kept in her club work.

On her Defence Counsel's suggestions, she reiterated that therefore every time she was referring to the Magic substance, she was referring to the herbal stuff.

She now also testified that she had never ordered this substance online, but used to get it from shops directly from Romania. She denied having ordered the drug online, now

adding that she had so declared to the police after realizing that Andrew was in trouble, thus trying to help him by this declaration. She also added that she made a mistake, really not realizing what she was doing at that time.

Asked now how come she had answered in her statement that Andrew did not take any cocaine (clearly the Inspector was referring to her boyfriend “*Q: Does Andrew take cocaine? A: No.*”, folio 48), this considering that now she testified that she had had a major argument because of his drug intake, she now insisted she was aware that he had a drug problem though not aware how serious.

Asked whether she had seen an amount of legal or illegal drugs at Andrew’s residence before the two parcels ordered by Andrew, she answered in the negative. She did say that she knew that Andrew was however ordering steroids online.

About the green and pink pills found in their flat, she answered that they might have been steroids, but she did not recall them to be ecstasy.

She now under oath refuted what she had repeatedly said in her statement and to the police officers (as reported above), that she had (together with her fiancé’/boyfriend), sold any party pills. She said that she was only referring to the Magic Flower the ethno-botanic substance. She denied having sold drugs or given drugs to anyone else as she had previously stated, answering “*I am against drugs.*” (folio 441).

She now evidenced that what she had said in her statement to the selling of stuff - that she used to place an order and everyone of their friends would give his/her share, and that

they were two or three girls involved, emphatically stating *“That is not true. It is completely false. It is not true.”* (folio 441)

She continued that she only stated this to help out Andrew who was clearly in trouble.

She insisted that she had stated that she only ordered the Flower Magic Powder, the legal substance. However now denying any such orders. She said in her testimony, that she never placed any orders online since one could easily buy the substance from any shop in Romania and Scotland. She stressed that she only stayed with Andrew for an overnight stay and that she did not move into Andrew’s place.

She denied ever being present for any parcel deliveries except those received from her mother.

She also testified that she had her first child the year before.

She denied importing illegal drugs in Malta, and taking Mephedrone since she reiterated she never lived in Malta in the first place, and was anti-drugs and very health and ecstasically conscious.

She insisted she found out about the drug, the parcel, only from Inspector Grech, and had never seen the parcel in the house. She insisted that when the police arrived she was in the shower.

She explained that of late she was always having fights with Andrew because of change in his behaviour. That is why, she

explained, she chose to reside in a hotel, and furthermore the reasons for her overdose.

Asked by the Prosecuting Officer why she had not informed them of her problems with her boyfriend, she answered that she had just attempted to kill herself, and she had never had any problems with the police before.

She agreed with the Police Inspector that there were two different types of sachets – according to her she was always referring to the Flower Magic Powder, the ethno-botanic ones.

Seen also a verbal entered in the records of the case, at folio 451, wherein both Prosecuting Officer and Defence Counsel agreed *“that on the morning of the 5th March, 2011, accused was released from hospital after two days of her admission, and the reason of her admission is that she was suffering from a voluntary induced overdose of pills.”*

Andrew Molt, a co-accused, also gave evidence. However he informed the Court that he had been handed a guilty judgment - six (6) years imprisonment.

He evidenced that Ciocanel (accused) and himself were engaged and that they had met six (6) months before his arrest, prior to March, 2011. He was the father of her children - two (2). He explained he met accused at a club in Paceville. He recalled she was travelling back and forth due to work. He did confirm that prior to their arrest, Ciocanel had returned to Malta on St Valentine’s Day. They went to the Hilton Hotel and spent one (1) night there. He explained that due to security clearance he was not allowed to have anyone living

with him, a restriction imposed by the American Embassy as at that time Molt was employed therewith.

He agreed his fiancée had to travel to Romania for post-operations examinations and had visited Malta for only two (2) weeks.

He testified that due to a fight between them, Ciocanel had overdosed on Ativan, anti-anxiety medicine. This according to him happened due to his intake of drugs and due to his mood swings. He confirmed that unknown to her he was taking Mephedrone. He testified that Mephedrone was not illegal in the States. He explained that after the fight, Ciocanel had to return to his residence since all her clothes were at his place.

About the parcels he insisted that he was meant to receive a legal version, non-scheduled Mephedrone. He confirmed he ordered this only for his personal use but had later decided to sell it in Malta.

He insisted Ciocanel knew nothing about the parcels, as she did not live in his house all the time. He also explained that she did not like him taking drugs. He recalled that accused had also asked him about the magic substance consumed in Romania since he had the word '*magic*' tattooed on his arm. He confirmed having ordered this substance, insisting it was a legal substance. He compared it to caffeine; insisted he consumed it only to have more energy as he worked long hours and thus avoided in taking cocaine.

He confirmed that the non-scheduled substance was found in his apartment, as also a scheduled substance. He testified he had received these as a free sample. He insisted he did not

been aware the substance was Mephedrone (the illegal version thereof).

He insisted Ciocanel had no knowledge of or relationship with the parcels found.

He confirmed under cross-examination that he had received already one packet and then received the second one, one packet containing the synthetic substance, whilst the second one contained real Mephedrone. Because of his arrest, he testified that he had no knowledge how the real Mephedrone was packed, as he never had any vision of it (was replaced in the controlled delivery).

Asked if Ciocanel had had therefore no knowledge of the nature of the substances, as he was continuously reiterating, how come she had in detail explained in her statement their nature, he answered that she did not know about the Mephedrone but knew of the non-scheduled substance found in the house. He also insisted she did not know about the cocaine or his intake thereof.

He admitted that Ciocanel knew he was taking a limited amount of Mephedrone, not the real amounts he was actually taking. He explained that when she had returned back to Malta, his weight had dropped drastically.

He admitted to having other substances in the house, as steroids. He said that the legal magic substances were scattered all about the house. He however insisted he did not know the sensation substance was illegal, so he left it laying around in the house.

He explained that Ciocanel kept insisting that the substance found was legal simply because that is all she knew, and had not realized that Molt had received the other package containing the scheduled substance.

The accused's medical file - a copy thereof, was exhibited in these proceedings by a Mater Dei representative.

On her part **Marie Louise D'Amato** representing Tropicana Hotel testified that the accused was a guest in the said hotel on the 15th of February, 2011 until the 16th of February, 2011.

A certain **Joseph Bartolo** representing the Hilton Hotel, testified that a Mr & Mrs Molt had been clients at the said Hotel, and exhibited a bill. The registration cards held in the Hotel showed that an Andrew Molt and Miss Ciocanel had been guests at the Hotel from the 14th February, 2011 to the 15th February, 2011.

Considers:

As very rightly submitted by Defence Counsel in his submissions, this case is one that simply and only rests on a point of credibility - credibility of Ciocanel's declaration to the police and what she stated viva voce.

It seems that in order to help her partner Molt, Ciocanel lied about her stay in Malta, purporting to have been in Malta for six (6) months when in real fact she had been away working and subsequently undergoing cosmetic surgery. Later it transpired that she in fact arrived in Malta on the 14th of February, spent one night with her boyfriend at the Hilton, the following night at the Tropicana Hotel, and was later and after

that evening invited to stay with Molt at his Embassy-provided residence in Attard. A few weeks later – two or so, she was arrested there from with her boyfriend Molt.

On her arrest after being questioned, Ciocanel insisted repeatedly that she and her boyfriend imported and sold party drugs, always insisting they were legal stuff. She described these drugs as being Flower Magic Substance, easily available according to her from shops in Romania and Scotland, drugs that had energy giving powers like caffeine, insisting she used these because of the long hours she spent in the club night scenes – she being a dancer; insisting these substances were legal and that she had bought them through internet. She explained that they were shared with her friends who actually paid for them.

Viva voce she actually denied saying all this, now realizing in what position she had placed herself.

She insisted in the interrogation that the stuff she ordered, the Magic, was legal. As regards to the parcel received, she stated that it was ordered only by her boyfriend, insisting she was extraneous thereto. She confirmed she ordered the Magic substance twice.

It also transpired from the records of the case that prior to Ciocanel's arrest she had been hospitalised, according to her, after having an argument with her boyfriend realizing he was doing drugs.

To be also noted that Godwin Sammut did conclude that the Magic Flower Substance was not a scheduled substance.

Considers:

Without any doubt the crime of conspiracy necessitates for its very existence the fundamental element of an agreement - one that must of its own nature be reached by two or more. Though Ciocanel did in the last two weeks admittedly reside with her boyfriend Molt, the parcel containing decoy drugs meant to be Mephedrone was addressed to Molt and Molt alone. Molt himself testifies that Ciocanel was extraneous to this. Ciocanel herself denies any knowledge of this parcel or plans thereto, or its dubious contents. Therefore the Court agrees with that submitted by Defence Counsel that the crime of conspiracy – that agreement necessary, that meeting of the minds, in this case to import Mephadrone, was not proofed.

As said, Ciocanel insisted in her declaration, though half denying it viva voce, that she had imported and offered for sale legal substances, the Magic Flower. No evidence has been brought forward that she imported Mephedrone or cocaine, or offered either for sale, therefore is also being acquitted from the second charge proffered against her.

The same acquittal applies with regards to the drug ecstasy since the pills, the pink and green pills found, resulted to be simple steroids.

The last charge brought against Ciocanel was that of simple possession of the drug Mephedrone. Again, besides having Mr Molt accept full responsibility of this drug, the Court is faced with a situation where Ciocanel though present in the residence wherein the drug was found, cannot be linked thereto beyond a reasonable doubt. Most certainly, and without doubt, the parcel received was addressed to Molt – no clear evidence of Ciocanel's involvement therein has been put

forward. Her mere presence for two (2) weeks barely consolidates her involvement in all this.

True Ciocanel's lifestyle and work do point towards a lifestyle more indulging in drugs, but no evidence of this beyond reasonable doubt has resulted except for this continuous and frequent use of the Magic Flower Substance, therefore the Court acquits **Ana-Maria Beatrice Cioacanel** from all charges proffered.

< Final Judgement >

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