



MALTA

COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR.
ANTONIO MICALLEF TRIGONA

Sitting of the 12 th May, 2015

Number 1040/2000

The Police

(Inspectors Yvonne Farrugia and Pierre Grech)

vs

Atinuke Nne Ugoji

The Court,

Having seen the charges against the accused:

“with having on the 2nd of October 2009 and in the preceding days in Malta carried out acts of money laundering by:

- i. converting or transferring property knowing or suspecting that such property is derived directly or indirectly from or the proceeds of criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;

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- ii. concealing or disguising the true nature, source, location, disposition, movement, rights with respect of, in or over or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- iii. retaining without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- iv. attempting any of the matters or activities defined in the above foregoing subparagraph (i,ii,iii, iv) within the meaning of article 41 of the Criminal Code;
- v. acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing subparagraphs (i,ii,iii,iv);

also with having on the 2nd October 2009 at the Malta International Airport failed to declare to the Comptroller of Customs [Director General (Customs)] whilst leaving Malta and carrying a sum of/equivalent to ten thousand Euro or more in cash;

The Court requested to attach in the hands of third parties in general all monies and other movable property due or pertaining or belonging to the accused, and further to prohibit the accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property in terms of article 22A of the Dangerous Drugs Ordinance Chap.101 of the Laws of Malta, of article 5(1)(a)(b) of the Prevention of Money Laundering Act Chap. 373 as well as to issue orders as provide for in articles 5(1) and 5(2) of the same Act and of Article 23A of the Criminal Code, Chap 9, of the Laws of Malta; also requested that in case of guilt, apart from imposing the punishment according to law, order the forfeiture of all exhibited objects; further requested to apply Article 533(1) of Chapter 9 of the laws of Malta as regards expenses incurred by the Court appointed experts.

Having seen the order of the Attorney General in terms of Article 3(2A)(b)(c) Chapter 373;

Having heard all the witnesses that the prosecution and the defence produced before it;

Having seen the final written submissions of the prosecution and heard the final oral submissions of the defence;

Having seen all records and documents inserted in the acts of proceedings;

Considers:

In its note of transmittal of the 30th October 2013 the Attorney General requested that the charge sheet be corrected so as to reflect the amendments to the Money Laundering Act with which the accused is also charged so as to include in paragraphs (i) to (iv), in the charge sheet, a reference to 'suspicion' apart from 'knowledge', and also to include 'possession or use', apart from acquisition, in paragraph (iii). To this end the prosecuting officer filed a new charge sheet in the records of the proceedings on the first adjournment of the case following the Attorney General's note of transmittal to include the amendments sought by the Attorney General. In connection with such amendments the Court affirms that those effected to paragraph (iv) were done after the alleged

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offence was committed such therefore that the amendment to the said paragraph is ineffectual in relation to the accused.

Now, before dealing with these amended charges, accused is facing another charge of having failed to declare to Customs on departure the sum she was carrying on her person in excess of €10,000.

In regards to this charge the evidence is unassailable and proves beyond any doubt that the accused, stopped when about to board the flight which would have taken her to Brussels, and searched, was found to be carrying the sum of €29,815 in cash, €20,000 of which were strapped to the waistband of her trousers and was equally split in two packets; the rest she was carrying in her bag. Defence counsel in his oral submissions on this charge submits a two-pronged line of defence: ONE - that accused about to embark on a flight Malta-Brussels would have kept her inside the European Union and consequently rendered, on this fact alone, inapplicable Legal Notice 149/2007 under which this charge is based; TWO – that the note of transmittal done by the Attorney General containing the articles/sections of law on which the Court could rest a verdict of guilt based solely on those articles/sections of law was inoperative and inadmissible since done on the strength of Article 370(1)(3)(a) of Chapter 9.

On both counts, however, the Court cannot agree. On point ONE, significantly because the relative legislation under which the accused is charged, that is LN149/2007 reproduced in SL 233.07 and amended by LN411/2007 and 112/2013, is clear and categorical in its Regulation (3) to which Schedule 3 applies (folio reference 'B1233' in LN149/2007) and leaves no room for interpretation. On point TWO, the Court does not detect any anomaly in the procedure used by the Attorney General in his note of transmittal in so far as the cash transaction is concerned. It deems the note to have been properly transmitted in terms of Article 370 of the Criminal Code for the simple reason that notwithstanding that LN149/2007 sanctions any breach of its provisions with a fine, the said Legal Notice is extraneous to the Criminal Code, and does not give exclusive jurisdiction to this Court.

It therefore follows that accused is guilty of the charge cited by the Attorney General in his note of transmittal for breaching the Cash Control Regulations.

In the same note of transmittal the Attorney General by virtue of Article 3(2A)(b)(c) of the Prevention of Money Laundering Act (Chap 373 - hereinafter referred to as the Act) issued the relative order and remanded accused before this Court to answer to the charges brought against her for having carried out, or attempting or being an accomplice, in acts of money laundering by:

- converting or transferring property knowing or suspecting that such property is derived directly or indirectly from or the proceeds of criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;
- concealing or disguising the true nature, source, location, disposition movement, rights with respect of, in or over or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- acquiring, possessing or using property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

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Considers:

That the definition given to 'property' in the Act is wide enough to include currency whatever its form and irrespective of whether at that point in time, that is on the commission of the offence, it was legal tender in Malta. Furthermore, for a successful conviction under the Act, a judicial finding of guilt in respect of the underlying criminal activity is not a 'sine qua non'. The prosecution can establish the underlying criminal activity on circumstantial or other evidence. The term 'underlying criminal activity' is defined in the Act by reference to the criminal activity from which the property or other proceeds, involved in a money laundering offence under the Act, have been directly or indirectly derived.

On this point the prosecution in its note of submissions concedes that [quote] "it did not manage to prove guilt of the underlying crime [but] it clearly proved the existing link between the accused's enrichments and the underlying crime of drug trafficking" thus shifting the onus of proof on the accused in virtue of Article 3 of the Act which ropes in Article 22(1C)(b) of Chapter 101.

The prosecution's main argument is that the accused failed to give a reasonable explanation from where the money she carried on her person originated from and proceeded thereafter to establish the link between the money and drug trafficking relying on the following resulting facts:

- her very brief stay in Malta, barely lasting a whole day, ostensibly to buy designer clothes, but which time, while in Malta, she spent, for the most part, in the company of a certain Ferdinand Onovo currently facing drug related charges;
- the known acquaintances of the accused in Italy who are implicated with drugs;
- herself being convicted for 'drug substances breaches' which result in possession and her being known in Italy also by another name;
- her failure to declare the money.

That, as correctly pointed out by defence counsel, notwithstanding the shifting of proof on the accused, the burden is still that of proving on a balance of probabilities as it is incumbent only on the prosecution to prove beyond reasonable doubt. According to the Court, the prosecution has managed to prove this on the money related charge in breach of Legal Notice 149/2007. The question now is whether the prosecution also managed to establish a link between this money and drug trafficking which the prosecution sees as the underlying criminal activity. In this context and in the Court's opinion it was sufficient for the prosecution to proof possession of the excess money not declared to Customs, which it did, and the corresponding suspicion on the illegal provenance of the money through the showing of links establishing a connection with drug trafficking. The Court is satisfied that the prosecution has established this link on the criteria of suspicion alone but certainly not on knowledge.

Accordingly and having come to this conclusion, the Court finds the accused also guilty of the charge of money laundering.

Having seen Section 3 together with Schedule Regulation 3 of Legal Notice 149/2007 and Article 2(i)(ii)(iii) and Article 3(2A)(ii) of Chapter 373 (as in force on the commission of the money laundering offences) condemns her to a fine (multa) of eight thousand five hundred euro (€8500).

Orders the forfeiture of the seized items including monies in favour of the Government of Malta.

< Final Judgement >

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