

17th November, 1997

Judge:-

Hon. Victor Caruana Colombo LL.D.

The Police

versus

Lothar Ernst Heinrich Beck

Dangerous Drugs Ordinance - Importation

The Dangerous Drugs Ordinance lays down that the word "dealing" with reference to dealing in a drug (namely not with reference to dealing with any other thing) includes importation (section 22 (1B)). In this context the law makes no distinction between whether the drug is for the exclusive use of the importer or otherwise. Therefore in section 22 (2) (b) (i), by the phrase "dealing in a drug", the law clearly means to include the importation of a drug and this independently of whether the drug imported is intended for the exclusive use of the person importing

It or otherwise. It is to be observed that in the said section 22 (2) (b) (i) the circumstance of "the exclusive use of the offender" is related expressly to the offence only of possession and not to any other of the offences conceived in that section. Obviously therefore that circumstance is irrelevant in the case of the offences other than that of possession, such as in the case of the importation of drugs.

The importation of a dangerous drug into Malta, irrespective of the quantity, is always to be considered a serious offence. Although a person, in importing a dangerous drug, may genuinely have had no intention of offering it to or sharing it with others, the mere fact that he has brought it into Malta brings about the danger that it may, even accidentally be used by others. Or the person in question may subsequently change his mind and decide to share it with others.

The Court:-

Having seen the judgement of 8th October, 1997 by which the Court of Magistrates (Malta) found the accused guilty that on the 26th September, 1997 at the Malta International Airport limits of Gudja:

He was in possession of the whole or any portion of the plant cannabis, contrary to section 8 (d) of Chapter 101 of the Laws of Malta;

He was in possession of the resin obtained from the plant cannabis or any preparations of which such resin formed the base, contrary to section 8 (a) of Chapter 101 of the Laws of Malta; and

Imported or brought into, or exported from, Malta any resin obtained from the plant cannabis and moreover imported

or caused to be imported any dangerous drug into Malta in contravention of sections 7 and 15A (1) of Chapter 101 of the Laws of Malta;

and sentenced the accused to imprisonment for six months - from which term is to be deducted the period the accused spent in preventive custody in connection with the present case - and to a fine of two hundred Malta liri (Lm200) and furthermore, considering the accused an illegal immigrant in terms of sections 14 and 15 of Chapter 217 of the Laws of Malta, ordered his removal from these Islands after having served his sentence. The said Court also ordered that the substances in question be destroyed;

Having seen the application by which the accused appealed from the said judgement and demanded that the judgement be varied and "amended in that it be confirmed in the declaration of guilt in so far as section 8 (d) is concerned, but revoked in so far as sections 7 and 8 (a) are concerned and also as to the applicability of the other sections whereby the accused was subjected to a punishment restrictive of personal liberty and this also with respect to section 8 (d); and that therefore he be found not guilty of the said offences appealed from and that he be not subjected to a punishment restrictive of personal liberty, and consequently be declared not guilty and freed and be not subjected to a punishment restrictive of personal liberty also in so far as section 8 (a) of Chapter 101 is concerned";

Having seen the record of the case and heard the submissions of Counsel for the appellant and for the prosecution considers —

Omissis;

The first grievance of the appellant is that the First Court in its judgement failed to take into consideration his submission as to his unawareness of being in possession of any resin obtained from the plant cannabis. On the contrary, the First Court did consider that submission in its judgement where it is stated that the Court "is reluctant to accept the second allegation that he was not carrying the cannabis resin found in his hand luggage ... the Court cannot accept as consonant with reality the allegation that the accused was unaware of the cannabis resin contained in the black container which was amongst these objects". The First Court heard the evidence *viva voce* and this Court of Appeal finds no reason to disagree with the Magistrate on this point. This Court therefore confirms the finding of the appellant guilty of knowingly importing into Malta and having in his possession resin from the plant cannabis. He is thus confirmed guilty of all the charges adduced;

The second grievance of the appellant is that the First Court gave a wrong interpretation to sections 22 (2) (b) (i) and 22 (1B) of Chapter 101 of our Laws. Section 22 (2) (b) (i) in so far as it is relevant to the present grievance, runs as follows:

"Every person charged with an offence against this Ordinance shall be tried ... and if he is found guilty shall, in respect of each offence, be liable on conviction by the Court of Magistrates ... where the offence is one under section 4 or under paragraph (c) of section 8 or consists in selling or dealing in a drug contrary to the provisions of this Ordinance or in an offence under paragraph (f) of subsection (1), or of the offence of possession of a drug, contrary to the provisions of this Ordinance, under such circumstances that the Court is satisfied that such possession was not for the exclusive use of the offender ... to imprisonment for a term of not less than six months but not exceeding five years and to a fine (*multa*) of not less than two hundred Maltese liri but not exceeding two

thousand Maltese liri”;

Section 22 (1B), also in so far as it is relevant to the grievance under review, states:

“For the purposes of this Ordinance the word “dealing” (with its grammatical variations and cognate expressions) with reference to dealing in a drug, includes ... importation ...”;

As regards the appellant’s second grievance, the First Court in its judgement stated as follows:

“subsection (i) (b) (2) of section 22 applies, *inter alia*, to the crime of “dealing in a drug”. In subsection (1B) the law elaborates on the meaning or rather the scope of the word “dealing” as contained in this section. It does so in the following terms: “For the purposes of this Ordinance this word “dealing” (with its grammatical variations and cognate expressions) with reference to dealing in a drug includes cultivation, importation etc. ...” Therefore according to this subsection, importation *ut sic* is considered as “dealing in a drug”. It is one of the criminal activities, which the cultivation, falls within the term dealing. The use of the phrase “with reference to dealing in a drug” is meant to make amply clear that this definition refers to those subsections in which the phrase “dealing in a drug” is employed and not to limit the application of subsection (i) as argued by the defence;

This conclusion is consonant with recent case law on the matter, in the case **The Police vs Thomas Donecker** decided by the Hon. Court of Appeal on the 24th September, 1996, the Court held that the importation of drugs into Malta, even for the agent’s personal use, amounts to “dealing in a drug contrary to the provisions of this Ordinance, the dealing in question taking

the form of importation", in terms of section 22 (1B). The learned judge stated quite clearly that "When a person imports drugs into Malta, it is immaterial whether those drugs are for his own personal use or otherwise". The relative sanction contained in subsection (i) (b) of subsection (2) of section 22 is applicable by the mere fact of the "importation";

In support of his grievance the appellant submits as follows:

"An important objective of these Amendments to the Drugs Ordinance was in its wide definition of what is "dealing in a drug". The purpose of the Legislator was to make the importation of drugs amounting to the offence of dealing in a drug without the need to prove further acts if this importation, *inter alia*, was with the intention of dealing in drugs. This was the political objective of the Amendment;

Section 7 of the Dangerous Drugs Ordinance expressly states that "no person shall import or bring into ... Malta any resin obtained from the plant cannabis". The First Court in its judgement correctly observed that "it may be added that if the agent intended to sell the drug in Malta, then he would be committing a further offence i.e. that of possessing drugs "not intended for his exclusive use";

The accused is not charged with possessing drugs "not intended for this exclusive use". It is therefore respectfully submitted that the Legislator did not intend to create a contradiction in the Law between possession intended for exclusive use and this possession as amounting to dealing in a drug, the Legislator did not envisage the contradiction that a person importing drugs for his exclusive use is "dealing in a drug" with himself;

Appellant is not submitting that he be found not guilty of importing into Malta drugs for his exclusive use in terms of Section 8 (a) but his submission is that he cannot be found guilty of dealing in a drug when the drug he had imported was for his exclusive use;

Appellant, with all due respect, submits that any reasoning to the effect that it is "immaterial whether these drugs are for his own personal use or otherwise for the purpose of dealing in a drug" is contrary to law and contrary to common sense;

When logic and an interpretation of Law part ways, the default can only lie in the interpretation of the Law";

This Court agrees with the First Court in its interpretation of the relevant sections and with its conclusion. In fact the law lays down that the word "dealing" with reference to dealing in a drug, (namely not with reference to dealing with any other thing) includes importation (section 22 (1B)). In this context the law makes no distinction between whether the drug is for the exclusive use of the importer or otherwise. Therefore in section 22 (2) (b) (i) by the phrase "dealing in a drug" the law clearly means to include the importation of a drug and this independently of whether the drug imported is intended for the exclusive use of the person importing it or otherwise. It is to be observed that in the said section 22 (2) (b) (i) the circumstance of "the exclusive use of the offender" is related expressly to the offence only of possession and not to any other of the offences conceived in that section. Obviously therefore that circumstance is irrelevant in the case of the offences other than that of possession, such as in the case of the importation of drugs. Consequently, the statement in **The Police vs Thomas Donecker** that "When a person imports drugs into Malta, it is immaterial whether those drugs are for his own personal use or

otherwise", is not contrary to law as submitted by the appellant, but consonant with a correct interpretation of the law;

The appellant submits also that the said statement is contrary to common sense. He states in his application that "the Legislator did not intend to create a contradiction in the law between possession intended for exclusive use and this possession as amounting to dealing in a drug, the Legislator did not envisage the contradiction that a person importing drugs for this exclusive use is "dealing in a drug" with himself"

On the above point, the judgement in *The Police vs Thomas Donecker* above quoted states:

"... the importation of a dangerous drug into Malta, irrespective of the quantity, is always to be considered a serious offence. Although a person in importing a dangerous drug may genuinely have had no intention of offering it to, or sharing it with, others, the mere fact that he has brought it into Malta brings about the danger that it may, even accidentally, be used by others. Or the person in question may subsequently change his mind and decide to share it with others";

For the above reasons and or for others the Legislator considers the importation of drugs even for personal and exclusive use, to be an offence as serious as that of dealing in the drugs. This is clear from the wording of the law quoted in the foregoing paragraphs. It appears to be clear also from the speeches in Parliament of the Honourable Dr. Louis Galea, then Minister for Home Affairs and Social Development, who brought before the House of Representatives the Bill to amend the Drugs Ordinance. The following is a free translation into English of the relevant parts of those speeches:

“We should strive for our laws to operate in a way to control the supply, the dealing and the purchase of drugs”;

“In the proposed law, we are introducing in every case the requirement of a certificate of importation ... irrespective of the country of origin and that of destination ... the absence of that certificate shall constitute a serious breach of the law punishable in a serious manner”;

“We have now given the word “dealing” the widest definition imaginable, in order to make sure that it comprises every imaginable act that may be connected directly or indirectly with trafficking. The word “dealing” includes importation ... Now anyone who comes in contact with the abuse of drugs may become guilty of dealing because we have widened the net and the definition of “dealing””;

“... we are increasing the punishment for what is known as dealing and trafficking ... and we are also increasing the punishment for the possession of drugs except where the drugs are intended for personal exclusive use ...”;

All the above extracts are taken from the Minister's speech in the House of Representatives at the sitting of 29 September, 1993. In the view of this Court, they show a determination to deal severely with drug trafficking, which by definition includes importation. The said extracts show also the intention to deal less severely with the mere possession, namely excluding importation, where the drugs are intended for personal exclusive use;

It is true that during the debate in parliament on the same Bill, to the Honourable Mr. Evarist Bartolo's question regarding “possession with intent to supply” Minister Galea replied:

"In that case one must bear in mind the offence of possession in itself. In the circumstances of a particular case the Court might consider that there is possession "with intent to supply showing that that possession constitutes the commencement of the execution of the offence of trafficking" (sitting of 19 January, 1994);

Considering that his statement was made during the debate on the clause relating to importation, the Minister might be understood to mean, by that statement, that importation with intent to supply drugs would constitute an attempt of the offence of trafficking or dealing in drugs. That would imply that importation without intent to supply would not amount to trafficking;

Nevertheless, it must be noted that Mr. Bartolo's question was put thus: "I believe that the matter of possession with intent to supply is to be debated later on". He appears to have meant that the matter was to be discussed at a stage after that relating to the importation clause. If Mr. Bartolo meant as much he would have considered the matter raised by him as unrelated to importation. The Minister then replied by referring to the offence of possession in itself, thus evidently detaching his comments above quoted from importation. Furthermore, if the Minister meant as stated in paragraph 12 above, he would have ran counter to his former statements quoted above in paragraph 9;

For the reasons stated above, this Court takes the view that the law expressly considers importation of drugs, irrespective of the intended exclusive use by the person importing them or otherwise to amount to dealing in drugs. That precisely is also the intention of the Legislator who considers importation of drugs, even for personal exclusive use, as a serious breach of the

law demanding serious punishment in the same way as dealing in drugs does. This does not seem to be in any manner contrary to common sense;

The judgment given by the First Court is to be confirmed. The punishment to which the appellant was sentenced is the minimum prescribed by the law and none of the provisions of the Probation of Offenders Act and sections 21 and 28A of the Criminal Code is applicable in view of section 22 (9) of Chapter 101;

Therefore rejects the appeal and confirms in toto the judgement appealed from.
