

9th April, 1997

Judge:-

Hon. Victor Caruana Colombo, LL.D.

The Police

versus

Emil Nikolov *et.*

Charge - Admission of Guilt - Appeal Application

It is not required by law to quote in the charge the law which creates the offence with which the accused is charged. That which is essential is that the charge makes clear the facts and the offence with which the accused is being charged.

Upon a plea of guilty, the Court cannot but proceed to sentence the accused, and apply the punishment prescribed by law, unless it is proved that he did not understand the nature of the charge, or that he had no intention of pleading guilty. Once the accused pleads guilty to the charges, the Court cannot consider the merits of the charges. Nor can the Court of Criminal Appeal consider the grounds of appeal which relate to the merits of the case.

The Court:-

Having seen the judgement given by the Court of Magistrates (Malta) on 18th March, 1997 which states as follows:

“charge them for having in these past days in Delimara limits of Żejtun infringed an implied condition of every permit given to any person according to paragraph (c) of sub-article (1) of article 6 of this Act that such person shall not in Malta exercise any profession or occupation or hold any appointment without a licence from the Minister responsible for Immigration; and further charge them that during these past days being given a residence permit landed or were in Malta without leave from the Principal Immigration Officer. The Court being requested that besides awarding the punishment established by law declares the aforementioned persons as prohibited immigrants and issues a removal order against them according to article 14 of Chapter 217 of the Laws of Malta;

Having seen the records and documents submitted;

Having heard the Police Inspector read and confirm the charges on oath;

Having heard the accused Emil Nikolov and Ivan Ivanov plead guilty to the charges through the interpreter purposely nominated and this after having heard the said accused state that they wished to change their plea of not guilty to one of guilty;

Having the said accused persisted in their plea even after they were given time to reconsider;

Having considered their voluntary and unconditional plea of guilty to the charges proffered against them and having seen article 5 (1), 6 (1) (b) (c), 11 (1) (2) and 14 (1) of Chapter 217 of the Laws of Malta, conditionally discharges them for a period of six months from today, by application of article 9 of Chapter 152 of the Laws of Malta and issues a removal order against them in terms of article 14 (2) of Chapter 217 of the Laws of Malta”;

Having seen the application by which the accused Emil Nikolov appealed from that judgement and petitioned this Court to reverse that same judgement and to declare that the appellant is not guilty of the charges and therefore to acquit him of those charges;

Having seen the records of the proceedings and heard the submissions of counsel for the appellant and the Attorney General, considers:

By judgement given today this Court declared to be unfounded the first ground of appeal by which the appellant pleaded the nullity of the proceedings;

Another ground of appeal is the nullity of the first charge because "the Act under which it is brought is not mentioned". On this point, the text of the charge admittedly is defective in that it refers to "this Act" without naming the Act. However it is not required by law to quote in the charge the law which creates the offence with which the accused is charged;

That which is essential is that the charge makes clear the facts and the offence with which the accused is being charged. This is perfectly clear in the charge against the appellant. He is charged with infringing a condition of his permit namely not to exercise in Malta a profession or occupation or hold an appointment without a licence from the Minister responsible for Immigration. This ground of appeal is therefore also unfounded;

The appellant raises two other grounds of appeal, namely that it is not true that he was in Malta without the relative permit and that it is also not true that he was exercising a profession, job or commission or was employed in Malta. These grounds refer to the merits of the case. The appellant before the first Court pleaded guilty to the charges. That being so that Court could not but proceed to sentence him and apply the punishment prescribed by law, unless it is proved that the accused did not understand the nature of the charge, or that he had no intention of pleading guilty. (Vol. XLVI. IV.911). There is in the present case no proof or allegation of the existence of such circumstances;

Once the appellant pleaded guilty to the charges, the first Court could not consider the merits of the charges, as the appellant suggested in his oral submissions. Nor can the Court of Appeal, in this second instance, consider the grounds of appeal which relate to the merits of the case;

For the above reasons rejects the appeal and confirms the judgement appealed from.
