

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. ENCARNACION JACOBO, DEFENDANT AND APPELLEE.*G.R. No. L-14151. April 28, 1960*

Ponente: LABRADOR, J.

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Appeal from an order of the Court of First Instance of Bulacan, Hon. Angel H. Mojica, presiding, granting a motion to quash the information filed in said court against Encarnacion Jacobo for violation of Section 25-A in relation with Section 47 of Act No. 2152, as amended by Act 3208 of the Revised Administrative Code.

The record discloses that the present case originated with an information filed in the Justice of the Peace Court of Guiguinto, Bulacan, charging Encarnacion Jacobo with having violated an order of the Secretary of Public Works and Communications directing her to remove whatever obstruction she may have placed in the bed of Sapang Cabay and to restore the bed of said stream to its original condition within 30 days from her receipt of said order. Trial of the case was held in the said court, after which the justice of the peace held that the evidence shows beyond reasonable doubt that the accused was guilty of the charge. So she was fined in the sum of P20.00, with costs. Against the said judgment the appeal was prosecuted to the Court of First Instance where a new information was filed by the provincial fiscal. Upon the docketing of the appeal in this court, a motion to quash was presented and the judge, acting thereon, dismissed the case, holding:

"Acting upon the motion to quash and the opposition thereto, and it appearing that 'the prosecution concedes that the accused applied for a free patent which was granted and Original Certificate of Title No. P-134 was issued in her favor by the President of the Philippines on December 29, 1963 which was correspondingly spread in the records of the Bureau of Lands and duly registered in the Register of Deeds of Bulacan on February 4, 1954', it seems clear that she could not be held guilty of having violated the provisions of Sec. 25-A in relation with Sec. 47 of Act 2152, as amended by Act 3208 of the Revised Administrative Code, allegedly committed during the period from December 17, 1955 to July 1956, as she was then the legal and absolute owner of the property in question. It was no longer public land but a private property of defendant. In the instant case there is no showing that mistake or oversight has been committed by the authorities concerned in the issuance of the title to the property in question so much so that the doctrine in the case of *Ledesma vs. Municipality of Iloilo*, 49 Phil., 769 invoked by the Fiscal is not controlling."

The Solicitor General has appealed from the above order, and in his Brief he argues that according to the motion to quash itself, one Petra Gatmaitan occupied prior to 1936 a portion of Sapang Cabay; that said Petra Gatmaitan transferred her rights to Modesto Pascual who, in turn, transferred his rights to the defendant; that the latter applied for a free patent which was granted by the Secretary of Agriculture and Natural Resources on December 29, 1953; and that an original certificate of title was issued to defendant on February 4, 1954. The order of the Secretary of Agriculture and Natural Resources, which ordered defendant to remove the gate of her fishpond on the ground that the said gate was obstructing a public stream, was rendered on November 16, 1955.

A study of the information discloses that defendant-appellee had been ordered to remove obstructions that she had

placed in the bed of Sapang Cabay. There is no allegation in the information that the Sapang Cabay is a river within the meaning of Article 420 of the Civil Code. The name of the stream itself indicates that it is only a creek. The claim of the Solicitor General that no rights could have been acquired by the defendant-appellee to the bed of the stream even though title thereto had been issued, cannot be sustained. The Solicitor General argues that it is not questioned that the Sapang Cabay is a public stream. There is no allegation to such effect in the information, and there is no statement in the motion to quash wherein an admission of said fact is made by the defendant-appellee. The Solicitor General further argues that a Torrens title of the defendant-appellee speaks of an agricultural public land, so that a public stream could not be deemed to have been included in defendant-appellee's patent. The trouble with the stand of the Solicitor General is that it assumes that the Sapang Cabay is a public stream when the information filed by the fiscal himself contains no allegation to such effect.

But assuming for the sake of argument that the defendant-appellee has included a public stream or has appropriated public waters in violation of the provisions of Act No. 2152, as amended, the possession by the defendant of a title to the property, which we assume to include the obstruction sought to be removed, should preclude the existence of malice or bad faith on her part. It is only after a judicial declaration declaring the Sapang Cabay to be a public stream or excluding the portion of the Sapang Cabay occupied by the gates of the defendant-appellee's land from the title of the latter, that defendant-appellee may be held liable for maintaining the obstruction or the gate in violation of the order of the Secretary of Public Works and Communications.

The order of dismissal of the information is hereby affirmed, without costs. So ordered.

Paras, C. J., Bengzon, Bautista Angelo, Concepcion, Endencia, and Gutierrez David, JJ., concur.
Padilla and Barrera, JJ., concur in the result.

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