

JOSE ILAGAN Y YLAGAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, ET AL., RESPONDENTS.

G.R. No. L-25796. January 29, 1974

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

For the reasons hereunder stated, we deny the instant petition for review of the decision dated December 7, 1965 of the Court of Appeals in CA-G.R. 03367-CR which affirmed the judgment of the Court of First Instance of Manila sentencing the herein petitioner Jose Ilagan to a term of imprisonment of one year and six months for the crime of illegal possession of firearm and ammunition.

The essential facts are not in dispute. At about midnight of September 26, 1960, the petitioner, a resident of 213 Quirino Avenue, Baclaran, Paranaque, Rizal, while drinking beer inside the Idle Hours Bar (on M.H. del Pilar Street, Manila), had an altercation with the floor manager of the bar whom he threatened with a gun. The petitioner was removed bodily from the premises but immediately thereafter jerked open the glass door of the bar after the floor manager slammed it shut. Two Manila patrolmen who responded to a phone call about the incident found the petitioner in possession, without a license, of a .32 caliber bereta pistol with eight live bullets in it. Later at the police headquarters, all that the petitioner revealed in a written statement, in addition to relating what happened at the Idle Hours Bar, is that the gun found on his person belonged to his wife. In the same statement, the petitioner, when asked whether he had anything to add to or subtract from his declarations, replied that he had none.

At the trial only the petitioner and his wife testified for the defense. They offered in evidence the following documents: (1) a license dated February 7, 1958 to possess the gun in question issued to Emiliana C. Ilagan (petitioner's wife) as cashier-secretary of an insurance firm; (2) a letter dated July 22, 1960 by Emiliana C. Ilagan informing the Chief of the Philippine Constabulary that she was waiving her right to possess the gun in favor of the petitioner; (3) an application dated July 25, 1960 by the petitioner for the issuance to him of a license to possess the gun in question, in which the petitioner stated that he was a field unit manager of an insurance firm with a monthly salary of P500, exclusive of commissions, and that he needed the gun "for personal protection in my travel especially in the province;" (4) a letter-indorsement by the Rizal (P.C.) Provincial Commander to the petitioner stating that before the latter's "application to possess firearm can be given due course," he should submit certain papers, e.g., clearances, a bond, and certificate of employment, and advising the petitioner to file another application, which he failed to do; (5) an I.D. card and certified true copy of the petitioner's appointment on July 1, 1959 as license inspector of Pasay City at a salary of P1,800 per annum; (6) an I.D. card stating that the petitioner was a member of the mayor's squad, together with a certificate attesting to his appointment on March 1, 1960 as confidential agent in the office of the mayor of Pasay City at a salary of P1,440 per annum; and (7) an unsworn certification signed by one Major Jaime F. Villafuerte of the Philippine Constabulary that the petitioner brought to him the gun in question for repair on September 19, 1960 and that the latter retrieved it at about 5:30 p.m. on September 26, 1960.

The prosecuting fiscal objected, at the trial, to the admission of the foregoing named papers and documents for being "immaterial and incompetent," but the trial court admitted them as part of the testimony of the petitioner and that of his wife.

In the present petition, the petitioner asks for his acquittal on the following grounds: (1) he has applied for a license to possess the firearm in question; (2) he was exempt from the license requirement as he was then a peace officer, being a confidential agent in the office of the mayor of Pasay City; and (3) he had no animus possidendi for he was merely carrying the gun home to his wife (in Baclaran) from the place (Camp Crame) where it was supposed to have been repaired.

1. No law has been cited, and this Court is aware of none, that supports the petitioner's theory that by the mere filing of an application for a license to possess a firearm the applicant thereby becomes vested with legal authority to hold and carry the same. In point of fact, the petitioner's application was denied due course by the Philippine Constabulary for lack of certain requisite documents. He was advised to renew his application, but he never bothered to comply. The petitioner's theory likewise does not find support in equity; it is fraught with grave danger, not to speak of supervisory difficulties and complications.

2. The petitioner argues that he was a "peace officer," invoking the provisions of section 879 of the Revised Administrative Code in relation to section 29 of the Charter of Pasay City (R.A. 183, as amended).

These cited provisions of law state:

"Sec. 879. Exception as to firearms and ammunition used by military and naval forces or by peace officers. — This article shall not apply to firearms and ammunition regularly and lawfully issued to officers, soldiers, sailors, or marines of the United States Army and Navy, the Philippine Constabulary, guards in the employment of the Bureau of Prisons, municipal police, provincial governors, lieutenant governors, provincial treasurers, municipal presidents, and guards of provincial prisoners and jails, when such firearms are in possession of such officials and public servants for use in the performance of their official duties." (Rev. Adm. Code)

"Sec. 29. Peace Officers. — Their powers and duties. — The Mayor, chief of police, and chief of secret service, and all officers and members of the city police and detective force shall be peace officers. x x x Whenever the Mayor shall deem it necessary to avert danger or to protect life and property, in case of riot, disturbances, or public calamity, or when he has reason to fear any serious violation of law and order, he shall have power to swear in special police, in such numbers as the occasion may demand. Such special police shall have the same powers while on duty as members of the regular force." (R.A. 183, as amended)

There is not a single phrase or sentence in the above-quoted provisions from which it may be inferred that a confidential agent in the office of the mayor of Pasay City is a "peace officer" or holds an equivalent position. No evidence was adduced that the petitioner was ever authorized by any department or office of Pasay City to carry a gun. To the contrary, he had to apply for a license to carry a firearm in his travels to the provinces as field unit manager of an insurance firm.

Neither may it be said that on the night in question he was on duty as a "special police." He testified that he was then merely on his way home to return the gun in question to his wife. His written statement to the Manila police investigator discloses that the floor manager of the Idle Hours Bar did ask him to leave the premises after a girl there around whose shoulders he had wrapped his arm and with whom he wanted to talk refused to have anything to do with him. Then, outside he violently jerked open the door of the bar and in so doing injured his hand. Obviously, he was then nowhere in the performance of the duties appurtenant to a "special police" within the letter and intent of section 29 of the charter of Pasay City.

People vs. Macarandang,[1] cited by the petitioner, is not in point. In that case the accused produced in evidence his appointment by Governor Dimakuta of Lanao as "a secret agent to assist in the campaign and detection of crimes," which this Court deemed sufficient to place the accused in the category of a "peace officer" equivalent to a member of the municipal police within the intentment of sec. 879 of the Rev. Adm. Code.

3. True it is that casual, temporary, incidental or harmless possession of a firearm has been held insufficient to convict a person of illegal possession,[2] but we are not convinced that the petitioner's possession of the gun in question during the time material to this case was without animus possidendi. The findings of the Court of Appeals on this point are noteworthy. Thus —

"The actuations of the accused as shown during the trial belie his claim of lack of animus possidendi. It was shown that the accused, instead of going home directly to deliver the gun to his wife, went to the Idle Hours Bar carrying with him the pistol loaded with eight live bullets. And when trouble arose between the accused and the manager of the bar, the accused got hold of the pistol, used it in attempting to break down the door of the bar and as a matter of fact, the manager of the bar complained to the police that the accused threatened the manager's life with the pistol.

"It is true that during the trial the accused on cross-examination tried to deny the use by him of the gun during the incident. Against said denial we have, as stated above, the complaint of the floor manager of the bar made to the police and in the presence of the accused to the effect that the latter threatened the manager's life with the use of the pistol, which the trial court, considering all the evidences introduced before it found to be the true version x x x "

It may be added that the petitioner's defense of absence of animus possidendi becomes absolutely unavailing in the face of his belief and contention, vehemently urged upon us for acceptance, that with his filing of an application to possess the firearm in question he could not thereafter be held guilty of the crime of illegal possession thereof.

ACCORDINGLY, the judgment a quo is affirmed in toto, at petitioner's cost.

Makalintal, C.J., Teehankee, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] L-12088, December 23, 1959, 106 Phil. Rep. 713.

[2] People vs. Estoista, 49 O.G. No. 8, p. 3330. The crime of illegal possession of a firearm belongs to that class of statutory offenses called malum prohibitum. (People vs. Cava, L-9416, August 31, 1956).

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