

**PEDRITO L. CATINGUB, PETITIONER, VS. THE COURT OF APPEALS,
THE HON. RICARDO C. PUNO AND THE PHILIPPINE CHARITY
SWEEPSTAKES OFFICE, RESPONDENTS.**

G.R. No. L-28701. March 25, 1983

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is an appeal by certiorari from the decision of the Court of Appeals in CA-G.R. No. 38698-R entitled "PEDRITO L. CATINGUB, Petitioner, versus HON. RICARDO C. PUNO, Judge of the CFI Manila, Branch 24, and the PHILIPPINE CHARITY SWEEPSTAKES OFFICE, Respondents."

Herein petitioner, Pedrito L. Catingub, was charged with the crime of malversation in Criminal Case No. 75696 of the Court of First Instance of Manila, Branch XXIV, under the following Information:

"That on or about and during the period covered from January 20 to February 24, 1963, in the City of Manila, Philippines, the said accused, being then a Sales Supervisor of the Philippine Charity Sweepstakes Office, Cagayan de Oro Branch, an instrumentality of the Government of the Republic of the Philippines, duly qualified, appointed and acting as such, and as such is responsible and/or accountable for public funds received by him by reason of his said office and position for the proper discharge of his duties and functions, did then and there willfully, unlawfully, feloniously and fraudulently, with grave abuse of confidence, misappropriate, embezzle, and take away from the said funds the total amount of P12,314.50 which he thereupon appropriated and converted to his own personal use and benefit, to the damage and prejudice of public interests and the Government of the Republic of the Philippines in the aforesaid amount of P12,314.50, Philippine Currency.

"Contrary to law." [1]

Assisted by counsel de oficio Atty. Ramon Academia during arraignment, petitioner pleaded not guilty to the crime charged. [2] Trial commenced on August 30, 1965 during which petitioner appears to have submitted to the court a paper purporting to be a Motion to Quash. [3] This motion, however, was withdrawn by petitioner, through counsel, on the ground that the facts to support lack of jurisdiction "are not yet apparent or they do not yet appear on record . . ." [4] At the continuation of trial on October 4, 1965, petitioner again filed a Motion to Quash on the ground that the trial court "is without jurisdiction to try the present case," the correct situs of the crime being Cagayan de Oro City. [5] The court held in abeyance the resolution of said Motion "until after the prosecution shall have rested its case." [6] In the meantime, trial proceeded and on February 21, 1966, the prosecution closed its evidence.

The prosecution evidence established that petitioner was appointed in Manila on April 13, 1960 as Salesman I, Philippine Charity Sweepstakes Office, with compensation at the rate of P1,800.00 per annum, effective upon assumption of office (Exhibit "A") which he assumed on May 9, 1960 after taking his oath of office in Manila on May 5, 1960. Thereafter, he was designated Temporary Sales Supervisor of the Philippine Charity Sweepstakes Office (PCSO) assigned at the Cagayan de Oro Branch. As such, he received sweepstakes tickets on consignment,

with the express obligation to turn over the proceeds of the sales of these tickets to the Philippine Charity Sweepstakes Office as shown in Exhibits "D", "D-1", "D-2", and "D-3". On March 12, 1963, petitioner was informed by the Auditing Examiner of the PCSO, Cagayan de Oro Branch that he has been found short of P12,307.45 (Exhibit "F-2"). Petitioner was ordered to explain the shortage in writing and to produce the missing amount. He failed to do so. On April 23, 1963, in view of his failure to settle his ticket accounts, and pursuant to Resolution No. 137 of the Board of Directors dated April 2, 1963, the services of the petitioner were terminated effective as of March 1, 1963, without prejudice to whatever court action the PCSO will take for the recovery of the amount involved. (Exhibit "B-1"). In a letter dated May 20, 1963, petitioner proposed to the General Manager of the PCSO, Manila, to settle his shortages by making monthly payments in the amount of at least P200.00, which proposal was, however, denied by the General Manager.

On April 25, 1966, petitioner filed a Motion to Dismiss on the sole ground that "the prosecution made a wrong choice of jurisdiction." He contended that "on the basis of the prosecution's evidence, the offense charged, together with all its essential ingredients occurred and the consummation thereof (was) completed, in Cagayan de Oro." [7]

The trial court on May 18, 1966, denied the aforesaid Motion to Dismiss in the following Order, to wit:

"Acting upon the defendant's 'Motion to Dismiss', dated April 22, 1966, the plaintiff's opposition thereto, dated April 28, 1966, and the reply dated May 10, 1966, filed in behalf of the accused, and considering the evidence on record, the Court believes and so rules that for the proper determination of the issues involved in this case, the accused should be heard in his defense.

Wherefore, the aforesaid motion to dismiss is hereby denied and the continuation of the trial of this case is hereby set for July 6, 1966, at 8:30 o'clock in the morning." [8]

Reconsideration of the foregoing Order sought by petitioner was denied in another Order dated November 3, 1966. [9] Petitioner assailed these two Orders of the Court of First Instance in his petition for certiorari, prohibition and mandamus before respondent Court of Appeals. The Court of Appeals (now Intermediate Appellate Court) dismissed the petition in a decision promulgated December 19, 1967, the dispositive portion of which reads:

"WHEREFORE, in the light of the foregoing considerations, we are of the considered opinion that the accused's motion to dismiss upon improper venue is without merit and accordingly the present petition for certiorari, prohibition and mandamus with preliminary injunction should be, as it is hereby dismissed, without pronouncement as to costs." [10]

Petitioner now comes to this Court by way of appeal by certiorari, raising the following errors:

- The Court of Appeals erred in holding that the Court of First Instance of Manila is vested with jurisdiction to try an offense under an Information charging Manila as the place of commission when the evidence adduced by the prosecution clearly establishes another place of commission.
- The Court of Appeals erred in holding that the consignment invoices of the Philippine Charity Sweepstakes Office, objected to as incompetent, control in every instance the ultimate situs of prosecution in a crime involving malversation even when the elements thereof have been shown to have taken place in another territorial jurisdiction.
- The Court of Appeals erred in not granting an equitable relief to petitioner by having him tried in the place of actual commission of the offense to afford him all the opportunity in an adversary proceeding to present his evidence and witnesses.

- The Court of Appeals erred in not resolving at least the doubt where the crime was committed in favor of the accused.

The main issue for resolution is whether or not the Court of First Instance of Manila has jurisdiction to continue with the trial of the offense as charged in view of the evidence presented by the prosecution.

The Information filed in the trial court specifically alleges that the crime imputed against petitioner was committed "in the City of Manila, Philippines." Such an averment would be sufficient if "the offense was committed or some of the essential ingredients occurred at some place within the jurisdiction" of the Court of First Instance of Manila pursuant to Section 9, Rule 110 of the Revised Rules of Court, Sec. 14 (a) also provides:

"Sec. 14. Place where action is to be instituted. - (a) In all criminal prosecutions, the action shall be instituted and tried in the court of the municipality or province wherein the offense was committed or any one of the essential ingredients thereof took place.

..."

Article 217 of the Revised Penal Code defines the crime of malversation of public funds or property as follows:

"Art. 217. Malversation of public funds or property. - Presumption of malversation. - Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

- The penalty of prision correccional in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.

....

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal uses. (As amended by Rep. Act No. 1060)."

The above presumption of malversation "takes the place of affirmative proofs showing the actual conversion (and) obviates the necessity of proving acts of conversion on the part of the accused, a thing almost always extremely difficult to do (U.S. vs. Acebedo, 18 Phil. 428, 431).

Respondent Court of Appeals, in upholding the trial court's dismissal of herein petitioner's Motion to Dismiss on ground of lack of jurisdiction, adverted to the written condition on the consignment invoices covering the sweepstakes tickets delivered to and received by said accused, Exhibits "D", "D-1", "D-2" and "D-3", that "I (petitioner) bind myself to comply strictly with existing rules and regulations and to turn over to the Philippine Charity Sweepstakes Office the proceeds of these tickets." As the following heading: "Republic of the Philippines, Philippine Charity Sweepstakes Office, Manila," was printed on the consignment invoices, the appellate court concluded that the PCSO mentioned or referred to therein was no other than the central or Manila office, and that petitioner's obligation was to turn over the proceeds of the sale to the PCSO in Manila. Accordingly, since petitioner had the obligation to turn over the proceeds of his ticket sales to the PCSO Manila and he failed to do so, the appellate court held that the courts of Manila had the jurisdiction to try the malversation charge against him.

We agree with the ruling of the Court of Appeals for We find on record the testimony of prosecution witness Adriano M. Ruiz, Branch Manager of the Philippine Charity Sweepstakes Office at Cagayan de Oro showing that "We require the fieldmen who receive the tickets to turn over the proceeds of their sales either to the branch office

or to the home office, and to return unsold booklets, if any, one week before the draw direct to the central office" (t.s.n., p. 11, Vol. II).

It may be true that as testified to by the Auditing Examiner, Amando Dominguez, assigned by the GAO to the Philippine Charity Sweepstakes Office that fieldmen "are bound to turn over the proceeds of the tickets at the branch where they are assigned or in Manila" (t.s.n., p. 2, Vol. IV) and that as declared by Lope V. Salvatoria, Assistant Department Manager of PCSO at Manila that "when the proceeds are turned over to the branch cashier, the responsibility ends there and the branch cashier in turn transmits the amount to the treasurer in Manila" (t.s.n., p. 25, Vol. V), the option to deliver the proceeds to the local branch office appear to be for convenience and for security reasons. But the final accounting, the settlement of accounts and the final clearances would have to be taken up in the central or Manila office. Petitioner himself recognizes this fact for as the evidence disclosed, he proposed to settle his shortages by paying P200.00 monthly in his letter addressed to the General Manager of PCSO in Manila (Exhibit "K").

We also agree with the respondent Court of Appeals that the case of *People vs. Angco*, 103 Phil. 33, is substantially on all fours with the case at bar. In the said *Angco* case, the Supreme Court laid down this ruling:

"The appellant presses the question of jurisdiction raised in a motion to quash which was denied by the trial court. He insists that as the malversation was committed while he was a travelling sales agent in Cagayan, as charged in the information, and that as it is not charged that the fund or part thereof was malversed in Manila, the Court of First Instance of Manila has no jurisdiction over the case. True it is alleged in the information that he had his 'headquarters at Tuguegarao, Cagayan' but it is also alleged that he was a 'Travelling Sales Agent of the Philippine Charity Sweepstakes Office, in said City,' (Manila . . . 'charged with selling sweepstakes tickets entrusted to him for sale in his district, with the obligation of turning over the proceeds of the sale of said tickets to the Treasurer of the Philippine Charity Sweepstakes Office in Manila,' . . . , and that he 'wilfully, unlawfully, feloniously and fraudulently, with grave abuse of confidence,' misappropriated, embezzled, misapplied and converted the amount of P3,960.95, the unaccounted and unpaid balance of the proceeds of the sale of the tickets to his own personal use and benefit, to the damage and prejudice of the Philippine Charity Sweepstakes Office. These allegations are sufficient to confer jurisdiction upon the Court of First Instance of Manila to the exclusion of the concurrent jurisdiction of the Court of First Instance of Cagayan. The findings of the trial court to the effect that the appellant 'was bonded and was authorized to sell sweepstakes tickets, with the obligation of turning over the proceeds of the sale to the treasurer of the Philippine Charity Sweepstakes Office, Manila'; and that the appellant failed to account for and pay part of the proceeds of the sale of tickets made by him, bear out the charge proffered against him in the information."

The crimes of estafa and malversation are similar in nature in that both involve misappropriation of funds or property, the difference being that in estafa, the property or funds misappropriated is private in character whereas in malversation, the property constitutes public funds or property for which the accused as a public officer is accountable by reason of the duties of his office. In the case of *U.S. vs. Cardel*, 23 Phil. 207, and *U.S. vs. Mesina*, 42 Phil. 66, it was held that estafa was consummated in the place where the accused is required to render an accounting and failed to do so. Applying the same ruling in the instant malversation case and Section 14(a), Rule 110 of the Revised Rules of Court hereinbefore quoted, We hold and rule that the present case of malversation may be tried in Manila since the offense charged was consummated in Manila.

Indeed, petitioner could have been charged and tried in Cagayan de Oro City for it is not disputed that he received the sweepstakes tickets from the PCSO, Cagayan de Oro branch. The essential ingredient of receiving the sweepstakes tickets took place in Cagayan de Oro City. He could also be charged in the City of Manila since the final accounting must be rendered in the Central Office, Manila. This is therefore, a case of concurrent jurisdiction by the proper court of the place wherein "anyone of the essential ingredients thereof took place." But the choice of

venue lies with the prosecuting officer and not with the accused.

Petitioner pleads for equitable relief by having him tried in Cagayan de Oro City to afford him all the opportunity in an adversary proceeding to present his evidence and witnesses. We cannot accept petitioner's plea for equity because having admitted in writing his shortages in his letter to the General Manager of PCSO in Manila, Exhibit "K", he comes to court with unclean hands. He who seeks equity must come to court with clean hands.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the decision appealed from is hereby AFFIRMED. The records of this case are hereby ordered remanded to the trial court for further proceedings in the ordinary course of law. No costs.

Petition denied.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., De Castro and Escolin, JJ., concur.
Aquino, J., on leave.
Abad Santos, J., reserves his vote.

[1] CFI Records, p. 1.

[2] Ibid., pp. 50 and 54.

[3] T.S.N. of hearing on August 30, 1965, p. 16.

[4] Ibid., p. 17.

[5] CFI Records, pp. 87-90.

[6] T.S.N. of hearing on October 4, 1965, p. 5.

[7] CFI Records, pp. 223-233.

[8] Ibid., p. 254.

[9] Ibid., p. 314.

[10] C.A. Decision, p. 8; Annex "A".

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