

CASTOR CUSTODIO, PETITIONER AND APPELLANT, VS. JUDGE PEDRO T. CRISTOBAL, ETC., ET AL., RESPONDENTS AND APPELLEES.*G.R. No. L-12487. January 30, 1962*

Ponente: BAUTISTA ANGELO, J.

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Castor Custodio and three others were accused of malicious mischief before the Justice of the Peace Court of Mabini, Pangasinan, upon the complaint filed by Ladislava Balgua. After trial they were all convicted, Castor Custodio having been sentenced to suffer 20 days of *arresto menor*, to indemnify the offended party in the sum of P80.00, with subsidiary imprisonment in case of insolvency, and to pay the costs.

The sentence was promulgated on June 20, 1955 on which date the accused, including Castor, were committed to the municipal jail. On June 22, 1955, Castor Custodio gave notice of his intention to appeal and was at the same time ordered released provisionally after filing the corresponding appeal bond. On June 24, 1955, counsel for the complainant filed a motion to lift the order of release with the justice of the peace court alleging that he could no longer be released inasmuch as he had already begun serving his sentence since June 20, 1955 for which reason his recommitment should be ordered so that he may serve the balance of his sentence. Finding the motion well-taken, the justice of the peace set aside his previous order of release and ordered the recommitment of Castor Custodio in an order issued on July 5, 1955. His order was given to the chief of police in order that it may be carried out, but before it could be implemented Castor Custodio lost no time in filing a petition for certiorari with injunction before the court of first instance against the justice of the peace and the chief of police praying that said justice of the peace be enjoined to carry out his aforesaid order it having been issued in excess of his jurisdiction.

Finding that the petition has on its face a *prima facie* case for the issuance of the preliminary injunction prayed for, the court of first instance granted the same upon the filing by petitioner of a bond in the amount of P200.00. Accordingly, on July 18, 1955, the clerk of court issued the requisite writ.

On August 5, 1955, respondents filed their answer stating that the order lifting the order of release and ordering the recommitment of petitioner was issued in accordance with law it appearing that said petitioner had already begun serving his sentence since June 20, 1955, and so he could no longer appeal, and the next step is to serve the balance of his sentence as stated in the original decision.

On September 17, 1956, the court issued an order requiring petitioner to include as parties-respondents the complainants or persons interested in sustaining the action of respondent justice of the peace pursuant to Section 5, Rule 67 of the Rules of Court, giving petitioner 5 days from receipt of the order within which to make the necessary amendment of his petition.

On October 1, 1956, petitioner filed a written "manifestation" by way of answer stating that in his opinion the only persons who should be included as respondents in the certiorari case were the justice of the peace who issued the order of recommitment and the chief of police who was required to implement it, aside from the fact that said chief of police was the one who signed the complaint which initiated the criminal case against him. On October

11, 1956, finding that petitioner has failed to comply with its order, and the written manifestation submitted by him was not well-founded, the court dismissed the case without costs. Petitioner filed a motion for reconsideration, and when the same was denied, he interposed the present appeal.

Appellant contends that the inclusion of the complainants as respondents in the certiorari case as required by the lower court is not necessary considering that the ones who were responsible for the issuance and implementation of the order of recommitment the validity of which is disputed were the justice of the peace and the chief of police of Mabini, Pangasinan, who were made the only respondents in said case, aside from the fact that the case wherein the order was issued being criminal in nature the real party in interest, if any, is the people who is under the control of the public prosecutor. Moreover, even granting *arguendo* that the lower court was correct in its theory that the complainants should be included as co-respondents because they are the parties who under the rules should sustain and defend the stand of the justice of the peace, the trial court should not have dismissed the case outright but should have given petitioner an opportunity to amend his petition.

We agree to this view. When the trial court *motu proprio* required petitioner to amend his petition in order to include the complainants as respondents in the belief that they are the ones most interested in sustaining the action of the justice of the peace pursuant to Section 5, Rule 67 of the Rules of Court, appellant submitted a written manifestation expressing the view that the required amendment was not necessary because in his opinion the justice of the peace and the chief of police were the only parties in interest because they are the ones who caused the order in question to be issued and implemented. Appellant was even of the impression that the chief of police was the one who signed the complaint which gave rise to the case of malicious mischief which resulted in his conviction. This view may not be correct, even if it may be contended that in a criminal case the real party in interest is the people who is under the control and direction of the government prosecutor; nevertheless, the trial court was somewhat harsh in dismissing the case outright without giving appellant an opportunity to amend the petition as desired by it.

It should be observed that the claim of appellant in the certiorari case is not without any basis it appearing that his recommitment was ordered upon the belief that he already begun serving his sentence when the truth is that he was merely committed to jail pending the perfection of his appeal. If this certiorari case should be dismissed on a mere technicality his right to appeal would be lost and his damage would be irreparable. Justice demands that he be given relief.

Wherefore, the order appealed from is set aside. The case is remanded to the lower court for further proceedings giving appellant 5 days from receipt of this decision within which to amend his petition as desired by said court. No costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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