

ARSENIO SOLIDUM, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA AND HERMOGENES CONCEPCION, JR. AS CITY FISCAL OF MANILA, PETITIONERS, VS. JAIME HERNANDEZ, RESPONDENT.

G.R. No. L-16570. February 28, 1963

Ponente: REGALA, J.

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REGALA, J.:

The facts of this case, as related by the City Fiscal of Manila and adopted by the herein respondent, are as follows:

In Criminal Case No. 171.52 entitled the "People of the Philippines vs. Secretary Jaime Hernandez," of the Court of First Instance of Manila, Branch XVII presided over by appellant Judge Arsenio Solidum, wherein appellee is charged with violation of Article 216 of the Revised Penal Code, appellant Hermogenes Concepcion, Jr. filed on April 18, 1959 an amended information alleging in substance that appellee, having acquired shares of stock in the Avegon Construction and Electrical Co., Inc., and having thus become interested, directly or indirectly, in its business, granted said corporation tax exemptions and otherwise acted favorably upon its various requests and petitions in his capacity as Secretary of Finance, and participated, as presiding officer, and member of the Monetary Board of the Central Bank, in meetings thereof wherein said Board decided to grant, and in fact granted said corporation dollar allocations in the total amount of \$1,612,224 from 1954 to 1958 and otherwise acted favorably on its other requests and petitions.

On June 15, 1959, appellee filed a motion to quash said amended information on the ground that the facts charged therein do not constitute an offense, alleging three reasons in support, to wit:

1) that 'the mere ownership by him of shares, of stock in a private corporation, whether or not that corporation may transact official business with him in his official capacity, does not fall within the purview of prohibited interest in a 'contrato u operacion' under Article 216 of the Revised Penal Code; 2) that petitioner had no interest or shareholding whatever in the corporation, Avegon, Inc., as of any of the material dates when said corporation was granted its tax exemption privileges in the Department of Finance and other requests by the Monetary Board of the Central Bank; and 3) that 'Article 216 of the Penal Code does not apply to a department head, such as petitioner, by virtue of Article VII, Sec. 11 paragraph 2 of the Constitution.

On July 9, 1959, appellant Hermogenes Concepcion, Jr., fiscal for the City of Manila, filed an opposition to the motion to quash aforementioned, showing clearly that appellee's interest as a stockholder of the Avegon, Inc., in whose business and transactions he intervened in his official capacity as Secretary of Finance and as presiding officer of the Monetary Board of the Central Bank by granting said corporation tax exemptions and dollar allocations, and otherwise acting favorably upon its other requests and petitions, was such an interest that Article 216 of the Revised Penal Code prohibits a public officer to have in a 'contrato u operacion'; that appellee's allegation that he 'had no interest or shareholding whatsoever in the corporation Avegon, Inc., as of the material dates when said corporation was granted tax exemption privileges in the Department of Finance and other requests by the Monetary Board of the Central Bank was purely a matter of evidence which appellee could probably avail of as a defense in the trial of the case, and that Article 216 of the Revised Penal Code is still a good law, effective and applicable to department heads, like appellee, because there is no inconsistency between said article of the penal code and the provisions of Article VII, Section 11, paragraph 2 of the

Philippine Constitution.

On July 17, 1959 appellant Judge issued an order denying the motion to quash, which reads thus:

"The last motion to quash filed by the defense raises fundamental question's which, in the opinion of the Court, cannot be decided properly intelligently and adequately without presentation of evidence.

"The Court likewise reserves its decision as to whether the provisions of Art. 216 of the Revised penal Code for the violation of which the herein accused is prosecuted, are repugnant to and inconsistent with the provisions of Art. VII, Section 11, paragraph 2 of the Constitution of the Philippines.

Wherefore, the motion to quash is hereby denied, and the arraignment of the accused is set on July 25, 1959, at 10:00 A.M.

So ordered."

"Appellee filed a motion for reconsideration of said order, which motion was denied by appellant Judge in an order of August 1, 1959.

On August 12, 1959, appellee filed with the Court of Appeals, a petition for prohibition and/or mandamus, with prayer for the issuance of a writ of preliminary injunction. In support of tins petition for mandamus, it is alleged that respondent Judge acted without or in excess of his jurisdiction or with grave abuse of discretion in issuing the two orders complained of and in not having quashed the information on the ground that the provisions of Article 216 of the Revised Penal Code do not apply and were rendered inoperative as to a department head, such a petitioner, by virtue of Article VII, Section 11, paragraph 2 of the Philippine Constitution. And as regard the petition for mandamus, it is alleged that respondent Judge neglected the performance of a duty specifically enjoined on him by his office under Section 6, Rule 113 of the Rules of Court, in not resolving herein appellee's motion to quash of June 15, 1959 and in deferring in effect until after trial on the merits his resolution on the fundamental questions raised therein as per the order of July 17, 1959, reaffirmed by him in the order of August 1, 1959.

In their answer of September 2, 1959, appellants alleged that, contrary to the appellee's charge, appellant Judge acted within his jurisdiction and without grave abuse of discretion in denying the appellee's motion to quash, for the reason that in the mind of appellant Judge, the motion raised fundamental questions which could not be resolved properly, intelligently, and adequately without presentation of evidence, especially that regarding the alleged implied repeal of Article 216 of the penal code by the Constitution insofar as department heads, chiefs of bureaus or offices and their assistants are concerned, the same not being indubitable considering the proposition advanced by Hermogenes Concepcion, Jr. that no consistency exists between the penal article and the constitutional provision and therefore the latter could not have impliedly repealed the former. Moreover, appellee has some other adequate remedy in law from the disputed order denying his motion to quash, and that is appeal in due time therefrom, following the ruling of this Honorable Court in several cases, the last of which is *Eulogio Mill vs. Hon. Nicasio Yatco*, 101 Phil., 599., (54 O.. Gaz, No. 10, p. 3232)

On January 23, 1960, the Court of Appeals rendered, a decision issuing the writ of prohibition prayed for, annulling the orders complained of and directing respondents to desist from further proceeding in Criminal Case No. 47152 of respondent Court on the ground that Article 216 of the Revised Penal Code had been rendered inoperative by Article VII, Section 11, paragraph 2 of the Philippine Constitution as regard heads of departments, and chiefs of bureaus or offices and their assistants.

Disagreeing with the above ruling of the Court of Appeals, herein petitioners have elevated the same to this Court contending that the Court of Appeals erred—

(a)

in assuming jurisdiction over this proceeding;

(b)

in holding that Article 216 of the Revised Penal Code was rendered pro tanto inoperative by Article VII, Section 11, paragraph 2 of the Philippine Constitution as regards department heads; and

(c)

in annulling the orders complained of and issuing a writ of prohibition when appeal in due time from said orders was the obvious and only remedy available to herein appellee.

It is the view of this Court that a resolution of the third assignment of error should be accorded priority inasmuch as a finding that the writ should not have been issued in the first place would render a ruling on the first two assigned errors premature at this stage of the proceeding.

We declare the Court of Appeals in error when it issued the writ of prohibition here complained of.

One of the more profound doctrines of procedural jurisprudence is that which allows the issuance of prohibitive writs only upon a showing of lack or excess of jurisdiction or of authority, or, grave abuse of discretion on the part of an inferior tribunal, corporation, board or person. (Rule 67, Sec. 2, Rules of Court; *Aglipay vs. Ruiz*, 64 Phil. 201; *Reyes et al. vs. The Hon. Guillermo Romero et al.*, G. R. No. L-14917, May 31, 1961; 42 Am. Jurs. Sec. 5, pp. 140-141; *Livingston vs. Wyatt*, 186 N.Y. 383). The reason for the aforesaid rule is not difficult to discern. In the exercise of discretion, inferior tribunals, corporations, boards or persons should be allowed some latitude of independence, a freedom of movement and judgment consistent with the trust reposed on them by law or regulation to mediate over specific disputes. If every act or ruling of them were to be subjected to the scrutiny and re-examination of a superior tribunal, and, in every instance must be reconciled with the views of the reviewing body, then the administration of justice will greatly be hampered. The discretion of lower tribunals will then be but a work, not a reality.

Thus, We have always adhered to the standard that for grave abuse of discretion to prosper as a ground for prohibition, it must be first demonstrated that there was such a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction (*Abad Santos vs. Province of Tarlac*, 67 Phil. 480; *Bibby de Padilla vs. Horrilleno*, 60 Phil. 511; *Alafriz vs. Nable*, 72 Phil. 278). Similarly, We have ruled that there is "excess of jurisdiction" where the court has jurisdiction but has transcended the same or acted without any statutory authority (*Leung Ben vs. O'Brien*, 38 Phil. 182; *Salvador Campos y Cia vs. Del Rosario*, 41 Phil. 45). In other words, prohibition ought be issued only after the reviewing tribunal shall have convinced itself that the lower court has exercised its power "in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion or to a virtual refusal to perform the duty enjoined or to act in contemplation of law (*Tavera-Luna, Inc. vs. Nable*, 67 Phil. 340).

Considering the above discussion, We cannot concur with the conclusion of the Court of Appeals regarding the conduct of the herein respondent judge. A cursory reading of the Order complained of shows how, on the contrary, he had cautioned himself against acting arbitrarily, despotically or whimsically. The same Order precisely reflects a deep sense of justice and mature exercise of discretion on the part of the respondent Judge when it recognized that the motion to quash filed by the defendant "raises fundamental questions which, * * * * cannot be decided properly, intelligently and adequately without presentation of evidence."

Furthermore, there is no exigency in this instant proceeding which would justify a disregard for the time-honored rule that prohibition is granted only where no other remedy is available which is sufficient to afford redress (III

Moran, Comments on the Rules of Court, p. 174). For this particular case, We hold the view that the observation of the City Fiscal that "the obvious and only remedy available to the appellee is appeal in due time from the decision that the appellant Court might render in the case" is valid and well taken. And, as the herein respondent has another and complete remedy at law either by appeal or otherwise. We need proceed no further to justify the lifting of the writ issued by the Court of Appeals.

As originally intimated, a ruling on the first two assignments of error would be premature at this stage. Wherefore, the writ of prohibition issued by the Court of Appeals is hereby lifted and this case is remanded to the lower court for a continuance of the suspended proceedings. Costs against appellee.

Bengzon, C. J. Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, and Dizon, JJ., concur.

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