

**MARIANO G. ALMEDA, SR., AND VALERIANA F. ALMEDA,
PETITIONERS, VS. THE HON. JESUS Y. PEREZ, JUDGE OF THE COURT
OF FIRST INSTANCE OF MANILA, AND THE REPUBLIC OF THE
PHILIPPINES, R...**

G.R. No. L-18428. August 30, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is a petition for prohibition and certiorari, with preliminary injunction, filed by petitioners, seeking to set aside and declare null and void the orders, dated March 15, 1961 and May 8, 1961, of the respondent Judge Jesus Y. Perez of the Court of First Instance of Manila, in Civil Case No. 44693 of said court. The first order allowed the filing of an amended petition for forfeiture against petitioners; the second denied a motion for the reconsideration thereof and for the dismissal of the amended petition for forfeiture.

In October, 1961, Epifanio T. Villegas and Jesus A. Mendoza filed a complaint with the Secretary of Justice, charging Mariano G. Almeda, Sr. with having acquired during his incumbency as government employee, cash and properties from unknown sources in the total amount of P121,407.98, which acquisitions, according to the complaint, were manifestly out of proportion to the salary and other lawful income of said Mariano G. Almeda, Sr., and, therefore, in violation of the provisions of Republic Act No. 1379, otherwise known as the Anti-Graft Law. Pursuant to the provisions of said Act, a preliminary investigation was conducted by a committee of investigators designated by the Secretary of Justice. In a resolution of said investigators, dated November 4, 1960, it was certified that there is reasonable ground to believe that from 1950 to 1959, Mariano G. Almeda, Sr. acquired properties manifestly out of proportion to his salary as Assistant Director of the National Bureau of Investigation, and to his other lawful income.

On the basis of the findings of the investigators, the Solicitor General, representing the Republic of the Philippines as petitioner, filed on November 12, 1960, with the Court of First Instance of Manila, a petition for forfeiture against Mariano G. Almeda, Sr., docketed as Civil Case No. 44693. It charges him with having committed graft while engaged in the performance of his official duties and, in consequence of said graft, had acquired properties and made cash disbursements from 1950 to 1959 grossly-disproportionate to his lawful income. His wife was included as a co-respondent in her capacity as wife of Mariano G. Almeda, Sr. and as co-owner of their conjugal properties.

Petitioner herein filed their answer on December 5, 1960 and thereafter the case was set for hearing, but on February 15, 1961, the Solicitor General filed a "Motion for Leave to Amend Petition for Forfeiture". The judge granted the motion but rejected the inclusion of Mariano F. Almeda, Jr. as party respondent. On March 25, 1961 the Solicitor General filed the amended petition for forfeiture, adding other counts and items of alleged unlawful acquisitions and disbursements thus increasing the alleged cash from unexplained sources received by the respondents from the years 1950-59 to P208,682.45, as against respondent's salary and other lawful income of

only P59,860.97. Respondents, petitioners herein, objected to the amendment on the ground that the new counts or charges had already been investigated and dismissed after investigation, and respondents had not been given a new preliminary investigation with respect to the new counts or charges; that the proceedings under Republic Act No. 1379 being criminal in nature, the petition may not be amended as to substance without respondents' consent. It is also claimed that the amendments were presented only to delay the proceedings to the prejudice of the respondents, and that the new counts or charges could not be included because one year had already elapsed after a general election in violation of the provisions of Republic Act No. 1379. After the filing of memoranda by the parties the respondent judge issued the order sought to be reviewed, authorizing the presentation of the second amended petition but without including therein Mariano F. Almeda, Jr. as a party respondent. The court ruled as follows:

"The Court finds no merit to the contention that the amended petition seeks to include new counts which were previously dismissed by the investigating Fiscals because no such dismissal appears in the resolution of said investigating fiscals and moreover, the only function of the investigating fiscals in the preliminary investigation was to determine whether or not there is probable cause that respondents have acquired properties beyond their means. The items of receipts and disbursements or acquisitions referred to as new counts by the respondents are but allegations in detail respecting the main allegation that respondents unlawfully acquired the properties described in the amended petition. The new allegations of receipts and disbursements embodied in the amended petition objected to by the respondents merely supplement or amplify the facts of unlawful acquisition originally alleged in the original petition. These amendments hence relate back to the date of the filing of the original petition so that the prohibition contained in Rep. Act 1379 that no petition shall be filed' within one year before a general election cannot apply with respect to the new items of receipts and disbursements. The Court finds no merits in the respondents' contention that the amended petition should not be admitted on the allegation that his proceeding is penal in nature and no amendment as to matters of substance can be admitted after the respondents have filed their answer because this is a civil case and the rules respecting amendments in civil cases and not of informations in criminal cases should govern the admission of amendments in this case. The mere fact that a preliminary investigation is required to be held in a proceeding of this nature does not make the same a criminal proceeding. Hence, the rule that amendments of pleadings are favored and should be literally allowed in the furtherance of justice should be applied.

"With reference to the objection that no preliminary investigation was conducted insofar as the new respondent Mariano F. Almeda is concerned, the Court finds said objection to be well-founded because no preliminary investigation was in fact conducted insofar as said new respondent is concerned in violation of Sec. 2 of Rep. Act 1379.

"Wherefore, the Court hereby orders the petitioner to file, within ten days, a second amended petition without including therein Mariano F. Almeda as party respondent or make reference therein with respect to said person.

"SO ORDERED."

The principal contention of the petitioners herein, respondents in the court below, is that Republic Act No. 1379 is penal in substance and effect, hence the presentation of the amended petition without the benefit of a previous preliminary investigation under the Act cannot be allowed; that the amendment would have the effect of presenting a charge (under Republic Act No. 1379) within one year from the date of a general election; and lastly, that the amendment may not be made on a matter of substance after the defendants had pleaded.

A study of the provisions of Republic Act No. 1379 readily discloses that the proceeding for forfeiture is civil in nature and not criminal, as claimed by the petitioners. A test has been suggested to determine whether the proceeding for forfeiture is civil or criminal, thus:

"* * * Forfeiture proceedings may be either civil or criminal in nature, and may be in rem or in personam. If

they are under a statute such that if an indictment is presented the forfeiture can be included in the criminal case they are criminal in nature, although they may be civil in form; and where it must be gathered from the statute that the action is meant to be criminal in its nature it cannot be considered as civil. If, however, the proceeding does not involve the conviction of the wrongdoer for the offense charged the proceeding is of a civil nature; and under statutes which speedily so provide, where the act or omission for which the forfeiture is imposed is not also a misdemeanor, such forfeiture may be sued for and recovered in a civil action." (37 CJS, Forfeiture, Sec. 5. pp. 15-16)

In the first place a proceeding under the Act (Rep. Act No. 1379) does not terminate in the imposition of a penalty but merely in the forfeiture of the properties illegally acquired in favor of the state. (Sec. 6) In the second place the procedure outlined in the law leading to forfeiture is that provided for in a civil action. Thus there is a petition (Sec. 3), then an answer (Sec. 4), and lastly, a hearing. The preliminary investigation which is required prior to the filing of the petition, in accordance with Sec. 2 of the Act, is provided expressly to be one similar to a preliminary investigation in a criminal case. If the investigation is only similar to that in a criminal case, but the other steps in the proceedings are those for civil proceedings, it stands to reason that the proceeding is not criminal. Had it been a criminal proceeding there would have been, after a preliminary investigation, a reading of information, a plea of guilty or not guilty, and a trial thereafter, with the publication of the judgment in the presence of the defendant. But these proceedings as above set forth, are not provided for in the law.

Section 12 of the law provides a penalty to the public officer, but said penalty is against the employee or officer for the transfer or conveyance of any unlawfully acquired properties. The law therefore penalizes an officer for transferring or conveying properties unlawfully acquired, but does not do so for making the unlawful acquisition; it merely imposes the penalty of forfeiture of the properties unlawfully acquired.

As the proceeding for forfeiture, as pointed out and as provided for in the law, is not a penal proceeding but a civil one for the forfeiture of the properties illegally acquired, and as the procedure outlined in the law is that which is followed in civil actions, amendment of the charges or the petition for forfeiture may be made as in ordinary civil actions; i. e. the amendments may be made before trial or in the course of trial without need of another investigation. It also follows that amendments setting forth newly discovered acquisitions may be inserted in the petition without obtaining the consent of the respondent.

Wherefore, the petition should be, as it is hereby, denied, with costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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