

FIDEL AMANTE, PETITIONER, VS. HONORABLE JUDGE JUAN P. ENRIQUEZ, COURT OF FIRST INSTANCE OF RIZAL, RESPONDENT.*G. R. No. L-9660. January 23, 1957*

Ponente: MONTEMAYOR, J.

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This is a petition for mandamus against Judge Juan P. Enriquez, presiding over the Court of First Instance of Rizal, wherein Criminal Case No. 4135, apparently for estafa, and wherein petitioner Fidel Amante is one of the accused, is pending. Amante alleges that he is being detained in the provincial jail in Rizal in connection with said criminal case; that he is very desirous of presenting witnesses on his behalf; among them Alfredo Reyes and Galicano Cunanan, both convicted also of the crime of estafa at the same court; that he had petitioned respondent Judge Enriquez orally and in writing to subpoena said two persons to testify for him at the trial, but that respondent judge refused to grant his petition in violation of his right to have compulsory process issued to secure defendant's witnesses in his behalf. So, he now asks us to order Judge Enriquez to subpoena said two prisoners.

In his answer, Judge Enriquez informs us that Alfredo Reyes and, Galicano Cunanan are prisoners serving final sentences in the New Bilibid Prisons, Muntinlupa, Rizal, and he gives his reasons for his failure to subpoena them. For this, we can do no better than reproduce that portion of his answer giving said reasons:

"* * * respondent respectfully states that his refusal was premised on the failure of petitioner to follow the procedure outlined in a circular of the Department of Justice regarding the issuance of subpoena to prisoners serving final sentence in the New Bilibid Prisons as witnesses, in order to prevent abuse of defendant's right to secure witnesses and unnecessary risk of escape and expense; however, respondent had authorized the taking of the deposition of the said witnesses at the New Bilibid Prisons, to which petitioner, his counsel de officio as well as the prosecution consented, but nevertheless not availed of by petitioner who filed instead the instant petition for mandamus;"3. That at the commencement of the trial last September 9, 1955, for the reception of further evidence for the defense of petitioner in Criminal Case No. 4135, his counsel de officio manifested before the respondent that the filing of the instant petition was made without his knowledge and consent, and that after a conference with the prosecution regarding the admissibility of the sworn statements of both Alfredo Reyes and Galicano Cunanan, the persons sought to be cited by subpoena, the prosecution agreeing that if these persons are called to testify, they would ratify the contents of their respective sworn statements, thereby dispensing with the appearance of both witnesses;

"4. That thereafter, counsel de officio in Criminal Case No. 4135 rested the defense of petitioner and announced in open Court that he would file in due time a petition to withdraw the instant petition for mandamus before that Honorable Court,

"Wherefore, it is respectfully prayed that the matter treated in this mandamus proceedings having become academic, the instant petition for mandamus be dismissed."

Then on October 13, 1955, Atty. Vivencio P. Angeles, former counsel de officio of petitioner Amante, filed a manifestation informing this Court that the filing of the petition for mandamus was made by the petitioner himself without his knowledge and consent, thereby corroborating the allegations of respondent Judge Enriquez in his

answer. Says the manifestation:

"That the filing of the instant petition for mandamus was made by the petitioner himself without the knowledge and consent of the undersigned."That after the trial last September 9, 1955, of the said Criminal Case No. 4135 in the Court of First Instance of Kizal the petitioner in the instant case, (as one of the accused in said criminal case No. 4135) told the undersigned that the (petitioner) would take care of filing in due time the corresponding petition to withdraw the instant petition for mandamus before this Honorable Court. "Wherefore, the undersigned hereby informs this Honorable Court that it is the petitioner who would file the corresponding petition to withdraw the instant petition for mandamus."

It would appear, however, that the petition to withdraw the present petition for mandamus was never prepared, much less filed, so the present case for mandamus was set for hearing on January 20, 1956. On the same date, petitioner Amante filed a motion for postponement, therein stating that he had received a copy of the resolution setting the case for hearing on January 30, 1956 ^ that he had just engaged the professional services of Atty. Vicente L. Santiago, and needed time to study the record of the case and to prepare for the hearing, and he asked that said hearing be held preferably between February 13 and 17, 1956. Acting upon said motion, the hearing was postponed to February 17, 1956, but according to a resolution of this Court of that date, February 17, when the case was called for hearing, there was no appearance. The inference is that the petitioner has lost interest in the case, or that his attorney realized the futility of insisting in compelling Judge Enriquez to subpoena the two prisoners serving final sentences in the New Bilibid Prisons without complying with the regulations "or circular of the Department of Justice regarding the issuance of subpoena to prisoners serving final sentences, in order to prevent abuse of defendant's right to secure witnesses and avoid unnecessary risk of escape of prisoners, as well as the expense entailed in, transferring said witnesses from Bilibid Prisons to the place of trial.

In view of these circumstances, we believe that respondent judge acted correctly in declining to subpoena the two witnesses desired by petitioner. Finding no merit in the present petition for mandamus, the same is hereby denied, without costs.

Paras, C. J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

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