

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
CARLOS MAGDALUYO, DEFENDANT AND APPELLEE.***G.R. No. L-16235. April 20, 1961*

Ponente: BARRERA, J.

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From the order of the Court of First Instance of Rizal dismissing the information in Criminal Case No. 4926-P filed against defendant Carlos Magdaluyo, the Government has interposed this appeal.

It appears on record that on November 7, 1958, defendant was found in possession of several decks of American playing cards, U.S. cigarettes, and bottles of assorted imported liquors with an estimated market value of P117,130.20. He was required by the Bureau of Internal Revenue to pay specific tax in the aggregate sum of P24,438.40, but he refused, alleging that he was not the owner of said articles. On December 4, 1958, the Deputy Commissioner of Internal Revenue recommended to the Pasay City Attorney, defendant's immediate criminal prosecution, for violation of Section 125, in relation to Sections 133, 137, and 147 of the National Internal Revenue Code, penalized under Section 174 of the same code.

While the case was pending investigation in the Pasay City Fiscal's Office, counsel for defendant addressed a letter dated January 137 1959 to the Commissioner of Internal Revenue, offering to compromise the case of his client, and agreeing to pay the full amount of the tax, subject to the following conditions: (1) that upon payment of the corresponding specific tax, the commodities on which the tax was imposed should be returned to defendant; and (2) that the case pending in the Pasay City Attorney's Office be withdrawn, and defendant authorized to pay P500.00 as compromise penalty, in addition to the tax demanded.

On January 15, 1959, a conference attended by Atty. Simeon D. Paredes of the Law Division of the Bureau of Internal Revenue, Pasay City Attorney Francisco Salva, and defendant's counsel, was called in order to deliberate on defendant's offer of compromise. On the following day (January 16), the Acting Chief of the Law Division, Bureau of Internal Revenue, reported in a memorandum to the Commissioner of Internal Revenue, the following tentative agreement: (1) defendant would pay the specific tax of P24,438.40, plus the additional sum of P500.00, in extrajudicial settlement of his violation of Section 125 of the National Internal Revenue Code, in relation to Sections 133, 137, and 147 thereof, which violation is penalized under Section 174 of the same Code; (2) upon payment of said sums, the Bureau of Internal Revenue would immediately withdraw its recommendation to the Pasay City Attorney, for the criminal prosecution of defendant; (3) the articles seized were to be forfeited in favor of the Government, notwithstanding the payment of the specific tax; and (4) when the articles seized are sold at public auction, defendant would be permitted to participate in the public bidding.

The Commissioner approved said compromise agreement, but increased the penalty from P500.00 to P1,000.00. Approval of said agreement with the modification imposed by the Commissioner, which were accepted by defendant, is contained in a memorandum of January 16, 1959 (Annex I). The Pasay City Attorney was then advised by the Commissioner on January 22, 1959, of the agreement, who thereupon wrote a letter dated January

24, 1959 to the Commissioner, expressing his conformity to the compromise agreement, as follows:

"Replying to your letter of January 22, 1959, asking (for) my comment on the proposed extra-judicial settlement of the liabilities of one Carlos Magdaluyo for the alleged violation of the provisions of Section 170 of the National Internal Revenue Code, I have the honor to inform that this office, adopting your stand in accepting the offer of respondent to pay in full the specific taxes demanded on him in the total sum of P24,438.40 with the additional sum of P1,000.00 as compromise penalty, finds no objection in dismissing the case.

"In view whereof, I am returning to you all the papers and documents you have submitted to this office in connection with the case aforesaid, with the information that this case has been deemed closed and terminated." (Italics supplied.)

In view, however, of defendant's difficult financial situation, he wrote a letter dated February 19, 1959 to the Commissioner of Internal Revenue, requesting permission to pay the obligation by installments, to which, said official agreed. Defendant paid P5,000.00 (O. R. No. A-09544) on February 16, 1959, and P5,000.00 (O.R. No. A-095634) on March 16, 1959. On May 11, 1959, the Commissioner of Internal Revenue wrote the following letter to defendant's counsel:

"In further reference to the pending specific tax case of your client, Mr. Carlos Magdaluyo of 1768 Taft Avenue, Pasay City, involving the sum of P24,438.40, plus the additional sum of P1,000.00 as compromise penalty, I have the honor to draw your attention to the fact that to this date, only the amount of P10,000.00 has been paid, in spite of the representation you made to this Office that the same would be paid in the monthly installments of P5,000.00

"In view thereof, we request that you urge your client to pay the remaining balance of his specific tax liability in the total amount of P15,438.40 within ten (10) days from receipt hereof, in order that this case may be closed and terminated."

Defendant, subsequently, made payments of P5,000.00 (OR No. A-517360) on May 19, 1959, and P5,000.00 (OR No. A-516854) on July 7, 1959, bringing the total sum paid to P20,000.00. As defendant failed to pay in full his tax obligation and compromise penalty of P1,000.00, Pasay Assistant City Attorney Antonio Paredes filed with the above-mentioned court, on August 10, 1959, the following information:

"That on or about the 7th day of November, 1958, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Carlos Magdaluyo, with deliberate intent to evade, deceive and defraud the government of taxes due from him, possess and have under his custody and control in his house, known as 1786 Taft Avenue, this City the following items, to wit:

- 1,185 decks of American Playing Cards,
- 4,100 packages of Assorted U.S. Cigarettes,
- 364 bottles of assorted liquor (cased and uncased.)

with an estimated market value of P117,130.20 and which are subject to specific taxes in the amount of P24,438.40, did then and there wilfully, unlawfully, and feloniously and notwithstanding repeated demands fail and refused to pay the aforesaid specific tax in the amount of P24,438.40, due from him, to the damage and prejudice of the government in the aforesaid amount of P24,438.40."

One week after the filing of said information, i.e., on August 17, 1959, defendant paid the Bureau of Internal Revenue the balance of the specific tax in the sum of P4,438.40, as well as the compromise penalty in the sum of P1,000.00 (a total of P5,438.40) under O.R. No. A-724051.

In view of said full payment of the specific tax and the compromise penalty, the Deputy Commissioner of Internal Revenue, on August 25, 1959, wrote a letter to the Pasay City Attorney, which reads:

"I have the honor to inform you that Mr. Carlos Magdaluyo of 1786 Taft Avenue, Pasay City, whose criminal prosecution for violation of sections 133, 137, and 147, all penalized under section 174 of the National Internal Revenue Code, was recommended to that office on December 4, 1958, has already paid in full his specific tax liability in the total sum of P24,438.40. Mr. Magdaluyo has, likewise, paid the additional sum of P1,000.00 as compromise penalty in extrajudicial settlement of his criminal liability arising from his aforesaid violation.

"In view thereof, this Office will interpose no objection to the withdrawal of the criminal case instituted against Mr. Magdaluyo." (Italics supplied.)

As the Assistant City Attorney was not agreeable to the withdrawal of the information, defendant, on September 16, 1959, filed a motion to quash the same, on the ground that "the criminal liability of the accused has been extinguished" by his full payment on August 17, 1959, of the tax liability and penalty pursuant to the compromise agreement with the Commissioner of Internal Revenue and consented to originally by the City Attorney of Pasay. To this motion, the Assistant City Attorney filed an opposition. On October 5, 1959, the court dismissed the case, in an order of this tenor:

"ORDER

"Acting upon the motions to quash dated September 16, 1959, and September 29, 1959, and the opposition thereto, and it appearing that the Commissioner of Internal Revenue has agreed to compromise this case (Annex I) and that the City Fiscal, upon being advised thereof on November 24, 1958, has expressed his conformity to the compromise agreement (Annex I), and it appearing further that the accused has fully paid already the amount of P24,438.40 mentioned in the compromise agreement,

"As prayed for, this case is hereby dismissed with costs de officio. The bond filed by the accused for his provisional release is hereby ordered cancelled.

"So ordered."

Dissatisfied with said order, the Government (through the Solicitor General) interposed this appeal.

The Solicitor General contends that the trial court erred in dismissing the case. It is urged that since the information charging defendant with the offense in question was filed prior to his (defendant's) full payment of the tax liability and teempromise penalty, the Commissioner of Internal Revenue lost the authority to compromise[1] the criminal aspect of the tax case.

We find no merit in the contention. The argument might be correct, had no compromise agreement been entered into between defendant and the Commissioner, with the knowledge of and concurrence by the Pasay City Fiscal, prior to the filing of the information (on August 17, 1959) or that there was non-compliance with the compromise agreement. The records disclose that the Commissioner of Internal Revenue has agreed to compromise the case (see memorandum Annex I), and that the Pasay City Fiscal, upon being advised thereof has expressed his conformity to the agreement, considering the case aa "closed and terminated". (See letter quoted above, dated January 24, 1959, or 7 months prior to the filing of the information on August 10, 1959).

Nor is there non-compliance with the compromise agreement which set no specific date within which defendant must fully pay the tax and penalty. In fact, the Commissioner of Internal Revenue agreed to the payment of said tax and penalty in installments (See letter of the Commissioner, Annex "L"), and defendant appears to have made payment as follows: P5,000.00 on February 16, 1959, P5,000.00 on March 16, 1959, P5,000.00 on May 19, 1959, P5,000.00 on July 7, 1959, and P5,438.40, on August 17, 1959.

The case of *Rovero vs. Amparo, et al.* 91 Phil., 228 cited by the Solicitor General is not applicable to the instant case. We there held that the Commissioner of Customs may not, under Article 1369 of the Revised Administrative Code, compromise decided cases; in the instant case, the compromise was agreed upon prior to the filing of the information *U.S. vs. Chua Puete and Que Ung Bo* (22 Phil., 327) is also not in point, for it involves an offer of compromise which was rejected by the Collector of Internal Revenue and not approved or accepted by the Secretary of Finance; in the instant case, defendant's offer of compromise was duly approved by the Commissioner of Internal Revenue and concurred in by the City Fiscal. *Morris vs. U.S.* (123 F. 2d. 957) is irrelevant, as it refers to an offer of compromise made after the complaint was filed; here the compromise agreement was entered into, as already stated, long prior to the filing of the information against defendant. Finally, Section 9, Rule 123 of the Rules of Court is inapplicable because it has reference to criminal cases not allowed by law to be compromised; the instant case involves a tax case, which the law (Sec. 309 of the Tax Code) expressly allows to be compromised.

Wherefore, finding no error in the order appealed from, the same is hereby affirmed in all respects, without pronouncement as to costs. So ordered.

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

[1] Under Section 309, National Internal Revenue Code.

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