

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. CONSTANTE L. DE PERALTA, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH II, CFI, SURIGAO DEL NORTE AND ISABEL LAURON, RESPONDENTS.

G.R. No. L-40837. April 29, 1977

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal which the Court deems to be a petition for certiorari under Rule 65 seeking the nullification of the orders of respondent court dated April 30, 1975 dismissing Criminal Case No. 426 of the Court of First Instance of Surigao del Norte, for grave oral defamation against private respondent Isabel J. Lauron on the ground that the offense charged had already prescribed.

On January 24, 1974 an information was filed with respondent court in Criminal Case No. 351 charging respondent Lauron with the crime of grave oral defamation allegedly committed against Mrs. Felicitas Bayang Lawan on December 15, 1973. Upon motion of the accused Lauron, on March 14, 1974, respondent court dismissed said case thru an order reading thus:

"The accused, through counsel, moved of this Court for the nullification of the information filed by the Assistant Provincial Fiscal in this case and further prayed that the case be remanded to the Municipal Court of Bacuag, Surigao del Norte for investigation and trial since the case is within the concurrent jurisdiction of both the Court of First Instance and the Municipal Court.

"The ground invoked by the movant for the nullification of the information is that the preliminary examination conducted by the Assistant Provincial Fiscal on the case was not in accordance with the mandatory requirement of Presidential Decree No. 77 which provides, among others, that the investigating fiscal should have the statements of the complainant and the witnesses sworn to before him.

"As to the move to have the case remanded to the Municipal Court of Bacuag, Surigao del Norte, accused urged the Court that the interest of justice and the convenience of the parties dictate that the investigation and trial of the case be had before said Municipal Court in Bacuag where the crime charged was allegedly committed and which municipality the parties and their witnesses are residents of.

"In his opposition to the motion, the Assistant Provincial Fiscal contends that there was no irregularity behind the filing of the information just because the counter-affidavits were not sworn to before the investigating fiscal.

"It is argued that the obligation to swear to the counter-affidavits before the investigating fiscal is addressed to the respondent, the accused in this instant case, and her failure to do so should not be capitalized by her to nullify the information filed against her.

"It is also argued that by accused putting up the Bail Bond, the deviation from the requirements of Presidential Decree No. 77 has been cured, following the ruling in the case of *Bermejo vs. Barrios, et al.*, No. L-23614, February 27, 1970; 31 SCRA 764.

"It should be noted that Presidential Decree No. 77 which amends Rep. Act No. 5180 and particularly that part which requires the statements of the complainant and his witnesses and the counter-affidavits of respondent and other supporting documents to be sworn to before the investigating fiscal is couched in mandatory terminology and deviation therefrom or non-compliance with such mandatory requirements as provided for therein could and should make the investigation based thereon irregular and the corresponding information that would be filed on the basis thereof a nullity.

"It may also be pointed out that in the case of *Bermejo vs. Barrios, et al.* mentioned in the foregoing, it in effect held that the posting of a bail bond amounted to a waiver of any irregularity or defect. But the defect or irregularity contemplated in said case was in the issuance of the order of arrest and not in the information. Thus, the ruling in the *Bermejo* case insofar as it touches on the remedial aspect of the law, viz; irregularity in the issuance of orders of arrest are waived by the posting of bail bonds, cannot be applied to the case at bar.

"To add further, the *Bermejo* case cited above was decided long before the issuance of Presidential Decree No. 77 and it could not then be made a basis in the interpretation of the provisions of Presidential Decree No. 77 insofar as the conduct of preliminary investigation is concerned.

"So, with the information in the present case being a nullity as having been based on an irregular conduct of a preliminary investigation, the case should have to be dismissed and to order the same to be remanded to the Municipal Court of Bacuag, as prayed for by the accused, would only be an exercise in futility, so to speak.

"WHEREFORE, premises considered, this Court hereby declares the information filed in this instant case to be null and void and the case is hereby ordered dismissed without prejudice, however, for the Assistant Provincial Fiscal to conduct anew a preliminary investigation in conformity with the requirements of Presidential Decree No. 77 and to file the corresponding information, if so warranted.

"Per consequence, the Bail Bond put up by the accused for her provisional liberty is hereby ordered cancelled and the bondsmen released from their obligation thereunder.

"SO ORDERED." (Pp. 13-15, Record.)

On March 18, 1974, or four days after the issuance of the above order of dismissal, the prosecution moved for reconsideration inviting the attention of the court to the following circumstances:

"This case was commenced with a letter-indictment subscribed and sworn to before this investigating Fiscal, true copy of which is hereto attached as Annex 'A', which letter-indictment is supported by affidavits also sworn before this investigating Fiscal. Upon careful perusal of the complaint together with the supporting documentary evidences, this investigating Fiscal having found prima facie case against the accused issued an order requiring accused to submit counter-affidavits. Respondent on January 17, 1974 filed counter-affidavits already sworn before the Municipal Judge of Bacuag. Because of the requirement of Presidential Decree No. 77 that respondent's statements and that of her witnesses shall be sworn before the investigating Fiscal, an order was issued on January 17, 1974, true copy of which is hereto attached as Annex 'B'. A subpoena as well was issued on same date, true copy of which is hereto attached as Annex 'C'. These processes were caused to be served by the Chief of Police of Bacuag whose return of service is hereto attached as Annex 'D', true copy only, and which is self-explanatory. Wittingly or unwittingly, the respondent and witnesses did not like (by the gesture displayed) to comply with the order of this investigating Fiscal. Respondent removed herself from her residence without leaving a specific address which situation has been interpreted by series of jurisprudence as a waiver of the opportunity to be heard at this stage.

"Conscious of the import and purpose behind Presidential Decree No. 77 (which is to obviate the original cumbersome procedure of conducting preliminary investigation and to expedite disposed of cases at this stage) and finding from the counter-affidavits that the utterance subject of the indictment are so admitted, this investigating Fiscal filed the information with the firm belief that circumstances, not only prima facie, are

attendant to secure the conviction of the accused beyond reasonable doubt.

"Thence, upon the information filed, the Honorable Court issued an order on February 4, 1974 causing the issuance of a warrant of arrest against accused Isabel J. Lauron on the premise which I quote: 'x x x, this court is of the opinion and so holds that the crime of Grave Oral Defamation defined and penalized under Article 358 of the Revised Penal Code in relation to Article 353 of the same code, might have been committed and the accused probably guilty thereof.' This I understand must have been yielded by the Honorable Court after proper perusal of the Information in relation to Presidential Decree No. 77 as is the bounden duty of the court to first satisfy himself that there is a prima facie case existing independently from the finding of investigating Fiscal (Amarga vs. Abbas, L-8666, O. G. for May 1956, p. 2545). For the existence and non-existence indeed of a prima facie case is determinative of the validity and invalidity of the information. Thus the accused posted her bail which operates an acceptance of the validity of the information and making the order of March 14, 1974 final." (Pp. 16-17, Record.)

This motion for reconsideration was denied on October 24, 1974. The delay in resolving the motion was due to the fact that respondent judge was assigned to hold court elsewhere in the meantime. Instead of impugning the order of dismissal before a higher court, on March 7, 1975, the fiscal filed with respondent court in Criminal Case No. 426 a new information charging the same respondent Lauron with the same offense of grave oral defamation which was the subject of the already dismissed case, Criminal Case No. 351. On March 10, 1975, respondent court, then presided by Hon. Oscar M. Herrera, issued the corresponding warrant of arrest. Upon motion to quash of respondent Lauron, on April 30, 1975, the following order herein assailed was issued by respondent Honorable Constante L. de Peralta:

"Anent the Information dated March 6, 1975 charging anew Isabel Lauron with the crime of Grave Oral Defamation, a Motion to Quash the same was interposed by the accused on the ground that the crime charged had already prescribed, contending, inter alia, that:

'To bring a person before the bar of justice, when from the records or evidence the offense had already prescribed, is to put him under merciless, groundless and malicious prosecution. Placed under such circumstances, he will be subjected to pain of unnecessary expenses, mental torture, humiliation, embarrassment and untold sufferings. A prosecuting officer who does this merciless act, is guilty of grave abuse of discretion and the use of the strong arm of the law. It is prosecution, pure and simple.' (Motion to Quash, rec., p. 45.)

"Under Article 90, Revised Penal Code, the offense of oral defamation which embraces the one at bar prescribes in 6 months.

"Under Article 91 of the same Code, the period of prescription shall commenced to run from the day on which the crime is discovered by the offended party, the authorities or their agents, and shall be interrupted by the filing of the complaint.

"The Information in the case at bar charged the crime of Grave Oral Defamation which, under Article 91 aforecited prescribes in six months.

"The alleged crime was first discovered by the offended party on December 15, 1973 and, since then, the prescriptive period began to run until an Information therefor was filed with this Court on January 24, 1974. Such Information was dismissed by this Court on March 14, 1974. A motion for reconsideration of the order of dismissal was filed on March 18, 1974.

"On October 24, 1974, the Motion for Re-consideration was denied.

"As now contended by the prosecution, the only issue for determination here is whether or not the motion for reconsideration interrupted the running of the prescriptive period.

"The prosecution, on this score, maintains that the motion for reconsideration, tolled the running of the prescriptive period in the light of the fact that the order was 'without prejudice, however, for the Assistant Provincial Fiscal to conduct anew a preliminary investigation in conformity with the requirements of Presidential Decree No. 77 and to file the corresponding information, if so warranted.'

"On the other hand, it is argued by movant that the course of action taken by the prosecution, i. e., the filing of the motion for the reconsideration of the order of dismissal, did not revive a case already dismissed and neither did it stop the running of the prescriptive period. The erroneous remedy assumed by the Fiscal, the movant further went on, could and should not be used to damage and prejudice the right of the accused, *quoting *Suarez vs. Platon, et al.* 69 Phil. 556) that:

'x x x It is the responsibility of the prosecuting officer who represents the government to see to it that the innocent is protected and the guilty punished.' (Motion to Quash, rec., p. 45.)

"With this later view of the movant, this Court is more inclined to agree as well as her contention that the motion for reconsideration did not take time out of the period of prescription for after all, during the pendency of said motion, the status of the case was that of a dismissed one already insofar as the Court is concerned only that it may be revived in the sense that the prosecution was being given a chance yet to file a new information after it should have conducted a preliminary investigation of the case in accordance with the provisions of Presidential Decree No. 77 and when it should have found then that a prima facie case existed. But in the meanwhile and for all legal intents and purposes, the case had been terminated and the prescriptive period running on as before.

"The period of prescription, so it is conceded, is not interrupted by the filing of the complaint with Fiscal's Office. This is a settled rule. (*Francisco V. Revised Penal Code*, Book One 3rd Ed. (1958) p. 975, citing *People vs. Tayco*, 73 Phil. 509.)

"And that after the period of prescription has been interrupted by the filing of the complaint or information, it shall commence to run again when such proceedings terminate without the accused being convicted. (*Ibid*, p. 975.)

"Applying the foregoing authorities to the case at bar, the prescriptive period in this instance had started to run from the moment the case was ordered dismissed on March 14, 1974 and the running should not be deemed to have been tolled by the filing of the motion for reconsideration and during the pendency of the same. For what is the motion, after all, except that it seeks to have the order of dismissal set aside or reconsidered but which order nevertheless and in itself had already terminated the proceedings.

"It should be pointed out that the Court, in using the phrase in its order of dismissal 'If so warranted' did so use the same in its generic sense to embrace the likelihood or otherwise of the offense charged as might have prescribed already.

"This Court sees no applicability of the cases of *People vs. Alberto Aquino*, 68 Phil. 589 and *Medrano vs. Mendoza*, 22 SCRA 705 cited by the prosecution (*Opposition to the Motion to Quash, Rec.*, p. 51). The facts and the circumstances obtaining in those cases are far different from the ones at bar.

"Adding altogether the period that lapsed from the time the offense charged at bar was 'discovered' on December 15, 1973 to January 24, 1974, the date the first Information was filed, and from March 14, 1974 when the Court ordered the dismissal of the case to March 3, 1975, when the case was refiled in Court under a new Information, sufficient time had passed already, enough to eclipse the period of prescription, as the movant puts it.

"And considering all of the foregoing in the light of the provisions of Section 2 (f), Rule 117 of the Revised Rules of Court aptly invoked by the movant, this Court is now left to no other alternative but to grant the motion to quash and -

"As prayed for therein, the above-entitled case is hereby ordered dismissed.

"With costs de oficio." (Pp. 28-31, Record.)

hence, the instant petition subscribed and sworn to by First Assistant Provincial Fiscal of Surigao del Norte, Ildefonso G. Montilla.

Thus, the issue presented for the resolution of the Court is whether or not the pendency of the motion for reconsideration filed by the prosecution on March 18, 1974 suspended the period of prescription of the offense charged, grave oral defamation. In this regard, it is Our considered view that the contention of the prosecution is legally correct.

It is not disputed that the crime of grave oral defamation prescribes in six months. (Art. 90, Revised Penal Code.) On the other hand, according to Article 91 of the same Code, "the period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him."

As can be seen in the aforequoted order of April 30, 1975, His Honor is of the view that "the running (of the period of prescription) should not be deemed to have been tolled by the filing of the motion for reconsideration and during the pendency of the same. For what is the motion, after all, except that it seeks to have the order of dismissal set aside or reconsidered but which order nevertheless and in itself had already terminated the proceedings."

We cannot share such view. We hold that the termination of a criminal case contemplated in Article 91 refers to a termination that is final, in the sense of being beyond reconsideration, as in the cases of an unappealed conviction or an acquittal. His Honor's position could be correct, if the termination of the criminal proceedings were one that amounts to a jeopardy which would bar a subsequent prosecution for the same offense, for in such a situation, the order becomes immediately final. Such is not the case here.

To start with, the previous order of dismissal of March 14, 1974 was issued upon a motion to dismiss of the respondent Lauron on the ground that the information against her was a nullity, because allegedly, the preliminary investigation conducted by the Fiscal did not comply with the requirements of Presidential Decree No. 77. In other words, the dismissal was ordered without the accused being arraigned and entering a plea, that is, before jeopardy could attach. (*People v. Turla*, 50 Phil. 1001.) In fact, that dismissal was not a judgment as defined in Section 1 of Rule 120, for according to that provision, "the term judgment as used in this rule means the adjudication by the court that the defendant is guilty or is not guilty of the offense charged, and the imposition of the penalty provided for by law on the defendant, who pleads or is found guilty thereof." Accordingly, the order of dismissal was open to a motion for reconsideration and to an appeal. (Second sentence, Sec. 2, Rule 122.) And since Section 6 of the same Rule 122 provides expressly that the filing of a motion for new trial interrupts the period for appeal, which is also the period for finality, (Sec. 7, Rule 120) it follows by analogy, in the absence of any express rule to the contrary, that the filing of a motion for reconsideration by the prosecution in the appropriate cases in which it is entitled to appeal should have the effect of suspending or interrupting the period of finality of the order of dismissal, contrary to the holding of respondent court in this case. And it being indisputable that by applying this rule of interruption or suspension, the filing of the information in the subject Criminal Case No. 426 would be on time, the order of dismissal impugned in the petition constitutes a gross legal error amounting to a grave abuse of discretion.

AS A RESULT OF ALL THE FOREGOING, the petition herein is granted, the order of dismissal of April 30, 1975 is hereby set aside and respondent court is ordered to proceed with the arraignment and trial of the case against private respondent Lauron in Criminal Case No. 426 in accordance with law. Costs against private respondent, Isabel Lauron.

Fernando, (Chairman), Antonio, Aquino, and Martin*, JJ., concur.
Concepcion, Jr., J., did not take part.

* Mr. Justice Ruperto G. Martin was designated to sit in the Second Division.

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