

**OLIMPIO NEÑARIA, HIPOLITO MACAMAY, MOISES MACAMAY,
EPIFANIO NOGUERA, AND SANTOS GATASI, PETITIONERS, VS. HON.
JOSE P. VELUZ, JUDGE OF THE COURT OF FIRST INSTANCE OF
MISAMIS ORIE...**

G.R. No. L-4683. May 29, 1952

Ponente: JUGO, J.

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JUGO, J.:

This is a petition for certiorari against the Judge of the Court of First Instance of Misamis Oriental, praying that the order of the respondent Judge denying the petitioners' motion for dismissal be annulled and that said court be declared without jurisdiction.

On November 12, 1948, an information for serious physical injuries was filed in the Justice of the Peace court of Mambajao, Misamis Oriental (Criminal Case No. 7103), against Ariston Talan, Andres Ganas, and the herein petitioners, Olimpio Neñaria, Hipolito Macamay, Epifanio Noguera, and Santos Gatasi.

On April 7, 1949, when the case was set for preliminary investigation, the accused moved that the Justice of the Peace court try the case on the merits, but said motion was denied. After conducting the preliminary investigation, the Justice of the Peace, in its order of April 27, 1949, dismissed the case against Ariston Talan and Andres Baganas, and forwarded the case to the Court of First Instance of Misamis Oriental, with respect to the other accused, the herein petitioners.

The information for the same offense was filed in the Court of First Instance of Misamis Oriental on June 14, 1949, and the case was set for trial thereafter. After the prosecution and the defense had introduced their evidence, the herein petitioners, on March 9, 1951, filed a motion to introduce additional evidence which the court granted on March 15, 1951. However, instead of presenting such evidence, the petitioners filed a motion to dismiss alleging that the Court of First Instance of Misamis Oriental had no jurisdiction to try the case. As the motion to dismiss was denied, the petitioners instituted the present proceedings.

In the present case, the Justice of the Peace court had concurrent jurisdiction with the Court of First Instance to try the case on the merits and render decision thereon.

An accused has a right to a preliminary investigation. To follow the contention of the petitioners, it would result that if a case over which a Justice of the Peace court and a Court of First Instance have concurrent jurisdiction on the merits is set for preliminary investigation before the Justice of the Peace, then the latter must necessarily try the case on the merits. As preliminary investigations are generally held by Justices of the Peace, the result would be that the Courts of First Instance would have no occasion to try this kind of cases on the merits, notwithstanding their concurrent jurisdiction.

It is said that when several courts have concurrent jurisdiction, the first court which acquires jurisdiction retains it to the exclusion of the others. This is a true principle, but in the present case the justice of the peace court

acquired jurisdiction for the purposes of the preliminary investigation and not for trial on the merits, for if by holding a preliminary investigation the Justice of the Peace necessarily acquires exclusive jurisdiction to try the case on the merits, the Court of First Instance would in fact and in effect be deprived of its concurrent jurisdiction on the merits in practically all cases of this kind.

The cases of *People vs. Pegarum* (58 Phil. 715), *People vs. Blanco*[1] (47 Off. Gaz., No. 7, p. 3425), *People vs. Palmon*[2] (47 Off. Gaz., Supp. No. 12, p. 29), and *Natividad et al. vs. Robles, etc.* (87 Phil., 834), are not applicable, for in the present instance, the case was forwarded by the Justice of the Peace after the preliminary investigation, to the Court of First Instance, and the latter proceeded with the trial of the case on the merits, receiving the evidence of the prosecution and the defense and then the petitioners filed a motion for the presentation of additional evidence which was granted, but instead of doing so, the accused moved for the dismissal of the case on the ground that the Court of First Instance had no jurisdiction, whereas in the case of *People vs. Pegarum*, supra, the court declared that if the information was filed in the Court of First Instance for the crime the penalty for which was within the jurisdiction of said court at the time the crime was committed, even if the penalty was afterward lowered so as to bring it within the jurisdiction of the Justice of the Peace court, still the Court of First Instance may proceed with the trial on the merits, which is not the question raised in the present case. In the case of *People vs. Blanco*, supra, the Court of First Instance erroneously declared itself with jurisdiction in the case of theft of an article valued at P28.00, for the reason that habitual delinquency was alleged in the information which raised the penalty to beyond six months imprisonment and/or P200 fine. It is clear that the doctrine of said case has no bearing here.

In the case of *People vs. Palmon*, supra, the Court of First Instance dismissed the case without even sending it to the Justice of the Peace court, believing that it had no jurisdiction over the crime charged, when as a matter of fact it had concurrent jurisdiction. This Court ordered in said case the Court of First Instance to proceed with the trial of the case without requiring that it be returned to the Justice of the Peace court, which must have held previously the preliminary investigation. That case is essentially different from the present one, for the reason that in the case at bar the court correctly took jurisdiction and retained it almost up to the end of the trial, in accordance with the *Palmon* case.

In the case of *Natividad et al vs. Robles*, supra, the Court of First Instance returned the case to the Justice of the Peace court, which had concurrent jurisdiction over the case. There was nothing erroneous in this act of the Court of First Instance, because as a matter of fact the Justice of the Peace court had concurrent jurisdiction. This is different from the present case, where the Court of First Instance having concurrent jurisdiction and having almost terminated the trial of the case and having denied its dismissal, still the petitioners ask this Court to order the court below to return the case to the Justice of the Peace court. In other words, in the *Natividad vs. Robles* case, the Court of First Instance returned the case to the Justice of the Peace, who, by virtue of his concurrent jurisdiction, could try the case on the merits, but in the present case the Court of First Instance retained the case over which it had concurrent jurisdiction and could proceed with it.

To send back the present case to the Justice of the Peace court will cause unnecessary delay and repetition of the evidence of both parties already presented to the Court of First Instance.

In view of the foregoing, the petition is denied, with costs against the petitioners. It is so ordered.

Pablo, Padilla, Tuason, and Reyes, JJ., concur.

[1] 85 Phil. 296.

[2] 86 Phil. 350.

CONCURRING

LABRADOR, J.:

I agree with the proposition sustained in the opinion of the Chief Justice that upon the filing of a complaint charging an offense falling under the concurrent original jurisdiction of the justice of the peace court and the Court of First Instance, the court in which the case is filed acquires the duty, right, or privilege to try the case on its merits, to the exclusion of the other court. (22 C. J. S. 186; *People vs. Blanco*, 47 Off. Gaz., 3425.) However, I can not subscribe to the idea that the said duty, right, or privilege to try the case on its merits to the exclusion of the other court because of the filing of the complaint involves jurisdiction, in the sense of the power of courts to try and decide cases cognizance of which is granted them by law. The law provides that the jurisdiction over the offense is concurrent between justice of the peace courts and Courts of First Instance, but it does not direct that the first court taking cognizance has the exclusive jurisdiction thereof. As to this matter of the exclusive right to try, the law defining jurisdiction (Judiciary Act of 1948) is silent. The filing of the complaint, we admit, grants an exclusive duty, privilege, or right to try, but this right is not jurisdiction, otherwise we would be sanctioning the proposition that parties by filing their cases may confer jurisdiction on one court and deny it to the other. Jurisdiction can only be fixed or conferred by law. It is, however, distinct from procedure.

Certain statutes confer jurisdiction, power, or authority. Others provide for the procedure by which that power or authority is projected into judgment. The one class deals with the powers of the court in the real and substantive sense; the other with the procedure by which such powers are put into action. The one is the thing itself; the other is the vehicle by which the thing is transferred from the court to the parties. The whole purpose and object of procedure is to make the powers of the court fully and completely available for justice. The most perfect procedure that can be devised is that which gives opportunity for the most complete and perfect exercise of the powers of the court within the limitations set by natural justice. (*Manila Railroad Co. vs. Attorney-General*, 20 Phil. 523, 529-530)

The principle under which the court first taking cognizance of the case retains the right to try the case is, therefore, merely a rule of practical and orderly procedure adopted to prevent confusion, and does not involve jurisdiction. Although sustained by the majority of courts, it (the principle) is not universal, as some courts repudiate it. (22 C. J. S. 186.) This is proof that it is not jurisdictional. As the exclusive right to try is merely a procedural right, parties by their acts may lose their right to demand trial by the court in which they filed their action.

Jurisdiction of the subject matter can not be conferred by estoppel; but one who invokes or consents to a court's jurisdiction is estopped to question it on any ground other than that the court lacks jurisdiction of the subject matter. (21 C. J. S. 161)

I am of the opinion, therefore, that as the petitioner did not insist that the justice of the peace court try the case on the merits, but allowed the Court of First Instance to do so, and participated therein (trial on the merits) by presenting his own evidence, he may not now be allowed to go back upon his acts and claim that the Court of First Instance lacks such right. He is estopped from attacking the right of the Court of First Instance to try the case or the validity of the proceedings already had therein.

I, therefore, vote for the denial of the writ.

CONCURRING

MONTEMAYOR, J.:

I concur in the opinion of Mr. Justice Labrador in so far as he concurs in the majority opinion of Mr. Justice Jugo, including his considerations justifying the denial of the petition.

DISSENTING

PARAS, C.J.:

On November 12, 1948, an information for serious physical injuries was filed in the justice of the peace court of Mambajao, Misamis Oriental, against Ariston Talan, Andres Ganas, and the herein petitioners, Olimpio Nenaria, Hipolito Macamay, Moises Macamay, Epifanio Nuguera and Santos Gatasi, in which information intent to kill was not alleged. On April 7, 1949, when the case was set for preliminary investigation, the accused moved that the justice of the peace court try the case on the merits, as it fell under its original jurisdiction in view of section 87 of the Judiciary Act of 1948. This motion was denied by the justice of the peace who thereupon proceeded with the preliminary investigation and, in his order of April 27, 1949, dismissed the case as against it Ariston Talan and Andres Ganas, and elevated/to the court of first instance with respect to the other accused, the herein petitioners.

On June 14, 1949, an information for the same offense, was filed in the Court of First Instance of Misamis Oriental. After the prosecution and the defense had presented their evidence, the herein petitioners, on March 9, 1951 filed a motion to introduce additional evidence, which was granted on March 15, 1951. The herein petitioners, however, instead of presenting such evidence, filed a motion to dismiss the case on the ground that the Court of First Instance of Misamis Oriental lacked jurisdiction, because although said court had concurrent original jurisdiction, the justice of the peace court of Mambajao had previously taken cognizance of the case to the exclusion of the court of first instance. This motion having been denied, the present petition for certiorari was instituted.

There is now no question that in cases of assaults where the intent to kill is not charged or evident upon the face, the justice of the peace court and the court of first instance have concurrent jurisdiction, (*People vs. Palmon*, 86 Phil., 350.) Accordingly, the justice of the peace court of Mambajao erred in not assuming jurisdiction over the case which was originally filed therein, particularly because it was asked specifically by the accused to try the case on the merits.

In similar case of *Natividad vs. Robles*, 87 Phil., 834, we made the following applicable pronouncement: "Our conclusion is that the offense of trespass to dwelling with violence as charged against petitioners, falls within the original jurisdiction of the justice of the peace court of Malabon, concurrent with that of the Court of First Instance of Rizal, and in the instant case, the court which first exercised jurisdiction was the justice of the peace court of Malabon, which already acted on the case though erroneously in the form of preliminary investigation."

The contention that the justice of the peace court, in forwarding the case to the court of first instance, and the petitioners, in proceeding with the trial in the latter court, waived the jurisdiction which the justice of the peace court had first acquired, is untenable. The settled rule is that jurisdiction over the subject-matter is conferred by law and cannot be waived by the parties who may set up the question of jurisdiction at any stage of the proceedings. (*U. S. vs. Jimenez*, 41 Phil., 1; *U. S. vs. Jayme*, 24 Phil., 90; *U. S. vs. Castaños*, 18 Phil., 210.)

In another case, wherein it was suggested that, inasmuch as the court of first instance had concurrent jurisdiction

and the case was already there, the matter should be left in said court in the interest of speedy adjudication, we held that "such suggestion should not be heeded, because of the rule that 'where several courts have concurrent jurisdiction of the same offense the court which first acquires jurisdiction of the prosecution retains it to the exclusion of the others' ". (People vs. Blanco, 47 Off. Gaz., 3425, 85 Phil., 296.)

We cannot agree with the observation that where the court of first instance indorses a case over which it has concurrent jurisdiction to the justice of the peace for preliminary investigation, the latter must necessarily try it on the merits, with the result that the court of first instance would have no occasion to try cases falling under the concurrent jurisdiction of the court of first instance and the justice of the peace court. When the information is filed before the court of first instance, and the latter refers the case to the justice of the peace for preliminary investigation, the order of reference is an act whereby the court of first instance takes cognizance of the case. The court of first instance should then retain it. The justice of the peace merely conducts the preliminary investigation and thereafter forwards the case to the court of first instance.

The result of the decision of the Majority may be plausible at most for the sake of expediency; but as a matter of law and principle, the decision may give rise to a situation whereby the trial and decision of cases within the concurrent jurisdiction of the justice of the peace court and court of first instance are left entirely to the choice or preference (nay whims and caprice) of either, and even of the parties. To this contingency we cannot assent.

The respondent Judge should therefore be ordered to remand the case to the justice of the peace court of Mambajao for trial on the merits.

Feria, Bengzon, and Bautista Angelo, JJ., concur.

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