

**DAMASO P. PEREZ AND REPUBLIC BANK, ETC., ET AL.,
PETITIONERS-APPELLANTS, VS. MONETARY BOARD, THE
SUPERIN-TENDENT OF BANKS, CENTRAL BANK OF THE PHILIPPINES
AND SECRE-TARY OF JUST...**

G.R. No. L-23307. June 30, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Petitioner-appellant Damaso P. Perez, for himself and in a derivative capacity on behalf of the Republic Bank, instituted mandamus proceedings in the Court of First Instance of Manila on June 23, 1962, against the Monetary Board, the Superintendent of Banks, the Central Bank and the Secretary of Justice. His object was to compel these respondents to prosecute, among others, Pablo Roman and several other Republic Bank officials for violations of the General Banking Act (specifically secs. 76-78 and 83 thereof) and the Central Bank Act, and for falsification of public or commercial documents in connection with certain alleged anomalous loans amounting to P1,303,400.00 authorized by Roman and the other bank officials.

Respondents assailed, in their respective answers, the propriety of mandamus. The Secretary of Justice claimed that it was not their specific duty to prosecute the persons denounced by Perez. The Central Bank and respondent officials, on the other hand, averred that they had already done their duty under the law by refer-ring to the special prosecutors of the Department of Jus-tice for criminal investigation and prosecution those cases involving the alleged anomalous loans.[1]

On July 10, 1962, respondents moved for the dis-missal of the petition for lack of cause of action. Petitioners opposed. The lower court denied the motion.

Subsequently, herein intervenors-appellees, as the incumbent directors of the Board of the Republic Bank, filed a motion to intervene in the proceedings. Petitio-ners opposed the motion but the lower court approved the same.

On January 20, 1964, the Monetary Board of the Cen-tral Bank passed Resolution No. 81 granting the request of Republic Bank for credit accommodations to cover the unusual withdrawal of deposits by its depositors in view of the fact that said Bank was under investigation then by the authorities. The grant, however, was conditioned upon the execution by the management and controlling stockholders of the Republic Bank of a voting trust agreement in favor of a Board of Trustees to be chosen by the lat-ter with the approval of the Central Bank.

Pursuant to this resolution, Pablo Roman and his fa-mily, as the controlling stockholders of Republic Bank, executed a voting trust agreement in favor of a board of trustees composed of former Chief Justice Ricardo Paras, Hon. Miguel Cuaderno and Mr. Felix de la Costa. Subsequently, or on March 13, 1964, this agreement was super-seded by another one with the Philippine National Bank as the trustee.[2]

In view of these developments, the intervenors-appellees filed a motion to dismiss before the lower claiming that the ouster of Pablo Roman and his family from the management of the Republic Bank effected by the voting trust

agreement rendered the mandamus case moot and academic. Respondents-appellees also filed a like motion to dismiss in which they again raised the impropriety of mandamus. Acting upon the two motions and the oppositions thereto filed by petitioners, the lower court granted the motions and dismissed the case. Hence, this appeal.

Appellants, contending that the ouster of Pablo Roman from Republic Bank's management and control has not altered or rendered moot the issues in the case, argue that the remedy of mandamus lies[3] to compel respondents to prosecute the aforementioned Pablo Roman and company, Addressing Ourselves directly to this issue raised on the propriety of the petition for mandamus, We rule, that petitioners cannot seek by mandamus to compel respondents to prosecute criminally those alleged violators of the banking laws. Although the Central Bank and its respondent officials may have the duty under the Central Bank Act and the General Banking Act to cause the prosecution of those alleged violators, yet We find nothing in said laws that imposes a clear, specific duty on the former to do the actual prosecution of the latter. The Central Bank is a government corporation created principally to administer monetary and banking system of the Republic,[4] not a prosecution agency[5] like the fiscal's office. Being an artificial person the Central Bank is limited to its statutory powers and the nearest power to which prosecution of violators of banking laws may be attributed is its power to sue and be sued.[6] But this corporate power of litigation evidently refers to civil cases only.

The Central Bank and its respondent officials have already done all they could, within the confines of their powers, to cause the prosecution of those persons denounced by Perez. Annexes 5 to 7-C CBP of respondents' answer and even petitioners' opposition to the first motion to dismiss[7] show that the cases of the alleged anomalous loans had already been referred by the Central Bank to the special prosecutors of the Department of Justice for criminal investigation and prosecution. For respondents to do the actual prosecuting themselves, as petitioners would have it, would be tantamount to an ultra vires act already.

As for the Secretary of Justice, while he may have the power to prosecute - through the office of the Solicitor General criminal cases, yet it is settled rule that mandamus will not lie to compel a prosecuting officer to Prosecute a criminal case in court.[8]

Moreover, it does not appear from the law that only the Central Bank or its respondent officials can cause the prosecution of alleged violations of banking laws. Said violations constitute a public offense, the prosecution of which is a matter of public interest and hence, anyone - even private individuals - can denounce such violations before the prosecuting authorities. Since Perez himself could cause the filing of criminal complaints against those allegedly involved in the anomalous loans, if any, then he has a plain, adequate and speedy remedy in the ordinary course of law, which makes mandamus against respondents improper.

But petitioners-appellants would insist that the impropriety of mandamus could no longer be raised before the lower court for the second time since it had already been invoked in a previous motion to dismiss which was denied. This is untenable. The lower court was not estopped from changing its opinion while it was under its jurisdiction to do so and on the same ground of lack of cause of action raised before, because the former order was purely interlocutory and thus remained constantly subject to alteration, modification or reversal by it before the rendition of final judgment on its merits.[9]

WHEREFORE, the order of dismissal appealed from is, as it is hereby, affirmed. Costs against petitioner-appellant Perez.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

[1] See Annexes 5, 7 and 7-A CBP of respondents' answer.

[2] See Annex "A" of Petitioners-Appellants' brief.

[3] I.e. that in their petition, pars. 6-10 and 12 specially, a cause of action for mandamus is stated.

[4] Sec. 2, Republic Act 265.

[5] See: *People vs. Tan*, L-9275 June 30, 1960.

[6] Sec. 4, Republic Act 265.

[7] See Records, p. 40.

[8] *Gonzalez vs. Court of First Instance*, 63 Phil. 846; *Di-maunahan vs. Hon. Aranas*, 74 Phil. 455; *People vs. Natoza*, L-8917, Dec. 24, 1956.

[9] Rule 135, Sec. 5(g), Rev. Rules of Court; *Gonzales vs. Gonzales*; 81 Phil. 38; 6 Moran, 1963 ed., 180.

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