

**AGUSTIN TALADUA, PETITIONER, VS. CAPT. FELIX C. OCHOTORENA,
ASSISTANT PROVINCIAL COMMANDER OF MISAMIS OCCIDENTAL
AND HON. ELIGIO DAJAO, MUNICIPAL JUDGE OF THE
MUNICIPALITY OF OR...**

G.R. NO. L-25595. February 15, 1974

Ponente: FERNANDO, J.

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FERNANDO, J.:

The basis for this certiorari proceeding is an alleged denial by respondent Judge Eligio Dajao[1] of petitioner's constitutional right not to be twice placed in jeopardy.[2] There was an accusation against him for illegal possession of untaxed blue seal cigarettes. After one postponement, the case was set anew for trial; on that occasion, after a lapse of twenty-five minutes, without the prosecutor and his witnesses showing up in court, respondent Judge ordered a provisional dismissal. On that very same day, the same charge was again filed against petitioner. Then came his motion to quash, relying on the double jeopardy clause. At first, respondent Judge agreed to do so; subsequently, he reconsidered and would continue with the trial of petitioner. Hence this petition. Considering the facts as thus revealed in their stark simplicity and their legal significance, the plea cannot be sustained. The guarantee against double jeopardy affords, under the circumstances, no protection to petitioner. The writ must be denied.

The complaint for illegal possession of untaxed blue seal cigarettes against petitioner[3] was filed on November 3, 1964. He was duly arraigned and pleaded not guilty to the charge on December 21, 1964, manifesting likewise his readiness for trial. It was, however, postponed to January 18, 1965. Five minutes after 9:00 o'clock on that day, the case was called for trial, but neither the prosecutor nor the witnesses had as yet arrived. It took respondent Judge only twenty minutes before issuing, an order of provisional dismissal, which reads thus: "This case was called for trial at exactly 9:05 A.M. without the presence of the government witnesses and the government prosecutor. In order not to prejudice the interest of the government, they were given a time extension; but according to the counsel it is now 9:25 a.m. and still we do not have here the presence of the government prosecutor and the government witnesses. In view of the apparent lack of interest on the part of the government to proceed, let this case be dismissed provisionally. The bail bond filed by the accused for his provisional release is hereby cancelled." [4] On that very same day, January 18, 1965, the other respondent, Captain Felix C. Ochotorena, as Assistant Provincial Commander, did file anew the very same case, docketed as Criminal Case No. 7732. [5] There was a motion to quash by petitioner on January 27, 1965 on the ground that he had been placed in double jeopardy by virtue of the provisional dismissal on January 18, 1965. [6] Then came the order of March 6, 1965 wherein respondent Judge granted the motion to quash, notwithstanding the fact of the previous dismissal being of a provisional character. [7] There was a motion for reconsideration filed by the prosecution on March 15, 1965. [8] Then came the challenged resolution, worded thus: "This case was dismissed by this court because of the prosecution's apparent neglect to appear when this case was called several times. * * * As the present motion to reconsider is a good demonstration of prosecution's interest to proceed and inasmuch as the

circumstances in the Cloribel case are not exactly similar to this case, the instant motion for reconsideration is hereby granted and the case restored to its previous status as a pending case." [9]

What clearly emerges from the undisputed facts is that the invocation of the jeopardy provision was made possible only because of the abrupt and hasty dismissal of the first criminal case against petitioner by the respondent Judge. It could not have been that he was completely unaware as to his action being precipitate. He could have displayed a little more patience. After all, the lapse of twenty minutes could not have unnecessarily delayed proceedings in his sala. If such were the case, then petitioner certainly would not have had the opportunity of raising a constitutional issue with deceptive plausibility. That is the appropriate way of referring to his contention. It certainly cannot be impressed with merit in view of the settled doctrine that a provisional dismissal forecloses the plea of double jeopardy. As noted at the outset, certiorari does not lie.

1. Republic vs. Agoncillo [10] decided in 1971, summarized anew the controlling principle on the question of provisional dismissal. Thus: "It is true jeopardy had attached with a valid complaint having been filed in a court of competent jurisdiction and defendants having been thereafter arraigned and pleaded. It had not terminated, though. There was neither conviction nor acquittal. There was thereafter a dismissal without prejudice. Defendants knew, or ought to have known, that the complaint could thus be filed again. They could have objected; they did not. Had they stood fast on what they conceived to be their rights as defendants, things might have been different. Matters could have definitely ended then and there. The jeopardy clause could have been thereafter appropriately invoked. The dismissal would have been unconditional in character. That is not however how things developed. What transpired instead was a dismissal clearly without prejudice." [11]

That is merely to abide by previous authoritative rulings. Reference was made in Republic vs. Agoncillo to Jaca vs. Blanco, [12] People vs. Romero, [13] and CoTe Hue vs. Encarnacion. [14]

2. It would have been different if the dismissal, although labelled provisional, did amount to an acquittal. The obvious example is one obtained after the prosecution had rested and the evidence offered by it was insufficient to show guilt beyond reasonable doubt. [15] Another example that comes to mind is where the dismissal was due to a denial of the right to a speedy trial of an accused as the basis for a dismissal. [16]

WHEREFORE, the writ of certiorari is denied. With costs against petitioner.

Zaldivar, (Chairman), Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] Respondent is the Municipal Judge of Oroquieta, Misamis Occidental. The other respondent is a certain Captain Felix C. Ochotorena, Assistant Provincial Commander of Misamis Occidental.

[2] Both under the Constitution of 1935, Article III, Section 1, paragraph 20, and the present Constitution, Article IV, Section 22, no person "shall be twice put in jeopardy of punishment for the same offense."

[3] Docketed as Criminal Case No. 7708.

[4] Petition, pars. 2 to 4 and Annex B of Petition.

[5] Ibid, par. 5 and Annex C of Petition.

[6] Ibid, Annex E.

[7] Ibid, Annex H.

[8] Ibid, Annex I.

[9] Ibid, Annex J.

[10] L-27257, August 31, 1971, 40 SCRA 579.

[11] Ibid, 586-587.

[12] 86 Phil. 452 (1950).

[13] 89 Phil. 672 (1951).

[14] 94 Phil. 258 (1954).

[15] Cf. People vs. Obsania, L-24447, June 29, 1968, 23 SCRA 1249 and the cases therein cited.

[16] Cf. Acebedo vs. Sarmiento, L-28025, December 16, 1970, 36 SCRA 247 and the cases therein cited.

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