

MONSIG. CAMILO DEL, PETITIONER, VS. FELIX MARTINEZ. JUDGE OF FIRST INSTANCE OF CEBU, CESAR KINTANAR, ASSISTANT CITY FISCAL OF CEBU, AND VICENTE SOTTO, RESPONDENTS.

G.R. No. L-247. March 14, 1946

Ponente: PERFECTO, J.

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PERFECTO, J.:

On October 24, 1945, information for illegal practice of medicine was filed against petitioner. On January 14, 1946, the respondent attorney was permitted, over petitioner's objection, to appear in the case as private prosecutor. After the order was entered, although retaining full control of the prosecution and assuming full responsibility therefor, the fiscal announced that he was turning over to said attorney the active conduct of the trial.

Petitioner complains that said order was issued with a grave abuse of discretion, there being no offended party named in the information, no damages sued to be recovered in the criminal action, and Atty. Vicente Sotto having previously announced his expressed reservation to file at a later date the corresponding civil action against petitioner.

Respondents answered that all the witnesses who testified before the fiscal are offended parties, they having been victims of petitioner; that, although it is true that said attorney manifested in open court that he had no objection to reserving the right to institute a civil action, it is not less true that later he withdrew said statement so as to bring the case under the provision of Rule 106, section 15; that the victims of petitioner wanted to recover in the criminal case the fees they paid to him; that petitioner has another remedy by appeal; and that there is no abuse of discretion in the issuance of the order in question.

At the hearing of this case, no one appeared to argue in behalf of petitioner. Attorney Juris Sotto appeared for the respondents and, on her petition, she was allowed to file a memorandum instead of arguing orally.

As alleged by petitioner, no offended party is named in the information, but such omission is not incompatible with the fact that, as alleged by respondents, all the witnesses who appeared before the fiscal as alleged victims of petitioner should be considered as offended parties, it appearing that the offense alleged in the information belongs to the class of harmful ones. If there are offended parties, petitioner's contention that no damages are to be recovered in the criminal action must be untenable.

The fact that respondent attorney manifested in open court that he had no objection to reserving the right to institute a civil action, should not be considered for the purpose of applying section 15 of Rule 106, it appearing that the statement has been withdrawn being the result of *lapsus linguae*.

Under the facts in this case, we are of opinion that the respondent judge did not commit any abuse of discretion or any legal error in permitting the intervention of respondent attorney as private prosecutor in the criminal case in question.

In fact, we do not see anything objectionable in said intervention if we take into consideration that in its order dated January 14, 1946, the lower court specifically guaranteed: "The court will see to it that the prosecution of this case be pushed through within the bounds of law, will not tolerate persecution nor delay. The case will be handled under the full responsibility of the fiscal. In ordinary parlance, attorney Sotto will be a guest of fiscal Kintanar, host, who may permit attorney Sotto to assist him. From the record of this case it can be gleaned that this court has not given consideration to any petition made by private prosecutor without the consent of the fiscal."

Section 15 of Rule 106, as interpreted by petitioner, is premised on the theory that the prosecution of offenses is a public function. But said public function can be performed not exclusively by fiscals or other public officers, but by private attorneys in cases where they are allowed to intervene as private prosecutors, s After all, in the performance of their professional duties, lawyers are officers of the court and assume public and official responsibilities.

Petition is dismissed with costs to be taxed against petitioner. So ordered.

Moran, C, J., Ozaeta, Paras, Jaranilla, Feria, De Joya, Pablo, Hilado, Bengzon, and Briones, JJ., concur.

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