

EDILBERTO M. RAMOS, PACIANO CAPALONGAN, VICTORINO REYES, ANDRES ATIENZA, ANDRES ASCUETA, CONSORCIA JOVEN AND JOSE JOAQUIN, PETITIONERS, VS. HON. GUILLERMO TORRES, PRESIDING JUDG...*G.R. No. L-23454. October 25, 1968*

Ponente: CONCEPCION, C.J.

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Original action for prohibition with preliminary injunction.

Petitioners herein are Edilberto M. Ramos, Paciano Capalongan, Victorino B. Reyes, Andres Atienza, Consorcia Joven, Jose Joaquin and Andres Ascueta. All of them are army personnel, working, with the exception of the last, in the Finance Service of the Philippine Army, the first as Colonel and Chief of said service, the second as Major and Chief of the Audit and Fiscal Branch thereof, the third as Captain and Officer-in-Charge of its Audit Section, the fourth as Captain, in charge of pre-auditing and processing commercial vouchers, the fifth as Audit Examiner, and the sixth as Clerk in charge of processing vouchers. Petitioner Ascueta is an employee in the office of the representative of the Auditor-General assigned to the Armed Forces of the Philippines.

On May 9, 1962, petitioners Ramos, Capalongan, Reyes, Joven, Joaquin and Ascueta, together with other members of the Armed Forces and some private individuals, as well as several unknown persons, were accused, in Criminal Case No. 11440 of the Court of First Instance of Rizal, of "malversation through falsification of public and commercial documents." The information in that case alleged that, during the period from July 1, 1960 to June 30, 1961, and for sometime prior and subsequent thereto, in the Municipality of Makati, Province of Rizal, said defendants, conspiring with one another and with intent of gain, did then and there commit a series of falsifications of public documents,[1] by causing it to appear that emergency purchases of lumber, aggregating 522, 634 board feet, had been made for the 501st Engineer Combat Group, HPA, Ft. William McKinley, Makati, Rizal, from the United Lumber, and delivered by the latter to the former, although there were really no such emergency purchases that were duly authorized, no projects requiring such purchases, and no actual deliveries of lumber, apart from the fact that the United Lumber was a non-existent firm, that the alleged payments thereto were false and that funds for allotments not intended for the purpose were used therefor, thereby defrauding the Government in the sum of P135,805.48, to the damage and prejudice of the Republic of the Philippines in the aforesaid amount.

Ten (10) days later, or on May 18, 1962, Criminal Cases Nos. 11437, and 11473 to 11490, of the same court, for "estafa thru falsification of public or official documents", were filed against some of petitioners herein and other persons not parties in the case at bar. On the same date, Ramos and other defendants in these nineteen (19) cases commenced Civil Case No. 7135 of said court, for prohibition, with preliminary injunction, to restrain the Government prosecutors from "causing the filing of any additional information or charges against them[2] similar to Criminal Case No. 11440 and from causing their arrest and detention." An order of said court, presided over by

Honorable Guillermo Torres, Judge, dated July 14, 1962, missed this prohibition case. Similarly, the aforementioned nine-teen (19) cases (Nos. 11437, and 11473 to 11490) were, on motion of the prosecution, after a re-investigation conducted by Hon. Nicanor P. Nicolas, the then Provincial Fiscal of Rizal, dismissed, on December 7, 1962.

On January 2, 1963, Criminal Cases Nos. 12200 to 12204 of said court, charging malversation thru falsification of public and commercial documents, were filed. Some of the petitioners herein were defendants in two (2) of said cases.¹ In an order, dated October 18, 1963, Judge Eulogio Mencias - who presided one of the branches of the Court of First Instance of Rizal - dismissed these five (5) cases, upon the ground that the informations therein do not conform substantially to the prescribed form and may place the de-fendants therein in danger of being punished five (5) times for the same offense. The prosecution seems to have appealed from said order, - upon the ground that two (2) of said cases belonged to a branch of the Court of First Instance of Rizal presided over by ano-ther Judge - but the record does not show what became of the appeal thus taken.

On January 30, 1964, the new provincial fiscal of Rizal, Honorable Benjamin H. Aquino, filed Criminal Cases Nos. 13202 to 13221 of the Court of First Instance of said Province, against Ramos and some of his co-petitioners herein, apart from other persons, charging them with malversation thru falsification of public and/or commercial documents.

Soon, thereafter, or on or about March 18, 1964 and subse-quently thereto, Fiscal Aquino began to conduct a preliminary inves-tigation of several other cases of malversation thru falsification, al-leggedly committed by Ramos and others, and covered by I.S.² Nos. 8238 to 8244, 8719 to 8726 and 8945 of the office of the Provincial Fiscal of Rizal, which later became the subject-matter of Criminal Cases Nos. 13740 to 13754 of the Court of First Instance of the same province.

These events impelled petitioners herein to file, on Septem-ber 4, 1964, the present action for prohibition, with preliminary injunction, against the aforementioned Judge Torres and Provincial Fiscal Aquino, as well as Hon. Emilio A. Gancayco, as Chief of the Prosecution Division, Department of Justice - who collaborated with the Provincial Fiscal in the prosecution of said cases - and the Chief of Staff of the Armed Forces of the Philippines, for the al-legged purpose: (1) of avoiding "multiplicity of suits and the op-pressive exercise of legal authority"; (2) of preventing "the ac-cused from being harassed and persecuted" by said respondents; and (3) of preventing "excessive bail."

In support of this contention, petitioners averred that the cases of alleged malversation thru falsification of public and com-mercial documents involved in Criminal Cases Nos. 11440, 12200 to 12204, and 13202 to 13221, "are connected and united", inasmuch as the recitals in the informations filed therein reveal identity of the language, the accused, the offended party, the period within which the offenses had been committed, the fraudulent acts or omis-sions performed and the documents falsified; that said informations were filed without conducting the requisite preliminary investigation; that, unless restrained by this Court, respondent prosecutors would file a number of other identical and connected cases against petition-ers herein; that the latter would thereby be placed in jeopardy of punishment more than once for the same offense; that the bail recommended in each case was P30,000; and that, considering the number of cases already filed and those which may, otherwise, be filed after the commencement of the present action, said recom-mendation would have the effect of denying petitioners' right to bail and, hence, of depriving them of liberty, without due process of law, because they could not afford to file a bond for P30,000 in each one of the cases adverted to above. Petitioners prayed, there-fore, that their:

"x x x petition for prohibition with preliminary injunction be granted by commanding the respondent Judge Torres to desist from further proceeding with the trial of the twenty (20) cases of malversation thru falsification of public and commercial documents or Criminal Cases Nos. 13202 to 13221 and to regard these twenty (20)

cases as closed or dismissed; to enjoin respondents Prosecutor Emilio A. Gancayco or his assistants and respondent Provincial Fiscal Benjamin H. Aquino or his assistants from filing in court the cases against Col. Ramos, his co-petition-ers and his co-respondents in IS. Nos. 8238 to 8244 and IS. Nos. 8719 to 8726, IS. 8945 and other identi-cal and connected cases or any other case or cases now filed with them by the Philippine Army or by Gen. Alfredo M. Santos, or the SALIGA1 against Col. Edilberto M. Ramos and the other petitioners or his co-respondents; to require the respondents herein to pay the costs of this action; and to grant to the petitioners such other relief as may be just and equitable under the premises."

Upon urgent motion of petitioners herein, soon after the ins-titution of this case, and the posting of a bond in the sum of P20,000, we issued, on September 21, 1964, a restraining order enjoining the respondents to refrain: (1) "from enforcing the warrants of arrest issued on or after September 12, 1964, in the Court of First Instance of Rizal"; (2) from "further proceeding with the trial of Criminal Cases Nos. 13202 to 13221" of the same court; and (3) "from filing in court cases against herein petitioners in connection with I.S. Nos. 8238 to 8244, and I.S. Nos. 8719 to 8726, and I.S. No. 8945" of the office of the Provincial Fiscal of Rizal.

It would seem, however, that, before notice of this restrain-ing order was served, Fiscal Aquino had filed the informations re-lative to the subject-matter of said information sheets, which in-formations were docketed as Criminal Cases Nos. 13740 to 13754 of the Court of First Instance of Rizal. Hence, the first subdivision of the restraining order was so amended, on November 25, 1964, as to expressly prohibit the enforcement of the warrants of arrest issued in said cases Nos. 13740 to 13754.

In their answer, respondents alleged, however, that the crime charged in Criminal Case No. 11440 is distinct and separate from the offenses charged in the other cases; that the crimes involved in the latter are different from each other and from the one charged in Cri-minal Case No. 11440; that each one of said cases involves different vouchers, different sums of money, different effects, different sup-pliers, dealers or vendors or alleged suppliers, dealers or vendors, and different projects; that the charges preferred against petitioners herein were the result of several months of investigation made by the National Bureau of Investigation and the Inspector General of the Army; that the informations in said cases were filed after the requisite pre-liminary investigations had been conducted by the Government prose-cutors; that the filing of said charges and informations bore, also, the approval of the Secretary of National Defense; and that the P30,000 bail originally recommended by the prosecution had been re-duced to P500 in each case.

Upon a review of the record, we are satisfied that petitioners herein have not established their right to the writ prayed for. Indeed, it is well-settled that, as a matter of general rule, the writ of prohibition will not issue to restrain criminal prosecution.¹ Hence, in *Hernandez v. Albano*,² we called attention to the fact that:

"x x x a Rule -- now of long standing and frequent application -- was formulated that ordinarily criminal prosecution may not be blocked by court prohibition or injunction. Really, if at every turn investigation of a crime will be halted by a court or-der, the administration of criminal justice will meet with an undue setback. Indeed, the investigative power of the Fiscal may suffer such a tremendous shrinkage that it may end up in hollow sound rather than as a part and parcel of the machinery of crimi-nal justice."

This general rule is based, inter alia:

"x x x on the fact that the party has an adequate remedy at law by establishing as a defense to the pro-secution that he did not commit the act charged, or that the statute or ordinance on which the prosecution is based is invalid, and, in case of conviction, by tak-ing an appeal."³

It is true that the rule is subject to exceptions.⁴ As pointed out in the *Hernandez* case:

"We are not to be understood, however, as saying that the heavy hand of a prosecutor may not be shackled --

under all circumstances. The rule is not an invariable one. Extreme cases may, and actually do, exist where relief in equity may be availed of to stop a purported enforcement of a criminal law where it is necessary (a) for the orderly administration of justice; (b) to prevent the use of the strong arm of the law in an oppressive and vindictive manner; (c) to avoid multiplicity of actions; (d) to afford adequate protection to constitutional rights; and (e) in proper cases, because the statute relied upon is unconstitutional, or was 'held invalid'.¹

Considering the allegations in the petition herein, as traversed in respondents' answer, and the documents annexed to said pleadings, we are not prepared to declare that the case at bar falls under any of the foregoing exceptions, for:

- (1) Although the bond originally recommended for the provisional liberty of the defendants in the cases adverted to above was P30,000, it is conceded that the same has been reduced to P500 in each case.
- (2) Petitioners' allegation to the effect that no preliminary investigations had been conducted before the filing of informations against them is emphatically denied by respondents. At any rate, this is a matter that should be, but, has not been, brought to the attention of respondent Judge.
- (3) As regards the plea of double jeopardy, the record does not show that petitioners have been placed in jeopardy, in the legal sense, even once. Besides, this question, like that of the alleged absence of a preliminary investigation, should be, but has not been raised in the trial court.
- (4) Neither have petitioners shown that the offenses charged in Cases Nos. 12200 to 12204, 13202 to 13221, and 13740 to 13754 form part of or are included in the information in Case No. 11440. In fact:
 - (a) The vouchers involved in each case are other than those falsified in the other cases;
 - (b) The amount malversed in each case is other than the amounts defrauded in the other cases;
 - (c) There are strong indications that, as respondents allege in their answer, Criminal Cases Nos. 11437, 11473 to 11490 refer to the so-called "Army Retirement Pay Racket", involving civilian and military personnel, who connived to collect the money value of accumulated furloughs of fictitious claimants; that Criminal Case No. 11440 refers to lumber allegedly purchased for the 501st Engineer Combat Group, Fort McKinley; that Criminal Cases Nos. 13202 to 13211 and 13216 to 13218 involve simulated purchases of engineering and construction materials for the VIth Engineering Combat Battalion, at Cagayan de Oro City; that the objects of the offenses charged in Criminal Cases Nos. 13212 to 13215 and 13219 to 13221 were assorted quartermasters' supplies allegedly bought for the Post Quartermasters Detachment of the Philippine Army; that Criminal Cases Nos. 13740, 13741, and 13750 to 13754 refer to quartermasters supplies, covered by 302 Government vouchers, allegedly bought for the 2nd Quartermaster, II Military Area, 2nd Infantry Division, in Canlubang, Laguna; and that Criminal Cases Nos. 13742 to 13749 involve supplies covered by 521 Government vouchers simulatedly bought for the 3rd Infantry Division in Camp Aquino, Tarlac;
 - (d) The supplier or supposed supplier or vendor in each case is different from the supplier or vendor in the other cases; and
 - (e) The defendants are not the same in all of the cases. We have not even found two (2) cases with identical defendants. What is more, there are some cases in which none of the petitioners herein are accused.

In this connection, it may not be amiss to bear in mind that, in a leading case, we had occasion to postulate:

"In effect, it will be noted that although all the informations in the 27 falsification cases were uniformly worded, the numbers of the vouchers alleged to have been falsified and the amounts thereof, are different. We have in the three (3) cases, subject of the proceeding at bar, Voucher No. 4, dated September 3, 1955, for P2,275.00; Voucher No. 6, dated September 6, 1955, for P3,590.00; and Voucher No. 13, dated September 6, 1955, for P3,410.00. The other informations also show different vouchers, dates and amounts. These

undeniable facts, alleged in the informations, evidently show that different acts of falsification were committed on different vouchers and covering distinct amounts. Each information did not refer to all said acts of falsification. Neither is there merit in the argument that said acts of falsification constituted a continuing offense, so as to have them all prosecuted in only one information. x x x "1

Inasmuch as respondent Judge has not been given a chance to pass upon the questions raised in the present case, and the records before us are inadequate to permit a judicious determination of said questions, particularly the issue of identity of the offenses charged in the different cases, we are of the considered opinion that, without prejudice to seeking the proper remedy in the lower court,² the petition herein should be, as it is hereby dismissed, and the writ prayed for, accordingly, denied, and the restraining order heretofore issued lifted, dissolved and set aside, with costs against the petitioners.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Angeles, Fernando, and Capistrano, JJ., concur.
Zaldivar, J., did not take part.

[1] More particularly described in the information.

[2] Petitioners herein.

1 Cases Nos. 12200 and 12202.

2 Investigation Slips.

1 A combination of the names of Santos, Lintag and Gancayco.

1 Kwong Sing v. City of Manila, 41 Phil. 103; Gorospe v. Peñaflorida, 101 Phil. 886, 892; Nicomedes, et al. v. Chief of Constabulary, etc., et al., L-16022, November 23, 1960; University of the Philippines, et al. v. The City Fiscal, L-18562, July 31, 1961; Tadeo v. Prov. Fiscal of Pangasinan, L-16474, January 31, 1962; Griñen. v. Consolacion, L-16050, July 31, 1962; Lava v. Gonzales, L-23048, July 31, 1964.

2 L-19272, January 25, 1967.

3 Gorospe v. Peñaflorida, 101 Phil. 892, citing 43 CJS, pp. 768-770.

4 Ibid, citing Dimayuga et al. v. Fernandez, 43 Phil. 304, 307; 28 Am. Jur. p. 416, citing Spielman Motor Sales Co. v. Dodge, 295 U.S. 89, 79 L. ed. 1322, 55 S Ct. 678; Yu Cong Eng et al. v. Trinidad, 47 Phil. 385, 389.

1 Underscoring ours.

1 People v. Gonzalez, L-16688-16690, April 30, 1963.

2 Capistrano v. Peña, 78 Phil. 749; Coronel v. Tan, 82 Phil. 81; Villanueva v. Chavez, 87 Phil. 639; Dizon V. Bayona, 98 Phil. 942; Pacquing v. Maiquez, 99 Phil. 141.

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