

**SIMPLICIO PALANCA, PETITIONER, VS. HON. JOSE R. QUERUBIN,
HON. NESTOR ALAMPAY, HON. CESAR KINTANAR, AND HON. JOSE
FER-NANDEZ, PRESIDING JUDGES OF BRANCHES II, III, IV AND V,
RES...**

G.R. Nos. L-29510-31. November 29, 1969

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Petitioner Simplicio Palanca is indicted before the Court of First Instance of Negros Occidental in 22 separate criminal cases, all involving estafa thru falsification of public documents.[1] These cases were spread by raffle amongst four district judges of the different branches of the court, viz:

Branch II - Hon. Judge Jose Querubin:

Criminal Cases Nos. 9245, 9330, 9337, 9341.

Branch III - Hon. Judge Nestor Alampay:

Criminal Cases Nos. 9336, 9338, 9340, 9342, 9343, 9346.

Branch IV - Hon. Judge Cesar Kintanar:

Criminal Cases Nos. 9329, 9331, 9335, 9339, 9345.

Branch V - Hon. Judge Jose Fernandez:

Criminal Cases Nos. 9244, 9246, 9328, 9332, 9333, 9334, 9344.

Petitioner moved to quash in each of the cases. Ground therefor was that the court did not validly acquire jurisdiction over his person since the warrants of arrest were issued by the court without the judge personally examining the complainant and his witnesses under oath or affirmation. Petitioner charges infringement of his constitutional right to due process, particularly citing Section 1(3), Article III of the Constitution. In an almost simultaneous move, he asked the different judges to consolidate the different cases. Both the motion to quash and the motion to consolidate were rejected by respondent judges. There were the familiar motions to reconsider and the equally usual turndowns.

Hence, the present petition for certiorari to nullify the orders of denial of the motion to quash; prohibition to stop the lower court judges from proceeding with the cases; and mandamus to compel consolidation, and to direct respondent judges to recall the warrants of arrest and thereafter to personally conduct the examination of complainants and their witnesses to determine the existence of probable cause. We issued a cease-and-desist order on October 3, 1968 upon a P5,000-bond.

1. One reason exists why petitioner's cause must fail. Prior to petitioner's questioning the court's jurisdiction over

his person, he had already filed a bond for his provisional liberty in all of the criminal cases in question and had already pleaded to all the informations therein.

We find a statement by respondents in their return before this Court, to which petitioner does not except, and which statement runs as follows: "The petitioner in the above-entitled case cannot and does not deny that he has appeared before your respondent Judges (both in person and thru counsel),[2] that he has filed bond for his provisional liberty in all of the criminal cases in question, that he has pleaded to all the informations therein, that he has asked for postponements, and that he has otherwise submitted himself to other court proceedings and processes." [3] That petitioner had pleaded to the informations before he moved to quash is implicit in his motion to quash of June 27, 1968. He there stressed that his motion to quash was filed under Section 10, Rule 117 of the Rules of Court, which explicitly allows questions of want of jurisdiction to be raised at any stage of the proceedings.[4]

The foregoing facts attain meaning in the context of established precepts in jurisprudence. Recognized by case law is the principle that the posting of a bail bond constitutes waiver of any irregularity attending the arrest of a person,[5] estops him from discussing the validity of his arrest.[6] Recently, this Court found occasion to pronounce that when petitioner filed an application for bail and waived the preliminary investigation proper, "he had waived his objection to whatever defect, if any, in the preliminary examination conducted x x x prior to the issuance of the warrant of arrest." [7] And then, a rule that has by now acquired deep roots is that an entry of a plea waives the right to preliminary investigation and any irregularity that surrounds it.[8] Anyway, the absence of a preliminary investigation does not impair the validity of a criminal information, does not otherwise render it defective. Nor does it affect the jurisdiction of the court over the case.[9] Besides, criminal procedure tells us that if a person does not move to quash a complaint or information until after he has pleaded thereto, he is deemed to have waived all objections then available which are grounds of a motion to quash except when the complaint or information does not charge an offense or the court is without jurisdiction of the same.[10] So it is that one of the grounds that must be deemed waived if defendant does not move to quash the complaint or information before pleading thereto is "that the court trying the cause has no jurisdiction of the person of the defendant," [11]

Here, the fact that petitioner posted bail bonds for his provisional liberty and the other fact that he already entered his not guilty plea to all the 22 informations, bar him from thereafter questioning the validity of his arrest and bringing up the absence of a proper preliminary investigation. His failure to move to quash before plea is tantamount to the submission of his person to the jurisdiction of the court. Petitioner's waiver is patent.

2. One other question: Did the judges below abuse their discretion in denying petitioner's motion to consolidate all the 22 criminal cases in one branch of the trial court?

In arguing for consolidation, petitioner submits that all the 22 informations filed against him show only one offended party, one accused, one set of witnesses listed by the prosecution, the identical offense of "estafa thru falsification of public documents", the identical language of the informations, and the commission of the offenses over the same period of time. Petitioner submits that much will be gained and nothing will be lost by consolidating these 22 cases. He reasons out thus: (1) considering that the alleged offended party has its offices and lawyers in Manila, that defendants' counsel is also from Manila, and the witnesses are mostly from Iloilo City, the requirement that the parties and the witnesses be made to repeat the same evidence, objections and arguments in the four branches of the court is not only wasteful of time, energy and money, but is patently vexatious and harassing which could be avoided if both prosecution and defense would pre-sent their respective witnesses, offer their documentary evidence, make their objections, and submit their arguments only once and to one judge at a great saving of time, energy, trouble and expense; (2) the 22 cases will engage the time of only one judge and the three other judges will be free to attend to other cases; (3) the assignment of all these 22 cases to one judge will

not materially increase the judge's case load, for he would be passing on the credibility of the same witnesses, and the validity of the same objections and arguments.

For his part, respondent fiscal denies that the informations list the same set of witnesses; that the witnesses will be the same for all cases because after listing the witnesses, the informations specifically state "and others"; and that the testimony of the witnesses will be the same in each and every one of the aforesaid 22 cases. He says that the 22 cases are distinct from one another, involve different subject matters, different manners of commission, different dates of commission, different sets of documents, and different testimony of different witnesses. He submits that con-solidation will only cause confusion.

Section 15, Rule 119 of the Rules of Court, provides that "[c]harges for offenses founded on the same facts, or which form or are a part of a series of offenses of the same or similar character may, in the discretion of the court, be tried jointly."

The question that projects itself, therefore, is whether the discretion granted respondent judges has been here abused.

We are not to lose sight of the object of consolidation - avoid multiplicity of suits, guard against oppression or abuse, prevent delay, clear congested dockets, simplify the work of the trial court, save unnecessary costs and expense, In brief, consolidation seek to attain justice with the least expense and vexation to the litigants.[12] Elsewhere, the present tendency is to permit consolidation when-ever possible and irrespective of the diversity of the issues in-volved.[13]

There is no question that separate accusations charging a defendant with disconnected but joinable crimes may be tried to-gether on condition that no substantive rights of defendant are adversely affected.[14] More elaborately, joint trial is proper "where the offenses charged are similar, related, or connected, or are of the same or similar character or class, or involve or arose out of the same or related or connected acts, occurrences, transactions, series of events, or chain of circumstances, or are based on acts or transactions constituting parts of a common scheme or plan, or are of the same pattern and committed in the same manner, or where there is a common element of substantial importance in their commission, or where the same, or much the same, evidence will be competent and admissible or required in their prosecution, and if not joined for trial the repetition or reproduction of substantially the same testimony will be required on each trial." [15]

Appropriately to be emphasized here is the appellate court's supervisory authority over the lower court, notwithstanding the wide discretion given the latter, whenever the appellate court is satisfied that the trial court has abused its discretion in denying motions to consolidate.[16] In *De Luccy vs. Ferrara*, 209 N.Y.S. 2d. 676, 678, the lower court's denial of the motion to consolidate was stricken down because it appeared that no party would be prejudiced and multiplicity of trials would be avoided. Indeed, in a cluster of American cases, the lower court's refusal to consolidate was over-ruled by the appellate court. And this, because no substantial rights were shown to be prejudiced, the same witnesses were to be presented, and the cases involved common issues save in some cases for the question of damages.[17]

In *Sideco vs. Paredes*, 74 Phil. 6, 7, an action for certiorari and mandamus, we found no valid reason for the lower court's refusal of a consolidated appeal of sixteen cases involving a common question of law, Instead, we held that consolidation was an imperative necessity to minimize appellant's expense in prosecuting his appeal. Instructive in this respect is Section 2, Rule 1 of the Rules of Court, which gives the guideline that the "rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding."

Let us go back to the cases before us. It cannot be denied that in all these cases there is only one offended party, one accused, an identical offense committed in substantially the same way over the same period of time, such that the criminal informations were couched in almost identical language. The witnesses listed are the same except that in some informations, Atty. Romeo H. Mediodia appear as a witness and in others, Atty. Fernando Mirasol. And this, because these two were the two notaries public that interchangeably notarized the documents.

There is much to petitioner's claim. The reasons he advances deserve assent. To be achieved by consolidation are simplification, not confusion, of procedure; economy, not waste, of time, energy and expense. And with one judge to hear the case, shuttling from one judge to three others at the same time or at different times will be obviated. Defendant will be insulated from unjust vexation. It is, indeed, correct to say that, all things considered, the administration of justice would be better served if only one trial before one judge is conducted in these 22 cases. We particularly note the absence of justifiable ground back of respondent judges' respective rulings against consolidation. All they say is that the cases are well distributed to the four branches of the court and that the denial was the consensus of all the judges. In the circumstances here presented, no potent reason suggests itself why these cases should not be lumped together in one branch of the trial court.

A policy statement of note is that "[t]he public interests of economy and speed weigh in favor of trying x x x closely related charges together, especially where x x x no prejudice to defendant appears." [18] In the case at bar, we fail to discern any prejudice to defendant in consolidating trial. In fact, it is precisely defendant himself who requests such consolidation. Consolidation is proper.

The conclusion here reached does not cross paths with our decision in *Philippine Air Lines, Inc. vs. Teodoro*, 97 Phil. 461, 468, an original action before this Court for certiorari and mandamus. In that case, a motion was filed below to have one case before one branch of a court transferred to another branch for joint hearing with a second case involving similar issues. After denial of the motion for consolidation, the first case was partially heard by the court. We held that no ministerial duty existed to compel the transfer. The factual background of the *Philippine Air Lines* case is different. One of the cases was there already partially heard before one judge. Here, hearing has not yet started in any of the 22 cases concerned.

Consolidation of trial is the clear course of action to take. But the judges below refused to so act. We, therefore, do not hesitate to say that respondent judges gravely abused their discretion in denying petitioner's motion for consolidation. And certiorari lies.

For the reasons given -

(1) The orders of respondent judges denying petitioner's motion to quash the informations in the 22 criminal cases against petitioner (Criminal Cases 9244, 9245, 9246, 9328, 9329, 9330, 9331, 9332, 9333, 9334, 9335, 9336, 9337, 9338, 9339, 9340, 9341, 9342, 9343, 9344, 9345, and 9346 of the Court of First Instance of Negros Occidental, all entitled "People of the Philippines, Plaintiff, versus Simplicio Palanca, Accused") and denying the recall of the warrants of arrest issued in said criminal cases, are hereby affirmed;

(2) Respondent judges, or those who may take their place, are directed to grant petitioner's motion to consolidate the said 22 criminal cases against him and to have these cases assigned to one of them after due raffle; and

(3) The preliminary injunction we heretofore issued is hereby dissolved.

No costs allowed.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Teehankee and Barredo, JJ., concur.
Castro and Fernando, JJ., in the result.

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- [1] Three informations were filed on August 1, 1967 and the other nineteen informations, on December 13, 1967.
- [2] Respondents' memorandum, pp. 7 and 8.
- [3] Rollo p. 183; emphasis supplied.
- [4] Section 10, Rule 117 of the Rules of Court, is hereinafter quoted at footnote 10, *infra*. See: Rollo, p.126
- [5] *U.S. vs. Grant*, 18 Phil. 122, 147; *Doce vs. Branch II of the Court of First Instance of Quezon* (1968), 22 SCRA 1028, 1031, citing *Carrington vs. Peterson*, 4 Phil. 134, and *U.S. vs. Grant*, *supra*.
- [6] *People vs. Dorado* (unreported), No. 21540, February 12, 1924, cited in *People vs. Red*, 55 Phil. 706, 711.
- [7] *Luna vs. Plaza* (1968), 26 SCRA 310, 321-322. See also: *People vs. Selfaison* (1961), 1 SCRA 235,244, citing *People vs. Ricarte*, 49 O.G. 974; *People vs. Quinto*, 60 Phil. 451; *People vs. Moreno*, 77 Phil. 548; *Bustos vs. Lucero*, 46 O.G. [Supp.] 445.
- [8] *Lozada vs. Hernandez*, 92 Phil 1051, 1054; *People vs. Casiano*, (1961), 1 SCRA 478, 483, citing *People vs. Solon*, 47 Phil. 443, 448, *People vs. Magpale*, 70 Phil. 176, and *People vs. Lambino*, 55 O.G. 1565; *People vs. de la Cerna* (1967), 21 SCRA 569, 572, citing *Oca vs. Jimenez*, L-17777, June 29, 1962.
- [9] *People vs. Figueroa* (1969), 27 SCRA 1239, 1248, citing *People vs. Casiano*, *supra*.
- [10] See: Section 10, Rule 117, Rules of Court, which provides:
- "SEC. 10. Failure to move to quash - Effect of - Exception. - If the defendant does not move to quash the complaint or information before he pleads thereto he shall be taken to have waived all objections which are grounds for a motion to quash except when the complaint or information does not charge an offense, or the court is without jurisdiction of the same, If, however, the defendant learns after he has pleaded or has moved to quash on some other ground that the offense for which he is now charged is an offense for which he has been pardoned, or of which he has been convicted or acquitted or been in jeopardy, the court may in its discretion entertain at any time before judgment a motion to quash on the ground of such pardon, conviction, acquittal or jeopardy."
- [11] *Francisco, Rules of Court in the Philippines*, Vol. V, Part III, Revised Edition, p. 197
- [12] 1 C.J.S., pp. 1342-1343, citing cases.
- [13] Anno: 68 A.L.R. 2d. 1378.
- [14] 53 Am. Jur., p. 70, citing *Com. vs. Slavski*, 140 N.E. 465. See: Ann. Cas. 1913A, 1005.
- [15] 23 C.J.S., pp. 680-681, citing cases.
- [16] See: 104 A.L.R. 76, citing *McAllister vs. Drislane*, 266 N.Y.S.
- [17] Anno: 68 A.L.R. 2d. 1407, citing *Tascio vs. Citizens Bank of White Plains*, 5 N.Y.S. 2d. 35; *Gruber vs. Alpert*, 13 N.Y.S. 2d. 771; *Kubran vs. Acme Brick Corporation*, 52 N.Y.S. 2d. 232; *Shea vs. Benjamin*, 91 N.Y.S. 2d. 745; *Kelly vs. John Vogel, Inc.*, 109 N.Y.S. 2d. 282; *Haber vs. Newton*, 113 N.Y.S. 2d. 777; *Yammerino vs. Surdi*, 130 N.Y.S. 2d. 291; *D'Ercole vs. Frederick*, 156 N.Y.S. 2d. 380; *Littman vs. Jacobowski*, 156 N.Y.S. 2d.

957; *Tammany vs. Bloom*, 173 N.Y.S. 2d. 551; *Preiss vs. Branningan*; 179 N.Y.S. 2d. 91; *Cotton vs. Henger*, 312 S. W. 2d. 299.

[18] *Williams vs. U.S.*, 265 F. 2d. 214, 216, citing *U.S. vs. Smith*, 112 F. 2d. 83, 85. See also: *Williams vs. State*, 135 A. 2d. 605, 610; *State vs. Coleman*, 214 A. 2d, 393, 397

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