

DAVID DELFIN, PETITIONER, VS. COURT OF APPEALS, PHILIPPINE CHARITY SWEEPSTAKES OFFICE, ILOILO CITY FISCAL AND HON. JESUS S. RODRIGUEZ, AS JUDGE OF THE COURT OF FIRST INSTANCE OF...

G. R. No. L-21022. February 27, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On May 24, 1960, the City Fiscal of Iloilo filed in the Court of First Instance of Iloilo an information for "malversation of public funds" against David Delfin, as follows:

"That on or about the 13th day of April, 1959, in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, being then the Sales Supervisor of the Philippine Charity Sweepstakes Office, Iloilo Branch, a public accountable officer, who, by reason of the duties of his office as such Sales Supervisor, had received under his custody P21,122.40, representing the total value of 677 booklets of Philippine Charity Sweepstakes tickets for the December 2, 1958 and December 21, 1958 draws, with the duty and obligation on the part of the said accused to account and produce the amount P21,122.40 to the proper authorities upon demand, but said accused, far from complying with the said duty and obligations, and when required to account and produce the whole amount of P21,122.40 accounted and produced only the amount of P1,065.11 thereby leaving a balance of P20,058.29, which the herein accused did then and there wilfully, unlawfully and feloniously misappropriate and convert to his own personal use and benefit, to the damage and prejudice of the Philippine Charity Sweepstakes Office in the aforementioned sum of P20,058.29, representing the total value of 677 booklets of sweepstakes tickets."

The accused pleaded not guilty, and the case proceeded to trial. After the prosecution had presented its evidence, counsel for the accused moved for the dismissal of the information. The court denied the motion by its order of August 16, 1962, stating that the prosecution had established a prima facie case.

Thereupon, the accused filed with the Court of Appeals a petition for prohibition and mandamus with preliminary prohibitory injunction, to compel the trial court to dismiss the case and desist from further proceeding with the trial of the same.

After hearing the parties, the Court of Appeals, in its resolution of October 31, 1962, denied the petition.

This is petitioner's appeal from the Court of Appeals.

Petitioner contends that the Philippine Charity Sweepstakes Office is a private office, that its employees are not "public officers" and its funds not "public funds". Thus, he argues that the elements of "public officer" and "public funds" in the crime of malversation are wanting in his case, so that, the trial court gravely abused its discretion in denying his motion to dismiss.

Prohibition is an extraordinary remedy available to compel any tribunal, corporation, board, or person exercising

judicial or ministerial functions, to desist from further proceedings in an action or matter when the proceedings in such tribunal, corporation, board or person are without or in excess of jurisdiction or with grave abuse of discretion[1] and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.[2] By writ of mandamus an inferior tribunal, corporation, board or person may be commanded to perform an act which the law specifically enjoins as a duty resulting from an office, trust or station but only in the absence of a plain, speedy and adequate remedy in the ordinary course of law.[3]

For grave abuse of discretion to prosper as a ground for prohibition, it must first be demonstrated that there was such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or that the lower court has exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility. It must be so patent and gross as to amount to an evasion or virtual refusal to perform the duty enjoined or to act in contemplation of law.[[4]]

Supposing petitioner's theory to be correct, that Philippine Charity Sweepstakes Office's employees are not public officers and its funds not public funds, still, the trial court cannot be said to have gravely abused its discretion in not dismissing the information. Even without the elements of "public officer" and "public funds", the information can suffice for conviction of a lesser offense, namely, estafa. This Court has ruled that a person charged under an information for malversation of public funds can be convicted of estafa, if the funds are in fact private funds, the reason being that estafa is included as a lesser, cognate offense in relation to malversation.[5]

Finally, petitioner has an adequate remedy in the ordinary course of law by way of appeal in due time. Such being the case, the extraordinary remedies of prohibition and mandamus cannot be resorted to.[[6]]

The ruling of this Court in *Solidum vs. Hernandez*, 117 Phil. 335—which involved a petition for "prohibition and/or mandamus", filed by the accused upon denial of his motion to quash on the ground that the facts charged do not constitute an offense applies squarely to this case:

"Furthermore, there is no exigency in this instant proceeding which would justify a disregard for the time-honored rule that prohibition is granted only where no other remedy is available which is sufficient to afford redress (*III MORAN*, Comments on the Rules of Court, p. 174). For this particular case, We hold the view that the observation of the City Fiscal that 'the obvious and only remedy available to the appellee is appeal in due time from the decision that the appellant Court might render in the case' is valid and well taken. And, as the herein respondent has another and complete remedy at law either by appeal or otherwise, We need proceed no further to justify the lifting of the writ issued by the Court of Appeals." (Italics supplied.)

PREMISES CONSIDERED, the judgment appealed from is hereby affirmed, with costs.

IT IS SO ORDERED.

Bengzon, C.J., Bautista Angelo, Reyes, J.B.L., Barrera, Paredes, Regala, Makalintal and Zaldivar, JJ., concur.

[1] *So Chu et al. vs. Nepomuceno*, 29 Phil. 208; *Tayko vs. Capistrano*, 53 Phil. 866; *Ma-no Sugar Central Co. vs. Barrios*, 79 Phil. 666. See Sec. 2, Rule 65, Rules of Court.

[2] *Almarza vs. Salas*, 47 Phil. 724; *Asinas vs. Court of First Instance of Romblon*, 51 Phil. 665; *Ton & Coo Teng Hee vs. Santamaria*, 54 Phil. 371.

[3] Sec. 3, Rule 65, Rules of Court.

[4] *Leung Ben vs. O'Brien*, 38 Phil. 182; *Salvador Campos y Cia. vs. Del Rosario*, 41 Phil. 45; *Bibby de Padilla vs. Horilleno*, 60 Phil. 511; *Tavera-Luna, Inc. vs. Nable*, 67 Phil. 340; *Abad Santos vs. Province of Tarlac*, 67

Phil. 480; Alafriz vs. Nable, 72 Phil. 278.

[5] U.S. vs. Solis, 7 Phil. 195.

[6] Almarza vs. Salas, *supra.*; Asinas vs. Court of First Instance of Romblon. *supra.*; Tong & Coo Teng Hee vs. Santamaria, *supra.* Secs. 2 & 3, Rule 65. Rules of Court.

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