

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
GERONIMA SINDIONG DE PASTOR AND SANTOS T. PASTOR,
DEFENDANTS AND APPELLEES.**

G.R. No. L-335. February 12, 1947

Ponente: HILADO, J.

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HILADO, J.:

The question presented here is whether or not, in view of the express repeal of sections 1458 and 1459, in relation with section 2723, of the Revised Administrative Code, and of Act No. 3243, by section 369 of Commonwealth Act No. 466, otherwise known as the National Internal Revenue Code, and in view of the later enactment of Commonwealth Act No. 503 (vide section 5), violations of the provisions of the repealed acts, while they were in force, could be legally prosecuted after the repeal but also after the enactment of Commonwealth Act No. 503.

The accused Geronima Sindiong de Pastor and Santos T. Pastor were, on June 4, 1941, charged by the Provincial Fiscal of Oriental Negros in an information filed with the Justice of the Peace Court of Dumaguete, capital of the province, with a violation of sections 1458 and 1459 of the Revised Administrative Code, in relation with Act No. 3243, and section 2723 of the same Code. The accused waived their right to a preliminary investigation, whereupon the proper information was lodged against them with the Court of First Instance of the province on July 11, 1941. Probably as a consequence of the Pacific war having supervened, no further proceedings were taken until January 27, 1946, when the accused filed a motion to quash. The motion was upheld by the trial court in its order dated February 12, 1946 (Appendix A of appellant's brief).

The Government, not agreeing with such order, interposed this appeal.

The business of the accused in connection with which they are thus being prosecuted was that of owners, managers or administrators of the "Magazine Center", an establishment devoted to the selling of newspapers, magazines and stationery, according to the information.

The information alleges that these defendants during the period comprised between January, 1936, and March 31, 1938, being such owners, managers and administrators of said "Magazine Center", with the deliberate purpose to evade the payment of the percentage tax upon their receipts, voluntarily, illegally, and criminally neglected to make a return of their sales within the time prescribed by law.

Counsel for appellant makes the following express admission in his brief (p. 3):

"It is an admitted fact that the provisions of law under which the accused are being¹ prosecuted, namely, sections 1458 and 1459 in relation with section 2723, of the Revised Administrative Code and Act No. 3243, had been expressly repealed by section 369 of Commonwealth Act No. 466. It is likewise admitted that the above-mentioned provisions of the Revised Administrative Code were no longer in force at the time the present action was instituted."

The trial court, in passing upon the motion to quash, inter alia, said (trial court's order, appendix A, appellant's

brief):

"This kind of business not being now subject to the payment of percentage tax, and for that matter not being required under the present law to file a quarterly return of their receipts and sales, is no longer within the penal provisions of section 209 of the Internal Revenue Code which supersedes the provisions of section 2725 of the Revised Administrative Code."

Appellant's counsel says (brief, pp. 6-7):

"Without the enactment of amendatory Act No. 503, the conclusion reached by the trial court would be correct, because it would then be clear that under Commonwealth Act No. 466, only the manufacturer, producer or importer is liable for the payment of the percentage tax. But with the enactment of the above-mentioned amendatory Act, the intention of the legislature to subject all merchants to the payment of the privilege tax, in the same way that they were subject thereto under the provisions of the Revised Administrative Code, becomes perfectly clear."

It results from this that according to the Government itself, without the enactment of Commonwealth Act No. 503, the present defendants would not have been liable to prosecution under the facts alleged in the information for the reason that under the National Internal Revenue Code only the manufacturer, producer or importer is liable for the payment of the privilege tax. But it is contended for the prosecution that in the enactment of said Commonwealth Act No. 503 the intention of the legislature was "to subject all merchants to the payment of the privilege tax, in the same way that they were subject thereto under the provisions of the Revised Administrative Code". The section of Commonwealth Act No. 503 particularly relied upon by the prosecution is the following:

"SEC. 5. As used in sections 184, 185 and 186 of Commonwealth Act Numbered Four hundred sixty-six, the phrase 'original sale, barter, or exchange' shall be construed to mean the first sale, barter, or exchange of article by every manufacturer, producer, or importer: Provided, however, That where the taxes prescribed in said sections have not been collected on articles, the original sales of which are subject to tax, in the possession of any merchant, the first sale, barter, or exchange of said articles on or after the approval of this Act shall be considered as an original sale, barter, or exchange and shall be subject to tax at the rates prescribed in said sections 184, 185, and 186." (Italics supplied.)

The underscored portion of the proviso of the aforequoted section determines what sale, barter or exchange of articles subject to the taxes prescribed in sections 184, 185, and 186 of Commonwealth Act No. 466 shall be considered as an original sale, barter or exchange and shall be subject to the tax, and it determines the question by saying that it shall be the first sale, barter or exchange on or after the approval of said Act Commonwealth Act No. 503 was approved on October 16, 1939. Therefore, the sales made by the present defendants between January, 1936, and March 31, 1938, were not covered by the provisions of section 5 of said Commonwealth Act No. 503 which was not in existence when they took place.

Under sections 1458 and 1459 of the Revised Administrative Code and section 1 of Act No. 3243, defendants were required to make a return of their sales and to pay the percentage tax therein provided for.

With respect to the newspapers, magazines and stationery sold by them, as "merchants" under the definition of section 1459, during the period alleged in the information, the penalty for their failure to make the required return was fixed by section 2723 of the same Code at a fine not exceeding P2,000 or imprisonment for a term not exceeding one year, or both. These provisions were, however, expressly repealed by section 369 of Commonwealth Act No. 466.

While it is true that under section 186 of Commonwealth Act No. 466 those newspapers, magazines and stationery would come within the meaning of the term "articles" used therein (Webster's International Dictionary,

p. 131, definition No. 6 of "article"), the fact is that by the said section the one made liable to pay the tax is the manufacturer, producer or importer and the tax is therein expressly made collectible only once, i. e., on every original sale, barter, exchange and similar transaction intended to transfer ownership of, or title to, the articles therein referred to. And, as regards the newspapers and magazines, persons, like defendants, engaged in the business of selling them, but who were not the printers or publishers thereof, could not have made the original sale, barter, exchange or similar transaction within the meaning of the oft-repeated section 186. Moreover, even the printer or publisher can hardly be considered as the "manufacturer or producer" thereof. And even if we direct attention to section 191 of Commonwealth Act No. 466, in so far as it relates to publishers, we will find that the tax of 1½ per cent thereby imposed is only upon the publishers who are not covered by the exception therein made, and not upon the merchant or the person who acquires the newspapers, magazines, reviews or bulletins therein spoken of from the publisher for purposes of resale. This means that defendants Herein would not come under the purview of said section 191 either.

From the foregoing it results that neither under section 186 nor under section 191 of the National Internal Revenue Code—nor under any other sections of said Code for that matter—would defendants be liable for the percentage tax therein created.

Radical changes from the aforesaid and other provisions of the former Internal Revenue Law, upon the enactment of the National Internal Revenue Code, are: (a) the increased rate from 1½ per cent under section 1459 of the Revised Administrative Code and section 1 of Act No. 3243 to 3½ per cent under section 186 of the National Internal Revenue Code; (b) the change in the incidence of the tax, namely, its imposition only upon the manufacturer, producer or importer on the original sale, barter, exchange, etc. effected by him, pursuant to section 186 of the National Internal Revenue Code, instead of upon every person making any sale, barter, exchange, etc., no matter how many times these transactions were successively repeated, under sections 1458 and 1459 of the Revised Administrative Code and section 1 of Act No. 3243; (c) the increase from 1 per cent under section 1461 of the Revised Administrative Code to 1½ per cent under section 191 of the National Internal Revenue Code in the tax on publishers, lithographers and printers; etc.

Consequently, we are of opinion that the provisions of sections 1458 and 1459 of the Revised Administrative Code and section 1 of Act No. 3243 were not reenacted, even substantially, in the National Internal Revenue Code.

But it is contended for the Government that the order appealed from is erroneous because of the enactment of Commonwealth Act No. 503, particularly section 5 thereof, transcribed in appellant's brief and also in an earlier part of this decision. However, we must not lose sight of the proviso of said section 5 which is in the words and figures following:

"Provided, however, that where the taxes described in said sections (sections 184, 185, and 186 of Commonwealth Act No. 466) have not been collected on articles, the original sales of which are subject to the tax, in the possession of any merchant, the first sale, barter, or exchange of said articles on or after the approval of this Act shall be considered as an original sale, barter, or exchange and shall be subject to the tax * * *."

This proviso was evidently designed to cover the case of those articles on whose original sale, barter, or exchange the percentage tax would have been collectible from the manufacturer, producer or importer if it had been effected upon or after the enactment of Commonwealth Act No. 466, but which were so sold, bartered or exchanged before said enactment: and for such a case it was provided that the first sale, barter, or exchange of said articles on or after the approval of the Act (No. 503) shall be considered as the original sale, barter or exchange thereof and shall be accordingly taxable. The sales made by the herein defendants, having taken place between January, 1936, and March 31, 1938, were effected more than one year before the enactment of Commonwealth Act No. 503, that

is, October 16, 1939.

It will, therefore, appear from the foregoing considerations that upon the enactment of the National Internal Revenue Code defendants herein ceased to be bound to make a return of their sales in question or to pay the percentage tax under consideration. And not only this, but even after the enactment of Commonwealth Act No. 503, such obligation could not in any sense be considered as revived—hypothetically supposing that such revival would have been valid—since by the express terms of the proviso of section 5 of the last mentioned act, the sales thus made by defendants would not, at any rate, have been considered as "the first sale, barter, or exchange" of the aforesaid newspapers, magazines and stationary. In other words, after the approval of the National Internal Revenue Code the continuity of the obligation, and therefore of the penal sanction for its violation, was broken. In consequence, the authorities cited by the Solicitor General on page 8 of his brief, predicated upon the re-enactment, literal or substantial, of the repealed provision by the repealing act, are not in point. In *Ong Chang Wing and Kwong Fok vs. United States* (40 Phil., 1046; 218 U. S., 272; 54 Law ed., 1040, 1041)), wherein the United States Supreme Court affirmed a judgment of conviction by this Court, the former tribunal said:

"It appears that the new Act No. 1757, which took the place of the repealed act, article No. 343 of the Philippine Penal Code, did not undertake to wipe out the offense of gambling, or keeping a gambling house in the Philippine Islands, but substantially re-enacted the former law with more elaboration and detail in its provisions than were contained in the former law." (Italics supplied.)

On the following page of the report, the same tribunal had the following to say of the effect of the decision of this Court:

"* * * The effect of the decision of the Philippine Supreme Court is to hold that under the law and local statutes, the repealing act re-enacting substantially the former law, and not increasing the punishment of the accused, the right still exists to punish the accused for an offense of which they were convicted and sentenced before the passage of the later act. * * *" (Italics supplied.)

In the case of *United States vs. Cuna* (12 Phil., 241), the earliest Philippine case cited in the Solicitor General's brief, this Court declared (p. 245):

"* * * In other words, that the enactment of new penal laws, notwithstanding the fact that they contain general repealing clauses, does not deprive the courts of jurisdiction to try, convict, and sentence persons charged with violations of the old law prior to the date when the repealing law goes into effect, unless the new law wholly fails to penalize the acts which constituted the offense defined and penalized in the repealed law."

In accordance with this doctrine, where the repealing law wholly fails to penalize the acts which constituted the offense defined and penalized in the repealed law, the repeal carries with it the deprivation of the courts of jurisdiction to try, convict, and sentence persons charged with violations of the old law prior to the repeal. This is our case, since, as already seen, the National Internal Revenue Code, and for that matter even Commonwealth Act No. 503, wholly fails to penalize the acts imputed upon the herein defendants.

Wherefore, it is the judgment of this Court that the order appealed from be, as it is hereby, affirmed with costs de officio. So ordered.

Moran, C.J., Paras, Pablo, Perfecto, Bengzon, Briones, Hontiveros, Padilla, and Tuason, JJ., concur.

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