

**EUFRACIO D. ROJAS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES
AND HONORABLE FEDERICO ALIKPALA, IN HIS CAPACITY AS JUDGE
OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH XXII,
RES...**

G.R. NO. L-22237. May 31, 1974

Ponente: FERNANDO, J.

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FERNANDO, J.:

In this certiorari and prohibition proceeding, petitioner would have this Court nullify two orders of respondent Judge, one for his arraignment and the other for his trial. He is the accused in a pending criminal case for violation of Article 319 of the Revised Penal Code,[1] for executing a new chattel mortgage on personal property in favor of another party without the consent of the previous mortgagee and duly noted in the record of the Register of Deeds. He would plead, however, before respondent Judge, and now with us, that no arraignment could be set, as thereafter the offended party filed a civil case for the termination of a management contract, one of the causes of action of which consisted of petitioner having executed a chattel mortgage when a prior chattel mortgage was still valid and subsisting, thus giving lie to his express manifestation that the property was free from all liens and encumbrances. It was his contention that the civil case was a prejudicial question, a decision of which was necessary before the criminal case could proceed. Both the petition as well as the memorandum thereafter submitted would characterize the challenged orders as amounting to a grave abuse of discretion, referring to what was termed as "well-settled principles and guideposts" on the subject. Petitioner's stand lacks solidity. The decisions of this Tribunal from *Berbari vs. Concepcion*,[2] announced in 1920, to *Bautista vs. Navarro*,[3] promulgated in 1972, betray its weakness. What is more, an applicable Civil Code provision, as will be shown, fails to lend support.[4] The petition must fail.

It is clear from the undisputed facts that the filing by the offended party, the CMS Estate, Inc., with the City Fiscal of Manila of five estafa charges against petitioner, resulted in the filing of the information made mention of at the outset. While at first assigned to the then Judge Jesus Perez, it was subsequently transferred to respondent Judge upon the former's elevation to the Court of Appeals. Thereafter, the challenged orders first for arraignment and then for the date for trial were issued, notwithstanding an opposition by petitioner.[5] The basis for such opposition, as noted, was that there was likewise, at the insistence of the offended party, a civil case against petitioner in the court of first instance of Manila for the revocation of a management contract.[6] Included in such complaint was an eleventh cause of action, namely the execution by petitioner of a chattel mortgage on a Caterpillar tractor, with his explicit affirmance that it was free from all liens and encumbrances, when such was not the case at all, as the very same tractor was the subject of a chattel mortgage in favor of the Davao Lumber Company, of Davao City, to secure petitioner's obligation, still valid and subsisting as of the date of his entering into the second mortgage.[7] Petitioner, as the accused in the criminal case under the Revised Penal Code arising from the same act imputed to him was thus encouraged to assert that thereby, he could no longer be tried pending the termination of the civil suit, as a prejudicial question was involved.

Respondent Judge was of a different mind. He saw to it that petitioner as the accused would have to abide by what is commanded by the procedural rules. First, he set the date for arraignment.[8] After the plea of not guilty, he fixed the date of trial.[9] Then came this petition for certiorari and prohibition, the former to annul and set aside the aforesaid orders and the latter to enjoin and restrain both the People of the Philippines and respondent Judge from proceeding in the instant case until after the determination of the aforesaid civil case. Respondents were required to answer, and upon petitioner posting a bond, a preliminary injunction was issued. In their answer it was alleged: "(g) That the resolution of the liability of the defendant in the civil case on the eleventh cause of action based on the fraudulent misrepresentation that the chattel mortgage the defendant executed in favor of the said CMS Estate, Inc. on February 20, 1957, that his D-6 'Caterpillar' Tractor with Serial No. 9-U-6565 was 'free from all liens and encumbrances' will not determine the criminal liability of the accused in the said Criminal Case No. 56042 for violation of paragraph 2 of Article 319 of the Revised Penal Code. * * * (i) That, even granting for the sake of argument, a prejudicial question is involved in this case, the fact remains that both the crime charged in the information in the criminal case and the eleventh cause of action in the civil case are based upon fraud, hence both the civil and criminal cases could proceed independently of the other pursuant to Article 33 of the new Civil Code which provides: 'In cases of defamation, fraud and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.' (j) That, therefore, the act of respondent judge in issuing the orders referred to in the instant petition was not made with 'grave abuse of discretion.' "[10]

The plea of respondent for the dismissal of this petition, as intimated at the outset, finds support in the applicable decisions of this Tribunal. The petition, to repeat, must fail.

1. In a fairly recent decision, *Zapanta vs. Montesa*,[11] Justice Dizon, speaking for the Court, stated: "We have heretofore defined a prejudicial question as that which arises in a case, the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal.* * * The prejudicial question – we further said – must be determinative of the case before the court, and jurisdiction to try the same must be lodged in another court.[12] It is indispensable then for this petition to succeed that the alleged prejudicial question must be determinative of the criminal case before respondent Judge. It is not so in this case. A more careful scrutiny of the applicable decisions would explain why. Thus in *Pisalbon vs. Tesoro*,[13] this Court, through Justice Jugo, stated: "The Court of First Instance of Pangasinan erred in holding that the criminal case should be suspended. In the present proceedings, the civil case does not involve a question prejudicial to the criminal case, for to whomsoever the land may be awarded after all the evidence has been presented in the civil case, may not affect the alleged crime committed by the notary public, which is the subject of the criminal case. But, even supposing that both the civil and the criminal case involve the same question and one must precede the other, it should be the civil case which should be suspended rather than the criminal, to await the result of the latter." [14] *De la Cruz vs. City Fiscal*,[15] decided six years later, reiterated such a view: "Now, with respect to the annulment of the affidavit of adjudication sought by Carmelita, the execution by Apolinario of said affidavit with its narration of facts, is intimately related to his guilt or innocence of the charge of falsification being investigated by the Fiscal, it is true; however, resolution of the petition for annulment of the affidavit of adjudication, affirmative or otherwise, does not and will not determine criminal responsibility in the falsification case. Regardless of the outcome of the pending civil case for annulment of the affidavit of adjudication, determination of the charge of falsification would be based on the truth or falsity of the narration of facts in the affidavit of adjudication, * * * Therefore, the civil case aforementioned does not involve a prejudicial question." [16] Then came *Benitez vs. Concepcion, Jr.*,[17] with facts even more analogous. There it was shown that there was a civil case for annulment of a deed of mortgage where the issue was whether or not certain

signatures were forged. There was also a criminal case for falsification, the issue being similar springing from the same facts. Precisely, according to this Court, with Justice Paredes as ponente, the fact "that the principal issues in both cases are the same" and did "arise from the same facts" would not show any necessity "that the civil case be determined first before taking up the criminal case." [18]

If there still be any doubts on the matter, what was said by Justice Barredo in *Isip vs. Gonzales* [19] would dispel them. As he pointed out: "In other words, there is a prejudicial question only when the matter that has to be priorly decided by another authority is one the cognizance of which pertains to that authority and should not, under the circumstances, be passed upon by the court trying the criminal case." [20] That is not so in the litigation before us. It becomes manifest therefore that there was no error committed by respondent Judge in ordering the arraignment and setting the case for trial. There was no abuse of discretion whatsoever. The allegation then of a grave abuse thereof is utterly devoid of merit.

2. Moreover, there is, as pointed out in the answer of respondents, another ground that militates in a well-nigh conclusive fashion against the pretension of petitioner. Article 33 of the Civil Code, already referred to, explicitly provides: "In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence." [21] Here, fraud is the basis for both the civil and the criminal actions. They are, according to law, to proceed independently. In the same way that the civil suit can be tried, the criminal prosecution has to run its course. This is an instance, as noted by the respondents, whereby a codal provision of undoubted applicability should prevail. The invocation of the doctrine on prejudicial question is thus attended with futility. It is easily understandable why. It would be a disservice to public interest if, under the circumstances disclosed, with the culpability of petitioner as the accused being dependent not on what is shown in one of the causes of action in a civil suit for revocation of the management contract, but on whether or not he did commit an act punishable by law, the hand of criminal prosecution would be stayed. What was done by respondent Judge then instead of being contrary to any juridical concept is to be commended if the basic policy underlying penal statutes is not to be frustrated.

WHEREFORE, the petition for certiorari and prohibition is dismissed. The preliminary injunction issued by this Court is set aside. Costs against petitioner.

Zaldivar, (Chairman), Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] Article 319 of the Revised Penal Code (1932) insofar as pertinent reads as follows: "Removal, sale or pledge of mortgaged property. — The penalty of arresto mayor or a fine amounting to twice the value of the property shall be imposed upon: * * * 2. Any mortgagor who shall sell or pledge personal property already pledged, or any part thereof, under the terms of the Chattel Mortgage Law, without the consent of the mortgagee written on the back of the mortgage and noted on the record thereof in the office of the register of deeds of the province where such property is located."

[2] 40 Phil. 837.

[3] L-35345, November 24, 1972, 48 SCRA 176.

[4] Article 33 of the Civil Code provides: "In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence."

- [5] Ibid, pars. 12-14.
- [6] Ibid, pars. 4 and 5.
- [7] Ibid, par. 6.
- [8] Order of Respondent Judge of September 2, 1963, Petition, Annex K.
- [9] Order of Respondent Judge of October 30, 1963, Petition, Annex M.
- [10] Answer, pars. g-j.
- [11] L-14534, February 28, 1962, 4 SCRA 510.
- [12] Ibid, 511. Cf. *Berbari vs. Concepcion*, 40 Phil. 837 (1920); *Aleria vs. Mendoza*, 83 Phil. 427 (1949); *Pisalbon vs. Tesoro*, 92 Phil. 931 (1953); *People vs. Aragon*, 94 Phil. 357 (1954); *Ocampo vs. Cochingyan*, 96 Phil. 459 (1955); *Sy vs. Malate Taxicab & Garage, Inc.*, 102 Phil. 482 (1957); *De la Cruz vs. The City Fiscal*, 106 Phil. 851 (1959); *Merced vs. Diez*, 109 Phil. 155 (1960); *Mendiola vs. Macadaeg*, 111 Phil. 181 (1961); *Benitez vs. Concepcion*, L-14646, May 30, 1961, 2 SCRA 178.
- [13] 92 Phil. 931 (1953).
- [14] Ibid, 932-933. Cf. *Ocampo vs. Cochingyan*, 96 Phil. 459 (1955).
- [15] 106 Phil. 851 (1959).
- [16] Ibid, 855. Cf. *Mendiola vs. Macadaeg*, 111 Phil. 181 (1961).
- [17] L-14646, May 30, 1961, 2 SCRA 178.
- [18] Ibid, 181. In support of such a view, the *Pisalbon* doctrine was invoked.
- [19] L-27277, May 31, 1971, 39 SCRA 255.
- [20] Ibid, 266. Cf. *Fortich Celdran vs. Celdran*, L-22677, Feb. 28, 1967, 19 SCRA 502; *Jimenez vs. Averia*, L-22759, March 29, 1968, 22 SCRA 1380; *Landicho vs. Relova*, L-22579, Feb. 23, 1968, 22 SCRA 731.
- [21] Article 33 of the Civil Code.

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