

**JESUS W. LAZATIN, PETITIONER, VS. HON. RUPERTO KAPUNAN,
JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND LUIS
PEÑA, ASST. CITY FISCAL OF MANILA, RESPONDENTS.**

G.R. No. L-29894. March 28, 1969

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

In this petition for certiorari and mandamus with prayer for preliminary injunction, petitioner seeks (1) to overturn re-spondent judge's order of September 5, 1968 declaring the case submitted for decision and those of September 13 and October 21, 1968 denying petitioner's motion to adduce additional evidence, (2) to compel said respondent judge to allow presentation of such evidence, and (3) to restrain him from proceeding with the promul-gation of the judgment all in Criminal Case 86565 of the Court of First Instance of Manila, entitled "People of the Philippines, Plaintiff, versus Jesus W. Lazatin, Accused."

On December 11, 1968, this Court, without requiring answer, dismissed the petition for lack of merit.

On January 2, 1969, petitioner moved to reconsider our order of dismissal. Thereto attached were certain documents - Annexes A, B, C, D and E - calculated to bring home petitioner's point that the transaction between him and the offended party, the subject of the estafa charge below, was one of loan.

On January 8, 1969, this Court directed respondents to comment on the motion for reconsideration. Comment was filed by respondent judge on January 25, 1969. On January 30, 1969, this Court reconsidered its dismissal order. Respondents chose not to answer the petition following reconsideration. The case was set for hearing on oral arguments for March 17, 1969. Only counsel for petitioner appeared thereat.

After hearing petitioner's counsel, we issued, on March 17, 1969, a temporary restraining order enjoining further pro-ceedings in the court below.

The case is before us for decision on the merits.

The controlling facts are:

Petitioner was charged in the Court of First Instance of Manila in the case heretofore adverted to, with the crime of estafa, in that said accused received in trust from the offended party, Vicenta Joven Iturralde, the sum of P10,000.00 in check "for the purpose of keeping the said check and under the express obligation of not cashing the same but merely depositing it in his name to make it appear that he (accused) has money in the bank so that he can make arrangements with any travel agency for the return passage of the wife of the said accused who was stranded in Hongkong or of returning the said amount upon demand, but the said accused, once in possession of the aforesaid check in the sum of P10,000.00 far from complying with his obligation cashed it and refused to return the said amount, despite repeated demands made upon him to do so and with intent to defraud, misappropriated, misapplied and converted the same or the value thereof to his own personal use and benefit to the damage and prejudice of the said Vicenta Joven Iturralde in the said sum of P10,000.00, Philippine

Currency."[1]

Petitioner was arraigned on July 27, 1967. He pleaded not guilty. The case was set for trial on August 11, 1967. Herein-after to be recited are the numerous, postponements from August 11, 1967, until finally the trial commenced on February 13, 1968. The People there closed its case. Defendant testified in court.

Came the hearing of September 5, 1968. Counsel for defendant verbally moved for continuance. The court denied the motion and considered the case as submitted for decision. On September 12, 1968, counsel for defendant moved for permission to adduce additional evidence. On September 13, 1968, the judge denied the motion. The defense motion for reconsideration of September 30, 1968 was rejected by respondent judge in his October 21, 1968 order. Hence, this petition.

1. Postponements and adjournments are matters addressed to the discretion of the trial court. To the question of whether or not respondent judge gravely abused his discretion, we now address ourselves.

The case for estafa was filed on July 3, 1967. Petitioner (defendant) was arraigned on July 27. The trial on August 11 was transferred to August 17 due to the absence of the return to the subpoena. On the last named date, petitioner failed to appear. However, the order of arrest and the confiscation of the bond was set aside on defendant's explanation that he had no time to come to Manila as he was then in Cabagan, Isabela. The trial for September 7, 1967 was postponed on the defense motion grounded upon the averment that petitioner was exploring the possibility of an amicable settlement. The hearing for October 10 was again postponed by agreement of the parties for the same purpose of amicably settling the case. So was the hearing of October 31. Then, the hearing for December 1 did not take place because defendant was ill. For the same reason, the hearing set for December 28 was transferred to January 15, 1968. But the hearing had to be reset for February 13, 1968 for lack of proof of service. The trial finally commenced on February 13, 1968. As aforesaid, the defense had already started presenting the evidence.

Two days were set for the next hearing: September 5 and 6, 1968. At the hearing on September 5, defense counsel moved for continuance. He averred that he was not able to contact his witnesses because he did not have "official notice" of the hearing for that day. The fact, however, was that counsel "had personal knowledge thereof as early as last Monday." Counsel then manifested that he wanted to present petitioner's wife. Respondent judge, considering the testimony of complainant and the branch manager of the Bank of Commerce that defendant's wife was not present at the transaction, took defendant's oral motion for postponement on February 5, 1968 "as another dilatory move to which the private prosecutor objected." Respondent judge reasoned out that if the purpose of defendant was not to delay he could have easily brought to court that day defendant's wife. In refusing postponement, the court felt that it had given to defendant all the opportunity to settle the matter with the complainant or to present his evidence.

In the factual backdrop presented, it is quite obvious that the lower court kept itself within bounds. And if we are solely to go by the facts to this point recited, it would seem that respondent judge's orders cannot be tagged as infected by fatal irregularities.

Nor will the motion to adduce additional evidence filed on September 12, 1968 help petitioner any. That motion was planted upon the ground that the evidence the defense desired to adduce "shall consist of the testimony of Petronila Lazatin and documentary evidence which will prove that the subject matter of this case was that of a loan and that it was Petronila J. Lazatin who transacted" this matter with complainant. Petitioner charges that respondent judge acted with haste when on September 13, 1968, the motion was denied. The fact that the motion was set for hearing is not, of course, determinative of the question as to whether or not the motion is pro forma such that the trial court may act thereon without waiting for the date of hearing.[2] Really, the motion to adduce

additional evidence is pro forma. The mere allegation that the additional evidence would consist in the testimony of Petronila J. Lazatin and documentary evidence lacks specificity. Explanation as to why the transaction is a loan is wanting. The precise facts to be proven are not known. The bare statement that the case refers to a "loan" is notches below the level of an averment of facts it is nothing but a conclusion of law. It relegates the motion to one which is pro forma.[3]

Petitioner's motion for reconsideration of September 30, 1968 fares no better. This time, petitioner's cry of injustice is that he is in grave jeopardy of being convicted, in infringement of his constitutionally protected right to be heard upon Section 1(17), Article III of the Constitution. This argument obviously lacks merit. Without giving to the lower court as much as a hint as to what the evidence to be presented would actually consist of, re-spondent judge was right in likewise throwing out this motion.

2. We take stock, however, of the averments in the motion - filed before this Court on January 2, 1968 - to reconsider this Court's minute resolution of December 11, 1968 dismissing the herein petition for certiorari and mandamus. This time, petitioner's new counsel, who for the first time appeared in the court below when they filed the motion to adduce additional evidence, attached for consideration of this Court the documents, Annexes A, B, C, D and E, heretofore mentioned. In the words of counsel, they did so "to avoid the impression that his motion for postpone-ment [evidently referring to the verbal motion below of September 5, 1968] was merely intended for delay." [4]

These documents are quite revealing. Worthwhile it is to underscore the salient portions thereof.

Annex A. This is a letter dated May 12, 1964 purportedly addressed by the offended party to Pet, defendant's wife, who is actually a close relative of said complainant. The date, May 12, 1964, is significant because the transaction here involved for P10,000 took place two days thereafter, namely, on May 14, 1964. The body of the letter reads:

"We were able to see a friend of your Aching Nena who is willing to give P10,000-but with the collateral. Call me up tonight at 9:30 (Tel 5-66-60) or early tomorrow morning if you are still interested." [5]

Annex C. This is another letter dated July 30, 1964 allegedly addressed by the offended party to "Pet", defendant's wife, and which reads:

"I was waiting for a call from you this morning, today being the end of the month. I have made assurances to the party with whom we are negotiating that by July 31 tomorrow, we shall be ready to finalize our transaction. This is because I have expected that you would be able to give me already the amount you promised. I understand that you have already registered your mortgage.

So please send me the amount, even if for tomorrow it is only P10,750.00 and then the balance by August 15, 1964.

Thanks and regards. Please do not fail me." [6]

We note that the original amount given was P10,000. But payment of P10,750 was exacted.

Annex D. This letter dated August 17, 1964, likewise allegedly addressed by the offended party to petitioner's wife, in part, reads:

"Again I have the sorry part of reminding you of the interest up to Sept. 14 which was due Aug. 14 (you are late three days now).

Kindly prepare your payments for the interest monthly up to December as you did at first." [7]

Annex E. In this letter dated September 18, 1964, "Vicentica" asks "Petring" to settle the former's "account" in cash "as soon as possible." [8]

Annex B. This one dated April 14, 1965 was written almost one year after the transaction involved in the criminal information. It is allegedly addressed by the offended party to "Suring" (accused) and "Petring", his wife. It reads:

"I came over because I would like you to return to me already the P10,000.00.

x x x

I think it is sufficient time that we have given you and it is your part now to understand our situation. We need the money by the end of April for the month of May.

You know me, if I could help I willingly do this without much ado.

Now, please I am very much pressed and I rely on you that you will, not put me down this time. As I say, it is needless to tell you all the circumstances. What is important is that please, be good enough to raise the whole of the P10,000.00. About the interest due to April, this much I can help - don't give the interest for April but please help me and return the capital this April.

I have never written you this way - please, help me now. Thank you." [9]

These letters belatedly presented and only to this Court, forces upon us a choice of two courses to pursue: Are we to hold fast to the rule that certiorari will not lie upon the ground of abuse of discretion unless there be "such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction"? [10] Or, are we to bend procedural requirements and consider as an overriding consideration the fact that the documents before us could, after all, prove that petitioner is not guilty of the crime of estafa charged? As we look in retrospect at the proceedings in the court below, it would seem to us that the obsession of petitioner's former counsel was to gain time to the end that the case be settled amicably. Obviously, he did not make as much as a perfunctory effort to look into the defense his client, the petitioner, might have. We do not hesitate to say that, being a member of the Bar, he could have known that there was an arguably presentable case on behalf of his client considering the documents just adverted to. Because, a loan transaction is not estafa. He could have even cross-examined complainant on those documents, or presented defendant's wife. He would not have even dilly-dallied. Instead, he could have faced the issue. This incompetence of counsel is "so great that his client is prejudiced and prevented from fairly presenting his case" - a ground for reopening. [11]

The motion to adduce additional evidence could not have advanced petitioner's cause. Because, the new attorneys who presented this motion have not appended thereto the documents heretofore mentioned. It is no excuse that the judge did not wait for September 27, the date petitioner set for the hearing of that motion. It was not worth considering. Nor did counsel attach those documents to their later motion for reconsideration of September 30, 1968.

If petitioner did not succeed in the court below, he cannot lay the blame at the door of respondent judge. We do not entertain the least doubt that had those letters been shown to respondent judge, the latter would have lent a willing ear to petitioner's plea for further opportunity to offer them, to identify them, and to present them. Surely enough, respondent judge would not look at those documents with hostile eyes; instead, he would consider them with the other evidence of record in finally determining the case. We are confident that respondent judge knows that if these documents were presented below and reopening is denied, he would be open to a charge of grave abuse of discretion,

We have before us the vehement insistence of counsel that with the testimony of defendant's wife and those

letters, defendant could overcome the evidence against him. Now that these documents came to light, we take the hospitable view that defendant should be given another opportunity to offer them. A man's liberty is precious. It should not be taken away except for the most cogent of reasons. We have once Said - in a civil case - that technicality should be turned out of a case especially "in the face of over-whelming proof that the main decision was not according to conscience, equity and justice."^[12] With greater reason should we give petitioner, defendant in a criminal case, an opportunity to prove that he is not guilty of the crime charged. For, as yet, no judgment has been rendered.

It has been said that a wide breadth of discretion is granted a court of justice in certiorari proceedings.^[13] The cases in which certiorari will issue cannot be defined. Because, to do so would be to destroy its comprehensiveness and usefulness.^[14] So wide is the discretion of the court that authority is not wanting to show that certiorari is "more discretionary than either pro-hibition or mandamus."^[15] In the exercise of our superintending control over inferior courts, we are to be guided by all the circum-stances of each particular case "as the ends of justice may require."^[16] So it is, that the writ will be granted where necessary to prevent a substantial wrong or to do substantial justice.^[17]

Here, there are what may be termed exceptional facts, which call for appropriate remedy: the documents which tend to prove that the transaction is a loan. It is better, on balance, that we look beyond procedural requirements and overcome the ordinary reluctance to exercise our supervisory powers. And this, to the end that the orders issued below may be controlled "to make them conformable to law and justice."^[18]

Of course, two principles here meet and clash. Certiorari lies only where there is a grave abuse of discretion, because clearly the court below had jurisdiction. On the other hand, there is petitioner's right to acquittal if guilt is not proven beyond reasonable doubt. More than this is that the evidence sought to be presented - before judgment is rendered - could spell the difference between acquittal and a jail term. One principle has roots as deep as the other. One is against the accused; the other favors him. We opt for giving the accused a chance to exculpate himself. In this, we have in mind the constitutional precept that in all criminal prosecutions, the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel.^[19]

For the reasons given, we vote to direct the Court of First Instance of Manila to reopen Criminal Case No. 86565, entitled "People of the Philippines, Plaintiff, versus Jesus W. Lazatin, Accused" (1) to enable defendant to present the letters heretofore mentioned and any further evidence in his defense, and to permit presentation of such other evidence of prosecution and defense as may be allowed under the Rules of Court; and (2) to decide the case upon submission thereof.

No costs.

SO ORDERED.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] Criminal Information below filed on July 3, 1967; emphasis supplied.

[2] Cf. *Ferrer vs. Tabora* (1959), 106 Phil. 759, 762.

[3] Contrast: *Loria vs. Court of Appeals*, L-19198, December 29, 1962. See also: *Einar vs. Santos* (1959), 106 Phil. 28, 33-34.

[4] Rollo, p. 18.

[5] Id., p. 27; emphasis supplied.

[6] Id., p. 29; emphasis supplied.

[7] Id., p. 30; emphasis supplied.

[8] Id., p. 31; emphasis supplied.

[9] Id., p. 28; emphasis supplied.

[10] Abad Santos vs. Province of Tarlac, 67 Phil. 480, 482.

[11] Palanca vs. American Food Manufacturing Co., 24 SCRA 819, 828, citing People vs. Manzanilla, 43 Phil. 167; Montes vs. CFI, 48 Phil. 640.

[12] Vda. de Sta. Ana vs. Rivera, 18 SCRA 588, 590. See also: PHHC vs. Tiongco, L-18691, November 28, 1964.

[13] 14 Am. Jur. 2d, pp. 783-784.

[14] Ferris, Extraordinary Legal Remedies (1926), pp. 180-181.

[15] 14 C.J.S., p. 138, at footnote under Largely discretionary, citing State vs. Kay, 4 P. 2d 498, 164 Wash. 685.

[16] Ferris, Extraordinary Legal Remedies (1926), p. 181.

[17] 14 C.J.S., pp. 138-139.

[18] See: Inherent powers of courts. Sec. 5(g), Rule 135, Rules of Court.

[19] Section 1(17), Article III, Constitution.

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