

**MATILDE HERRERO AND ANTONIO L. CRISOSTOMO, PETITIONERS,
VS. POMPEYO DIAZ, JUDGE OF FIRST INSTANCE OF MANILA, AND
MANUEL GASPAR, RESPONDENTS.**

G.R. No. L-28. November 27, 1945

Ponente: FERIA, J.

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FERIA, J.:

This is a petition for certiorari and prohibition praying for the annulment of the resolution of the respondent judge ordering the reconstitution of the record of criminal case No. 6450 of the Court of First Instance of Manila, and prohibiting him from proceeding with the said criminal case for adultery instituted against the petitioners by complaint of Manuel Gaspar, one of the respondents herein, during the regime of the so-called Republic of the Philippines.

Petitioners contend that the respondent judge acted without jurisdiction in issuing the order in question, because all the proceedings in said criminal case No. 6450 have been invalidated by the proclamation of General Douglas MacArthur of October 23, 1944, and because the Court of First Instance of Manila has no jurisdiction to continue the proceeding in cases commenced in the Court of First Instance of Manila under the so-called Republic of the Philippines; and that the respondent judge acted in excess of his jurisdiction in ordering the reconstitution of said case, not upon petition of the fiscal as required by Act No. 3110, but upon petition of the attorney for the offended party.

The first two questions raised by petitioners fall squarely under the ruling of this Court in the case of *Co Kim Cham vs. Valdez Tan Keh and Dizon* (G. R. No. L-5, p. 113, ante), promulgated on September 17, 1945, in which this Court held that all judicial acts and proceedings of the courts of justice during the Japanese occupation which are not of political complexion, were before, and remained good and valid after, the restoration of the Commonwealth Government; that they have not been invalidated by the proclamation of General Douglas MacArthur of October 23, 1944; and that the present courts have jurisdiction over cases, not of a political complexion, filed therewith during the Japanese occupation, and may take cognizance of and continue them to final judgment.

It is obvious that the crime with which petitioners are charged is not of a political complexion, for petitioners are accused of the crime of adultery penalized by the Revised Penal Code of the Commonwealth Government. This code and the Court of First Instance in which the complaint was filed were the same code and court of the Commonwealth which were continued by the so-called Republic of the Philippines, a government established in the Islands by the Japanese forces of occupation.

A criminal proceeding in a court of justice is said to be of a political complexion when the offense charged is a new act not defined and penalized by the municipal laws, or an act already penalized by the latter as a crime against the legitimate government, but taken out of the territorial law and penalized as a new offense committed against the belligerent occupant, incident to a state of war and necessary for the control of the occupied territory

and the protection of the army of the occupier. They are. acts which tend, directly or indirectly, to aid or favor the enemy and are directed against the welfare, safety and security of the belligerent occupant. As examples, we have the crimes against national security, such as treason, espionage, etc., and against public order, such as rebellion, sedition, etc., crimes against the Commonwealth or United States Government under the Revised Penal Code which were made crimes against the belligerent occupant.

Petitioners' contention that the attorney for the offended party is not authorized by Act No. 3110 to move for the reconstitution of the record of the criminal case in question, and that in allowing its reconstitution upon the mere petition of the private prosecutor the respondent judge acted in excess of his jurisdiction, untenable.

The intervention of the offended party or his attorney is authorized by section 15 of Rule 106 of the Rules of Court, subject to the provisions of section 4 of the same Rule that all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal. Taking into consideration that a criminal action for adultery can only be commenced or recommended by the offended party and not by the fiscal (article 344, Rev. Pen. Code), and that the petition for reconstitution was filed without objection or with the acquiescence of the city fiscal, it is evident that the provisions of the law on reconstitution of records have been substantially complied with.

In view of the foregoing, the petition is denied.

Moran, C. J., Ozaela, Paras, Jamnilla, Be Joya, Pablo, and Bengzon, JJ., concur.

DISSENTING

PERFECTO, J.

The judicial process, consisting alone of an information for admitting and the bond of accused the reconstitution of which has been ordered by the Court of First Instance of Manila in the present case, is among those declared null and void and without effect in the proclamation issued by General Douglas MacArthur on October 23, 1944, in pursuance to the declaration issued by President Franklin D. Roosevelt on October 23, 1943, denying recognition to the Vargas Executive Commission and the Laurel Philippine Republic set up under the Japanese regime, as we have explained in our opinions in *Co Kim Cham vs. Valdez Tan Keh and Dizon* (G. R. No. L-5, p. 153, ante), and *Peralta vs. Director of Prisons* (G. R. No. L-49, p. 334, ante).

We vote for the granting of the writs prayed for.

DISSENTING

HILADO, J., :

I dissent. My reasons are the same as those expressed in my main dissenting opinion in G. R. No. L-5 Co Kim Cham vs. Valdez Tan Keh and Dizon (p. 199, ante), in my dissenting opinion upon the motion for reconsideration therein (p. 398, ante), and in my concurring opinion in G. R. No. L-49, Peralta vs. Director of Prisons (p. 355, ante). For those reasons, my opinion is that the resolution of the Japanese-sponsored Court of First Instance of Manila ordering the reconstitution of the record of criminal case No. 6450 thereof was and is null and void.

The writs prayed for should be granted.

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