

ALBERTO S. WONG, PETITIONER, VS. HON. NICASIO YATCO, ETC., ET AL., RESPONDENTS.*G.R. No. L-9525. August 28, 1956*

Ponente: LABRADOR, J.

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Certiorari against various orders or proceedings in the Court of First Instance of Rizal, Hon. Nicasio Yatco, presiding.

On December 28, 1954, petitioner was charged before the court with a violation of Commonwealth Act No. 104 for allowing more than 400 laborers to work in a room of 3,427.20 cubic meters space, during the period from May 3, 1954 to October 11, 1954. On February 17, 1955, after the accused had pleaded not guilty, he filed a motion to quash on the ground that at the time of the alleged violation the regulations implementing the law had not yet been published in the Official Gazette as required by law. The Department of Labor, through its legal assistant, joined petitioner in asking for the dismissal of the case on the ground that the violation was merely technical, and petitioner's factory was complying substantially with Department regulations. The motion was supported by a letter attached thereto, written by the Secretary of Labor, showing that the engineer of the Department of Labor had found compliance after a subsequent inspection. But respondent judge held that the legal assistant of the Department of Labor had no authority to appear before his court and ordered the motion and the letter of the Secretary of Labor detached from the record and returned.

When the case was called for hearing on March 17, 1955, the first assistant city attorney of Quezon City appeared and made a verbal motion for the dismissal of the charge on the same grounds mentioned in the motion for dismissal filed by the legal assistant of the Department of Labor. Instead of approving this motion, the court made a surprise visit to the place where the alleged violation was taking place, conducting an ocular inspection of the premises. During the inspection the presiding judge questioned the petitioner, who answered that there were 397 laborers working in the factory on the day in question. After the inspection the court entered an order finding that petitioner was still violating the provisions of Commonwealth Act No. 104 and denied the verbal motion of the fiscal to dismiss, and ordered him to file an amended information within a period of five days. Pursuant to this order the fiscal filed an amended information on March 18, 1955. As this amended information alleged that the commission of the violation took place on January 2, 1954 to October 11, 1954, petitioner reiterated his original motion to quash. The judge had ordered the fiscal to file an opposition to the motion to quash, but the fiscal instead of doing so filed an amended information on March 31, 1955, changing the period of the supposed violation to that from January 2, 1955 to March 17, 1955. On June 28, 1955 the judge denied the motion to quash.

On July 23, 1955, petitioner filed another motion to quash the amended information, on the ground that no preliminary investigation had been conducted on the first and second amended informations. But the judge denied this motion alleging that he had seen a continuous violation of the rules and regulations. So he set the case for trial. It was at this stage of the proceedings that petitioner presented his petition in this case.

The orders and proceedings of the lower court are alleged to have been committed with grave abuse of discretion for the following reasons, namely, that the testimony of petitioner was not taken by the judge in the ocular inspection under oath; that no opportunity was given petitioner to give an explanation or to his counsel to cross-examine the witness on whose testimony the judge based his order to elicit exculpatory facts; that petitioner's case was prejudged and he was, therefore, denied a fair trial; that the judge constituted himself as a raiding party, performing police function, refusing to hear explanations; and that the amended informations were filed without a previous preliminary investigation, etc.

There is a feeling among some of the members of the court that judges should be admonished to act with impartiality, devoid of prejudice in favor of the accused or of the State, abstaining from acts indicative of undue or unjustified interest for one side or the other, in order that the public may have confidence in the administration of justice. The discretion lodged in the judge in granting or refusing a motion for dismissal, as in this case, does not authorize, much less justify, the personal interest demonstrated by the respondent judge in making an ocular inspection, in directing the continuance of the action against the petitioner, against findings and recommendations of executive officials entrusted with the implementation and enforcement of laws, if confidence in the judicial department is to be conserved. This, notwithstanding, we have decided to consider the legal issues on their real merit and worth.

Except for the impression that it produced that the judge was personally interested in maintaining the action against the petitioner, the action of the respondent judge in making the ocular inspection and in questioning the petitioner in his factory, is valid and legal, as it was a proceeding that he adopted in order to be able to pass on the motion for dismissal. The proceeding was not a preliminary investigation ; it was a proceeding adopted by the judge himself, the form and manner of which he is at liberty to choose, in order to enable him to exercise his judgment and discretion in passing upon the motion for dismissal. It was not a preliminary investigation; hence the rights of the accused at such a proceeding could not have been invoked. There was, therefore, no abuse of discretion in the adoption of the proceeding or in the manner thereof.

The other legal issue is; Was the presentation of the amended information changing the date of the commission of the offense to between January 2, 1955 and March 17, 1955, justified, when the original information filed on December 28, 1954 charged violation from May 3, 1954 to October 11, 1954? May the State be allowed to amend the information by stating that the offense was committed between January 2, 1955 and March 17, 1955, on an original information dated December 28, 1954?

There are argument that can be presented against such an amendment. One is that such an amendment is not one of form but of substance, especially as the offense charged was not yet punishable on December 28, 1954, when the original information was filed. The acts charged in the original information were not punishable at the time of its filing in 1954; the violation charged in the amended information took place in 1955. The amendment is certainly on a matter of substance because in 1954 the act was not punishable yet. The amendment cannot be allowed because the accused, petitioner herein, had already pleaded not guilty to the original information. Another reason is the fact that when the original information was filed the violation was not yet subject to prosecution because the law had not yet been published. It is true that since the information was filed the law had become effective; but the law can have no retroactive effect. Since an amended information is supposed to retro act to the time of the filing of the original information, and at the time of the filing of the original information the offense was not yet punishable, the proper course would have been not to amend the previous information but to file another one. In civil cases, if a cause of action does not exist at the time the complaint is filed, but accrues thereafter, the defect can not be cured by an amendment; a new complaint must be filed because the cause of action must exist prior to the time of the filing of the complaint (*Limpangco vs. Mercado*, 10 Phil., 508).

Similarly, an information filed before the effectivity of a law punishing an offense may not be amended after the law punishing the crime had come into effect to charge a violation after the law had come into effect. As an amendment retro acts to the time of the presentation of the amended pleading, the amended information would contain a violation committed after its filing. A crime charged should have been committed prior to the filing of the information; no information can be filed for a future violation. In the case at bar the court should have dismissed the original information and authorized the presentation of a new one.

For the foregoing considerations, the orders of the court complained of are hereby, as they are, set aside, and the respondents directed to act conformably with this decision. Without costs.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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