

CASIMIRO V. ARKONCEL, PETITIONER, VS. COURT OF FIRST INSTANCE OF BASILAN CITY, PRESIDED BY HON. REGINO HERMOSISIMA; CITY FISCAL ANDRION AND GERARDO ESPERAT, RESPONDENTS.

G.R. No. L-27204. August 29, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

Casimiro V. Arkoncel, a lawyer serving as officer-in-charge of the Basilan Branch of the Board of Liquidators, was charged with qualified theft by the City Fiscal of Basilan City in the Court of First Instance of Basilan, together with his laborers named Rogelio Lachica, Moro Hasi, Anastacio Inid and Geronimo Inid (Criminal Case No. 1763).

It was alleged in the information that the accused stole 5,000 coconuts from the land of Gerardo Esperat. The Fiscal, after certifying that he had conducted the proper preliminary investigation, added "that the accused were duly subpoenaed but failed to appear".

According to the Fiscal, when Arkoncel appeared in court and was about to be arrested, the arrest was not effected because of his supplication that the case be settled and, if it could not be settled, that he be allowed to go home so that he could prepare the requisite bail bond.

Instead of posting bail, Arkoncel filed on December 14, 1966 the instant special civil action of prohibition in order to enjoin his prosecution for qualified theft.

He alleged that he was denied due process because he was not subpoenaed to appear at the preliminary investigation. That assertion is not correct. The truth is that in two subpoenas dated September 13, and 21, 1966 (containing the usual warning: "Fail not under penalty of law") he was required to appear at the preliminary investigation. He did not appear at the scheduled hearings. The hearing set for September 29, 1966 was postponed at the instance of Atty. Engracio S. Bautista, a land investigator of the Zamboanga City office of the Board of Liquidators, who presumably appeared for Arkoncel.

Atty. Bautista informed the Fiscal that he had requested the Manila office of the Board of Liquidators to furnish him certain data relevant to the case. The hearing was postponed for three weeks. After the expiration of that period Arkoncel and Bautista did not get in touch with the Fiscal. He filed the information in October, 1966.

The issue is whether Arkoncel's prosecution can be enjoined. We hold that this case falls within the general rule that injunction or prohibition does not lie to restrain a criminal prosecution. It does not fall within the exceptions where the prosecution may be enjoined (a) for the orderly administration of justice, (b) to prevent the use of the strong arm of the law in an oppressive and vindictive manner, (c) to avoid multiplicity of actions, (d) to afford adequate protection to constitutional rights, and (e) where the statute relied upon is unconstitutional or was declared void (*Hernandez vs. Albano*, L-19272, January 25, 1967, 19 SCRA 95, 98-99; *Ramos vs. Torres*,

L-23454, October 25, 1968, 25 SCRA 557).

The reason for the general rule is that the accused has an adequate remedy at law by establishing as a defense to the prosecution that he did not commit the act charged, or that the statute, on which the prosecution is based, is void, and, in case of conviction, by taking an appeal (Gorospe, vs. Penaflorida, 101 Phil. 886). Public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society (Nicomedes vs. Chief of Constabulary, 110 Phil. 52; Grinen vs. Consolacion, 115 Phil. 697).

There is another reason which justifies the dismissal of the petition. Arkoncel did not exhaust his remedies. He did not raise in the lower court the alleged lack of due process. He came to this Court without first filing in the lower court a motion to quash or asking for a reinvestigation. His contention in this Court that his prosecution was merely an act of harassment, while he was in the lawful performance of his duties as a government officer, is a factual allegation that has no basis in the record. It is controverted by the respondents. He should have raised that issue in the lower court.

The rule is that in a preliminary investigation conducted by the provincial or city fiscal, or state attorney, it is sufficient if the accused was given a chance to be heard (Sec. 14, Rule 112 of the Rules of Court). In this case, Arkoncel was afforded an opportunity to appear at the preliminary investigation. He waived his appearance. A "preliminary investigation may be done away with entirely without infringing the constitutional right of an accused under the due process clause to a fair trial" (Bustos vs. Lucero, 81 Phil. 640.)

WHEREFORE, the petition, which is patently frivolous and dilatory, is dismissed with treble costs against the petitioner.

SO ORDERED.

Makalintal, C.J., Concepcion, Jr., and Martin, JJ., concur.

Barredo, J., did not take part.

Antonio, J., is on leave.

Martin, J., was designated to sit in the Second Division.

Fernando, J., concurs with the qualification that under the circumstances set forth in his concurring and dissenting opinion in Aquino Jr. v. Military Commission, the lack of a preliminary investigation may amount to a denial of due process.

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