

**DONALD MEAD, PETITIONER, VS. HON. MANUEL A. ARGEL IN HIS CAPACITY AS PRESIDING JUDGE IN THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH XXXV AND THE PEOPLE OF THE PHILIPPINES, RESP...**

*G.R. No. L-41958. July 20, 1982*

Ponente: VASQUEZ, J.

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**VASQUEZ, J.:**

The issue posed for determination in this case is whether or not a Provincial Fiscal has the authority to file an information for a violation of Republic Act No. 3931, entitled "An Act Creating a National Water and Air Pollution Control Commission."

On March 11, 1975, petitioner Donald Mead and a certain Isaac Arivas were charged by the Provincial Fiscal of Rizal with a violation of Section 9, in relation to Section 10 of Republic Act No. 3931, under an information reading as follows:

"That on or about the 23rd day of August, 1972, and for some time prior and subsequent thereto, in the municipality of Malabon, province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the president and the general manager, respectively, of the Insular Oil Refinery Co. (INSOIL), a corporation duly organized in accordance with existing laws, conspiring and confederating together and mutually helping and aiding one another, did then and there willfully, unlawfully and feloniously drain or otherwise dispose into the highway canal and/or cause, permit, suffer to be drained or allow to seep into such waterway the industrial and other waste matters discharged due to the operation of the said Insular Oil Re-finery Co. so managed and operated by them, thereby causing pollution of such waterway with the resulting damage and/or destruction to the living plants in the vicinity and providing hazard to health and property in the same vicinity."

The case was docketed as Criminal Case No. C-5984-75 and it was subsequently assigned to Branch XXXV of the Court of First Instance of Rizal ( Caloocan City) presided over by the respondent Judge.

On August 11, 1975, petitioner Donald Mead, one of the accused in the criminal case, filed a motion to quash on the grounds that the trial court has no jurisdiction and that the Provincial Fiscal of Rizal has no legal personality to file the above-quoted information. The motion to quash was denied by the respondent Judge in an Order dated September 5, 1975. A Motion For Reconsideration filed by the petitioner was also denied by the respondent Judge in his Order of November 10, 1965. Hence, this petition for certiorari with preliminary injunction to annul the said orders of the respondent Judge who allegedly acted in excess of or without jurisdiction in issuing the same.

In Our Resolution dated November 28, 1975, the respondents were required to comment on the petition and a temporary restraining order was issued to enjoin the respondent Judge from enforcing his questioned orders until otherwise directed by this Court.

It is the principal contention of the petitioner that the National Water and Air Pollution Control Commission

(hereinafter referred to as the "Commission") as created under Republic Act No. 3931 has the exclusive authority to determine the existence of "pollution" before a criminal case can be filed for a violation of the said law; and that it has the exclusive authority to prosecute violations of the same. Petitioner further avers that the Commission not having finally ruled that the petitioner has violated Republic Act No. 3931, the Provincial Fiscal of Rizal lacks the authority to prosecute the petitioner for a violation of said law.

The respondents, on the other hand, maintain that while Republic Act No. 3931 grants the power and duty to the Commission to investigate and prosecute violations of Republic Act No. 3931, such grant of power and authority is not exclusive, and does not deprive fiscals and other public prosecutors of their authority to investigate and prosecute violations of the said law committed within their respective jurisdictions.

Before discussing the main issue on its merits, We deem it necessary to resolve a procedural question raised by the respondents in support of their prayer that the instant petition should not be entertained. Respondents advert to the rule that when a motion to quash filed by an accused in a criminal case shall be denied, the remedy of the accused-movant is not to file a petition for certiorari or mandamus or prohibition, the proper recourse being to go to trial, without prejudice to his right to reiterate the grounds invoked in his motion to quash if an adverse judgment is rendered against him, in the appeal that he may take therefrom in the manner authorized by law. (*Mill vs. People*, et al. 101 Phil. 599; *Echarol vs. Purisima*, et al., 13 SCRA 309.)

There is no disputing the validity and wisdom of the rule invoked by the respondents. However, it is also recognized that, under certain situations, recourse to the extraordinary legal remedies of certiorari, prohibition or mandamus to question the denial of a motion to quash is considered proper in the interest of "more enlightened and substantial justice", as was so declared in "*Yap vs. Lutero*", G.R. No. L-12669, April 30, 1959, 105 Phil. 3007:

"However, were we to require adherence to this pretense, the case at bar would have to be dismissed and petitioner required to go through the inconvenience, not to say the mental agony and torture, of submitting himself to trial on the merits in Case No. 16443, apart from the expenses incidental thereto, despite the fact that his trial and conviction therein would violate one of his constitutional rights, and that, an appeal to this Court, we would, therefore, have to set aside the judgment of conviction of the lower court. This would, obviously, be most unfair and unjust. Under the circumstances obtaining in the present case, the flaw in the procedure followed by petitioner herein may be overlooked, in the interest of a more enlightened and substantial justice."

To the same effect is the pronouncement in "*Pineda and Ampil Manufacturing Co., vs. Bartolome*, et al." 95 Phil., 930-938, expressed as follows:

"While a denial of a motion to dismiss for lack of jurisdiction was held not to be a proper basis for a petition for certiorari [*Nico vs. Blanco*, 46 Off. Gaz., Supp. (1) 88; 81 Phil., 213], or an appeal and not certiorari is the proper remedy for correcting an error which a lower court may commit in denying a motion to set aside a judgment, or in setting aside an order of dismissal, [*Rios vs. Ros*, et al., 45 Off. Gaz. (No. 3) 1265; 79 Phil., 243; *Santos vs. Pecson*, 45 Off. Gaz. (No. 3), 1278; 79 Phil., 754] however, in some instances, the Supreme Court has departed from the general rule and has entertained the writ notwithstanding the existence of an appeal. Thus, in one case the Supreme Court took cognizance of a petition for certiorari notwithstanding the fact that the accused could have appealed in due time when it found that the action was necessary to promote public welfare and public policy (*People vs. Zulueta*, 89 Phil., 880). In another case, a petition for certiorari to annul an order of the trial judge admitting an amended information was entertained although the accused had an adequate remedy by appeal 'inasmuch as the Surplus Property cases have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof.' (*People vs. Zulueta*, supra. Citing *Arevalo vs. Nepomuceno*, 63 Phil., 627.) And still in another case, the writ was entertained where the appeal was found not to be adequate remedy, as where the order which is sought to be reviewed is merely of

interlocutory or peremptory character, and the appeal therefrom can be interposed only after final judgment and may therefore be of no avail. (Rocha vs. Cross-field, 6 Phil., 355; Leung Ben vs. O'Brien, 38 Phil., 182. See also Mendoza vs. Paruñgao, 49 Phil., 271; Dais vs. Court of First Instance, 51 Phil., 36).

For analogous reasons it may be said that the petition for certiorari interposed by the accused against the order of the court a quo denying the motion to quash may be entertained, not only because it was rendered in a criminal case, but because it was rendered, as claimed, with grave abuse of discretion, as found by the Court of Appeals. It would be indeed unfair and unjust, if not derogatory of their constitutional right, to force the accused to go to trial under an information which, in their opinion, as was found, accuses them of multiple offenses in contravention of law. And so, in our opinion, the respondent court did not err in entertaining the petition for certiorari instead of dismissing it, as claimed."

The motion to quash filed by the accused in Yap vs. Lutero was on the ground of double jeopardy. In Pineda vs. Bartolome, the ground invoked was duplicity of offenses charged in the information. In the case at bar, the petitioner assails the very jurisdiction of the court wherein the criminal case was filed. Certainly, there is a more compelling reason that such issue be resolved soonest, in order to avoid the court's spending precious time and energy unnecessarily in trying and deciding the case, and to spare the accused from the inconvenience, anxiety and embarrassment, let alone the expenditure of effort and money, in undergoing trial for a case the proceedings in which could possibly be annulled for want of jurisdiction. Even in civil actions, We have counselled that when the court's jurisdiction is attacked in a motion to dismiss, it is the duty of the court to resolve the same as soon as possible in order to avoid the unwholesome consequences mentioned above.

"It is also advanced that the present petition is premature, since respondent court has not definitely ruled on the motion to dismiss, nor held that it has jurisdiction, but only argument is untenable. The motion to dismiss was predicated on the respondent court's lack of jurisdiction to entertain the action; and the rulings of this Court are that writs of certiorari or prohibition, or both; may issue in case of a denial or deferment of action on such a motion to dismiss for lack of jurisdiction.

'If the question of jurisdiction were not the main ground for this petition for review by certiorari, it would be premature because it seeks to have a review of an interlocutory order. But as it would be useless and futile to go ahead with the proceedings if the court below had no jurisdiction this petition was given due course.' (San Beda vs. CIR, 51 O.G. 5636, 5638).

"While it is true that action on a motion to dismiss may be deferred until the trial and an order to that effect is interlocutory, still where it clearly appears that the trial judge or court is proceeding in excess or outside of its jurisdiction, the remedy of prohibition would lie since it would be useless and a waste of time to go ahead with the proceedings. (Philippine International Fair, Inc., et al. vs. Ibañez, et al., 50 Off. Gaz. 1036; Enrique vs. Macadaeg, et al., 47 Off. Gaz. 1207; see also San Beda College vs. CIR, 51 Off. Gaz. 5636.) ( University of Sto. Tomas vs. Villanueva, L-13748, 30 October 1959.)' " (Time, Inc. vs. Reyes, 39 SCRA, pp. 315-316.)

An additional factor that induced Us to entertain the instant petition is the obvious merit We find in the same. Our reading of the provisions of Republic Act No. 3931 has convinced Us that the clear legislative intention is to vest in the Commission the exclusive authority to determine the existence of "pollution" penalized thereunder and to prosecute violations of said law.

The information filed against the herein petitioner charges him with a violation of Section 9, in relation to Section 10 of Republic Act No. 3931. More specifically, it alleges that the petitioner, with his co-accused Isaac Arivas, "willfully, unlawfully and feloniously drain or otherwise dispose into the highway canal and/or cause, permit, suffer to be drained or allow to seep into such waterway the industrial and other waste matters discharged due to the operation of the said Insular Oil Refinery Co. so managed and operated by them, thereby causing pollution of

such waterway with the resulting damage and/or destruction to the living plants in the vicinity and providing hazard to health and property in the same vicinity."

Section 9 in its first paragraph, supposedly the criminal act being imputed to the petitioner, reads as follows:

"SEC. 9 Prohibitions. — No person shall throw, run, drain, or otherwise dispose into any of the water and/or atmospheric air of the Philippines, or cause, permit, suffer to be thrown, run, drain, allow to see or otherwise dispose into such waters or atmospheric air, any organic or inorganic matter or any substance in gaseous or liquid form that shall cause pollution of such waters or atmospheric air."

It will be noted from the above-quoted provision that the prohibited act is to throw, run, drain or otherwise dispose into any of the water and/or atmospheric air of the Philippines, any organic or inorganic matter or substance "that shall cause pollution of such waters or atmospheric air." Stated in simpler terms, the offense allegedly committed by the petitioner was the act of causing pollution of a waterway (highway canal).

The term "pollution" as used in the law is not to be taken in its ordinary signification. In Section 2, paragraph (a), of Republic Act No. 3931, "pollution" is defined in these words:

"(a) 'Pollution' means such alteration of the physical, chemical and/or biological properties of any water and/or atmospheric air of the Philippines, or any such discharge of any liquid, gaseous or solid substance into any of the waters and/or atmospheric air of the country as will or is likely to create or render such waters and/or atmospheric air harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life."

The power to determine the existence of pollution is vested by the law in the Commission. Section 6, among others, gives the Commission the authority to "determine whether a pollution exists in any of the waters and/or atmospheric air of the Philippines." (Section 6(a), No. 1); to "hold public hearings, x x x make findings of facts and determinations all with respect to the violations of this Act or orders issued by the Commission." (Ibid., No. 3); to "institute or cause to be instituted in the court of competent jurisdiction legal proceedings to compel compliance with the provisions of this Act" (Ibid., No. 5); and, "after due notice and hearing, revoke, suspend or modify any permit issued under this Act whenever modifications are necessary to prevent or abate pollution of any water and/or atmospheric air of the Philippines." (Ibid., No. 7.) Section 8 contains explicit provisions as to the authority of the Commission to determine the existence of pollution and to take appropriate court actions to abate or prevent the same. It provides:

"SEC. 8. Proceedings before Commission. — The Commission may, on its own motion; or upon the request of any person, investigate or may inquire, in a manner to be determined by it, as to any alleged act of pollution or the omission or failure to comply with any provisions of this Act or any order of this Commission.

Whenever it appears to the Commission, after investigation, that there has been a violation of any of the provisions of this Act or any order of the Commission, it may order whoever causes such violation to show cause before said Commission why such discharge of industrial wastes or any waste should not be discontinued. A notice shall be served on the offending party directing him or it to show cause before the Commission, on a date specified in such notice, why an order should not be made directing the discontinuance of such violation. Such notice shall specify the time and the place where a public hearing will be held by the Commission or its authorized representatives, and notice of such hearing shall be served personally or by registered mail, at least ten days before said hearing; and in the case of a municipality or corporation such notice shall be served upon the mayor or president thereof. The Commission shall take evidence with reference to said matter and may issue an order to the party responsible for such violation, directing that within a specified period of time thereafter, such

violation be discontinued unless adequate sewage works or industrial wastes disposal system be properly operated to prevent further damage or pollution.

No investigation being conducted or ruling made by the Commission shall prejudice any action which may be filed in court by any person in accordance with the provisions of the New Civil Code on nuisance. On matters, however, not related to nuisance, no court action shall be initiated until the Commission shall have finally ruled thereon and no order of the Commission discontinuing the discharge of waste shall be stayed by the filing of said court action, unless the court issues an injunction as provided for in the Rules of Court."

The last paragraph of the above-quoted provision delineates the authority to be exercised by the Commission and by the ordinary courts in respect of preventing or remedying the pollution of the waters or atmospheric air of the Philippines. The provision excludes from the authority of the Commission only the determination of and the filing of court actions involving violations of the New Civil Code on nuisance. It is expressly directed that on matters not related to nuisance "no court action shall be initiated until the Commission shall have finally ruled thereon." This provision leaves little room for doubt that a court action involving the determination of the existence of pollution may not be initiated until and unless the Commission has so determined the existence of what in the law is considered pollution.

It may not be argued that the above-cited provision refers only to the filing of civil actions, and not to criminal cases as is the one herein involved, there being no basis either in the context in law nor from a consideration of the purpose behind the enactment of the same upon which such a distinction may be made. Indeed, respondents do not seriously question that the court action contemplated in the last paragraph of Section 8 includes criminal proceedings. Respondents merely aver that the aforementioned grant of authority to the Commission is not exclusive of the power of Fiscals to file criminal actions for a violation of the provisions of Republic Act No. 3931.

We are likewise not in accord with the view that the law intended to give concurrent authority to the Commission and Fiscals to prosecute violations of Republic Act No. 3931. It is true that there is no provision expressly declaring that the authority vested in the Commission to prosecute violations of Republic Act No. 3931 is exclusive. Using the same logic, there is neither a provision declaring such authority to be concurrent or may be exercised jointly with Fiscals. The absence of an explicit declaration as to the exclusive authority of the Commission to prosecute violations of the subject law does not detract from the clear intention to make it so, as gathered from the philosophy of the law itself and as gleaned from several provisions of the same. It is clearly deducible from the provision of Section 8 expressly declaring that no court action shall be initiated, except those related to nuisance, until the Commission shall have finally ruled on the alleged act of pollution; and also from Section 6(a), No. 5, which authorizes the Commission to "initiate or cause to be instituted in a court of competent jurisdiction legal proceedings to compel compliance with the provisions of this Act."

As may be seen from the law, the determination of the existence of pollution requires investigation, public hearings and the collection of various information relating to water and atmospheric pollution. (Sections 6, 7, and 8.) The definition of the term "pollution" in itself connotes that the determination of its existence requires specialized knowledge of technical and scientific matters which are not ordinarily within the competence of Fiscals or of those sitting in a court of justice. It is undoubtedly in recognition of this fact that in Section 4 of the law, it is provided that "the basic personnel necessary to carry out the provisions of this Act shall be engineers, chemists, bio-chemists, physicists, and other technicians"; and required in Section 3 that the Chairman of the Commission shall be the Chairman of the National Science Development Board, one of the part-time commissioners shall be a recommendee of the Philippine Council of Science and Technology, and one of the two full-time commissioner shall be a sanitary engineer.

The vesting of authority in an administrative body to determine when to institute a criminal action for a violation of the law entrusted to it for administration or enforcement, to the exclusion of the regular prosecution service of the government, is not new in this jurisdiction. It is recognized in *Yao Lit vs. Geraldez, et al.*, 106 Phil. 545 which upheld the exclusive authority of the Commissioner of Immigration to investigate and impose administrative fines upon violators of the provisions of Republic Act No. 751 for the reason that said official "has better facilities than the prosecuting officials to carry out the provisions of the said Act, the former official being the keeper of the records pertaining to aliens." The same principle has been recognized with respect to the prosecutions of violations of the Anti-Dummy Law (Republic Act No. 1131.) In holding that the City Fiscal of Manila has no authority to prosecute such violations independently of the Anti-Dummy Board, it was said:

"Were the city fiscal or the provincial fiscals who have the power or right to prosecute violations of all laws and ordinances allowed to prosecute violations of the Anti-Dummy Board, there would be no order, concert, cooperation, and coordination between the said agencies of the government. The function of coordination which is entrusted to the Anti-Dummy Board is evident from all the above-quoted provisions of Republic Act No. 1130. There can be no coordination as envisioned in the law unless the Anti-Dummy Board be given the power to direct and control the city fiscal in the prosecutions of the violations of the Anti-Dummy Law." (Rollo, p. 118; 5 SCRA, 428, 433.)

In *R. B. Industrial Development Co., Ltd. vs. Enage* (24 SCRA 365) involving the authority of the Bureau of Forestry over the management and use of public forests and the transfer of licenses for the taking of forest products, this Court has made this pronouncement:

"A doctrine long recognized is that where the law confines in an administrative office the power to determine particular questions or matters, upon the facts to be presented, the jurisdiction of such office shall prevail over the courts." (p. 124, Rollo.)

It is our considered view that the Provincial Fiscal of Rizal lacked the authority to file the information charging the petitioner with a violation of the provisions of Republic Act No. 3931 there being no prior finding or determination by the Commission that the act of the petitioner had caused pollution in any water or atmospheric air of the Philippines. It is not to be understood, however, that a fiscal or public prosecutor may not file an information for a violation of the said law at all. He may do so if the Commission had made a finding or determination that the law or any of its orders had been violated. In the criminal case presently considered, there had been no prior determination by the Commission that the supposed acts of the petitioner had caused pollution to any water of the Philippines. The filing of the information for the violation of Section 9 of the law is, therefore, premature and unauthorized. Concommittantly, the respondent Judge is without jurisdiction to take cognizance of the offense charged therein.

WHEREFORE, the petition is hereby granted and the questioned Orders of the respondent Judge are hereby annulled and set aside. The respondent Judge is ordered to dismiss Criminal Case No. 5984-75 for lack of jurisdiction. No costs.

### **SO ORDERED.**

Teehankee, (Chairman), Makasiar, Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur.

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