

COMMISSION ON ELECTIONS, PETITIONER, VS. HONORABLE MANUEL V. ROMILLO, JR., DISTRICT JUDGE, COURT OF FIRST INSTANCE OF ILOCOS NORTE (BRANCH II), RESPONDENT.

G.R. No. L-36388. March 16, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

In this Petition for Certiorari and Mandamus, petitioner Commission on Elections the (COMELEC) seeks to annul the Order of Respondent Judge, dated October 27, 1972, in so far as it dismissed the Complaint in Criminal Case No. 120-II, and the Order, dated December 20, 1972, which denied petitioner's Motion for Reconsideration.

On April 24, 1972, the COMELEC filed four (4) criminal Complaints against one Eden Asuncion for election offenses committed on Election Day, November 8, 1971, at around 10:00 A.M., at Polling Precinct No. 58, Laoag City. The four (4) cases were filed with said Court for preliminary investigation pursuant to Sections 234 and 236 of the Election Code of 1971 (Republic Act No. 6388).[1]

The criminal cases filed were:

(1)

Criminal Case No. 119-II, for violation of Section 61 of the Election Code of 1971, by carrying a gun inside the said polling place on the same date and time, while the voting was in progress;

(2)

Criminal Case No. 120-II, for violation of Section 172 of the Election Code of 1971, by unlawfully entering said polling place on the same date and time;

(3)

Criminal Case No. 121-II, for violation of Sec. 231(a), par. 25 of the Election Code of 1971, by employing unlawful means or scheme to discover or read the contents of prepared ballots by voters of said polling place on the same date and time;

(4)

Criminal Case no. 122-II, for violation of Sec. 231(a), par. 32 of the Election Code of 1971, by conducting himself in a disorderly manner as to interrupt the voting proceedings in said polling place on the same date and time.

After preliminary investigation, respondent Judge issued the Order, dated October 27, 1972, dismissing Criminal Cases Nos. 119-II, 121-II and 122-II for insufficiency of evidence, and quashing the Complaint in Criminal Case No. 120-II, which is the questioned portion of the Order, on the ground that the mere presence of an unauthorized person in the polling place does not constitute an offense.

COMELEC's Motion for Reconsideration was denied by respondent Judge in his Order dated December 20, 1972, which Order is also challenged herein.

The Complaint in Criminal Case No. 120-II for Preliminary Investigation reads:

"Pursuant to Section 2, Rule 110, Revised Rules of Court, in relation to Section 234 and 236 of the Election Code of 1971, the undersigned accuses EDEN ASUNCION of Laoag City for violation of Section 172 of Republic Act No. 6388, committed as follows:

"That on November 8, 1971, Election Day, around 10:00 a.m. in Laoag City and within the jurisdiction of this Honorable Court, while the voting was going on in Precinct No. 58 located at Balatong Elementary School Building in Barrio Balatong, Laoag City, the accused EDEN ASUNCION who is not authorized to enter a polling place, did, then and there, unlawfully enter the polling place of said precinct.

CONTRARY TO LAW."

Section 172, paragraph I of the Election Code of 1971, alleged to have been violated, provides:

"SEC. 172. Persons allowed in and around the polling place. - During the voting, no person shall be allowed inside the polling place, except the members of the board of inspectors and their substitutes, the watchers, the representatives of the Commission, the voters casting their votes, the voters waiting for their turn to get inside the booths whose number shall not exceed twice the number of booths and the voters waiting for their turn to cast their votes whose number shall not exceed forty at any one time. The watchers shall stay only in the space reserved for them it being illegal for them to enter places reserved for the voters or for the board, or to mingle and talk with the voters within the polling place.

x x x "

Violation of the foregoing provision is classified as a serious election offense, thus:

"Sec. 230. Election offenses and their classification. - Violation of any of the provisions, or pertinent portions of sections x x x one hundred and seventy-two x x x shall be serious election offenses; x x x "

the penalty prescribed therefor being:

"SEC. 233. Penalties. - Any one found guilty of a serious election offense shall be punished with imprisonment of not less than six years and one day but not more than twelve years; x x x "

From the tenor of the foregoing provisions, it is clear that Section 172, in relation to Sections 230 and 233 of the Revised Election Code of 1971, is penal in character, contrary to the ruling of respondent Judge.

Sections 172, 230 and 233 of the said 1971 Election Code have been reproduced in Sections 137, 179 and 181 of the 1978 Election Code, and in Sections 192, 262 and 264 of the Omnibus Election Code.

But while respondent Judge may have erred in his rationalization, the quashal of the complaint in Criminal Case No. 120-II will have to be upheld. The same reason given by respondent Judge for the dismissal of Criminal Cases Nos. 119-II, 121-II and 122-II, that is, for insufficiency of evidence, applies. Quoted in the dismissal Order is the following testimony of the Chairman of the Board of Election Inspectors of Precinct No. 58, Laoag City, showing the absence of a prima facie case against the accused.

'Q -

As per telegram of the Comelec, Manila, dated February 10, 1972, affidavits were submitted by Marcelino Dajugar and Lucille Guerrero of Barrios Balatong and No. 19, respectively, of Laoag City charging one, Eden Asuncion, of having entered the polling place and voting booths of Precinct No. 58, with firearms and then watched voters fill up ballots and read the contents thereof. What can you say about that?

‘A -

All I can say is that when I saw Eden Asuncion tried (sic) to enter the voting booth, I stopped him and sent him out and he did so; I never saw him carrying a firearm. With respect to the charges that Eden Asuncion watched voters fill up their ballots and reading the contents of the same, I never saw him committed (sic) those acts because when he tried to enter the voting booths I called his attention to go out and he went out.’ (Exhibit "1")

Under those circumstances, by no means can it be concluded that Eden Asuncion had violated Section 172 of the Election Code. The secrecy and sanctity of the ballot sought to be protected by the said provision has not been violated.

WHEREFORE, the Petition for Certiorari and Mandamus is denied. No costs.

SO ORDERED.

Yap, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] "Sec. 234. Jurisdiction of Courts of First Instance. - The Courts of First Instance shall have exclusive original jurisdiction to make preliminary investigations, issue warrants of arrest and try and decide any criminal action or proceeding for violation of this Code. From its decision an appeal shall lie as in other criminal cases.

"Sec. 236. Prosecution of election offenses. - The Commission shall, through its duly authorized legal officers, have the power to investigate and prosecute before the Court of First Instance on preliminary investigation all election offenses."

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