

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LORENZO PADERNA Y GAMBOA, DEFENDANT-APPELLANT.

G.R. No. L-28518. January 29, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

The appellant Lorenzo Paderna y Gamboa was prosecuted in the Court of First Instance of Negros Occidental for unlawful possession of four packs of untaxed imported cigarettes known locally as "blue seal" cigarettes. The information, filed on August 8, 1966 and denominated "for violation of Rep. Act No. 4097," charged.

"That on July 25, 1966, in the evening, in La Carlota City, Province of Negros Occidental, Philippines ... the above-named accused, without justifiable cause or reason intentionally, feloniously, criminally and illegally had in his possession four (4) packages of UNTAXED BLUE SEALS CIGARETTES the specific tax of which in the amount of P4,224 has not been paid, in violation of law."

After trial, the court found Paderna "guilty beyond reasonable doubt of violation of Republic Act 4097" and sentenced him to pay a fine of P200 and suffer imprisonment of 4 months and 1 day.

He then appealed to the Court of Appeals where he moved to quash the information on the ground that the trial court did not have jurisdiction to try the case. He contended that Republic Act 4097, which punished the unlawful possession of untaxed articles with a "fine of not less than ten times the amount of the specific tax due on the articles found but not less than two hundred pesos nor more than five thousand pesos and . . . imprisonment of from four months and one day to four years and two months," had been amended by Republic Act 4713, effective on June 18, 1966, and that the penalty for the same offense was reduced to a "fine of not less than fifty pesos nor more than two hundred pesos and imprisonment of not less than five days nor more than thirty days, if the appraised value . . . of the article does not exceed five hundred pesos." The result is that the case was now cognizable only by the city court of La Carlota City, this, according to the appellant, for the reason that criminal statutes should be given retroactive effect in so far as they favor the accused.

Upon the other hand, the Solicitor General contended that the CFI of Negros Occidental, having validly acquired jurisdiction under Republic Act 4097, could not thereafter be divested of it.

In its resolution of December 20, 1967 the Court of Appeals certified the case to us, because in issue is the jurisdiction of a court.

In our view both the appellant and the Solicitor General are in error.

1. To begin with, what the appellant should have filed is a motion to dismiss this case, not a motion to quash the information. The rule that objection to the jurisdiction of a court may be raised at any stage of the proceedings and is not waived by a failure to file a motion to quash,[1] does not mean that a motion to quash based on that ground may be filed at any stage of the action. Under the rules of criminal procedure, a motion to quash an information may be filed only before the defendant enters his plea.[2] Nevertheless, we will brush aside this technicality, and

treat the appellant's motion as one to dismiss this case for lack of jurisdiction.

2. Republic Act 4097, which took effect on June 19, 1964, and Republic Act 4713, which took effect on June 18, 1966, are both amendatory statutes relating to section 174 of the National Internal Revenue Code. It is not the principal purpose of Republic Act 4713 to reduce the penalty earlier provided by Republic Act 4097, for while the reduction in penalty may be the result of its enactment in this particular case it is so only incidentally. Rather, the purpose of Republic Act 4713 is to draw a distinction between unlawful possession of untaxed imported articles and unlawful possession of untaxed locally manufactured articles. A graduated scale of penalties is provided for the former even as the same penalty (introduced by Republic Act 4097) is maintained with respect to the latter. Thus, section 174 of the Tax Code, as amended by Republic Act 4713, now reads:

"SEC. 174. Unlawful possession or removal of articles subject to specific tax without payment of tax. - Any person who owns and/or is found in possession of imported articles subject to specific tax, the tax on which had not been paid in accordance with law or any person who owns and/or is found in possession of imported tax exempt articles other than those to whom they are legally issued shall be punished by:

"1. A fine of not less than fifty pesos nor more than two hundred pesos and imprisonment of not less than five days nor more than thirty days, if the appraised value, to be determined in the manner prescribed in the Tariff and Customs Code, including duties and taxes, of the article does not exceed five hundred pesos.

"2. A fine of not less than six hundred pesos nor more than five thousand pesos and imprisonment of not less than six months and one day nor more than four years, if the appraised value, to be determined in the manner prescribed in the Tariff and Customs Code, including duties and taxes, of the article exceeds five hundred pesos but does not exceed fifty thousand pesos.

"3. A fine of not less than five thousand pesos nor More than eight thousand pesos and imprisonment of not less than four years and one day for more than eight years, if the appraised value to be determined in the manner prescribed in the Tariff and Customs Code, including duties and taxes, of the article is more than fifty thousand pesos but does not exceed one hundred fifty thousand pesos.

"4. A fine of not less than eight thousand pesos nor more than ten thousand pesos and imprisonment of not less than eight years and one day nor more than twelve years, if the appraised value, to be determined in the manner prescribed in the Tariff and Customs Code, including duties and taxes, of the article exceeds one hundred fifty thousand pesos.

* * * *

"Any person who is found in possession of locally manufactured articles subject to specific tax, the tax on which has not been paid in accordance with law, or any person who is found in possession of such articles which are exempt from specific tax other than those to whom the same is lawfully issued shall be punished with a fine of not less than ten times the amount of the specific tax due on the articles found but not less than two hundred pesos nor more than five thousand pesos and imprisonment of from four months and one day to four years and two months. . . ."

In this case the charge is for unlawful possession of untaxed "blue seals cigarettes" of an appraised value of less than P500, which makes the case fall under paragraph of section 174, but, as already stated, this is a mere happenstance, and a general statement that the latest amendment reduced the penalty for the offense is unwarranted.

3. Nor is it correct to say that since the amendment of section 174 of the Tax Code by Republic Act 4713, as applied to the facts of this case, is favorable to the accused it should be given retroactive effect in determining the jurisdiction of the trial court. It is now a settled rule of law that the jurisdiction of a court is determined by the

statute in force at the time of the commencement of the action,[3] and that once acquired, jurisdiction is retained until the case is finally terminated. In this respect, the Solicitor General is correct. But the Solicitor General nonetheless has overlooked the important and cogent fact that both the commission of the offense and the filing of the information in this case took place after the enactment of Republic Act 4713 on June 18, 1966. Thus, the offense is alleged to have been committed on July 25, 1966; the information was filed by the city attorney on August 8, 1966. Consequently, jurisdiction over this case should be determined under the provisions of Republic Act 4713. Since the penalty provided by this latter statute is a fine of not less than P50 nor more than P200 and imprisonment of not less than 5 nor more than 30 days because the value of the cigarettes does not exceed P500, this case falls within the original and exclusive jurisdiction of the city court of La Carlota City.[4]

Indeed, this case is in substance similar to *People v. Pegarum*,[5] in which this Court made the following findings and pronouncements:

"Before the Revised Penal Code took effect, the penalty provided by law for the offense alleged to have been committed by the appellant was *arresto mayor* in its medium degree to *presidio correccional* in its minimum degree, or from two months and one day of *arresto mayor* to two years and four months of *presidio correccional*. The penalty prescribed in the Revised Penal Code for the same offense is *arresto mayor* in its medium and maximum periods, or from two months and one day to six months of *arresto mayor*. This is the penalty applicable in this case. (Revised Penal Code, article 22)

"It is, thus, clear that under the law in force at the time the crime was committed, the Court of First Instance had jurisdiction to try the case; while under the law in force at the time the complaint or information was filed, the case was originally cognizable by the justice of the peace. The specific question thus raised is whether the jurisdiction of a court to try a criminal action is to be determined by the law in force at the time of the commission of the crime, or by that in force at the time of instituting the action. 'As a general rule the jurisdiction of a court depends upon the state of the facts existing at the time it is invoked, and if the jurisdiction once attaches to the person and subject matter of the litigation, the subsequent happening of events, although they are of such a character as would have presented jurisdiction from attaching in the first instance will not operate to oust jurisdiction already attached. (16 C.J., sec. 246, p. 181) In the instant case, jurisdiction was invoked for the first time when the complaint was filed in the justice of the peace court on February 6, 1932. That was after the Revised Penal Code took effect. By reason of the penalty which might be imposed, jurisdiction to try the case was already vested in the justice of the peace. Hence, the Court of First Instance acted beyond its jurisdiction in trying the case."

4. Jurisdiction over this case therefore belongs exclusively to the city court of La Carlota, pursuant to section 81 of its charter[6] in relation to section 87(c) of the Judiciary Act of 1948. But what of the jurisdiction of the newly-created circuit criminal courts? Section 1 of Republic Act 5179, which took effect on September 8, 1967, provides in part that circuit criminal courts shall have -

"limited jurisdiction, concurrent with the regular court of first instance, to try and decide the following criminal cases falling under the original and exclusive jurisdiction of the latter:

* * *

"c. Violations of sections 3601, 3602, and 3604 of the Tariff and Customs Code and sections 174, 175 and 345 of the National Internal Revenue Code. (emphasis supplied)

The jurisdiction of the circuit criminal courts is thus dependent not only on the type of cases but also on the penalties provided for those cases. Inasmuch as the case at bar falls within the exclusive and original jurisdiction of the city court, it cannot, even if it involves a violation of section 174 of the Tax Code, be taken cognizance of by circuit criminal courts the jurisdiction of which is concurrent with that of courts of first instance in criminal

cases where the latter's jurisdiction is original and exclusive.

ACCORDINGLY, the motion is granted, and this case is dismissed, without prejudice to the filing of another information for the same offense in the city court of La Carlota City.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.

[1] Rule 117, see 10.

[2] Id. sec. 1.

[3] E.g.: Aquizap v. Basilio, L-21293, Dec. 29, 1967; Rilloraza v. Arciaga, L-23848, Oct. 31, 1967; People v. Pegarum, 58 Phil. 715 (1933).

[4] Jud. Act of 1948, secs. 44(f) and 87(c); Esperat v. Avila, L-25922, June 30, 1967.

[5] Note 3, *supra*, at 716-17.

[6] Rep. Act 4585.

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