

**SERGIO OSMEÑA, JR., PETITIONER, VS. SECRETARY OF JUSTICE,
JOSE S. AMADORA, FISCAL, CITY OF CEBU, HON. GUILLERMO P.
VILLASOR, PRESIDING JUDGE, COURT OF FIRST INSTANCE OF CEBU,
BR...**

G.R. No. L-32033. September 30, 1971

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

Petitioner is accused of violation of the Anti-Graft and Corrupt Practices Act in connection with the Cebu Reclamation Project, by virtue of an information filed on March 1, 1966, in Criminal Case No. V-10874 of the Court of First Instance of Cebu. The case was assigned by means of raffle to Branch II of said court, then presided over by Judge Amador E. Gomez. Having previously decided the civil case involving the project in question, which is also the subject-matter of the anti-graft case, upholding the legality of the said project, Judge Gomez voluntarily disqualified himself on April 22, 1968, from hearing the criminal action.

A re-raffle was held, as a result of which the case was assigned to Branch I of the court, presided over by respondent Judge Guillermo P. Villasor. At the arraignment on September 25, 1968, petitioner entered a plea of not guilty.

Thereafter, the Circuit Criminal Court of Cebu was organized. Criminal cases pending before the different branches of the Court of First Instance of Cebu belonging to the category of cases enumerated in RA No. 5179, which may be taken cognizance of by the Circuit Criminal Court, including the anti-graft case hereinbefore mentioned, were raffled pursuant to Administrative Order No. 258 of the Secretary of Justice, dated September 11, 1968, with the end in view of transferring thirty (30) of such cases to the Circuit Criminal Court of Cebu to constitute the latter's initial cases. The result of that raffle (the third for this case) was that the case was to continue to pertain to Branch I, presided over by Judge Villasor.

Thereafter, Judge Villasor set the case for hearing several times; but each time a postponement was had upon repeated motions of the prosecution headed by respondent Fiscal Jose S. Amadora. Then on January 14, 1969, just before the scheduled hearings which had been re-set for January 28, 29, 30 and 31, 1969, the said Fiscal filed a motion to transfer the case to the Circuit Criminal Court. This move was opposed by petitioner. Judge Villasor denied the motion on the ground that, in accordance with the raffle held for distribution purposes, the aforementioned anti-graft case was to be retained by Branch I, presided over by him. Hearing was set for March 21, 1969.

On the day of the trial, respondent Fiscal Amadora obtained another postponement by virtue of a telegram from the Undersecretary of Justice, which was shown to the Presiding Judge, ordering another raffle of that one case so as to transfer it to one court - the Circuit Criminal Court.

The trial of the case was re-set again for April 28 and 29, 1969. Respondent Fiscal filed a second motion to raffle

the case for transfer to the Circuit Criminal Court, for which reason the hearing of the case was again suspended. Then the Secretary of Justice issued Memorandum Circular No. 53 of July 22, 1969, authorizing the transfer to the Circuit Criminal Courts of all anti-graft cases pending in all Courts of First Instance, actual trial of which had not yet been commenced.

Petitioner persisted in his objection to the transfer of the case. He was given time by respondent Judge Villasor within which to seek a reconsideration of Memorandum Circular No. 53 of the Secretary of Justice; otherwise, the anti-graft case in question would be transferred to the Circuit Criminal Court.

On September 12, 1969, Fiscal Amadora filed another motion (urgent) to transfer the case to the Circuit Criminal Court so that trial could be held immediately; but on September 19, 1969, respondent Judge Villasor issued an order voluntarily inhibiting himself from hearing the case and directing "the Clerk of Court to take up with the Executive Judge the matter of re-assigning this case in the usual manner among the other branches of this Court."

In the meantime, or on September 8, 1969, petitioner, thru his counsel, asked the Secretary of Justice, in writing, if the Anti-graft case in question was covered by his Memorandum Circular No. 53; and on September 15, 1969, the Secretary of Justice replied to the effect that his aforesaid circular did not have "the least intention of singling out any particular case, much less criminal case No. V-10874. x x x Indeed, as this Department said in a letter dated February 5, 1969 to Fiscal Amadora: 'The Department finds no sufficient reason to authorize the transfer to the Circuit Criminal Court of the particular case (No. V-10874) mentioned in (your) request. On the other hand, if the Circuit Criminal Court would not object to the transfer of additional cases in excess of the 30 already transferred, this Department would authorize the transfer by raffle of such number as would be agreeable to the Court.'" However, this case was transferred just the same without benefit of raffle, pursuant to a memorandum circular, dated January 26, 1970, signed by all the judges of the Court of First Instance of Cebu, except Judge Villasor, executed "[i]n the light of the intentions of Memorandum Circular No. 53 of the Department of Justice," directing all Branch Clerks "to turn over to the Clerk of Court, in order to effect the transfer to the Circuit Criminal Court of all cases involving violations of the Anti-Graft and Corrupt Practices Act and violations of the Tariff and Customs Code and Sections 174, 175 and 345 of the National Internal Revenue Code, pending in our Salas, the actual trial of which has not yet been commenced." The case is now docketed in the Circuit Criminal Court of Cebu as Criminal Case No. CCC-XIV-47.

Petitioner moved on September 25, 1969, to reconsider the order of voluntary disqualification of Judge Villasor because it was not based on any legal ground; but the same was denied in an order of January 30, 1970. Thereafter, respondent Judge Francisco Ro. Cupin of the Circuit Criminal Court scheduled the trial of the anti-graft case for June 1, 2, 3 and 4, 1970.

On April 10, 1970, petitioner moved for the return of the case to Branch I of the Court of First Instance of Cebu, and for the cancellation of the scheduled dates of trial on June 1, 2, 3 and 4, 1970; respondent Fiscal opposed. On June 1, 1970, respondent Judge Cupin of the Circuit Criminal Court denied petitioner's motion and ordered the trial to proceed as scheduled June 2, 3 and 4. He likewise denied the opposition previously filed by petitioner to the appearance of a private prosecutor in the case.

It is in this factual backdrop that petitioner came to this Court by means of the present special civil action of certiorari, prohibition and mandamus, praying that Judge Villasor's order of voluntary inhibition be set aside; that the order for the reassignment and/or transfer of Criminal Case No. V-10874 to the Circuit Criminal Court, as well as Memorandum Circular No. 53 of the Department of Justice insofar as it concerns the present anti-graft case, be annulled; and that the order of the Circuit Criminal Court scheduling trial of the case and denying petitioner's opposition to the appearance of a private prosecutor be likewise annulled. Petitioner also prays that the

case be returned to the Court of First Instance of Cebu, and that Judge Villazor be ordered to resume or continue taking cognizance and jurisdiction of the same. Finally, petitioner seeks issuance of a writ of preliminary injunction against Circuit Judge Cupin, enjoining him, in the meanwhile, from proceeding with the trial of the anti-graft case against petitioner. On June 16, 1970, we issued a temporary restraining order.

The issue of whether or not Judge Villazor abused his discretion in voluntarily inhibiting himself from the trial of the anti-graft case against petitioner has become moot and academic by virtue of his transfer from Cebu to Manila.

We come to the more substantial issue of whether or not the transfer of the present anti-graft case to the Circuit Criminal Court of Cebu was in excess of jurisdiction or in grave abuse of discretion.

The transfer was effected by virtue of a memorandum circular, dated January 26, 1970, signed by all the judges of the Court of First Instance of Cebu except Judge Villazor. The said circular itself states that it was made "[i]n the light of the intentions of Memorandum Circular No. 53 of the Department of Justice." The memorandum circular therein mentioned, dated July 22, 1969, authorizes the transfer to the circuit criminal courts of all anti-graft cases pending in all courts of first instance, actual trial of which had not yet been commenced. In directing their respective Branch Clerks to turn over to the Clerk of Court certain cases - including the present case - for transfer to the Circuit Criminal Court of Cebu, the judges were, therefore, in large measure, if not entirely, motivated by Memorandum Circular No. 53.

In *People vs. Gutierrez, etc., et al.*, L-32282-83, November 26, 1970, we said:

"We agree with respondents that the present laws do not confer upon the Secretary of Justice power to determine what court should hear specific cases. Any such power, even in the guise of administrative regulation executive affairs, trenches upon the time-honored separation of the Executive and the Judiciary; and while not directly depriving the courts of their independence, it would endanger the rights and immunities of the accused or civil party. It could be much too easily transformed into a means of predetermining the outcome of individual cases, so as to produce a result in harmony with the Administration's preferences. The creation by Republic Act No. 5179 of the Circuit Criminal Courts for the purpose of alleviating the burden of the regular Courts of First Instance, and to accelerate the disposition of criminal cases pending or to be filed therein, nowhere indicates an intent to permit the transfer of preselected individual cases to the circuit courts. Neither do Administrative Orders Nos. 258 and 274 evidence any such intention; particularly since Administrative Order No. 258, Series of 1968, in Section 2 of its Part V, as confirmed by Administrative Order No. 274 of the same year, in Section 3 of Part III thereof, provides that the transfer to Circuit Criminal Courts of cases pending in the regular Courts of First Instance should be effected by raffle, chance here operating to nullify any executive arbitration of what particular cases should be apportioned to either tribunal. x x x."

While Memorandum Circular No. 53 of the Department of Justice does not, on its face, single out the anti-graft case against petitioner, the peculiar facts surrounding the transfer of said case to the circuit court lead to no other conclusion than that the transfer was in effect one of a preselected case. Note that although petitioner was arraigned way back on September 25, 1968, before Judge Villazor, who set the case for trial several times, trial had to be postponed each time on motion of Fiscal Amadora. Note also that even if the raffle held pursuant to Administrative Order No. 258 resulted - as Fate would have it - in the retention of the case by the court of first instance, the said court, much as it wanted to, could not proceed to trial because on the date scheduled therefor, Fiscal Amadora again obtained a postponement by flashing in open court a telegram from the Undersecretary of Justice ordering another raffle of the present anti-graft case for transfer to the circuit court. We join petitioner in wondering how chance could come into play by raffling one case in one court for transfer to another court. The postponement was followed by the filing of another motion to raffle the case for transfer to the circuit court, which again resulted in the suspension of the trial. Thus, when Memorandum Circular No. 53 was issued a few

months thereafter, or on July 22, 1969, authorizing the transfer to the circuit criminal courts of all anti-graft cases actual trial of which had not yet been commenced, the necessary groundwork had already been laid to ensure that the anti-graft case against petitioner would be among those that could be transferred to the circuit court on the strength of the circular; the repeated postponements of the trial of the case on the Fiscal's motions had seen to that.

Although on September 15, 1969, in answer to petitioner's query as to whether or not the case against him was covered by Memorandum Circular No. 53, the Secretary of Justice assured petitioner that if more cases would be transferred to the circuit court, the cases to be transferred would be determined by raffle, no such raffle ever took place. What came next - after Judge Villasor had inhibited himself on September 19, 1969 was the circular of the other judges which, far from giving weight and effect to the abovementioned assurance of the Secretary of Justice, in effect accomplished in one broad sweep what, previously, chance could not bring about. Indeed, it did little to accord respect to the valid order of Judge Villasor wherein he had expressly contemplated the re-assignment of the case "in the usual manner"--meaning by raffle--"among the other branches of this Court." This, apparently, is the reason why Judge Villasor could not, in conscience, give his imprimatur to his colleagues' circular.

Considering that the repeated postponements, on the Fiscal's motions, of the trial of Criminal Case No. V-10874 of the Court of First Instance of Cebu, were obviously intended to place the case within the coverage of what later came out as Memorandum Circular No. 53; that the memorandum circular signed by the judges was made [i]n the light of the intentions of Memorandum Circular No. 53;" that the Secretary of Justice, from whose Office the said memorandum circular emanated, had expressly stated - in connection with petitioner's case - that any transfer of additional cases to the Circuit Criminal Court of Cebu pursuant to Memorandum Circular No. 53 would be determined by raffle; that contrary to such official commitment no raffle was held; and that no serious and weighty reasons similar to those which prompted this Court in *People vs. Gutierrez, etc., et al., supra*, to exercise its inherent power to decree the transfer of trial from one court to another, obtain in the instant case, we hold that the transfer of Criminal Case No. V-10874 from the Court of First Instance of Cebu to the Circuit Criminal Court is null and void.

The remaining issue before us relates to the denial by respondent Judge Cupin of the Circuit Criminal Court of petitioner's opposition to the appearance of Atty. Vicente S. del Rosario as a private prosecutor in the anti-graft case in behalf of Mr. Manuel O. Ponce. The Judge denied the opposition on the ground that the information alleges that damages have been caused to Mr. Ponce.

Judge Cupin must have in mind charges Nos. 1 and 2 of the information. Under the first charge, petitioner is alleged to have violated Sec. 3, par. (e), of RA No. 3019, i.e., causing undue injury to any party, including the Government, in that petitioner, taking advantage of his position as Mayor of Cebu City, "Committed acts of harassment and embarrassment against said Manuel O. Ponce by (a) ordering the prosecution of said Manuel O. Ponce by the City Fiscal of Cebu for the violation of building ordinance of Cebu City; and (b) other ordinances that took place more than ten (10) years ago, by ordering thru Secretary of Health, Manuel A. Cuenco, who obtained his appointment on such position thru accused's political influence, the exhumation of the dead body of the wife of said Manuel Ponce, despite the fact that it was legally buried more than a year ago in the Ponce Island, the manmade island constructed with great sacrifice of said Mr. Ponce and his family, and finally causing the destruction of said island to the tremendous financial and material losses of said Mr. Ponce by having said island buried under silt and mud by the dredging operation of the Dillingham dredging machine rented by said Cebu Development Corporation and Essel, Inc., in the Cebu Reclamation area." Under the second charge petitioner is alleged to have violated Sec. 3, par. (f), of the same law, in that he neglected or refused, after due demand or request, without sufficient justification, to act within a reasonable time, by preventing "Manuel O. Ponce from securing a Mayor's permit to exercise his calling or profession as boat builder for the year 1965 in order to drive

him out of the Ponce Island, which was badly coveted by the accused, being included in the area of the Cebu Reclamation Project, where said Mr. Ponce was having his dry-docking, boat building and other business," for the purpose of favoring petitioner's own interest or giving undue advantage to another interested party.

Since we have already held above that the order transferring the present anti-graft case to the Circuit Criminal Court is null and void, it follows that all proceedings had before the said court - including that in connection with Judge Cupin's order denying petitioner's opposition to the appearance of a private prosecutor - are likewise void and of no legal effect. It is therefore unnecessary for us for the present purpose to pass upon the legality of such order. Considering, however, that proceedings will have to continue in the Court of First Instance of Cebu after the return of this case to that court where this same issue may again crop up, it becomes incumbent upon us to make a ruling thereon for the guidance of the parties and the court below.

It appears that Manuel O. Ponce has previously filed two civil cases against petitioner in connection with the Cebu Reclamation Project. In one of them, Civil Case No. R-7978, Manuel O. Ponce, et al. vs. City of Cebu, et al., Mr. Ponce lost in the Court of First Instance of Cebu, which held Mr. Ponce and the other plaintiffs to "have no personal interest that stands to be affected by the reclamation work undertaken by the herein defendants," because Ponce Island "is definitely within the foreshore area over which the City of Cebu has unquestioned authority to reclaim under Republic Act No. 1899." In the other case, Civil Case No. R-9455, Manuel O. Ponce, et al vs. Sergio Osmeña, Jr., et al., the same court, in a decision which is now on appeal to this Court absolved Osmeña from liability and dismissed "the complaint for damages and insofar as the reclamation by the defendants of the foreshore proper which includes the Ponce Island is concerned." The filing of those cases by Mr. Ponce was a positive step toward the protection of his interest and the recovery of indemnity from petitioner. On account thereof, and considering that whatever injury or loss Mr. Ponce may have personally suffered from the acts of petitioner alleged in the present information could only stem from his right to Ponce Island, over which, as already stated, Mr. Ponce has already filed two civil cases, it must be concluded that he has no more interest of a civil character to protect in the present criminal proceedings. Respondents shield themselves behind the terse argument that "in cases of violation of the Anti-Graft and Corrupt Practices Act the offended party is really the entire populace and not only the Government." Even assuming that Mr. Ponce is an offended party in the present case on account of the allegations of the information earlier referred to and quoted, he lost his right to intervene when he instituted the two civil actions in court, because by so doing his special interest in the criminal case had disappeared (*Gorospe, et al. vs. Gatmaitan, et al.*, 99 Phil., 600, citing *People vs. Velez*, 77 Phil., 1026, and *People vs. Olavides*, 80 Phil., 280). In the premises, the appearance of a private prosecutor on behalf of Mr. Manuel O. Ponce has become indefensible.

WHEREFORE, the order transferring Criminal Case No. V-10874 of the Court of First Instance of Cebu to the Circuit Criminal Court is declared null and void; all proceedings had before the said circuit court in its Criminal Case No. CCC-XIV-47 particularly the order of June 1, 1970, are likewise declared null and void; and respondent Judge Francisco Ro. Cupin is ordered to cause the return of the said case to the Court of First Instance of Cebu for another raffle, together with other cases from the different salas thereof, for the purpose of assigning additional cases to the Criminal Circuit Court presided over by him, in accordance with Memorandum Circular No. 53 of the Department of Justice. No pronouncement as to costs.

Concepcion, C.J., Dizon, Makalintal, and Zaldivar, JJ., concur.

Reyes, J.B.L., J., concurs with this opinion and that of Justice Barredo.

Castro, J., concurs in the opinion passed by Justice Villamor and in the second paragraph of the concurring opinion of Justice Barredo.

Fernando, J., concurs in the opinion and in the second paragraph of the concurring opinion of Justice Barredo.

Barredo, J., concurs in separate opinion.
Teehankee and Makasiar, JJ., no part.

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CONCURRING OPINION

BARREDO, J.:

I concur in the result.

My principal reason for my vote in favor of the judgment in this case is that I cannot find any justification for allowing the Secretary of Justice to have any part at all in the distribution or assignment of cases among the different branches of any Court of First Instance, of which the corresponding Circuit Criminal Court is one. I took this view in my concurring opinion in the case of *People v. Gutierrez*, cited in the main opinion of Justice Villamor, and I cannot see why I must opine differently now. It is true that the transfer of the case against petitioner herein involved was directed by a circular of the judges of the Court of First Instance of Cebu, which is how it should be, but it appears, however, that the said circular is expressly premised on the "intentions of Memorandum Circular No. 53 of the Department of Justice", and naturally, matters would be worse if such an attitude on the part of the judges were to be sanctioned by this Court. It is bad enough if the Secretary should interfere with the judges, but it is definitely the end of judicial independence if the judges themselves are to act pursuant to the intentions of the Department of Justice in the distribution and assignment of cases among them.

I do not have to share the view expressed in the main opinion as to the purposeful tendency of the maneuvers of the fiscal in trying to see to it that the transfer of petitioner's case to the Circuit Criminal Court is effected, but I feel very strongly that any suspicion engendered by the circumstances recounted by Justice Villamor should not be allowed to develop into a definite conclusion, and the wisest step to avoid such an eventuality is to leave the case against petitioner in the hands of any of the judges of the regular courts who should be chosen by raffle.

Insofar as the appearance of Atty. Vicente del Rosario as private prosecutor is concerned, I agree that the private interests of Mr. Manuel O. Ponce affected by the allegedly illegal acts of petitioner may best be protected in the civil case filed by said party against petitioner now pending on appeal in this Court and wherein Atty. del Rosario is one of his lawyers.

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