

**PEOPLE OF THE PHILIPPINES AND MANUEL GEROMO, PETITIONERS,
VS. HON. GREGORIO CONSULTA, AS ACTING MUN. JUDGE OF
GUINOBATAN, ALBAY, AND LEA B. OLAGUER, RESPONDENTS.**

G.R. No. L-41251. March 31, 1976

Ponente: MARTIN, J.

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MARTIN, J.:

This is a petition for review of the Order of the Municipal Court of Guinobatan, Albay in Criminal Case No. 4738, entitled People of the Philippines vs. Lea B. Olaguer dismissing the complaint in said case on the ground that the same will place private respondent in double jeopardy.

On June 23, 1973, petitioner Manuel Geromo filed with the Municipal Court of Guinobatan, Albay, a complaint (Criminal Case No. 4578) against private respondent Lea B. Olaguer charging her with violation of the Usury Law (Act 2655, Sec. 1 in relation to Section 19) allegedly committed as follows:

"That in or about November, 1972, at Guinobatan, Albay, Philippines, and within the jurisdiction of the Hon. Court, the above-named accused did then and there willfully, unlawfully, and feloniously lend money and goods to the undersigned in the total sum of P560.00 and after payment of P30.00 leaving a balance of P530.00, charged a usurious rate of interest of .03% per month and for eight (8) months from November, 1972 to June, 1973, or a total of P607.20, to the damage and prejudice of the undersigned.

"That by reason of the aforesaid criminal act committed by the accused, the undersigned suffered and will suffer damages of no less than P10,000.00 including attorney's fees and incidental expenses."

Upon arraignment, private respondent pleaded not guilty and immediately moved orally to quash the complaint on the ground that it charges no offense.

On July 17, 1973, pursuant to the order of the Municipal Court of Guinobatan, Albay, private respondent filed a written motion to quash the aforesaid complaint alleging "that the allegations contained in the above-entitled case or the facts charged do not constitute an offense (Paragraph (e), Sec. 2, Rule 117 of the New Rules of Court).

On January 31, 1974, the Municipal Court of Guinobatan, Albay ordered the dismissal of the complaint against private respondent. Petitioner Manuel Geromo filed a motion to reconsider said order and/or motion to reinstate or accept an amended complaint against private respondent but the same was denied. As a result petitioner filed a petition for certiorari in the Court of First Instance of Albay (Case No. 5003) assailing the order of the Municipal Court of Guinobatan, Albay, dismissing the complaint he filed against private respondent.

On June 7, 1974, the Court of First Instance of Albay dismissed the petition for certiorari filed by petitioner although it made known to petitioner that another complaint may be filed against private respondent in accordance with the provisions of Section 3, Rule 117.

On June 17, 1974, petitioner filed with the Municipal Court of Guinobatan, Albay, the respondent Court herein, another complaint (Criminal Case No. 4738) for violation of the Usury Law against private respondent. But the

respondent Court dismissed the same upon a motion to quash filed by private respondent on the ground that the filing of the second complaint will put the accused in double jeopardy. Petitioner filed a motion for reconsideration of said order but the same was denied by the respondent Court.

Hence, this instant petition for certiorari, which in a resolution dated November 5, 1975, this Court treated as special civil action, considered the comments of private respondent as answer and required both parties to file simultaneous memoranda. In the same resolution the People of the Philippines was considered impleaded as principal party petitioner.

The main issue in this petition is whether or not the quashal or dismissal of Criminal Case No. 4578 of the Municipal Court of Guinobatan, Albay, against private respondent upon motion to quash filed by the latter and the subsequent filing of another complaint (Criminal Case No. 4738) with the respondent Court against her for the same offense had placed private respondent in double jeopardy.

1. The posture taken by the respondent Court that the dismissal of the complaint in Criminal Case No. 4578 against private respondent is a bar to the subsequent filing of another complaint against her for the same offense on the ground that the private respondent would be placed in double jeopardy, is wrong. It will be noted that the order sustaining the motion to quash the complaint against petitioner was based on Subsection (a) of Section 2 of Rule 117 of the Rules of Court – that the facts charged in the complaint do not constitute an offense. If this is so then the dismissal of said complaint will not be a bar to another prosecution for the same offense, for it is so provided in Section 8 of Rule 117 of the Rules of Court that an order sustaining the motion to quash is not a bar to another prosecution for the same offense unless the motion was based on the grounds specified in Section 2, Subsection (f) and (h) of this rule^[1] and the records clearly show that the ground relied upon by the Municipal Court of Guinobatan, Albay in dismissing the first complaint (Criminal Case No. 4738) is not one of those exceptions provided for under Section 8, *supra*. It is not a case where the criminal action or liability of the private respondent has been extinguished, nor a case where the private respondent has been previously convicted or in jeopardy of being convicted or acquitted of the offense charged because the first complaint under which she was prosecuted does not allege facts constituting any offense. In order that the protection against double jeopardy may issue in favor of an accused person, the following requisites must be present in the original prosecution: (a) a valid complaint or information; (b) a competent court; (c) the defendant had pleaded to the charge; and (d) the defendant was acquitted, or convicted, or the case against him was dismissed or terminated without his express consent.^[2] The complaint for violation of the Usury Law (Act No. 2655) filed with the Municipal Court of Guinobatan, Albay against private respondent is not sufficient in form and substance to support a conviction. A mere reading of the first complaint will readily show its substantial defect. Thus it alleged " * * * accused did then and there willfully, unlawfully and feloniously lend money and goods to the undersigned in the total sum of P560.00 and after payment of P30.00 leaving a balance of P530.00, charged a usurious rate of interest of .03% per month and for eight (8) months from November, 1972 to June, 1973, or a total of P607.20 to the damage and prejudice of the undersigned." On the face of the complaint it is evident that no violation of the Usury Law was committed because the interest of .03% per month or .36% which private respondent charged the petitioner for his loan or forbearance did not exceed the 14% allowed by the Usury Law for loans without security. The complaint therefore does not charge any offense. In *People vs. Austria*,^[3] this Court held that if an information is dismissed and the accused is discharged on a demurrer or on petition of the fiscal or the accused, or on the court's own motion, because the information or complaint is either void or fatally defective, or when it does not charge the proper offense, such dismissal and the consequent discharge of the accused is not a bar to his prosecution for the same offense.

2. Furthermore, the quashing of the first complaint (Criminal Case No. 4578) against private respondent for

insufficiency as prayed for by the latter can in no way be used by him to plead that he has already been placed in jeopardy.[4] The act of private respondent in asking for the dismissal of the complaint against him operates as a waiver of her defense of double jeopardy in the second prosecution for the same offense. When a criminal case is dismissed upon the express application of the defendant, the dismissal is not a bar to another prosecution for the same offense because his action in having the case dismissed constitutes a waiver of his constitutional prerogative against double jeopardy as he thereby prevents the court from proceeding to the trial on the merits and rendering judgment of conviction against him.[5]

3. Private respondent contends that petitioner has not questioned the decision of the Court of First Instance of Albay dismissing the petition for certiorari filed by petitioner (Civil Case No. 5003) assailing the order of the Municipality of Guinobatan, Albay, dismissing the original complaint (Criminal Case No. 4578) as well as the order denying the motion to reinstate or to accept the amended complaint. He thus concludes that the order of the Municipal Court of Guinobatan, Albay dismissing the original complaint is final. But the order of the Municipal Court of Guinobatan, Albay in Criminal Case No. 4578 dismissing the first complaint for usury against the private respondent was not a decision on the merits thereof. Not being a decision on the merits, said order of dismissal cannot bar the prosecution of the second complaint against private respondent for the same offense upon the principle of *res judicata*. In *People vs. Bellosillo*,[6] this Court held: "Where an order dismissing a criminal case is not a decision on the merit, it cannot bar as *res judicata* a subsequent case based on the same offense." Besides, the provision of Rule 30, Section 3 of the Rules of Court to the effect that a "dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court", does not apply to criminal cases.[7]

4. Private respondent further claims that the present suit suffers from laches as the order sought to be set aside dates back to November 24, 1974. This contention is untenable. In a general sense, laches is failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[8] It is evident from the record that petitioner has perfected his appeal from the order in question within the reglementary period. So the lower court remanded the record of the case to the Court of First Instance of Albay. However, his case was elevated to this Court on question of law upon motion by the Provincial Fiscal. Obviously no laches has attached to the present suit.

WHEREFORE, judgment is hereby rendered reversing the order of the respondent Court, dismissing Criminal Case No. 4738 and ordering said Court to proceed with the trial thereof.

No pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] (f) That the criminal action or liability has been extinguished;

* * * * *

(h) That the defendant has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged.

[2] *People vs. Obsania*, L-24447, June 29, 1968, Vol. 23 SCRA 1249.

[3] 94 Phil. 897.

[4] Sugay vs. Pamaran, 41 SCRA 260; People vs. Obsania, 23 SCRA 1249; People vs. Catolico, 38 SCRA 389.

[5] Flordelis vs. Castillo, 58 SCRA 303; People vs. Obsania, 23 SCRA 1249; People vs. Sy, 30 SCRA 150; People vs. Togle, 105 Phil. 126.

[6] 9 SCRA 835.

[7] People vs. Bellosillo, 9 SCRA 835.

[8] Tijam vs. Sibonghanoy, 32 SCRA 29.

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