

**HELENA ALMAZAR, PETITIONER, VS. HON. PEDRO D. CENZON.
PRESIDING JUDGE, BRANCH XL, COURT OF FIRST INSTANCE OF
MANILA; THE HONORABLE CITY FISCAL OF MANILA, AND WALTER
PHILIPPS, RE...**

G.R. No. L-46188. May 28, 1988

Ponente: CORTES, J.

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CORTES, J.:

The issue raised in this case is whether the respondent trial judge gravely abused his discretion in dismissing Criminal Case No. 22915 (People of the Philippines v. Walter Philipps) on a motion to dismiss filed by the fiscal upon instructions of the Secretary of Justice to whom the case was elevated for review.

Private respondent Walter Philipps and petitioner Helena Almazar were former husband and wife. They married in 1968 but obtained a divorce in Nevada, U.S.A. in 1974.

On September 5, 1975, after the parties had parted ways, the City Fiscal of Manila upon complaint of Almazar filed an Information against Philipps for estafa, docketed as Criminal Case No. 22915 in the Court of First Instance of Manila, Branch XIV, Judge Echiverri, presiding. The information reads:

That on or about February 11, 1975, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously defraud one HELENA A. ALMAZAR in the following manner, to wit: the said accused, having been appointed by the latter as her Attorney-in-Fact, granting said accused the authority to sell her airplane, a Rilev Twin Navion Model D16, with Serial No. TN-12 NAV 4-1038, Registry No. PI-C551 and to execute and sign the necessary Deed of Sale and other pertinent papers therefor, under the express obligation on the part of said accused of turning over the proceeds of the sale thereof once sold, did then and there wilfully, unlawfully and feloniously sell the aforesaid airplane to one Charles T. Mulvaney for the amount of P25,000.00, and with intent to defraud, failed and refused to turn over said amount to said Helena A. Almazar despite repeated demands made upon him to do so, thereby misappropriating, misapplying and converting the said amount to his own personal use and benefit, to the damage and prejudice of said Helena A. Almazar in the aforesaid amount of P25,000.00, Philippine currency.

Contrary to law.

Even as the case was set for arraignment several times, arraignment was deferred as the case was then under review by the Secretary of Justice.

The Secretary of Justice found that no probable cause against Philipps existed. He rejected Almazar's claim that she owned the plane as her paraphernal property. Instead, he accepted Philipps' assertion that he (Philipps), a pilot, was the owner of the plane. Hence, he directed the City Fiscal of Manila to file a motion to dismiss the case, which the latter did in his motion dated April 1, 1976.

Almazar filed an opposition to the motion to dismiss. In his order dated August 20, 1976, Judge Echiverri denied the motion to dismiss. The fiscal filed a motion for reconsideration which the trial judge denied.

On November 23, 1976, Philipps was arraigned in which he entered a plea of "not guilty."

Meanwhile, Judge Echiverri fell sick and the case was reassigned to Judge Vallejos, but later re-raffled to Judge Cenzon, the public respondent herein.

As the fiscal did not want to proceed with the trial of the case, Judge Cenzon directed the public prosecutor to put in proper form his motion for reconsideration of the order denying the motion to dismiss, which the fiscal did. On May 9, 1977, Judge Cenzon issued an order dismissing the case. Hence, this original action for certiorari and mandamus, the private offended party praying that the dismissal be set aside, and the fiscal ordered to prosecute the case.

In her assignment of errors, Almazar contends:

I

THE RESPONDENT JUDGE ERRED AND ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN REOPENING THE INCIDENT OF THE MOTION TO DISMISS WHICH HAD ALREADY BEEN SET AT REST.

II

THE RESPONDENT JUDGE ERRED AND ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN DISMISSING THE CRIMINAL CASE AFTER THE ARRAIGNMENT OF THE ACCUSED BUT WITHOUT TRIAL.

III

THE RESPONDENT JUDGE ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION, IN NOT COMPELLING RESPONDENT CITY FISCAL TO PERFORM HIS INESCAPABLE PUBLIC DUTY TO PROSECUTE THE CRIMINAL CASE, WHO ACTED CAPRICIOUSLY AND ARBITRARILY IN REFUSING TO PROSECUTE. OSTENSIBLY TO SUPPRESS EVIDENCE TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

Respondent judge was well within his powers to act upon any aspect of the case after it had passed on to him. Well settled is the rule in this jurisdiction that a judge is competent to act so long as the case remains before him, but after it has passed from his branch to another branch of the same court, the case can be acted upon only by the judge of the latter branch. [See *Eleazar v. Zandueta*, 48 Phil. 193 (1925); *Hizon v. Ocampo*, 72 Phil. 318 (1941); *PNB v. Javellana*, 92 Phil. 525 (1953).]

With respect to the second assignment of error, this Court, in two recent decisions [*Crespo v. Hon. Mogul, et al.*, G.R. No. L-53373, June 30, 1987, 151 SCRA 462; *Peralta v. CFI-La Union, et al*, G.R. No. L-48011, January 29, 1988], has stated in categorical terms that:

Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.

*** **The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any

disposition of the case as (to) its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. ... A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.

The issue then is whether the dismissal of Criminal Case No. 22915 was so capricious and whimsical as to amount to lack of jurisdiction.

Note that Criminal Case No. 22915 was at that stage when no evidence had as yet been presented in Court. In such situations, where there is a "clash between the judge who did not investigate and the fiscal who did, or between the fiscal and the offended party or the defendant, those of the fiscal's should normally prevail." (Crespo vs. Hon. Mogul, *supra* at p. 468; See also *US v. Barredo*, 32 Phil. 444 (1915); *People v. Hon. Pineda*, G.R. No. L-26222, July 21, 1967, 20 SCRA 748]. We have carefully gone over the records of this case and found that there is sufficient basis for the order of dismissal.

The findings and observations made by the Secretary of Justice are most apt:

It appears that the airplane formerly belonged to one Hamilton Parrish, an American citizen, who on June 27, 1963 leased it to respondent with an option to buy. The lease was for ten years at a monthly rental of P-650.53 and among the conditions stipulated was that if respondent would exercise the option before the expiration of the term, the lease would be terminated "simultaneously with the payment of the balance due on the lease contract." On July 2, 1963, respondent paid Parrish P78,064, the total amount of rental for ten years. Parrish executed a private deed of sale conveying the airplane to respondent "following the exercise by the (latter) of his option to purchase." On May 13, 1969, or after the parties' marriage on April 18, 1968, a public deed of sale was again executed by Parrish conveying the same airplane "unto Helena A. Almazar of legal age with residence at 1214 A. Mabini, Ermita, Manila" for the sum of "one peso and other valuable considerations." The airplane was registered with the Civil Aeronautics Administration in her name. Then on November 5, 1971, a contract of lease with option to buy, similar to that between respondent and Parrish, was executed by and between respondent and complainant who used also her maiden name. On March 28, 1972, she executed a special power of attorney in favor of respondent authorizing him, among other things, to "negotiate and execute deed of sale and deliver the necessary documents for such sale." On February 11, 1975, respondent sold the airplane to Charles T. Mulvaney, an American citizen.

Before the parties obtained their divorce decree on December 2, 1974, respondent paid complainant the sum of P210,000 as "full payment of any and all further claims" against the former. In the divorce decree, it was stated "that by written agreement between the (parties) entered into on the 20th day of February, 1974 the parties have fully settled and adjusted all matters pertaining to their property rights, and the support and maintenance of defendant (herein complainant) and there are no property rights or support rights to be adjudicated in this action."

It is respondent's thesis that he had the right to dispose of the airplane, he being the absolute owner thereof without any obligation to account for its proceeds to anyone and that the deed of sale in favor of complainant, the lease contract with option to buy and the special power of attorney she executed in his favor were intended merely for his convenience. He claimed that sometime in 1969 Parrish, in whose name the airplane had remained registered up to then, wanted the registration cancelled as he was no longer the actual owner of the airplane; that since respondent could not have the registration transferred in his name because under Philippine law an aircraft may only be registered by Philippine or American citizens, he had Parrish execute the deed of sale in favor of complainant under her maiden name just so that the airplane registration could be transferred to her, thereby acceding to the desire of Parrish.

I am inclined to accept respondent's thesis. The contract of lease with option to buy, dated June 27, 1963, between respondent and Parrish was obviously resorted to in view of respondent's disqualification, he being a British subject, to have the airplane registered in his name. The transaction between the two was really a sale as shown by the fact that a week later respondent paid the full amount of the rent for ten years, which amount must be the consideration or the price of the airplane. That the transaction was a sale is also buttressed by the private deed executed by Parrish stating that the buyer, or respondent, had exercised his option to purchase. In the subsequent deed of sale in favor of complainant, the name used was her maiden name although at that time she was already married to respondent. In the ordinary course of things, the use of her maiden instead of her married name must have been explained to her. Had her married name been used, it could have raised the question of her citizenship by virtue of her marriage to respondent and this would prevent the transfer of registration from Parrish to her.

Further, the Secretary of Justice pointed out: ...

In the special power of attorney granted to him by complainant, it is significant to note that now was it therein stated that she owned the airplane. The divorce decree explicitly stated that the parties had fully settled all matters pertaining to their property rights as indeed respondent had already paid complainant the sum of P210,000 in full payment of all claims against him. Respondent from the time he acquired the airplane from Parrish, had the sole possession and use thereof, attended to all the requisite papers and paid all the charges and fees for its operation and maintenance. Complainant never exercised any act of ownership over it: indeed, as admitted by her, respondent paid her not a single centavo for the use of the airplane despite their supposed contract of lease with option to buy. Finally, it may be taken into account that not many persons own an airplane. Considering its cost and the expense of its operation and maintenance, it is ordinarily acquired for business purposes or by those who could afford it. The record reveals no reason why complainant would buy one. On the other hand, respondent is a licensed pilot and executive of Shell Company and needs an airplane to fly to be able to maintain his license.

In view of the ruling above, it is no longer necessary to pass upon the third assignment of error.

One last point. The Court notes that Philipps appealed the resolution of the Manila Fiscal to the Secretary of Justice after Criminal Case No. 22915 had already been filed in court. Even as it concedes the power of the Secretary of Justice to review the action of prosecutors, the Court deems it appropriate to reiterate what was stated in the Crespo case:

... the Secretary of Justice should, as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in Court. The matter should be left entirely for the determination of the Court. [Crespo v. Mogul, *supra* at pp. 471-472.]

WHEREFORE, the petition is hereby DENIED. No costs.

SO ORDERED.

Fernan (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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