

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HERMOGENES MARIANO AND HON. AMBROSIO M. GERALDEZ, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF BULACAN, BRANCH...

G.R. No. L-40527. June 30, 1976

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

This Petition for Certiorari postulates a ruling on the question of whether or not civil courts and military commissions exercise concurrent jurisdiction over the offense of estafa of goods valued at not more than six thousand pesos and allegedly committed by a civilian.[1]

On December 18, 1974, the office of the Provincial Fiscal of Bulacan filed an Information (Criminal Case No. SM-649) accusing private respondent herein Hermogenes Mariano of estafa alleged to have been committed as follows:

"That on or about and during the period from May 11 and June 8, 1971, in the municipality of San Jose del Monte, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Hermogenes Mariano, being then appointed as Liaison Officer by the then incumbent Municipal Mayor, Constantino Nolasco, acting for and in behalf of the municipality of San Jose del Monte, Bulacan and authorized to receive and be receipted for US excess property of USAID/NEC for the use and benefit of said municipality received from the said USAID/NEC the following items, to wit:

"150 ft. electric cable valued at \$15 or P100.50

"525 ft. cable power valued at \$577.50 or P3,859.35

"250 ft. electric cable at \$125.00 or P837.50

with a total value of \$717.50 or P4,797.35, involving the duty of making delivery of said items to the said Municipal Mayor, but the said accused Hermogenes Mariano once in possession of the said items and far from complying with his aforesaid obligation and in spite of repeated demands, did then and there wilfully, unlawfully and feloniously, with grave abuse of confidence and with deceit, misappropriate, misapply and convert to his own personal use and benefit the said items valued at \$717.50 or P4,797.35, belonging to the said USAID/NEC, to the damage and prejudice of the said owner in the said sum of \$717.50 or P4,797.35." (pp. 13-14, rollo)

On February 19, 1975, Hermogenes Mariano thru his counsel filed a motion to quash the Information on the following grounds:

"1. That the court trying the cause has no jurisdiction of the offense charged or of the person of the defendant;

"2. That the criminal action or liability has been extinguished;

"3. That it contains averments which, if true, would constitute a legal excuse or justification." (p. 19, rollo)

In his motion to quash, Mariano claimed that the items which were the subject matter of the Information against him were the same items for which Mayor Constantino A. Nolasco of San Jose del Monte, province of Bulacan, was indicted before a Military Commission under a charge of malversation of public property, and for which Mayor Nolasco had been found guilty and sentenced to imprisonment at hard labor for ten (10) years and one (1) day to fourteen (14) years and eight (8) months with perpetual disqualification plus a fine of P19,646.15 (see pp. 23-24, rollo), and that inasmuch as the case against Mayor Nolasco had already been decided by the Military Tribunal, the Court of First Instance of Bulacan had lost jurisdiction over the case against him. (pp. 19-20, *ibid*)

On March 14, 1975 respondent Judge issued an Order granting the motion to quash on the ground of lack of jurisdiction on reasoning as follows:

"Considering that the Military Commission had already taken cognizance of the malversation case against Mayor Nolasco involving the same subject matter in its concurrent jurisdiction with this Court, the case involving the subject properties had already been heard and decided by a competent tribunal, the Military Commission, and as such this Court is without jurisdiction to pass upon anew the same subject matter." (pp. 30-31, rollo, *italics supplied*)

Respondent Judge did not rule on the other grounds invoked in the motion to quash.

The People now seeks a review of the aforesaid Order and presents the sole issue of jurisdiction of respondent Court over the estafa case filed against respondent Mariano.

"Jurisdiction" is the basic foundation of judicial proceedings.[2] The word "jurisdiction" is derived from two Latin words "juris" and "dico" - "I speak by the law" which means fundamentally the power or capacity given by the law to a court or tribunal to entertain, hear, and determine certain controversies.[3] Bouvier's own definition of the term "jurisdiction" has found judicial acceptance, to wit: "Jurisdiction is the right of a Judge to pronounce a sentence of the law in a case or issue before him, acquired through due process of law;" it is "the authority by which judicial officers take cognizance of and decide cases." [4]

In *Herrera vs. Barretto*, September 10, 1913, 25 Phil. 245, 251, this Court, in the words of Justice Moreland, invoking American jurisprudence, defined "jurisdiction" simply as the authority to hear and determine a cause - the right to act in a case. "Jurisdiction" has also been aptly described as the right to put the wheels of justice in motion and to proceed to the final determination of a cause upon the pleadings and evidence.[5]

"Criminal Jurisdiction" is necessarily the authority to hear and try a particular offense and impose the punishment for it.[6]

The conferment of jurisdiction upon courts or judicial tribunals is derived exclusively from the constitution and statutes of the forum. Thus, the question of jurisdiction of respondent Court of First Instance over the case filed before it is to be resolved on the basis of the law or statute providing for or defining its jurisdiction. That, We find in the Judiciary Act of 1948 where in its Section 44(f) it is provided:

"SEC. 44 Original jurisdiction. - Courts of First Instance shall have original jurisdiction:

x x x x x x x x

"(f) In all criminal cases in which the penalty provided by law is imprisonment for more than six months, or a fine of more than two hundred pesos;" (*italics supplied*)

The offense of estafa charged against respondent Mariano is penalized with *arresto mayor* in its maximum period to *prision correccional* in its minimum period, or imprisonment from four (4) months and one (1) day to two (2)

years and four (4) months.[7] By reason of the penalty imposed which exceeds six (6) months imprisonment, the offense alleged to have been committed by the accused, now respondent, Mariano, falls under the original jurisdiction of courts of first instance.

The above of course is not disputed by respondent Judge; what he claims in his Order is that his court exercises concurrent jurisdiction with the military commission and because the latter tribunal was the first to take cognizance of the subject matter, respondent court lost jurisdiction over it. That statement of respondent court is incorrect.

In *People vs. Fontanilla*, this Court speaking through then Justice now Chief Justice Fred Ruiz Castro, categorically reiterated the settled rule that the jurisdiction of a court is determined by the statute in force at the time of the commencement of the action.[8] In the case at bar, it is rightly contended by the Solicitor General that at the time Criminal Case No. SM-649 was filed with the Court of First Instance of Bulacan, that was December 18, 1974, the law in force vesting jurisdiction upon said court was the Judiciary Act of 1948, the particular provision of which was not affected one way or the other by any Presidential issuances under Martial Law. General Order No. 49 dated October 4, 1974, which repeals General Order No. 12 and the latter's amendments and related General Orders inconsistent with the former, redefines the jurisdiction of military tribunals over certain offenses, and estafa and malversation are not among those enumerated therein.[9] In other words the Military Commission is not vested with jurisdiction over the crime of estafa.[9-a]

Respondent court therefore gravely erred when it ruled that it lost jurisdiction over the estafa case against respondent Mariano with the filing of the malversation charge against Mayor Nolasco before the Military Commission. Estafa and malversation are two separate and distinct offenses and in the case now before Us the accused in one is different from the accused in the other. But more fundamental is the fact that We do not have here a situation involving two tribunals vested with concurrent jurisdiction over a particular crime so as to apply the rule that the court or tribunal which first takes cognizance of the case acquires jurisdiction thereof exclusive of the other.[10] The Military Commission as stated earlier is without power or authority to hear and determine the particular offense charged against respondent Mariano, hence, there is no concurrent jurisdiction between it and respondent court to speak of. Estafa as described in the Information filed in Criminal Case No. SM-649 falls within the sole exclusive jurisdiction of civil courts.

PREMISES CONSIDERED, the appealed Order dated March 14, 1975, is set aside and respondent Judge is directed to proceed with the trial of Criminal Case No. SM-649 without further delay.

So Ordered.

Teehankee, Makasiar, Aquino, and Martin, JJ., concur.

Aquino, J., was designated to sit in the First Division.

[1] This Petition for Review was filed by Asst. Provincial Fiscal Clemente G. Perfecto of the Province of Bulacan. In the Court's Resolution of July 16, 1975, the Court Resolved to give due course to the Petition, treat the same as a special civil action, granting the parties time within which to file their memoranda. Respondent Mariano did not answer this Petition nor did he file any memorandum. On May 28, 1976, the Solicitor General filed his memorandum supporting this Petition of the Provincial Fiscal of Bulacan.

[2]*Moody vs. Port Clyde Development Co.*, 102 Me. 365

[3]*In re Adoption and Custody of Underwood*, 107 S.E. 2d 608, 616, 144 W. Va. 312; *Wesley vs. Schneckloth*,

346 P. 2d 658, 660, 55 Wash. 2d 90; Atwood vs. Cox, 55 P. 2d 377, 380; Barrs vs. State, 97 S.E. 86, 87; Long Flame Coal Co. vs. State Compensation Com'r, 163 S.E. 16, 19; 23 A Words & Phrases 136

[4] Chicago Title and Trust Co. vs. Brown, 47 L.R.A. 798; In re Taylor, 45 L.R.A. 136; State vs. Wakefield, 15 A. 181, 183, 60 Vt. 618

[5] Wabash R. Co. vs. Duncan, C.A. Mo., 170 F. 2d 38, 41

[6] Moran, Rules of Court, 1970 Ed., Vol. 1, p. 36

[7] ART. 315. Swindling (estafa) - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

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3d. The penalty of arresto mayor in its maximum period to prision correccional in its maximum period, if such amount is over 200 pesos but does not exceed 6,000 pesos.

[8] L-25354, June 28, 1968, 23 SCRA 1227

[9] Memorandum, pp. 3-4

[9-a] General Order No. 49 was amended by General Order No. 54 dated October 22, 1975, to include estafa as among those cognizable by the military tribunals but only when the crime is committed in large scale or by a syndicate.

[10] People vs. Fernando, L-25942, May 28, 1968, 23 SCRA 867

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