

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MONICA ANINO, DEFENDANT-APPELLANT.

G.R. No. L-25997. May 28, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

This is an appeal from the order of the Court of First Instance of Misamis Occidental in Criminal Case No. 6290, denying the motion to quash the information filed by the Provincial Fiscal with the court a quo, charging appellant Monica Anino of the crime of dereliction of official duty punished under Article 208 of the Revised Penal Code.

The information substantially alleged as follows: that during the months of June, July and August, 1965, and for sometime thereafter, the said accused, being the duly elected Barrio Captain (Lieutenant) of Barrio Villaflor, municipality of Oroquieta, Misamis Occidental, and holding office as such with the legal duty of enforcing the laws and ordinances in said barrio, did then and there allow, encourage and tolerate illegal cockfights and a game of chance known as "hantak" from which she collected 20% of the proceeds for the barrio treasury, thus, violating the law or tolerating and encouraging the commission of crimes or maliciously refraining from instituting prosecution of violators of the law in dereliction of her duties as such barrio official.

The legal question posed revolves around the legality of the act of the Provincial Fiscal of Misamis Occidental in filing the case with the Court of First Instance of the said province.

Thus, herein appellant reiterates in this appeal the grounds relied upon by her in her motion to quash in the court below, namely:

- (1) That the filing of the case directly with the Court of First Instance is contrary to section 12 of Republic Act No. 3590, otherwise known as the Barrio Charter, which took effect on June 22, 1963; and
- (2) That the Court of First Instance of Misamis Occidental does not have original jurisdiction of the case under Republic Act No. 3828.

Citing and relying on the first paragraph of Section 12 of Republic Act No. 3590 which reads, thus:

"Section 12. SUPERVISORY POWER OF THE MUNICIPAL MAYOR - The municipal mayor shall exercise the power of supervision over barrio officials. He shall receive and investigate complaints made under oath against barrio officials for neglect of duty, oppression, corruption or other form of misconduct in office, and conviction by final judgment of any crime involving moral turpitude. For minor delinquency, he may reprimand the offender; and if a more severe punishment seems to be desirable he shall submit written Charges touching the matter to the municipal council, furnishing a copy of such charges to the respondent and law enforcement agencies either personally or by registered mail. Upon recommendation of the Barrio Council the municipal mayor may in such case suspend the officer pending action by the council, if in his opinion, the charge be one affecting the official integrity of the officer in question, but in no case shall the period of suspension exceed thirty days, x x x."

it is the contention of the appellant that under the foregoing provision of the law, the exclusive and original jurisdiction to investigate barrio officials for neglect of duty, oppression, corruption or other form of misconduct in office is vested solely unto the Municipal Mayor who shall conduct a hearing of the charges, and should his finding be that they certain merely to minor delinquency, he may reprimand the offender; and if a more severe punishment seems to be desirable, he shall submit written charges touching the matter to the Municipal Council furnishing a copy of such charges to the respondent and law enforcement agencies either personally or by registered mail."

To the extent and within the literal meaning of the language of that portion of the section of the law cited by the appellant, it would seem that the contention is correct. However, taking into account the succeeding paragraph of the same section of the law, which reads thus:

"Where suspension is thus effected, the written charges against the officer shall be filed within five days with the municipal council, which shall adopt the procedure specified in section twenty-one hundred eighty-nine and twenty-one hundred ninety of the Administrative Code."

and considering that, as required, the Administrative investigation should be proceeded and conducted in accordance with the provision of Section 2190 of the Administrative Code, which reads thus:

"If, upon due consideration, the provincial board shall adjudge that the charges are not sustained, the proceedings shall be dismissed; if it shall be adjudged that the accused has been guilty of misconduct which would be sufficiently punished by reprimand or further reprimand, it shall direct the provincial governor to deliver such reprimand in pursuance of its judgment; and in either case the official, if suspended, shall be reinstated.

"If in the opinion of the board the case is one requiring more severe discipline, and in case of appeal, it shall without unnecessary delay forward to the Secretary of Interior, within eight days after the date of the decision of the provincial board, certified copies of the record in the case, including the charges, the evidence, and the findings of the board, to which shall be added the recommendation of the board as to whether the official ought to be suspended, further suspended, or finally dismissed from office; and in such case the board may exercise its discretion to reinstate the official if suspended.

"The trial of the suspended municipal official and the proceedings incident thereto shall be given preference over the current and routine business of the board."

it is evident that the nature, scope and extent of the investigation conceived thereunder, is purely administrative in nature, and this is clearly deducible from the fact that the penalty that case imposed upon the erring official is only either reprimand, suspension or dismissal from office. And it is clearly inferrable from the same provisions of the law that when the act constituting the neglect of duty, oppression, corruption or other form of misconduct in office amounts to a transgression of the penal laws, then it becomes the duty of the prosecuting officer of the Government to take a hand in the case by instituting the corresponding investigation and prosecution of the guilty person to the full limit of the law.

Where certain conduct of a public official subjects himself to a criminal prosecution under the common law, the fact that a statute makes such conduct a ground for his removal from office, does not relieve him of his criminal responsibility. (*Ingco vs. Provincial Fiscal of Batangas, et al.*, G. R. No. L-23220, Dec. 18, 1967.)

Proceedings for removal from office is an administrative action, which is entirely distinct and separate from a criminal action, because a crime is a public wrong, more atrocious in character than misfeasance or malfeasance committed by a public official in the discharge of his duties, and is injurious not only to a person or a group of persons but to the State as a whole. The circumstance that the offence alleged to have been committed, was

perpetrated in connection with the performance of official duties, is no reason to stop the prosecution of the case for the alleged acts constitute a crime distinct in itself, and detachable from its character as an administrative defense committed by a public officer.

The power of supervision of the Municipal Mayor over barrio officials under the Barrio Charter Law is similar and analogous to the supervision exercised by the Provincial Governor over municipal officials and thus, when the Provincial Governor is informed that a municipal official is guilty of official misconduct amounting to a criminal liability, it is the duty of the Provincial Governor to refer the matter to the Provincial Fiscal who is duty bound, under the law, to institute the necessary proceedings in court. This is so, because the prosecution and enforcement of penal laws are functions of the State. Thus, it has been held that a barrio Lieutenant who fails to cause the prosecution for the crime of arson of which he is aware is guilty of "prevarication" (U. S. vs. Mendoza, 23 Phil. 194). We really see no cogent reason why the Provincial Fiscal may not prosecute herein appellant independently of whatever administrative investigation the Municipal Mayor himself might conduct relative to the same charges. To hold otherwise would be tantamount to tying the hands of the prosecuting arms of the State and prevent them from prosecuting an offending barrio official unless and until the Municipal Mayor concerned shall have acted and forwarded the charges to the fiscal. Such a situation, to our mind could not have been the intent and purpose of the law relied upon by herein appellant. Consequently, we have to declare that the provincial Fiscal was legally right in taking this case directly with the Court of First Instance, and the trial court acted correctly in denying the motion to quash the information on this ground.

But appellant would insist further that the Court of First Instance of Misamis Occidental does not have original jurisdiction to hear the case. It is argued that since the crime of dereliction of duty charged in the information carries with it a penalty of six months and one day to two years and four months which is below the maximum penalty of three (3) years imprisonment which municipal courts may impose under the law, the information should have been filed with the municipal court concerned. Reliance is made upon Sec. 87(c) of Republic Act No. 296, as amended by Republic Act No. 3828, which took effect on June 22, 1963, and among other things provides:

"Sec. 87. Original jurisdiction to try criminal case.- Justices of the peace and judges of the municipal court of chartered cities shall have original jurisdiction over:

x x x x x

"(c) Except violations of election laws all other offenses in which the penalty provided by law is imprisonment for not more than three years or a fine of not more than three thousand pesos, or both such fine and imprisonment."

There is no merit in this claim. It should be noted that notwithstanding the aforequoted amendment to Sec. 87 of Republic Act No. 296 by Republic Act No. 3828, the original jurisdiction of courts of first instance to try cases wherein the penalty prescribed by law is imprisonment for more than 6 months, or a fine of more than P200.00 has remained unchanged, leaving a zone where the jurisdiction of these courts is now concurrent with that of justice of the peace and municipal courts. To this effect was the holding in the case of *Esperat vs. Hon. David Avila, et al.*,^[1] where this court, speaking thru Mr. Justice J. B. L. Reyes, explained that:

"Actually, there is nothing irreconcilable between 44(f) and 87(c) of the Judiciary Act.

"As therein provided, the court of first instance was given original jurisdiction over cases where the penalty prescribed by law is imprisonment for more than six months or fine of more than P200.00; the justices of the peace and municipal or city courts of chartered cities, over cases where the penalty is imprisonment for not more than 3 years, and fine of no more than P3,000.00. In other words, where the prescribed penalty is

imprisonment for more than six months, but not exceeding 3 years, or fine of more than P200.00 but not exceeding P3,000.00 (not exceeding 6 years or fine not exceeding P6,000.00, in justice of the peace or municipal court in the capital of the province), the justice of the peace or municipal court only has concurrent (and not exclusive) original jurisdiction with the Court of First Instance. And, it may be stated that this concurrent jurisdiction between the inferior courts and the court of first instance was not provided for the first time in Republic Act No. 3928. Under Republic Act 2613, crimes the penalties for which do not exceed 6 years, or fine for not more than P3,000.00, were specifically placed within the jurisdiction of the justice of the peace and municipal courts, concurrent with the court of first instance.

"It follows, therefore, that the exclusive original jurisdiction of the justice of the peace and municipal courts is confined only in cases where the prescribed penalty is imprisonment for 6 months or less or fine of P200.00 or less, whereas, the exclusive original jurisdiction of the court of first instance covers cases where the penalty, is incarceration for more than 3 years (or 6 years in the case of city courts and municipal courts in provincial capitals), or fine for more than P3,000.00 (P6,000.00 in proper cases), or both such imprisonment and fine. Between these exclusive jurisdiction lies a zone where the jurisdiction is concurrent. This is the proper construction to be placed on the provision involved therein, regardless of what may have been the prior rulings on this matter. x x x."

FOR ALL THE FOREGOING CONSIDERATIONS, and in the light of the authority above-quoted, the instant appeal should be, as hereby it is dismissed, with costs against appellant. Let the record of this case be remanded to the court below for further proceedings.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, and Castro, JJ., concur.

[1] L-25922, June 30, 1967.

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