

ANTONIO S. COHON, PETITIONER, VS. HON. ANTONIO D. CINCO, AS JUDGE PRESIDING BRANCH NO. VIII, COURT OF FIRST INSTANCE OF CEBU; THE PROVINCIAL FISCAL OF CEBU, SANTIAGO N. MEDIDA, ...

G.R. No. L-35673. December 14, 1979

Ponente: ANTONIO, J.

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ANTONIO, J.:

Petition for review on certiorari of the Order dated September 26, 1972 of the Court of First Instance of Cebu, Branch VIII, in Criminal Case No. BO-17, entitled "People of the Philippines versus Antonio Cohon. The following are the pertinent facts:

Before the Court of First Instance of Cebu, in Criminal Case No. BO-17, petitioner Antonio S. Cohon was charged, in an Information dated April 22, 1970, with violation of Section 16(c) and Section 20(a), in relation to Section 23 of Commonwealth Act No. 146, as amended, allegedly committed as follows:

"The undersigned Assistant Provincial Fiscal accuses ANTONIO S. COHON of violating Commonwealth Act No. 146, as amended, committed as follows:

"That on the 25th day of November, 1969 and for some time prior and after thereto, in the seaways of the City of Cebu, the Barrio of Hagnaya, Municipality of San Remegio and the Municipality of Santa Fe, both in the Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the sole owner, operator and general manager of the Lapu-lapu Shipping Lines, a domestic corporation duly organized and existing in accordance with the laws of the Republic of the Philippines, with principal office at Cebu City, Philippines, did then and there willfully, unlawfully and feloniously allow one of its vessels, the M/V Ana Fe, to operate and charge rates for freights and passengers without authority from the Public Service Commission on the line between Cebu City and Cataingan, Masbate via Hagnaya, San Remegio and Santa Fe, both in Cebu, a line also covered by the vessels of the San Vicente Shipping, Inc., another corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Lucena City, Philippines and authorized by the Public Service Commission to charge rates for freights and passengers, to the damage and prejudice of the San Vicente Shipping, Inc.

"In violation of Section 16(c) and Section 20(a), in relation to Section 23 of Commonwealth Act No. 146, as amended."

Private respondent filed a separate civil case arising from the same incident (Civil Case No. R-225).

Thereafter, Provincial Fiscal Juan V. Reyes and Assistant Provincial Fiscal Manuel R. Potot filed a Motion to Dismiss, dated August 11, 1970, alleging that "the PSC Order of August 5, 1970, taken conjunctively with the PSC decision of November 28, 1969 * * * has made the above-entitled criminal case against owner-operator Antonio S. Cohon of the Lapu-lapu Shipping Lines moot and academic for the same has confirmed the valid authority of the vessels of the Lapu-lapu Shipping Lines to charge and collect increased rates for freight and passengers", and that "the evidence on hand for the prosecution has become insufficient to sustain the offense

charged in the information and hold the defendant criminally responsible therefor."

Private respondent (complainant a quo) opposed the Fiscal's motion to dismiss on the ground that the order of the Public Service Commission reinstating the status of Lapu-lapu Shipping Lines as a beneficiary to the PSC decision which authorized increases in passenger and freight rates is not yet final, the same having been elevated to the Supreme Court on petition for review on certiorari.[1] It alleged that the determination by the Supreme Court of the legality of the PSC order constitutes a prejudicial question to the prosecution or non-prosecution of the criminal case.

Thereafter, complainant filed a motion to defer hearing, dated September 26, 1970, on the foregoing ground.

Petitioner filed an opposition to the foregoing motion to defer hearing, alleging that the criminal case has been postponed twice at the instance of complainant and that deferment of the hearing would violate petitioner's right to a speedy trial.

Acting on the foregoing and after due hearing, respondent Judge issued an Order dated September 26, 1970, stating as follows:

"After hearing the arguments in favor of the motion and in favor of the opposition to the motion for deferment of the hearing of the criminal case, the Court is of the opinion that the ground alleged in the motion to defer hearing in these two cases is well-grounded.

"WHEREFORE, the hearing of these two cases (Civil Case No. R-225 and Criminal Case No. BO-17) scheduled for September 28, 29 and 30, 1970 is postponed to new assignment. Likewise, the resolution of the Motion to Dismiss is held in abeyance pending the result of the Certiorari case."

On October 8, 1971, the Provincial Fiscal relying upon the ruling of the Public Service Commission in PSC Cases Nos. 70-1799, 70-3251, 70-2879, 69-6258, 70-2025 and 70-6009, filed an Amended Motion to Dismiss, alleging that in view of said rulings, "the information against defendant Antonio S. Cohon can no longer be sustained and, as a consequence, said defendant cannot be held criminally liable therefor." This was opposed by complainant, to which opposition petitioner replied that in the light of the supervening facts, petitioner is innocent of the offense charged in the information. Thereafter, complainant filed a supplemental opposition, alleging that the outright dismissal of the criminal case would be inconsistent with the order of suspension by reason of "prejudicial question"; would deny complainant of due process since the Fiscal's motion to dismiss is adverse to complainant; and would lead to prescription of the criminal action.

On February 29, 1972, respondent Judge issued an Order denying the amended motion to dismiss, as follows:

"* * * if this case is dismissed, even provisionally only in a matter of a few months and the case is not refiled, the action will prescribe and the Court may thus become open to the charge of miscarriage of justice. There is, therefore, no prejudice that can be caused the defendant if the amended motion to dismiss is denied, and this case is tried on the merits. This Court had finally decided that this course of action would be for the best interests of justice. This decision has been arrived at after re-examining the merits of the proposition that the hearing of this criminal case should be held in abeyance pending the result of the certiorari case. It is now the opinion of this Court that the certiorari case is not a prejudicial question to this instant criminal case for the reason that the issue raised in the certiorari case is not basically connected with the facts which will determine the guilt or innocence of the herein accused. What is more, we have not lost sight of that essential right of the accused – the right to a speedy trial.

"In the light of the foregoing premises, the Court resolves to deny as it hereby denies the amended motion to dismiss. The Clerk of Court is ordered to calendar this case for hearing on April 3 and 4, 1972."

On March 9, 1972, complainant (herein private respondent) filed a motion to declare the existence of a prejudicial question and to suspend the criminal proceedings, reiterating the pendency of G.R. No. L-32441. By reason thereof, petitioner filed a motion to strike complainant's motion from the records on the ground that complainant has no personality to intervene in the criminal case, considering that they have filed a separate civil action (Civil Case No. R-225) arising out of the same act. This was opposed by complainant.

Thereafter, or on July 3, 1972, Assistant Provincial Fiscal Potot filed a pleading wherein it was maintained that "the issues raised in the petition for review by certiorari, G.R. No. L-32441, now pending before the Supreme Court, are determinative of the criminal case now pending before this Honorable Court." [2]

Acting on the various pleadings filed by the parties, respondent Judge issued the questioned Order of September 26, 1972, which reads, in part, as follows:

"With respect to the matter of prejudicial question, this Court is well aware of its Order of February 19, 1972 where it said: 'That the certiorari case is not a prejudicial question to this instant criminal case.' However, after a second hard look at the matter, and after reading the various pleadings containing citations of authorities on the question of prejudicial question, this Court is now of the opinion that any resolution by the Supreme Court on the pending certiorari case may determine the guilt or innocence of the accused; and so we concur with the Provincial Fiscal's opinion on this matter. As a consequence, the hearing and the trial of this case should be suspended until after the Supreme Court shall have finally resolved the now pending certiorari case."

Before this Court, petitioner contends that it was the duty of the trial court to resolve the several motions filed by him for the dismissal of the criminal case, and that in holding the same in abeyance, respondent court impinged upon his constitutional right to a speedy trial.

In the meantime, or on January 31, 1977, this Court promulgated its resolution dismissing G.R. No. L-32441. [3] This was a petition for review of the order of the defunct Public Service Commission granting a motion for reconsideration and restoring to private respondent Lapu-lapu Shipping Lines its status as a beneficiary of the increase of rate granted in its decision of November 28, 1969. In said case, it was found that Lapu-lapu Shipping Lines has been confirmed by both the defunct Public Service Commission and its successor, the Board of Transportation, in its use and charge of the Basic Rates as amended in the operation of its shipping business in the Philippine Coastwise Trade since its inception to the present time.

In the resolution of this Court penned by Justice Enrique M. Fernando (now Chief Justice) dismissing the petition, the Order of the Board of Transportation, dated June 22, 1976, was set forth, thus:

"Acting on the petition for extension of provisional authority filed by applicant-petitioner Antonio S. Cohon dated June 14, 1976 and it appearing that applicant-petitioner's provisional authority will expire on July 11, 1976 while the basic application is still pending final determination by this Board and that being contested, the same may not be finally decided for quite sometime, the Board believes that in the interest of public welfare and convenience, applicant's provisional authority to operate his five (5) inter-island vessels contained in the orders of the Board dated July 30, 1974, March 18, 1975, July 11, 1975 and January 13, 1976, may be, as the same is hereby (extended) for a period of one (1) year from July 11, 1976. In consonance with the policy of this Board to adopt and maintain a uniform schedule of shipping rates in the inter-island coastwise trade, the Board, upon consideration of applicant-petitioner's manifestation dated May 3, 1976, as well as the opposition thereto filed by oppositor San Vicente Shipping, Inc., dated June 3, 1976, hereby provisionally authorizes applicant to adopt also the 15% across-the-board increase in passenger and freight rates granted to the Philippine Shipowners Association, et al., by virtue of the Order dated January 27, 1976 as amended by a subsequent order dated April 5, 1976 issued in Case No. 73-18210, subject to the same terms and conditions embodied in the aforesaid orders." [4]

By reason of the foregoing order, and acting on therein respondent's Motion to Dismiss, this Court said:

"It does appear clear that there is merit to the motion to dismiss. The matter has indeed become moot and academic. Respondent Public Service Commission had been abolished. It has been replaced by the Board of Transportation. As is evident in the pleadings, the precise issue, the enjoyment by private respondent as a beneficiary of the increase of rates, challenged by petitioner was passed upon by the latter body. Moreover, the Board made clear in its order of June 22, 1976 that the basic application is still pending final determination, the decision not being expected 'for quite sometime'. Under the circumstances, it would be a needless waste of time and effort for this Court to pass upon the powers of a defunct agency when after all, what is being litigated is precisely under consideration by the administrative agency now entrusted with the regulatory function. In the light of the supervening facts, this is one case not ripe for adjudication, there being as yet no final determination. The order of the Public Service Commission challenged in the present petition, has, to quote a recent decision, lapsed into 'innocuous desuetude.'"[5]

Considering that the Board of Transportation itself has extended petitioner's provisional authority to charge the increased rates, with a pronouncement that the basic application was still pending and may take some time to resolve, it is apparent that there can be no basis for the criminal charge against herein petitioner. Armed with the provisional authority granted by the administrative body vested with the proper authority, petitioner cannot be said to have violated the law.

WHEREFORE, the petition is granted and respondent court is hereby ordered to dismiss Criminal Case No. BO-17 against herein petitioner. Costs against private respondent.

Barredo, (Chairman), Concepcion, Jr., Santos, and Abad Santos, JJ., concur.
Aquino, J., in the result.

[1] G.R. No. L-32441, entitled "San Vicente Shipping, Inc., Petitioner, versus The Public Service Commission, and Lapu-lapu Shipping Lines, member of the Club Shipowner's Association in Case No. 69-6258 of the Public Service Commission, Respondents."

[2] Petition, p. 30, Rollo.

[3] 75 SCRA 144.

[4] Ibid., pp. 146-147.

[5] Ibid., p. 147.

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