

CELEDONIO ESCUDERO Y ESCORPESO, PETITIONER, VS. HON. ANTONIO G. LUCERO, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH XI AND THE MUNICIPAL COURT OF THE CITY OF MANILA, ...

G.R. No. L-11629. May 14, 1958

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Petitioner herein, Celedonio Escudero y Escorpeso, seeks a writ of certiorari to set aside an order of respondent, Hon. Antonio G. Lucero, as Judge of the Court of First Instance of Manila. Upon the filing of the petition and the posting of the corresponding bond, this Court issued a writ of preliminary injunction to restrain the enforcement or execution of said order.

Petitioner was, on January 19, 1956, convicted by the Municipal Court of Manila, in Criminal Case No. D-43383 thereof, entitled "People of the Philippines vs. Celedonio Escudero y Escorpeso", of the crime of "estafa" and sentenced accordingly. On appeal taken by Escudero from the decision of the municipal court, the case was docketed as Criminal Case No. 34136 of the Court of First Instance of Manila, and assigned to Branch I thereof, presided over by Hon. Antonio G. Lucero, Judge. Sometime later, the trial of the case began, but it was not completed. What transpired next is set forth in the order complained of, from which we quote:

"* * * When the case was called for continuation of trial on August 2, 1956, despite the fact that he signed the notice for his appearance on that date and despite the fact that the Plaridel Surety & Insurance Company was notified, he failed to appear, and this is the reason why said bonding company had to ask for various extensions within which to arrest him and to produce his person. On October 11, 1956, when the case was again called for trial, said bonding company was unable to present him and his counsel, Atty. Flaviano Manalo, moved that he be allowed to withdraw his appearance on the ground that he could not contact his client, the herein accused, and it was only after much efforts that the Plaridel Surety & Insurance Company was able to turn him over to the MPD on November 6, 1956. * * *"

Accordingly, on November 14, 1956, respondent Judge issued an order, the pertinent parts of which read:

"* * * Considering these factual circumstances; considering that the right to appeal is merely statutory; and considering his unwillingness to appear before this Court; and considering further that, from the record, it appears that even in the Municipal Court the Alto Surety & Insurance Company and the Consolidated Underwriters, Inc., who posted bonds for him one after the other, had to surrender him for his unwillingness to appear presumably due to the fact that there are other criminal charges pending against him, this Court believes, and is of the opinion, that he had abandoned his appeal, as the Supreme Court has held that waiver of his appeal may be implied from his flight. (P. vs. Ang Giok, 73 Phil., 366.)

"WHEREFORE, this Court hereby declares that, by the accused's conduct, he has abandoned his appeal, and the Clerk of Court is directed to remand this case to the Municipal Court for the promulgation of the decision rendered by Judge Ramon A. Ycasiano on January 19, 1956."

Hence, the present petition for certiorari to set aside said order and reinstate Escudero's appeal.

Pursuant to section 8 of Rule 119 of the Rules of Court, upon appeal from a decision of a justice of the peace or municipal court, said decision is vacated, and the case shall be tried in all respects anew in the Court of First Instance as if it were a case originally instituted in that court. This, notwithstanding, section 9 of the same Rule provides that, "before the papers and transcript have been forwarded to the court of first instance," the justice of the peace or the judge of the municipal court may "allow the appellant to withdraw his appeal, in which case the judgment of the justice of the peace or judge of the municipal court shall be revived and become final." Even after the transmittal of said papers and transcript to the Court of First Instance, the same is explicitly authorized by section 12 of Rule 118, "in its discretion," to "allow the appellant * * * to withdraw his appeal, provided a motion to that effect is filed before the trial of the case on appeal, in which case the judgment of the justice of the peace or municipal court shall become final, the provision of section 8, Rule 119 to the contrary notwithstanding, and the case shall be remanded to the court a quo for execution of the judgment." From these provisions, petitioner seemingly deduces that, once the trial of the case, on appeal to the Court of First Instance, has started therein, the appeal may no longer be withdrawn by appellant, and that the Court of First Instance has no authority to revive the decision appealed from and remand the case to the court of origin for execution of the decision thereof, even if the accused had, by his behaviour, shown no interest in the appeal and the intent to abandon it. It is our considered opinion that this conclusion does not follow.

To begin with, section 9, Rule 119, and section 12, Rule 119, regulate the right of the accused to withdraw his appeal. These provisions do not control the authority of the Court to dismiss the appeal or declare it abandoned, regardless of the will of the accused.

Secondly, the revival of the decision of the justice of the peace or municipal court, under said Rules 118 (section 12) and 119 (section 9), shows that, although said decision is vacated by the appeal, such effect is neither final nor permanent, but subject to the authority of said inferior courts and/or Court of First Instance, as the case may be. Said courts have, in the respective cases, discretion to allow the withdrawal of appeal and revive the decision appealed from. Thus, the appeal does not necessarily place such decision beyond the reach or jurisdiction of the Court of First Instance or of the inferior

Thirdly, "the power to define, prescribe and apportion the jurisdiction of the various courts" is vested by the Constitution in "the Congress" (Section 1, Article VIII, of the Constitution). The Rules of Court should not be so construed, therefore, as to affect the jurisdiction of the courts, as determined by the fundamental law and statutes. The pertinent power of the Supreme Court is limited to the promulgation of "rules concerning pleading, practice and procedure in all courts," and, consequently, to the determination of the means, ways, or manner in which said jurisdiction, as fixed by the Constitution and acts of Congress, shall be exercised.

Petitioner alleges that he was not unwilling to appear for trial and that his failure to do so was due to lack of notice from his bondsmen. But, this pretense is contrary to the facts set forth in the order complained of, to wit: that petitioner was personally served with notice of the hearing, on which he signed; that the bonding company had to ask several extensions of time within which to arrest him and produce his person; that when the case was called for trial on October 11, 1956, said bonding company was unable to present him and his counsel, Atty. Flaviano Manalo, moved that he be allowed to withdraw his appearance on the ground that he could not contact his client; and that "it was only after much efforts that the Plaridel Surety & Insurance Company was able to turn him over to the MPD on November 6, 1956." None of these facts is denied by petitioner.

In view of the foregoing, we find that respondent Judge had acted neither without jurisdiction nor in excess of his jurisdiction or with grave abuse of discretion, in issuing the order complained of, for which reason the petition in

this case is hereby dismissed, and the writ of preliminary injunction issued herein is dissolved, with costs against the petitioner.

It is so ordered.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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