

**NEMESIA U. ALAMA, PETITIONER, VS. THE HONORABLE
MACAPANTON ABBAS, JUDGE OF THE COURT OF FIRST INSTANCE
OF DAVAO, AND THE PROVINCIAL FISCAL OF DAVAO,
RESPONDENTS.**

G.R. No. L-19616. November 29, 1966

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

This is a petition for mandamus with preliminary injunction, praying that respondent Judge Macapanton Abbas, of the Court of First Instance of Davao, be ordered to immediately give course to the appeal interposed by petitioner in five criminal cases decided by said Judge.

Petitioner is the accused in Criminal Cases Nos. 5364, 5365, 5366, 5443 and 6112, for malversation of public funds thru falsification of official documents, before the Court of First Instance of Davao. Upon her plea of guilty in the five criminal cases, judgment was rendered by the respondent Judge which was promulgated on December 19, 1961.

On January 3, 1962, within the reglementary period to appeal, petitioner filed a notice of appeal in all the five cases. After the appeal bond, which was previously fixed at P20,000.00 for the five cases was filed and approved, respondent Judge, on January 11, 1962, ordered counsel for petitioner to file a manifestation stating therein the questions of law that the accused would raise in the appeal. Complying with said order, on January 26, 1962, counsel for petitioner filed a manifestation enumerating the questions of law he would raise in the Supreme Court, to wit:

- "1. That accused's plea of guilty in the five (5) cases were secured thru misrepresentation.
- "2. That the penalties are not what had been promised the accused.
- "3. That the penalty imposed in Criminal Case No. 6112 is excessive.
- "4. That the decisions are rendered upon defective informations."

On February 8, 1962, an order was issued by the respondent Judge disallowing the appeal, the pertinent portions of which reads:

"The accused pleaded guilty to the information in all these cases. All defects in the information except want of jurisdiction and that the acts alleged in the information do not constitute an offense are deemed waived. The accused is intelligent and educated.

"The contention that the plea of guilty entered by the accused in all these cases were secured by misrepresentation is a question of fact. If true, there is no evidence of such misrepresentation in the record and it can not be reviewed on appeal. Moreover, the accused is intelligent and assisted by counsel. If there was any promise regarding the penalties, it is also a question of fact and since the record does not show such promise it

can not be reviewed on appeal. It is not pointed out why the penalty Imposed in Criminal Case No. 6112 is excessive. The penalty imposed in this case is the minimum penalty. It is not stated why the informations are defective. As already stated all defects in the information except want of jurisdiction and that the acts alleged in the information do not constitute an offense are deemed waived by the plea of guilty."

Claiming that respondent Judge acted improvidently and without any legal basis either (1) because at the time the questioned order was issued petitioner's appeal was already perfected and so respondent Judge had lost jurisdiction over the case, or (2) that respondent Judge has no power to pass upon the issues he would raise in the appeal, on April 3, 1962, petitioner filed the instant petition for mandamus with preliminary injunction to restrain the execution of the judgment in the five criminal cases in question. The Provincial Fiscal of Davao is included as party respondent. On April 6, 1962, this Court gave due course to the petition and issued the writ of preliminary injunction, prayed for, without bond.

The petition is meritorious. Settled is the rule that once an appeal in a case, "whether civil or criminal, has been perfected, the court a quo loses jurisdiction over the case both over the record and over the subject of the case" (The Director of Prisons, et al. v. Teodoro, etc., et al., 97 Phil., 391, 395). And in criminal proceedings, an appeal is perfected by "filing a notice of appeal with the court in which the judgment or order was rendered, and by serving a copy thereof upon the adverse party or his attorney, within fifteen days from the rendition of the judgment or order appealed from" (Evaristo, et al. v. Hon. Olegario Lastrilla, et al., L-14682, November 29, 1960; Sections 3 and 6, Rule 118, Old Rules of Court, now Sections 3 and 6, Rule 122.). Here it is not disputed that petitioner had filed her notice of appeal with respondent Judge on January 3, 1962, and having complied with the legal requirements for the perfection of her appeal before the statutory period for appeal expired,[1] there is no need for the respondent Judge to require petitioner to file a manifestation stating the questions she wants to raise in her appeal, and all that is left for him to do is to give the appeal due course. This is so because whether the issues to be raised by petitioner in the appeal are factual, or the appeal is frivolous or dilatory, is not for the court a quo to pass upon but by the appellate court.

Thus, in the case of Dasalla, et al. v. The Hon. Judge Hermogenes Caluag, et al., L-18765, July 13, 1963, this Court held:

"It is true that, according to defendants, judging from its merits, the appeal seemingly has been interposed by the plaintiffs merely for manifest delay, but even if this were true the right to pass upon this question is not certainly the court a quo whose decision is in issue but the appellate court. The court a quo cannot prevent a party from appealing from its order or decision no matter how frivolous it may be in order that it may be reviewed by an appellate court, because such prerogative is given to the latter. As a matter of fact, this case is covered by our rules when they provide that where an appeal is found to be frivolous double or treble costs may be imposed on the appellant, which may be paid by his attorney, if so ordered by the court (Section 3, Rule 131). Indeed, this is a matter that cannot be looked into by the court a quo because it goes to the very merits of its decision. x x x"

Recently, We had occasion to reiterate the foregoing ruling:

"Respondent judge having erroneously dismissed GSIS' timely appeal, the present action for mandamus is the proper remedy (Sec. 15, Rule 41, Rules of Court). As regards the right to pass upon whether or not the appeal is manifestly for delay, the same resides not on the court a quo whose decision or order is in issue, but on the appellate court during consideration of said appeal (Dasalla vs. Caluag, L-18765, July 31, 1963)." (Government Service Insurance System v. Hon. Gaudencio Cloribel, et al., L-22236, June 22, 1965)

It is contended by the Provincial Fiscal of Davao, in behalf of respondents, that the notice of appeal filed by the petitioner did not comply with the requirement of Section 3, Rule 42 of the Rules of Court (now Section 2, Rule

42 of the New Rules of Court) which provides:

"Sec. 2. Appeal on pure question of law.—Where the appeal is based purely on questions of law, the appellant shall so state in his notice of appeal, and then no other questions shall be allowed, and the evidence need not be elevated."

This contention has no merit. The above-quoted provision refers to appeal in civil cases. The requirement that when the appeal (to the Supreme Court) is based on pure question of law "the appellant shall so state in his notice of appeal" does not mean that right in the notice of appeal the questions of law to be raised must be specified. That requirement is simply for the purpose of determining whether, or not, there is necessity for the transmission to the Supreme Court of the record of the evidence adduced during the trial. The law prescribes the cases that are appealable directly from the Court of First Instance to the Supreme Court, but if the appellant manifests that the appeal is based purely on questions of law he should so state in his notice of appeal so that the record of the evidence would not be transmitted to the Supreme Court. Thus if the subject matter of a civil case before the Court of First Instance is valued at more than P200,000.00, for instance, the decision of the Court of First Instance is appealable directly to the Supreme Court — and both questions of fact and law may be reviewed by the Supreme Court. Here is a case where it is necessary to state in the notice of appeal that the appeal is based on purely question of law — otherwise if there is no such statement in the notice of appeal the entire records of the case will have to be remitted to the Supreme Court. It is understood that in cases which are not appealable directly from the Court of First Instance to the Supreme Court a notice of appeal to the Supreme Court will only relate to questions of law.

The law prescribes the criminal cases that are appealable directly from the Court of First Instance to the Supreme Court, and in these cases both questions of fact and law may be reviewed by the Supreme Court. It is understood that an appeal from the decision of the Court of First Instance to the Supreme Court in those cases that are not directly appealable to the Supreme Court only questions of law may be raised. And so, in appeals in criminal cases that are not appealable directly to the Supreme Court, there is even no need to state in the notice of appeal that the appeal is based on purely questions of law. In fact, the provisions of Rule 118 of the Old Rules of Court (now Rule 122 of the New Rules of Court), relating to appeals in criminal cases from the Court of First Instance to the Supreme Court, makes no mention of any requirement that the appellant should state in his notice of appeal that the appeal is based on purely question of law.

The respondent Judge, therefore, erred in requiring the counsel for the petitioner to make specifications of the question of law that the petitioner would raise in his appeal to the Supreme Court from the decision in Criminal Cases Nos. 5364, 5365, 5366, 5443 and 6112 of the Court of First Instance of Davao.

It appearing that the respondent Judge had unlawfully excluded the petitioner from the enjoyment of a right to which she is entitled, and the petitioner has no other plain, speedy and adequate remedy in the ordinary course of law, the issuance of a writ of mandamus in the present case is in order.

WHEREFORE, the writ of mandamus, prayed for, is granted. The order dated February 8, 1962 is set aside, and respondent Judge, or whoever now has taken the place of the respondent Judge and to whose sala Criminal Cases Nos. 5364, 5365, 5366, 5443 and 6112 of the Court of First Instance of Davao are assigned, is hereby ordered to give due course to petitioner's appeal in said criminal cases. No costs.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Sanchez and Ruiz Castro, JJ., concur.

[1] Although there is nothing in the record to show that notice of the appeal was served upon the adverse party,

this fact is to be presumed as the same is not raised and/or denied by respondents.

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