

EDMOND M. RUIZ, PETITIONER, VS. HON. COURT OF APPEALS, HON. LEONOR INES LUCIANO, AS PRESIDING JUDGE OF THE JUVENILE AND DOMESTIC RELATIONS COURT OF QUEZON CITY, AND CELESTINE LU...

G.R. No. L-39257. July 23, 1976

Ponente: CASTRO, J.

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CASTRO, J.:

This is a petition for review on certiorari of the decision dated July 30, 1974 of the respondent Court of Appeals in CA-G.R. SP 03010 entitled "Edmond M. Ruiz, Petitioner, versus Hon. Leonor Ines Luciano, etc., and Celestine Lumba Ruiz, Respondents." By resolution dated March 3, 1975, the Court resolved to consider this petition as a special civil action.

This case has become moot and academic; the petition is hereby dismissed.

On January 11, 1974 the private respondent Celestine Lumba Ruiz filed with the Juvenile and Domestic Relations Court of Quezon City a complaint for support and custody of her three minor children against the petitioner (Sp. Proc. QE-00711), alleging, among others, that the petitioner and the private respondent were lawfully married in 1967; that they have three legitimate children, namely, Maria Veronique Cathryn, 5 years old, Candice Albertina, 3 years old, and Ma. Gabrielle Angeli, 1 1/2 years old, all surnamed Ruiz; that sometime in December 1973, she was driven out of their conjugal home and thereafter prevented from entering the premises and has been completely deprived of seeing her children and having custody of them; that the petitioner has exerted every conceivable effort to prevent her from communicating with her own children; that the petitioner has likewise refused to extend any support to her since then; and that their relationship has been completely strained and that there is no hope of reconciliation.

Answering the complaint, the petitioner denied most of the allegations therein, and averred that the private respondent abandoned the conjugal home and their children and failed to return after her release from detention following her arrest with Ensign Joseph Sevilla in a motel; that their relationship has been "completely strained"; and that there is no hope of reconciliation; that the private respondent has committed adulterous acts, penalized by Art. 333 of the Revised Penal Code, for which she was in fact apprehended; that in view thereof she has become unfit to take care of the children and is not entitled to support, having given cause for legal separation and for loss of parental authority.

The petitioner filed on February 14, 1974 a petition against the private respondent for legal separation (Case QE-00724), with the Juvenile and Domestic Relations Court of Quezon City, containing virtually the same allegations, to wit, that the private respondent committed adultery by having sexual intercourse, during the period from September to December 1973, in Pasay City and elsewhere with a man not her husband; that the respondent without just cause abandoned and neglected the children; and that the said acts, aside from giving cause for legal separation, constitute grounds for loss of parental authority, disqualification to receive any support from the

petitioner, and deprivation of custody and care of the children. He prayed that a decree of legal separation be granted and that the custody of the three minor children be given to or retained by him.

On March 22, 1974 the private respondent filed an *ex parte* motion in Sp. Proc. QE-00711 that she be allowed to visit her children and take possession of her personal effects. The court set this motion for hearing on April 8, but the hearing was postponed and reset for April 23, 1974 at 8:30 o'clock in the morning, the court requiring the "defendant, together with the parties' children x x x to be personally present."

On April 22, 1974 the petitioner filed two separate urgent motions for the suspension of the proceedings in both cases, pursuant to Section 3(b) of Rule 111 of the Rules of Court, until after final judgment in the criminal case for adultery that had been filed against the private respondent and her paramour, Ensign Joseph Sevilla, PN, before the Military Commission No. 2 (Criminal Case No. MC-2-42), contending that the aforesaid civil actions and criminal charge pending before the military tribunal "arose from the same offense of adultery committed by the respondent and her paramour."

The urgent motions to suspend proceedings were heard jointly by the respondent Judge on April 23, 1974, the same date to which was reset for hearing the private respondent's *ex parte* motion to allow her to visit her children and take possession of her personal effects. The petitioner's urgent motions were verbally denied in open court, but the petitioner was given three days within which to file a motion for reconsideration. This the petitioner did. The private respondent's motion was not, however, resolved.

The petitioner received on April 29, 1974 a copy of the written order dated April 23, 1974 denying the urgent motion to suspend proceedings and resetting the conciliation conference for May 6, 1974 at 2 o'clock in the afternoon, at which date and time the petitioner and the respondent were ordered to personally appear, the former to bring to the court the three minors under pain of contempt should he fail.

Anticipating that the respondent Judge would deny his motion for reconsideration, and would proceed with the "conciliation conference" as rescheduled, the petitioner filed with the Court of Appeals on May 2, 1974 a petition for certiorari and prohibition with writ of preliminary injunction (CA-G.R. SP-03010-R) for the specific purpose of setting aside the respondent Judge's order of April 23, 1974.

The Court of Appeals, in its resolution of May 3, 1974, required the respondent to comment and ordered that a temporary restraining order issue.

On July 30, 1974 the appellate court promulgated its resolution denying the petition and lifting the temporary restraining order. The motion for reconsideration of the resolution was likewise denied on August 26, 1974. Hence the present petition for certiorari with writ of preliminary injunction, raising two issues, to wit:

"1, Whether or not the hearing and all proceedings in Sp. Proc. No. QE-00711 for support and custody of minors and Civil Case No. QE-00724 for legal separation both pending before the Juvenile and Domestic Relations Court should be suspended until final judgment in Criminal Case No. MC-2-42 for adultery against private respondent and her paramour tried by the military tribunals has been rendered; and

"2. Corollary to the above, whether or not the respondent Court (of Appeals) and the respondent Judge (of the JDRC) erred in not suspending the hearing and all proceedings in said cases until the decision in the criminal case for adultery has become final";

and praying (1) that the petition be given due course; (2) that pending determination of the merits, a restraining order be immediately issued *ex parte* enjoining the respondent Judge of the Juvenile and Domestic Relations Court from further proceeding in Sp. Proc. QE-00711 and Civil Case QE-00724 until final judgment in Criminal Case

MC-2-42 shall have been rendered; and (3) that after due hearing, the preliminary writ of injunction be made permanent, with costs against private respondent.

Without giving due course to the petition, the Court resolved on September 18, 1974 to require the respondents to comment thereon; the Court likewise issued a temporary restraining order.

The respondents filed their comment on September 27, 1974, stating, among others, that the questions raised by the petitioner are the same as those raised before the Court of Appeals and that the respondent Court's resolution answers all the questions. A "Reply to Respondents' Comment" was filed on October 7, 1974, annexing thereto a copy of the decision of the Military Commission No. 2 which convicted the private respondent and her paramour of the crime of adultery. This decision was, however, still pending review by the competent military authorities.

On March 3, 1975 the Court resolved to consider the instant petition as a special civil action and the respondents' comment as answer and set the case for hearing. At the hearing, the counsels of both parties were required to submit (1) a joint manifestation regarding the actual status of the criminal case for adultery, (2) a copy of the decision of the military commission on the adultery case, and (3) a transcript of the proceedings before the said Military Commission.

The petitioner filed on February 20, 1976 a "Manifestation" stating that "on January 22, 1976, the sentence imposed by Military Commission No. 2 on private respondent Celestine Lumba Ruiz and her paramour Ensign Joseph Sevilla was approved by His Excellency, Pres. Ferdinand E. Marcos, as the Reviewing Authority, and the New Bilibid Prisons in Muntinlupa, Rizal and the Women's Correctional Institution were designated as the places of confinement." A xerox copy of the action of the Reviewing Authority signed by the President was attached thereto.

The principal issue in the instant case is whether or not the proceedings in Sp. Proc. QE-00711 for support and custody of children and in Civil Case QE-00724 for legal separation should be suspended until the judgment in Criminal Case MC-2-42 shall have become final. The principal relief prayed for by the petitioner is to enjoin the respondent Judge of the Juvenile and Domestic Relations Court of Quezon City from proceeding in the two civil cases until said finality. The judgment in the criminal case has become final with the approval thereof by the President. Consequently, the controversy from which the instant case sprang has come to an end; no effective relief can be given to the parties in the premises, and no practical result can be gained by rendering a decision. This case has become moot and academic.

ACCORDINGLY, the petition is dismissed, and the temporary restraining order issued on September 18, 1974 is hereby lifted. No pronouncement as to costs.

Makasiar, Muñoz Palma and Martin, JJ., concur.
Teehankee, J., files a brief concurrence.

CONCURRING:

TEEHANKEE, J.,

I concur. Although I entertain grave constitutional doubts about the military commission's jurisdiction to try and convict private respondent, a civilian, for the crime of adultery (in line with my dissenting opinion in *Aquino vs. Military Commission No. 2*, 63 SCRA 546, 611, 618-619, that civilians placed on trial for civil offenses under general law are entitled to trial by judicial process, into by executive or military process), this question is not involved in the present case. The petition is properly dismissed for having been rendered moot since what

petitioner has sought has already been attained, i.e. the suspension of the two civil cases pending in the civil courts, one for support and custody of minor children filed by respondent, and the other for legal separation filed by petitioner, until the military commission's action of conviction in the adultery case became, as it has now become, final with its approval by the President as the Reviewing Authority.

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