

AUGUST O. BERNARTE, CARMELITO ACEBRON, AND ANTONIO B. QUIAMBAO, PETITIONERS, VS. THE SECRETARY OF NATIONAL DEFENSE, THE PROVINCIAL FISCAL OF RIZAL, THE CHIEF OF STAFF OF THE ARM...

G.R. No. L-36222. August 21, 1982

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

In this certiorari and prohibition proceeding, petitioners then under detention by military authorities arising from the filing of charges against them for the crime of malversation with the illegal use of public property before respondent Military Commission No. 5, challenged its jurisdiction on the ground that previously a complaint based on the same facts, more specifically, the unloading of the RCA rice from the motor vehicle M/V New Cronulla in Mariveles, Bataan to be placed on a barge and thereafter its apprehension two days later with such rice, was the subject of a criminal complaint filed before the Provincial Fiscal of Rizal.[1] It was then alleged that an oral motion to quash before respondent Military Commission based on the lack of jurisdiction was denied.[2] A motion for reconsideration met the same fate resulting in the filing of this petition.[3] It was likewise alleged that this certiorari and prohibition proceeding could be viewed likewise as one for habeas corpus.[4] Respondents, the then Secretary, now Minister, of National Defense, the Provincial Fiscal of Rizal, the Chief of Staff of the Armed Forces of the Philippines, as well as respondent Military Commission were required to comment.

In the comment of respondents submitted by Solicitor General Estelito P. Mendoza,[5] there was a recapitulation of the events that gave rise to the filing of the criminal case before the respondent Military Commission. The Rice and Corn Administration imported rice, the shipment arriving at the Port of Mariveles, Bataan on September 5, 1972. Some individuals including petitioners loaded 4,401 bags valued at P440,100.00 on a barge known as Kalinga 21. When it reached Makati, Rizal, it was apprehended. The Chief of Police of such municipality then filed with the Provincial Fiscal of Rizal a letter-complaint for "Violation of the Rules and Regulations of the RCA Law, amended by RA No. 3452," more particularly "Illegal possession of RCA rice," against some eighteen persons, among them being petitioner August O. Bernarte. Thereafter, the Prosecution Staff of the Military Tribunals conducted an investigation in accordance with Presidential Decree No. 39. As a result, the charge for malversation was filed against petitioners and seventeen other persons before respondent Military Commission No. 5.

The principal issue according to the Solicitor General could be formulated in this wise: "Did Military Commission No. 5 legally assume jurisdiction over Criminal Case No. MC-5-4 charging malversation notwithstanding the fact that a complaint for violation of the RCA law and regulations was filed on September 18, 1972 with the Office of the Provincial Fiscal of Rizal? Stated otherwise, the question may be asked: Did the fact that there was a prior complaint filed before the Provincial Fiscal of Rizal for violation of the RCA law and regulations deprive the military commissions of their concurrent jurisdiction with civil courts of trying the case now before Military Commission No. 5 which is for malversation committed in Mariveles, Bataan?"[6] It was his submission that

there could be no doubt as to the jurisdiction of respondent Commission not only because the offense was within its jurisdiction but also because there could be no question of double jeopardy as they were two separate offenses. He concluded by stating that petitioners: "have failed to show, as indeed they cannot show, that a complaint was filed before the Provincial Fiscal of Bataan in regard to the crime of malversation committed thereat - before or after September 22 1972. And neither can they intelligently and consistently maintain that the Provincial Fiscal of Rizal can possibly file an information in the Province of Rizal charging a felony committed in Bataan. This being the case, petitioner stance is exposed for what it is - unjustified and without legal basis." [7]

There was subsequently a motion by petitioners to require respondents to submit certain data and information to this Court wherein it was stressed that they: "are civilians charged with malversation, allegedly committed in a non-military area. B. All the civil courts in greater Manila and in Luzon, for that matter, are open and functioning freely and normally. C. The government is in the untrammelled exercise of its authority. D. Military tribunals for trying civilian offenders have become an anachronism specially at this time when the President has just issued a decree which 'changed the permanent stations of district judges to serve better the ends of justice.' (The Daily Express, May 31, 1973) E. This Honorable Court has assumed supervision over the lower courts, and it is in a position to know that there is absolutely no justification for giving military tribunals jurisdiction to try cases involving civilians." [8] After a rejoinder was submitted by respondents wherein the legal points raised were discussed, such motion was denied. Respondents filed their memorandum but petitioners failed to do so. At the time of the filing of such memorandum, the case of *Aquino, Jr. v. Military Commission No. 2*, [9] had been decided where the jurisdiction of military tribunals over civilians for certain specified offenses connected with rebellion and subversion was sustained.

This certiorari and prohibition proceeding must, therefore, be dismissed.

1. The ruling of this Court in the afore-cited *Aquino, Jr. v. Military Commission* decision leaves no doubt that a civilian could be tried by a Military Commission. The comment of the Solicitor General is quite clear on the matter. In *Gumaua v. Espino*, [10] there was a reiteration of such doctrine that the President of the Philippines, entrusted with the power to issue decrees having the force and effect of law, could during the period of martial law create military commissions or court martial to try not only members of the Armed Forces, but also civilian offenders for specified offenses. The charge against petitioners in this case is one of them. The legal point raised by petitioners is, therefore, bereft of merit.

2. Now as to the issue of double jeopardy. Petitioners appear to have ignored that the Constitution is a guarantee against a prosecution "for the same offense." [11] Nor does it suffice that there was such a complaint before the office of the Provincial Fiscal even on the assumption that the offenses could be considered identical, for as was reiterated in *Collector of Customs v. Villaluz*, [12] in an opinion by Justice Makasiar: "The constitutional right against double jeopardy exists, not after the first preliminary examination or investigation, but only after the first trial which results either in conviction or acquittal or in the dismissal or termination of the case without the express consent of the accused by a court of competent jurisdiction upon a valid complaint or information and after the accused had pleaded to the charge." [13]

WHEREFORE, the petition is dismissed for lack of merit.

Aquino, Concepcion, Jr., Abad Santos, De Castro, and Escolin, JJ., concur. Barredo, and Guerrero, JJ., no part.

[1] Petition, pars. 6, 9-10.

[2] *Ibid*, pars. 16 and 21.

[3] *Ibid*, par. 22.

[4] Ibid, par. 37. Habeas corpus is included in the caption of this suit.

[5] He was assisted by Assistant Solicitor General Rosalio A. de Leon, Solicitors Vicente V. Mendoza, Jose A.R. Melo and Jesus O. Ibay.

[6] Comment, 6.

[7] Ibid, 10-11.

[8] Manifestation and Motion to require respondents to submit certain data and information to this Honorable Court, 7.

[9] L-37364, May 9, 1975, 63 SCRA 546.

[10] L-36188-37586, February 29, 1980, 96 SCRA 402 (per Makasiar, J.).

[11] According to Article IV, Sec. 22 of the Constitution: "No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."

[12] L-34038, June 18, 1976, 71 SCRA 356.

[13] Ibid, 396.

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