

PEDRO ACHARON, PETITIONER AND APPELLANT, VS. FIDEL P. PURISIMA, ET AL., RESPONDENTS AND APPELLEES.

G. R. No. L-23731. February 26, 1965

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Pedro Acharon seeks to restrain the Municipal Judge of General Santos, Cotabato, from trying certain criminal cases filed against him for violation of Commonwealth Act No. 303 pending final disposal of the instant petition for certiorari.

The present petition requires an inquiry into the antecedents of the incident that gave rise to the petition for certiorari instituted by Pedro Acharon before the Court of First Instance of Cotabato.

Acharon was charged with a violation of Commonwealth Act No. 303 in four separate informations before the Municipal Court of General Santos, Cotabato, which were set for preliminary investigation on April 28, 1962. Sometime prior to said date, Acharon filed a motion to quash on the ground of lack of jurisdiction because (1) the administrative remedies provided for by the rules and regulations promulgated under the Minimum Wage Law as a condition precedent for the filing of a criminal action thereunder were not exhausted and (2) the certification issued by the Secretary of Labor as a prerequisite for an action to be taken under Commonwealth Act No. 303 has not been obtained. This motion was denied. And his motion for reconsideration having been disregarded Acharon filed a petition for certiorari before the Court of First Instance of Cotabato alleging lack of jurisdiction or grave abuse of discretion on the part of the municipal court.

The petition was given due course and in due time respondents filed their answer justifying the action taken by the Municipal Court of General Santos. However, after the court a quo has set the case, for hearing and allowed respondents to submit a memorandum in their behalf, it dismissed the petition on the ground that neither the information filed before the court of origin nor the order denying the motion to quash were incorporated into the petition thus rendering it impossible for the court to render a decision on the merits. The court said: "For this failure of the petitioner to plead the complaint and the order in question, from which the court should have gathered the facts which constitute alleged lack of jurisdiction and grave abuse of discretion, the Court is not in a position to render a judgment in this case." From this order of dismissal Acharon took the present appeal and now petitions that, pending the disposal of this appeal, the Municipal Court of General Santos be enjoined from hearing the criminal cases above adverted to.

We are of the opinion that this appeal has no merit for the reason that the step Acharon should have taken to obviate the technical defect observed by the court a quo on which it predicated its order of dismissal was not to appeal but to file a motion for reconsideration furnishing the court with the two pleadings which it considered vital for an intelligent determination of the case. Apparently this was not done because no such step appears in the record. Moreover, when the motion to quash filed by Acharon that neither the information filed before the court of origin nor the order denying the motion to quash were incorporated into the petition thus rendering it impossible

for the court to render a decision on the merits, the court said: "For this failure of the petitioner to plead the complaint and the order in question, from which the Court could have gathered the facts which constitute the alleged lack of jurisdiction and grave abuse of discretion, the Court is not in a position to render a judgment in this case." From this order of dismissal Acharon took the present appeal and now petitions that, pending the disposal of this appeal the Municipal Court of General Santos be enjoined from hearing the criminal cases above adverted to.

We are of the opinion that this appeal has no merit for the reason that the step Acharon should have taken to obviate the technical defect observed by the court a quo on which it predicated its order of dismissal was not to appeal but to file a motion for reconsideration furnishing the court with the two pleadings which it considered vital for an intelligent determination of the case. Apparently this was not done because no such step appears in the record. Moreover, when the motion to quash filed by Acharon to nullify the criminal cases filed against him was denied by the Municipal Court of General Santos his remedy was not to file a petition for certiorari but to go to trial without prejudice on his part to reiterate the special defenses he had invoked in his motion and, if, after trial on the merits, an adverse decision is rendered, to appeal therefrom in the manner authorized by law. This is the procedure that he should have followed as authorized by law and precedents. Instead, he took the unusual step of filing a writ of certiorari before the Court of First Instance which in our opinion is unwarranted it being contrary to the usual course of law. We find, therefore; of no useful purpose to continue with the present appeal making the parties spend unnecessarily for the printing of their briefs only to have it dismissed in the end. As a corollary, we likewise find unnecessary to issue the writ of preliminary injunction prayed for.

WHEREFORE, the present appeal is dismissed. The petition for preliminary injunction is denied. No costs.

Bengzon, C.J., Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

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