

GIL V. MANLAVI, COMPLAINANT, VS. JUDGE EUSTAQUIO Z. GACOTT, JR., REGIONAL TRIAL COURT, BRANCH 47, CITY OF PUERTO PRINCESA, RESPONDENT.

A.M. No. RTJ-95-1293. May 09, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is an administrative complaint filed against respondent, the presiding judge of the Regional Trial Court, Branch 47, Puerto Princesa City.

I

Complainant, a senior police officer, charged respondent with partiality, miscarriage of justice and knowingly rendering an unjust decision in connection with the dismissal of Criminal Cases Nos. 9210 (Illegal Possession of Explosives Intended for Illegal Fishing) and 9211 (Illegal Possession of Illegally Caught Fish). The cases were consolidated for trial.

The accused moved to quash Criminal Case No. 9210 on the ground that the evidence of the prosecution was the product of a warrantless and illegal search and seizure. Respondent granted the motion in the Order dated July 9, 1992, citing the admission of the prosecution that the search and seizure was not covered by a search warrant, and that the search warrant presented in court was issued after the fact.

Complainant contended that the confiscation of the fish in the absence of a search warrant was allowed under Circular No. 130 (s. 1967) of the Office of the President.

The accused moved to quash Criminal Case No. 9211 on the ground that the information failed to charge the offense of illegal possession of fish caught by explosives for its failure to allege the element "for profit."

The information in said case reads as follows:

"That on or about the 18th day of January, 1991, at Bgy. Mandaragat, Puerto Princess City, Philippines and within the jurisdiction of this Honorable Court, the said accused conspiring and confederating together with John Doe, Peter Doe and William Doe whose true identities and present whereabouts are still unknown and one Virgilio Laguna, a military officer, which case was forwarded to the JAGO, did then and wilfully, unlawfully and feloniously possess illegally caught assorted fish with the use of explosives, weighing more or less Eight (8,000) Thousand Kilos."

In his comment, the City Prosecutor admitted the omission in the information of the phrase "for profit" but he claimed that said omission was a mere technicality.

In his Order dated June 25, 1992, respondent granted the motion on the ground that the information was fatally defective, because it failed to allege two essential elements: (1) that the accused had knowledge that the fish were illegally caught with the use of explosives; and (2) that they intended to dispose of or sell the fish for profit.

The prosecution moved for the reconsideration of the order arguing: (1) that the word "knowingly" was substituted with the word "wilfully"; and (2) that P.D. No. 704 punishes the separate acts of possessing, dealing in, selling or disposing of illegally caught fish or aquatic products. The motion for reconsideration was denied.

II

In his comment, respondent denied the charges against him and asserted that his orders were supported by law and evidence. He moved for the dismissal of the instant complaint.

As to the dismissal of Criminal Case No. 9210, complainant himself admitted that the search and seizure was conducted in the absence of a warrant. The search warrant produced by the complainant was issued after the search and seizure took place.

Moreover, complainant cannot justify the warrantless search and seizure by invoking Circular No. 130 (s. 1967) of the Office of the President. The circular pertains to the procedure in the confiscation of fish caught through the use of explosives. Such confiscation may be exercised only by the Commissioner of Fisheries or his representatives, who can only take a sample of the fish (not to exceed one kilo) for testing if the fish were indeed caught through the use of explosives. It is only upon the determination that the fish were caught through the use of explosives when the seizure of the entire catch may be authorized. Thereafter, an appraisal of the value of the fish caught shall be made, which shall be paid to the accused should he be subsequently acquitted in the criminal case filed against him.

We note that the arresting officers failed to show compliance with the procedure prescribed by the very circular they invoke.

As to the dismissal of Criminal Case No. 9211, respondent erred in holding that the information was defective in not alleging that the offense was committed "knowingly." The element of knowledge was encompassed within the word "wilfully" used by the prosecutor.

However, the information suffers from infirmity for failure to allege the element "for profit." Section 33 (Illegal fishing, dealing in illegally caught fish or fishery/aquatic products) of Presidential Decree No. 704, as amended, provides:

"xxx It shall likewise, be unlawful for any person knowingly to possess, deal in, sell or in any manner dispose of, for profit, any fish or fishery/aquatic products which have been illegally caught, taken or gathered" (Underscoring supplied).

It is true that the provision prohibits the separate acts of possessing, dealing in, selling or disposing of illegally caught fish and aquatic products, but said acts must not only be done "knowingly" but also "for profit," an essential element of the offense.

Complainant's argument — that a quashal of the complaint or information cannot be done without the prior written approval of the provincial prosecutor — is misplaced.

Complainant invokes Section 4, Rule 112 of the New Rules on Criminal Procedure, which provides:

xxx xxx xxx

"No complaint or information may be filed or dismissed by an investigating fiscal without the prior written approval of the provincial or city fiscal or chief state prosecutor."

xxx xxx xxx

Said provision applies to the conduct of the preliminary investigation, which is within the control of the public prosecutor. It has no application in a case where the information is already filed before the proper court. In fact, the epigraph of Rule 112 is "Duty of investigating fiscal."

In the case at bench, the accused moved for the quashal of the criminal cases after their arraignment. As a general rule, an accused can move for the quashal of the information on any ground before arraignment (Revised Rules of Court, Rule 117, Sec. 1). However, the rule admits of some exceptions such as where there is no offense charged (Revised Rules of Court, Rule 117, Section 8; Cruz, Jr. v. Court of Appeals, 194 SCRA 145 [1991]), for what controls is not the designation of the offense charged in the information but the allegations of the constitutive elements of the offense (People v. Aczon, 225 SCRA 237 [1993]). Any ambiguity in the information shall be resolved in favor of the accused (People v. Bondoy, 222 SCRA 216 [1993]).

Well-settled is the rule that the acts of a judge which pertain to his judicial capacity are not subject to disciplinary power, unless when they are committed with fraud, dishonesty, corruption or bad faith (Abiera v. Maceda, 233 SCRA 520 [1994]).

WHEREFORE, the complaint is DISMISSED.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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