

**COMMUNICATIONS INSURANCE COMPANY, INCORPORATED,
PETITIONER, VS. HON. ONOFRE A. VILLALUZ, IN HIS CAPACITY AS
PRESIDING JUDGE OF THE CIRCUIT CRIMINAL COURT, ANTONIO
MARIÑAS, DEPUT...**

G.R. Nos. L-36721-27. August 29, 1980

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petitioner filed this petition for certiorari and prohibition against the Order of the respondent Judge issued in Criminal Cases Nos. CCC-VII-481, 487 to 492-P.C. all against Nestor Evangelista, with three or four co-accused, for seven (7) cases of estafa through falsification of commercial documents. The Order complained of denied the motion filed by petitioner for the reduction of its liability under the seven (7) bail bonds it posted for the temporary release of Nestor Evangelista, which were declared forfeited on May 11, 1972 in an order which gave petitioner thirty (30) days within which to produce the body of Nestor Evangelista who failed to appear during the trial on April 12, 1972, and to show cause why judgments should not be rendered against it on its bonds.

Petitioner failed to comply with the aforecited order, so on June 8, 1972, on order of respondent judge, a writ of execution was issued for the total amount of the seven (7) bail bonds in the sum of P134,000.00.[1] Invoking the "three-fold" rule under Art. 70 of the Revised Penal Code, as amended, petitioner filed the motion for the reduction of its liability under the bonds it posted, setting the motion for hearing on April 14, 1973. Respondent judge denied the motion in an order dated April 6, 1973.[2]

It is in denying the motion aforecited, even before the date set for its hearing, allegedly contrary to prevailing jurisprudence and "a clear policy mandated by law relative to confiscation of bail bonds, particularly as to the amount thereof", that the respondent judge is alleged to have gravely abused his discretion for which the petitioner took the present recourse.

In the resolution of this Court of May 30, 1973,[3] after the Solicitor General has filed its comment to the petition,[4] petitioner was required to pay to the Clerk of Court of the Supreme Court the amount of P90,000.00, equivalent to three times the highest amount of bail bond (P30,000) offered by petitioner on behalf of accused Nestor Evangelista, as a condition precedent to the giving of due course to the petition as regards the balance of P44,000.00 of the total bail bond of P134,000.00. Petitioner having paid the P90,000.00 to the Clerk of Court of this Court, respondents were required to file their answer to the petition which was given due course as regards the balance of P44,000.00.[5]

Respondents, through the Solicitor General, filed their Answer on July 26, 1973, after which the case was set for hearing on August 24, 1973.[6] At the hearing, only the representative of the Solicitor General appeared, petitioner filing instead a motion to file Memorandum in lieu of oral argument, for which he was given 30 days to file, and the Solicitor General, also given 30 days to reply thereto.[7]

The seven cases of estafa through falsification of commercial documents, the amounts involved, the imposable penalties and the amounts of the bail bonds in each are as follows:

"Case No.

Amount Involved

Maximum Penalty Imposable

Amount of Bond

(1) 481 P 20,000.00

8 years

P 14,000.00

(2) 487 200,000.00

20 years

30,000.00

(3) 488 50,000.00

10 years

17,000.00

(4) 489 25,000.00

8 years

14,000.00

(5) 490 150,000.00

20 years

25,000.00

(6) 491 30,000.00

8 years

14,000.00

(7) 492 100,000.00

15 years

20,000.00

TOTALS -

89 years

P134,000.00"

As earlier stated, the bail bonds were ordered confiscated on May 11, 1972, and a writ of execution was issued on June 8, 1972. It was only on April 5, 1973, but without having surrendered the person of Nestor Evangelista, that petitioner filed a motion asking the Criminal Circuit Court to reduce its liability under its bonds, principally basing its request on the so-called "three-fold" rule under Art. 70 of the Revised Penal Code whereby the convict would be made to serve not more than three-fold the length of time corresponding to the most severe of the penalties imposed on him, which in no case shall exceed forty (40) years.

Petitioner seeks also to apply, by analogy, Circular No. 29, May 7, 1972 which reads:

"When the accused is charged of three or more offenses arising from the same incident, the crime not being complex the bail bonds shall not exceed threefold that which is required under this Circular for the most severe offense."

Finally, petitioner invokes the ruling in the case of *People vs. Puyat*, G. R. No. L-8091, February 17, 1956, 98 Phil. 415, which reduced the liability of the confiscated bond of P10,000.00 to P3,000.00, the Court taking into account the sentence imposed which was five (5) years, five (5) months and eleven (11) days, in order to make the surety's liability proportional to the sentence. The ruling invoked, which was similarly applied in another case, *People vs. Daisin*, G. R. No. L-6713, April 29, 1957, can have no application to the case at bar, for while in the cases cited, the accused was subsequently surrendered, here the petitioners have not up to the present produced the accused before the court. It is obvious that, without the accused being surrendered for trial and to serve sentence if convicted, judicial process as should apply to the seven cases involving serious offenses is completely thwarted. There is a complete failure of justice due not only to society but also to the private parties upon whom prejudice and damage have been inflicted. These circumstances and the grievous consequences flowing therefrom did not obtain in the cases cited, for the accused was surrendered to pay his debt to society and to those personally aggrieved and harmed. The interest of the State is in the execution of the sentence, and as long as the accused is presented to serve that sentence, even if delay may have been incurred in by his bondsmen in surrendering him for the purpose, there is valid reason for the liberality of the State in reducing the liability of the bail bond, which in reality is "partial remission of the bondsman's liability", legally and morally justifiable. Thus, as quoted in the petition itself:

"The liberality which we have shown in dealing with bondsmen in criminal cases and in mitigating their liability on bonds already confiscated because of the delay in the presentation of defendants, finds explanation in the fact that the ultimate desire of the State is not the monetary reparation of the bondsman's default, but the enforcement or execution of the sentence, such as the imprisonment of the accused or the payment by him of the fine imposed. That interest of the State can not be measured in terms of pesos as in private contracts and obligations. The surrender of the person of the accused so that he can serve his sentence is its ultimate goal or object. The provision for the confiscation of the bond, upon failure within a reasonable time to produce the person of the accused for the execution of the sentence, is not based upon a desire to gain from such failure; it is to compel the bondsman to enhance its efforts to have the person of the accused produced for the execution of the sentence. Hence, after the surety has presented the person of the accused to the court, or the accused already arrested, we have invariably exercised our discretion in favor of the partial remission of the bondsman's liability.

"A further reason for such liberality lies in the fact that if the courts were strict in enforcing the liability of bondsmen, the latter would demand higher rates for furnishing bail for accused persons, making it difficult for such accused to secure their freedom during the course of the proceedings. If courts were strict in the endorsement of the monetary responsibility of bondsmen, bail which is considered a precious right, would be difficult to obtain. Bondsmen will reduce rates only if the courts are liberal in dealing with them in the performance of their obligations.

"Lastly, if the courts are averse to mitigating the monetary responsibility of bondsmen after confiscation of their bond, bondsmen would be indifferent towards the attempts of the State to secure the arrest of defendants, instead helping it therein."

The three-fold rule, on the other hand, has absolutely no bearing on the confiscation of the bond and the amount thereof to be forfeited. It has reference only to the maximum duration of the sentence to be served where three or more offenses have been committed. It has, therefore, no relevance at all when the accused absconds to become a fugitive from justice and makes a mockery of the judicial process, designed to protect society in general and particular members thereof directly offended. Considerations of liberality as have inspired the rulings relied upon by petitioner cannot be said to equally exist in the case at bar where there is not a mere delay in the presentation of the accused, but a total failure to produce him to be tried and sentenced accordingly if found guilty.

By its own terms and phraseology, the circular of the Secretary of Justice also invoked by petitioner, is clearly not applicable. It explicitly excludes complex crimes from its benign effects, the kind of crime with which Nestor Evangelista is charged in all the seven counts of estafa with falsification of commercial documents. They likewise do not arise from the same incident, which is one of the conditions required in the circular for its application in a given situation. Furthermore, the circular sets a rule for the determinations of the amount of bail in the situation contemplated, certainly a different matter from the amount to be forfeited to the State of bail bonds confiscated for violation of the terms and conditions thereof.

There is a faint intimation in the instant petition that respondent judge abused his discretion gravely when he denied petitioner's motion to reduce its liability on its bond even before the hearing thereof as set in the motion. Considering, however, that the writ of execution was issued on June 8, 1972, and the motion aforementioned was filed on April 5, 1973, long after the declaration of confiscation of the bond as early as May 11, 1972, respondent judge saw evidently in the motion a mere dilatory tactic, which it really is, and a reading thereof not showing any useful necessity of a hearing, its denial even without hearing is justified. Besides, hearing is more for the benefit of the adverse party, not to the movant who suffers the penalty of dismissal of his motion if he fails to set it for hearing with due notice to the adverse party.

In any event, since the merit of his motion has in effect been examined thoroughly by Us in this petition, petitioner has no reason to complain against what appeared to it and now claims to be a hasty denial of said motion in violation of due process which it is not.

WHEREFORE, there being no reversible error in the order complained of, much less grave abuse of discretion on the part of the respondent judge, the instant petition is hereby dismissed. No costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

[1] Annex "O" to Petition, p. 41, Rollo.

[2] Annex "Q" to Petition, p. 46, Id.

[3] p. 67 Rollo.

[4] pp. 61-65, Id.

[5] Resolution of June 25, 1973, p. 72, Rollo.

[6] Resolution of August 21, 1973, p. 89, Id.

[7] Resolution of August 24, 1973, p. 95, Id.

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