

**JUAN APURILLO, PETITIONER, VS. THE HONORABLE JUDGE
HONORATO GARCIANO, COURT OF FIRST INSTANCE OF LEYTE,
BRANCH VI, THE CLERK OF COURT, ANASTACIO AZCARRAGA, AND
THE SHERIFF OF LE...**

G.R. No. L-23683. July 30, 1969

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

Original action for prohibition.

In Criminal Case No. 1030 of the Court of First Instance of Leyte, Branch VI, entitled "People of the Philippines, versus Conrado Lawaan @ Dadoy Justisa, et .al., Accused," respondent Judge issued an order, dated April 20, 1964, confiscating the bond of accused Conrado Lawaan because of the repeated failure of his bondsmen to produce his person before the Court for the promulgation of the judgment.[1] Petitioner appears to be one of said accused's bondsmen -- in fact, he admits that he was notified of the promulgation of judgment.[2] Neither he nor the other bondsmen of accused Conrado Lawaan challenged the order of confiscation. Execution on the bond followed, and notice of attachment of the properties offered as bond was furnished the petitioner and the other bondsmen.[3] Thereupon, petitioner, alleging forgery of his signature on the bail bond, filed with the court a quo a motion to be excluded as bondsman, setting said motion for hearing on July 18, 1964.[4] On July 18, 1964 respondent Judge issued an order directing respondent Clerk of Court to investigate the matter regarding the alleged forgery of petitioner's signature on the bail bond. By virtue of that order the Clerk of Court forthwith sent by registered mail to herein petitioner Juan Apurillo, to municipal judge Antonio Brillo before whom the bail bond appears to have been subscribed and sworn to by the petitioner, and to Wenceslao Yu, Martin Narido and Paciano Miralles, the other bondsmen, a notice of the investigation to be conducted by him in his office on July 29, 1964 at 8:00 a.m., attaching to the notice the said order of the court.

Of those notified, only the petitioner and Judge Brillo appeared for the investigation.[5] Both gave their respective testimonies, which were reduced to writing in question-and-answer form and sworn to by them. After the investigation, respondent Clerk of Court submitted to the court a report of his findings, attaching thereto the sworn statements of Judge Brillo and of the petitioner[6]. Acting upon the report of the Clerk of Court, and on his "findings that the signature of the bondsman Juan Apurillo is genuine as a result of his investigation of the matter," respondent Judge, in an order dated August 13, 1964, denied petitioner's motion to be excluded as bondsman.[7]

Without asking for the reconsideration of that order of August 13, 1964, petitioner filed with this Court the present action, alleging that in denying his motion to be excluded as bondsman respondent Judge acted with grave abuse of discretion for not affording him due process, and that he is left without any plain, speedy and adequate remedy in the ordinary course of law[8]. In his prayer, petitioner asks this Court to issue a writ of prohibition ordering the respondents to desist from further proceeding with the confiscation of petitioner's property offered as

bond; to require the respondents to grant the petitioner a fair hearing to determine the question of whether his signature was forged or not; and for such other relief as may be just and equitable in the premises. The petition was given due course by this Court and ordered the issuance of a writ of injunction, prayed for, upon petitioner's posting of a bond in the sum of one thousand pesos (P1,000.00).[9]

Among the respondents, only the Clerk of Court filed an answer to the petition. Subsequently, however, the Solicitor General, acting as counsel for all the respondents and for the Republic of the Philippines, filed a memorandum to amplify and further clarify respondents' position in addition to what have already been stated in the answer of the Clerk of Court.[10] In said memorandum, the Solicitor General submits that the petitioner was not denied due process or law and that petitioner's signature on the bail bond is not a forgery.

It is well settled that a writ or prohibition will not issue, unless it appears that the party against whom it is sought has acted without or in excess of jurisdiction or with grave abuse of discretion, and that there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law[11]. In the case at bar, the primary question to be resolved is whether the respondent Judge had acted with grave abuse or discretion, as claimed by petitioner, allegedly for not affording him due process of law in denying his motion to be excluded as bondsman. The order of denial, according to petitioner, was based on the report of the Clerk of Court who, aside from making an arbitrary finding without giving him an opportunity for a fair hear-ing, is not competent to make a determination of the genuineness or the signature in question because he is not a handwriting expert.[12]

We find that petitioner's claim that he was not afforded due process is belied by the record, which shows the following: (1) the court, with power to hear and determine the motion of the petitioner to be excluded as bondsman, heard said motion on July 18, 1964; (2) without abdicating its judicial power, the court, per order dated July 18, 1964, referred to the Clerk of Court, as Commissioner, for investigation the matter regarding the alleged forgery or petitioner's signature on the bail bond; (3) petitioner was notified of the investigation conducted by the Clerk of Court, first, by virtue of the said order of the court, presumably during the hearing of the motion, and second, by the notification sent by the Clerk of Court through registered mail, to which notification the order of the court was attached; (4) petitioner appeared before the Clerk of Court on July 29, 1964, the date set for the investigation, and presented his side, testifying under oath and his statements were reduced to writing; (5) during the investigation, petitioner had the opportunity to confront the sole adverse witness, Judge Brillo, who testified that the bail bond was subscribed and sworn to before him by the petitioner; (6) after the investigation, the Clerk of Court submitted to the court his findings, supported by the sworn declarations of the petitioner and of Judge Brillo; (7) the respondent Judge, in resolving petitioner's motion, took into consideration the findings of the Clerk of Court and, presumably, was guided by the expediente or Criminal Case No. 1030, more particularly, the documents mentioned in the report as containing the signatures of the petitioner (pp. 9-11, 77, 88 and 340). Indeed, with all these circumstances disclosed by the record, it cannot be said that the petitioner was not given "an opportunity for a fair hearing." We hold that he was fully accorded due process of law.

"Due process is satisfied if the following conditions are present: (1) there must be a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceeding; (3) the defendant must be given an opportunity to be heard; and (4) judgment must be rendered upon lawful hearing." [13]

In order that the claim or abuse of discretion may be entertained, it must be shown that there was such a capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction. In other words, prohibition must be issued only after the reviewing tribunal shall have convinced itself that the lower court has exercised its power in an arbitrary or despotic manner, by reason of passion or personal hostility, and it must be so patent and gross as would amount to an evasion, or to a virtual refusal, to perform the duty enjoined by law.[14] In the case now

before Us no act of respondent Judge may be considered a capricious and whimsical exercise of judgment. On the contrary, his actuations indicate that he had cautioned himself against acting arbitrarily despotically or whimsically. The procedure he adopted, in referring to the Clerk of Court (as Commissioner) for investigation the matter regarding the alleged forgery of petitioner's signature, is sanctioned by the Rules of Court. And his adoption in toto of the findings of the Commissioner is allowed by said Rules.[15] We do not find anything irregular or illegal in the actuations of respondent Judge, and of respondent Clerk of Court in his capacity as commissioner.

Petitioner's objection to the qualification of the commissioner -- that he is not a handwriting expert -- cannot be entertained now. "A party who desires to controvert the propriety of a reference should move before the trial court for a revocation of the reference, and failure to make such a motion is tantamount to acquiescence, and the point cannot be initially raised before the reviewing court on appeal." [16]

Equally without merit is petitioner's claim that the proceeding was tainted with irregularity because he was not given an opportunity to object to the findings of the Commissioner [17]. Otherwise stated, petitioner contends that there was non-observance of the procedure prescribed by sections 10 and 11 of Rule 33 of the Rules of Court, that is, notice to the parties or the filing of the report of the Commissioner and the setting of such report for hearing. In one case, [18] this Court dismissed such claim in this wise:

"Neither is there merit in the claim that there was irregularity in the proceedings before the trial examiner due to the non-observance of the procedure prescribed by sections 10 and 11 of Rule 34 (now Rule 33) or the Rules of Court, that is, notice to the parties of the filing of the report or a trial commissioner and the setting of such report for hearing. In *Manila Trading & Supply Co. vs. Philippine Labor Union*, 71 Phil. 539, it was held:

"When the Court of Industrial Relations refers a case to a commissioner for investigation, report and recommendation, and at such investigation the parties are duly represented by counsel, heard or at least given an opportunity to be heard, the requirements of due process has been satisfied, even if the Court failed to set the report for hearing, and a decision on the basis of such report; with the other evidence of the case, is a decision which meets the requirements of a fair and open hearing."

While the foregoing ruling was made in a case elevated to this Court from the Court of Industrial Relations, in the proceedings of which the Rules of Court have suppletory application, We find no legal bar to the application of the principle evolved in said ruling to cases similarly situated before the ordinary courts of justice.

One more thing. The general rule applicable to actions for prohibition, as in the special civil action for certiorari, against a tribunal, board or officer, is that the aggrieved party must first seek a reconsideration of the decision or order complained of, so that the tribunal, board or officer will have an opportunity to correct the error or mistake in the decision or order [19]. No such reconsideration was asked by petitioner in the court below before filing the present action. An action for prohibition would lie only in the absence of appeal, or any other plain, speedy and adequate remedy in the ordinary course of law. Petitioner had still the remedy of a motion for reconsideration which he did not avail of. The circumstances of this case are such that petitioner cannot be exempted from the general rule that he should first seek a reconsideration, as a plain and adequate remedy, available to him, before he resorts to the special civil action of prohibition.

IN VIEW OF THE FOREGOING, the petition for prohibition should be, and it is hereby, dismissed. Costs against the petitioner.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Fernando, Capistrano, Teehankee and Barredo, JJ., concur.

[1] Annex C, Petition.

[2] Annex B, Answer.

[3] Annexes B and C, Petition.

[4] Annex D, Petition.

[5] Annexes A and B, Answer.

[6] Annex D, Answer.

[7] Annex E, Petition.

[8] Par. 10, Petition.

[9] The record does not show actual issuance of the preliminary injunction.

[10] A motion for admission of the memorandum was filed but no resolution thereon has been made by this Court although it was included in the agenda of March 16 and 24, 1965.

[11] Lim vs. Sabarre, L-22002, July 20, 1968; Solidum vs. Hernandez, L-16570, February 28, 1963.

[12] Par. 9, Petition.

[13] Macabingkil vs. Yatco, L-23174, Sept. 18, 1967.

[14] Solidum vs. Hernandez, supra; Tavera-Luna Inc. vs. Nable, 67 Phil. 340; and Alafriz vs. Nable, 72 Phil. 278.

[15] Rule 33, Rules of Court.

[16] Francisco, The Revised Rules of Court, Vol. II, p. 379, citing Covner vs. U.S., C.C.A. Ill. 1939, 103 F. 2d 629.

[17] Par. 7, Petition.

[18] Bay View Hotel Employees' Union vs. Bay View Hotel, Inc., G. R. No. L-10393, March 30, 1960.

[19] Phil. American Life Insurance Co. vs. Social Security Commission, L-20383, May 24, 1967; Maritime Co. of the Philippines vs. Paredes, L-24811, March 3, 1967; Plaza vs. Mencias, L-18253, October 31, 1962.

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