

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. ZOSIMO MONTEMAYOR AND CIRIACO DUCUSIN, APPELLEES AND DEFENDANTS.

G.R. No. L-17449. August 30, 1962

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal on questions of law from an order of the Court of First Instance of Bukidnon, entered in its Criminal Case No. 602, granting the accused's motion to dismiss the charge for illegal use of public funds, on the ground that the facts alleged in the information do not constitute an indictable offense.

Zosimo Montemayor, President of the Mindanao Agricultural Colleges, organized and chartered by Republic Act 807, and Ciriaco Ducusin, property custodian of the same College, were jointly accused in an information filed by the Provincial Fiscal on 9 July 1956, couched in the following terms:

"That on or about during the period from August 1, 1953 to December 1, 1953, both dates inclusive, in barrio Musuan, Municipality of Maramag, Province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the accused Zosimo Montemayor then, and until now, President of the Mindanao Agricultural College, a government institution established and existing under the provisions of law, did them and there, willfully, unlawfully and feloniously direct, instruct, and order the accused Ciriaco Ducusin to use students' property deposits for the purchase of supplies and materials needed by the college, and the latter, then the property custodian of said college and who had been keeping said fund under his administration, by virtue of said instruction and order, did then and there willfully, unlawfully and feloniously use, spend and apply the amount of P1,911.64 out of said fund for the purchase of 9991.8 gallons of gasoline, 965.1 gallons of crude oil and 131.5 gallons of SAE 30 for the use of said college, thereby applying said amount to a public use other than that for which it was appropriated by Resolution No. 13 of the Board of Trustees of said college namely, for the payment of the losses and breakages of college instruments and equipments incurred by students."

Upon the motion of the accused, the Court dismissed the information by the following order:

"Upon consideration of the Motion to Quash, dated January 19, 1960, filed by counsel for the accused in the above-entitled case and the opposition thereto, dated March 7, 1960, presented by the Provincial Fiscal, the Court concurs with the arguments stated in the said motion to quash and finds that deposits in question are not of the character of public funds which have been appropriated by law or ordinance within the purview of Article 220, paragraph 2, of the Revised Penal Code, and applied by the accused for uses other than those intended, so as to render them liable for the crime of illegal use of public funds under the above-mentioned penal provisions."

Article 220 of the Revised Penal Code penalizes the illegal use of public funds in the following terms:

Art. 220. Illegal use of public funds or property.—Any public officer who shall apply any public fund or property under his administration to any public use other than that for which such fund or property were appropriated by law or ordinance shall suffer the penalty of prision correccional in its minimum period or a fine

ranging for one-half to the total value of the sum misapplied, if by reason of such misapplication, any damage or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification.

If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 per cent of the sum misapplied."

The state contends that it is error for the lower court to declare that the amounts deposited by the students were not public funds. This is undoubtedly correct, for the amounts paid by the students to the college, in order to answer for the value of materials broken, were no more "deposits" in law than bank "deposits" are so. There was no showing that the college undertook to keep safe the moneys in question and return it later to each student in the very same coins or bills in which it had been originally received. The Mindanao Colleges merely bound itself to reimburse or repay to each student the amount "deposited" by him or her, after deducting or setting off the value of broken equipment. The relation thus established between college and student was one of debtor and creditor, not one of depositor and depository; the transaction was a loan, not a deposit. As a loan, the College acquired the ownership of the moneys paid by the students, subject only to the obligation of reimbursing equivalent amounts, unless a deduction should happen to be due. Such being the case, the moneys became public funds, from the time the College received them, since the College was, and is, a public entity.

But the matter does not end there. To constitute the crime charged, there must be a diversion of the funds from the purpose for which they had been originally appropriated by law or ordinance (R.P.C. Art. 120); and, as correctly found by the court below, the students' payments had not been as appropriated. The resolution of the college authorities that the amounts paid by the students should be later refunded nowhere implied that the repayment was to be made precisely out of the moneys received, and as the refund could be made out of any available funds of the College, there was no appropriation for a particular purpose that was violated by these accused.

Wherefore, the order appealed from is affirmed. No costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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