

RAFAELA G. CASTRO, ASSISTED BY HER HUSBAND, TEODORO M. CASTRO, PETITIONER AND APPELLANT, VS. JOSE P. BENGZON, CITY FISCAL OF MANILA, AMBROSIO LORENZO, MANUEL DE LA FUENTE, MANIL...

G.R. No. L-1985. September 20, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

The question raised in this appeal is whether prohibition and mandamus lie against the city fiscal and the chief of police of Manila to prohibit them from investigating a criminal case filed by the latter with the former against a pharmacist for illegal possession of prohibited drugs and to compel them to refer the case to the Collector of Internal Revenue.

A petition to that effect was filed by Mrs. Rafaela G. Castro in the Court of First Instance of Manila, which, upon motion of the respondents, was dismissed by that court, upon the following facts:

On October 30, 1947, Capt. Ambrosio Lorenzo of the Manila Detective Bureau, armed with a search warrant and accompanied by several detectives, searched the premises at 1005 Azcarraga, Manila, where the Farmacia Aurora, owned and operated by the petitioner Rafaela G. Castro, was located. She protested against the search on the ground "that the Manila police has no power and jurisdiction to search for prohibited drugs because the matter is within the competence of the Bureau of Internal Revenue," and that "she is a duly licensed pharmacist with opium permit and license." Overruling the protest, the detectives found, took possession of, and receipted for the articles listed in Exhibit D of the petition, which reads as follows:

"MANILA POLICE DEPARTMENT

"DETECTIVE BUREAU

"MANILA

"October 30, 1947

"TO WHOM IT MAY CONCERN:

"The following articles or effects were found in the Farmacia Aurora located on No. 1005 Azcarraga Street, Manila, after the raid therein conducted by Capt. Ambrosio Lorenzo et al., on the afternoon of October 30, 1947, to wit—

"Effects found on the person of Inez Lopez de Lumban:

"56 Tablets in 3 small tubes of morphine sulphate 0.016 GM grams

"1 small empty tube morphine sulphate

"35 small papers (papelitos) of cocaine powder

"11 small white tablets of supposed opium

"1 small bottle containing cocaine powder

"Effects for chemical test, also confiscated from said drugstore:

"24 Syrettes in five small boxes of solution of morphine tartrate

"2 empty boxes of solution of morphine

"1 small bottle containing morphine sulphate powder

"1 small bottle containing hydrochloride Merck

"1 box containing 4 papers (papelitos) of cocaine powder

"41 small tablets in 3 small tubes of morphine sulphate

"2 papers (papelitos) found inside the cash register

"1 small tube containing 10 hypodermic tablets 1/2 grain physostigmine salicylate

"1 small tube containing 18 atropine sulphate tablets

"8 syrettes containing each 20 tablets of physostigmine salicylate

"4 small tubes each containing 20 tablets of emetine hydrochloride

"1 small empty unlabeled bottle

"Note.—As the above articles has [have] not as yet been classified by competent authorities and the permit to possess said prohibited drugs has been brought home by the husband of the suspect or accused Mrs. Rafaela Gabriel de Castro, the drugs specified in the permit will be returned if called for by the owner.

"(Sgd.) Det. O. C. ESPINOZA

"Intelligence Unit

"(Sgd.) (Mrs.) Rafaela Gabriel de Castro."

The petitioner was arrested, was subsequently released on a bail of P3,000, and was charged before the city fiscal with illegal possession of prohibited drugs. She in turn filed a countercharge against Capt. Ambrosio Lorenzo and his party for illegal execution of search warrant and for "incriminatory machinations and coercion."

Before the charge and the countercharge could be investigated by the city fiscal, the petitioner commenced the present action in the Court of First Instance of Manila seeking the writs of prohibition and mandamus for the purposes hereinabove mentioned.

The petitioner alleges that she had a permit issued by the Collector of Internal Revenue to possess the prohibited drugs seized from her, with the exception of 70 tablets of morphine sulphate which, she claims, had been left in her drugstore by an unknown Chinaman shortly before the detectives arrived on October 30, 1947.

Appellant contends "that the Collector of Internal Revenue has exclusive jurisdiction over the case to the exclusion of the fiscal and the police." On the other hand, the Solicitor General, in representation of the Collector of Internal Revenue, contends that since the petitioner admits the possession of 70 tablets of morphine sulphate not covered by her permit, it is apparent that the case involves not only a violation of the pertinent provisions of the National Internal Revenue Code but also of article 190 of the Revised Penal Code, and hence both the City Fiscal of Manila and the Bureau of Internal Revenue have concurrent jurisdiction over the case; and that since the former has already taken the initiative therein, the latter cannot be compelled to take cognizance of the case to the exclusion of the City Fiscal, who under the law is charged with the duty of investigating all charges of crimes, misdemeanors, and violations of ordinances and to prepare the necessary informations or complaints against the persons accused. (Section 2465, Revised Administrative Code, as amended.) The City Fiscal, in his own behalf and in behalf of the other respondents, adopts that contention of the Solicitor General.

- We find no provision in the National Internal Revenue Code which vests exclusive jurisdiction in the Collector

of Internal Revenue to investigate and prosecute violations of the law regarding the possession of prohibited drugs. Under section 340 of said Code pharmacists, upon permit from the Collector of Internal Revenue, may transfer and deliver prohibited drugs to other pharmacists or to any person or institution lawfully authorized to receive them. And section 342 requires pharmacists to keep true and correct records of all prohibited drugs received and dispensed or transferred by them, in such form and manner as may be prescribed in the regulations of the Department of Finance, and provides that "such record and the stock of prohibited drugs on hand shall be subject to inspection at all times by the duly authorized officers, agents, or deputies of the Bureau of Internal Revenue. Violation of this provision is penalized in section 356 by a fine of not less than P50 nor more than P1,000.

It is, however, apparent from the record that said provisions of the National Internal Revenue Code are not what the appellant is charged with having violated but article 190 of the Revised Penal Code, which penalizes "anyone who, unless lawfully authorized, shall possess, prepare, administer, or otherwise use any prohibited drug."

- The fact that a pharmacist may, under the National Internal Revenue Code, be permitted by the Collector of Internal Revenue to possess prohibited drugs specified in the permit does not exempt him from prosecution under article 190 of the Revised Penal Code if he should be found in possession of prohibited drugs without any permit or of any amount thereof not covered by his permit.

It is admitted by the appellant that she had a permit to possess only 26 tablets of morphine sulphate, and it appears that the members of the Manila Detective Bureau who searched her premises found two lots of morphine sulphate tablets, namely, "56 tablets, in 3 small tubes, of morphine sulphate 0.016 gm.," and "41 (later reduced to 40) small tablets, in 3 small tubes, of morphine sulphate." It was up to her to prove to the fiscal during the investigation and, if necessary, to the court during the trial that the excess of 70 tablets over the amount covered by her permit had been left on the counter of her drugstore by an unknown Chinaman without her consent, as she alleged for the first time in her amended petition.

From the foregoing considerations we conclude that the contention of the respondents is well taken and that of the petitioner, untenable.

- Counsel for the appellant in their brief discuss at length many collateral matters to show that their client has been the victim of persecution and frame-up by the Manila police. Thus they have assigned as errors of the trial court: (3) not declaring the search warrant null and void because it was issued without probable cause and authorized a search at night; (4) not declaring the search warrant null and void because it was issued only to fish for evidence against Mrs. Castro; (5) not declaring the search warrant null and void because it did not describe properly the place to be searched; (6) not declaring illegal the search made by ten detectives in a place occupied by three persons and the search on the person of Ines Lopez; (7) not finding that Mrs. Castro was deprived of her property without due process of law and not ordering the immediate return to her of the property; and (8) not finding that excessive bail was required.

These issues are not germane to the question of whether the City Fiscal had jurisdiction to investigate the complaint by the police against the petitioner for alleged violation of the penal laws regarding the possession of prohibited drugs. In this connection petitioner herself filed a complaint with the city fiscal against the detectives for alleged illegal search and abuses. She should prosecute that complaint and should at the same time present to the fiscal such proofs as she cared to present on the charges against her by the agents of the law. Those matters cannot be litigated in this prohibition and mandamus proceeding.

The order appealed from is affirmed, with costs.

Moran, C.J., Paras, Feria, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

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