

MANUEL SY Y LIM, PETITIONER, VS. HON. COURT OF APPEALS, HON. EDUARDO P. CAGUIOA, AS JUDGE OF THE CFI OF BULACAN, HON. PEDRO D. OPIANA, AS PROVINCIAL FISCAL OF BULACAN, ATTYs. DA...

G.R. No. L-37494. March 30, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petition for certiorari seeking the review of the decision of the Court of Appeals[1] sustaining the order of the Court of First Instance of Bulacan denying the motion to quash filed by petitioner to an information for violation of Article 188, paragraph 2 of the Revised Penal Code.

It appears that petitioner was charged with violation of Article 189, paragraph 1, of the Revised Penal Code in an information quoted as follows:

"That in or about during the period from June, 1970 to October, 1970, in the municipality of Valenzuela, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Manuel Sy y Lim, in un-fair competition and for the purpose of deceiving or defrauding the Sea Commercial Company, Incor-porated, a domestic corporation duly organized under the laws of the Philippines, of its legitimate trade or the public in general, did then and there wilfully, unlawfully and feloniously sell or offer for sale hand pumps of inferior quality and labelled JETMATIC DRAGON HAND PUMP and at a lower price and giving them the general appearance of the JETMATIC DRAGON hand pumps of the Sea Commercial Company, Incorporated, as to the outside appearance, including, among others, the color, the embossed words PAT No. 463490 on the spout, the embossed words MODEL chamber assembly, the embossed words JETMATIC DRAGON HAND PUMP on the lateral surface of the cylinder assembly and many other parts both as to the design and the materials used which induced the public to believe that the JET-MATIC DRAGON HAND pumps offered are those of the Sea Commercial Company, Incorporated, to the damage and prejudice of the said Sea Commercial Company, Incorporated and the general public." [2]

After trial, the trial court rendered judgment the dispositive portion of which reads:

"WHEREFORE, the prosecution having failed to prove that the accused gave his goods the general appearance of the goods of another manu-facturer or dealer, this Court finds him not guilty of the same and acquits him of the charge of violating Article 189, paragraph 1 of the Revised Penal Code. However, the Court finds that the evidence submitted in this case, show prima facie that the accused has violated Article 188, No. 2, of the Revised Penal Code and the Court, therefore, orders the Fiscal to prepare the corresponding information charging the accused Manuel Sy y Lim with violation of Article 188, No. 2 of the Revised Penal Code and to file the same within five (5) days from today." [3]

The respondent Fiscal filed the information as ordered by the trial court, alleging as follows:

"That in or about or during the period from June, 1970 to October, 1970, in the municipality of Valenzuela, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Manuel

Sy y Lim, in infringement of trade-mark and for the purpose of deceiving or defrauding the Sea Commercial Company, Incorporated, a domestic corporation duly organized under the laws of and doing business in the Philippines, of its legitimate trade and/or the public in general, did then and there wilfully, unlawfully and feloniously sell and/or offer for sale hand pumps of inferior quality and labelled JETMATIC DRAGON HAND PUMP at a lower price, accused knowing fully well that the trade-mark JETMATIC DRAGON HAND PUMP has been fraudulently used in the said hand pumps, thereby giving them the general appearance of the registered JETMATIC DRAGON HAND PUMP being sold and/or being offered for sale are those of the Sea Commercial Company, Incorporated, when in fact they are not to the damage and prejudice of the said Sea Com-mercial Company, Incorporated and the general public."[4]

To the above information, petitioner filed a motion to quash alleging that it did not conform to the prescribed form; that the Court had no jurisdiction over the case because no preliminary investigation was conducted, thereby depriving accused of due process; and that the new informa-tion would place accused in double jeopardy.[5] As already stated, this motion was denied.

In the instant case, petitioner makes the following assignment of errors:

I

"THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER IS NOT PLACED IN DOUBLE JEOPARDY BY HIS PROSECUTION UNDER THE SECOND INFORMATION IN QUESTION.

II

"THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER COULD BE VALIDLY ARRAIGNED AND TRIED UNDER THE SECOND INFOR-MATION WITHOUT A PRELIMINARY INVESTIGATION HAVING BEEN PREVIOUSLY CONDUCTED THEREON BY THE FISCAL, AS INSISTED UPON.

III

"THE HONORABLE COURT OF APPEALS ERRED IN DENYING PETITIONER'S PLEA FOR CERTIORARI AND MANDAMUS TOWARD QUASHING THE SECOND INFOR-MATION IN QUESTION."[6]

1. It is the contention of petitioner that by the filing of the second information, he would be placed in double jeopardy because under the first information, he could have been convicted of the offense charged in the second informa-tion. Since he was acquitted under the first information, to charge him again for the same offense as aforestated would according to petitioner, constitute double jeopardy.

Petitioner supports this contention by pointing out that the only difference between the two informations, in so far as the charge of infringement of trademark is con-cerned, is that in the first information, there is no alle-gation that the trademark is registered while in the second information, the allegation is made that the trademark is registered. He contends, however, that registration is not an element of the crime as defined in Article 188, par. 2, of the Revised Penal Code. The absence of allegation of registration of the trademark is, therefore, no impediment to his conviction for infringement of trademark under the first information which, in all other respects, alleged what would constitute the aforesaid offense. Although by express designation of the offense, what was charged there-in is unfair competition, it is the allegation of the infor-mation that determines what offense is being actually charged.

In advancing the above propositions, petitioner would treat the two offenses of infringement of trademark and

un-fair competition as separate and distinct, not as one necessarily included in, or including, the other. Upon this pre-mise, it cannot be successfully contended that what happened with respect to the offense of infringement of trademark, assuming it was also charged in the first information as a separate offense, is, by no manner of reasoning, one of acquittal for said offense. The trial court precisely found sufficient evidence with which to indict him for said offense and accordingly ordered the filing of a more proper information, proceeding in accordance with Section 13 paragraph 2, of Rule 110 and Section 12, of Rule 119 of the Rules of Court, which are quoted:

"If it appears at any time before judgment that a mistake has been made in charging the proper offense the court may dismiss the original complaint or information and order the filing of a new one charging the proper offense, provided the defendant would not be placed thereby in double jeopardy, and may also require the witnesses to give bail for their appearance at the trial.

"SEC. 12. When mistake has been made in charging the proper offense.- When it appears at any time after trial has begun and before judgment is taken, that a mistake has been made in charging the proper offense, and the defendant cannot be convicted of the offense charged, nor of any other offense necessarily included therein, the defendant must not be discharged, if there appears to be a good cause to detain him in custody, but the court must commit him to answer for the proper offense, and may also require the witnesses to give bail for their appearance at the trial."

In the opinion of the trial court, the first information did not properly charge the offense of infringement of trademark, for what was expressly charged was unfair competition. In proceeding in accordance with the above quoted provisions of the Rules of Court, the trial court evidently felt it can not properly convict the accused of infringement of trademark, although it found evidence sufficient to justify filing the proper information for said offense. But, undoubtedly, the court found it not proper to acquit the accused of said offense. Hence there can be no double jeopardy as to the offense charged in the second information on the ground of a prior acquittal for the same offense.

It is, therefore, absolutely correct to hold that there is on the basis of the facts as stated above, no double jeopardy even on the premise that "registration" is not an essential element of the offense charged in the second information as contended by petitioner. It becomes more so if registration is a necessary element as submitted by the Solicitor General with whom We are inclined to agree, although an express ruling on the matter need no longer be made for not being material nor decisive.

Upon a slightly different theory, petitioner would, likewise, invoke his right against double jeopardy. Thus he cites the case of *U. S. vs. Lim Suco*[7] which hold that after conviction for a crime which has various incidents included in it, he cannot be a second time tried for one of those incidents without being twice put in jeopardy. He also cites another case[8] for the proposition that the charge in the second information for an act already alleged in the first information which flowed from an identical or a single criminal intent, in this case the single criminal act of unfair competition, should not be divided into separate crimes, as would happen if a separate crime of infringement of trademark is to be prosecuted again. More specifically, he cites the case of a charge for illegal importation of explosives as not allowing a subsequent prosecution for illegal possession of the same explosives.[9] This holds true, according to petitioner, if the description of the offense is merely changed in the second information but which would not make for any substantial difference between the description in the first information and that in the second information, citing Chief Justice Moran.[10]

What makes the ruling cited by petitioner not applicable to the present is that in the cases cited, acquittal was for the offense specifically charged without the trial court expressly finding that for the other offense also charged but not expressly so by the statutory designation of the offense, evidence exists to justify his being held to answer for

such offense, in accordance with Section 12, Rule 119 of the Rules of Court, as the trial court in the instant case very explicitly did. It is this circumstance that, clearly and undisputably would prevent double jeopardy to attach, for there is neither acquittal nor conviction, not even dismissal of the case, which might result in double jeopardy arising to ban the proceedings contemplated in the aforecited provisions of the Rules of Court.

From what has been said above, the applicability of Section 13, paragraph 2 of Rule 110, in relation to Section 12, Rule 119, to the case at bar is clear. It is justified by petitioner's own theory that the offense of infringement as charged in the second information was also sufficiently included in the first information as a separate offense. But with respect thereto, the trial court made no decision, either of acquittal or conviction. It felt that under the information as so worded, conviction was not legally possible obviously for not sufficiently informing the accused of the nature and cause of the accusation against him, which is one of his constitutional rights, although factually, the assessment of the evidence by the court tended towards justifying conviction. Verily, the situation fits into what is contemplated by the provisions of the Rules of Court already referred to, which do not call for a new or separate preliminary investigation, which petitioner contends is indispensable, to which the Solicitor General expressed agreement.

What evidently led the Solicitor General to give his conformity to the stand taken by petitioner as to the necessity of a new preliminary investigation is his belief that "judgment has already been rendered acquitting the accused", while the Rules of Court cited speaks of "before judgment." But as already intimated, as to the offense of infringement of trademark, which petitioner himself contends was also charged in the first information, the Court rendered no judgment yet, either for acquittal or for conviction, as it appeared to the trial judge that the accused cannot properly be convicted for said offense, even if conviction was warranted by the evidence, a mistake having been made, as he read the information, and with reason, in charging the proper offense.

However, if petitioner insists on another preliminary investigation, the same may be granted by way of "reinvestigation", the Solicitor General who actually represents also the prosecution having expressed conformity to the holding of one. Let it not be said that We are not mindful of the rule that all doubts should be resolved in favor of the accused, a rule which itself should be liberally construed in his favor.

WHEREFORE, as recommended by the Solicitor General, the decision appealed from is modified as to give petitioner the right of preliminary investigation before he is arraigned and tried under the second information for violation of Article 188, paragraph 2, of the Revised Penal Code. No costs.

SO ORDERED. Concepcion, Jr., Abad Santos, and Escolin, JJ., concur. Ericta, J., see separate dissenting opinion. Aquino, J., see dissent. Barredo, J., (Chairman), in the result.

[1] Annex "A" to Petition, p. 21, Rollo.

[2] p. 4, Petitioner's Brief, p. 61, Rollo.

[3] p. 5, Id.

[4] pp. 6-7, Id.

[5] Annex "F" to Petition in C.A.-G. R. No. Sp. 01412.

[6] pp. 1-2, Petitioner's Brief, p. 61, Rollo.

[7] 11 Phil. 484.

[8] U. S. vs. Gustilo, 19 Phil. 208.

[9] *People vs. Elkanish*, 90 Phil. 53.

[10] *Comments on the Rules of Court*, 1970 Ed. pp. 257--258, citing *People vs. Maria del Carmen*, G.R. No. L-3459, January 9, 1951.

DISSENTING OPINION

AQUINO, J.:

I dissent. Judge Eduardo P. Caguioa, acquitted Manuel Sy of unfair competition but ordered him prosecuted for selling water pumps with an imitation trademark.

The factual background is as follows:

Sea Commercial Co., Inc., a domestic corporation, has a duly registered trademark for water pumps known as Jetmatic. At the same time, it is the local distributor of the water pumps manufactured by Kawamoto Pump Manufacturing Co., Ltd. of Nagoya, Japan under the trademark Dragon which is duly registered with the Philippine Patent Office.

Sea Commercial Co., Inc. sells water pumps under the trademark Jetmatic Dragon, a combination of its trademark and the trademark of its Japanese principal.

At the instance of Sea Commercial Co., Inc., agents of the National Bureau of Investigation raided Manuel Sy's ware-house at 380 Gapan Street, Tondo, Manila and seized 274 water pumps. Sy admitted ownership of the pumps and his sales of that merchandise.

Sy also admitted that he imported hand pumps or water pumps from King Brothers Corporation of Taiwan which were manufactured by Mun Lung Iron Manufacturing. In appearance, the Taiwan water pumps and the Japanese water pumps were very similar. Judge Caguioa found:

"The similarities consist in the color, which is green with gold marks, embossed words and figures 'PAT NO. 463490' appearing on the spouts of the pumps, the embossed word 'Model Dragon Hand Pump' on both sides of the chamber assembly, the embossed words 'Jetmatic Dragon Hand Pump' on the lateral surface of the cylinder assembly, the three-day assemblies, cylinder assembly, the valve.

"It will be noted, however, that outside of the color, the similarities referring to the embossed words, numbers and figures appearing on the various parts of the pumps, are words and figures which are moulded into the pumps and could have only been placed there through a mould with that kind of embossed words and figures at the time of casting.

"It is obvious, therefore, that these similarities, outside of the color, could only have been placed by the manufacturer of the pumps himself."

Judge Caguioa concluded that because the prosecution had not proven that Sy was the manufacturer of the imitation pumps or that he was the one responsible for giving to the imitation pumps the same appearance as the water pumps of Sea Commercial Co., Inc., he could not be held liable for unfair competition under article 189(1) of the Revised Penal Code.

However, Judge Caguioa held that since Sy was aware that the imitation pumps bear the registered trademark of Sea Commercial Co., Inc. and that they are not the same as the hand pumps described in the brochures of King Brothers Corporation, Sy should be prosecuted for the crime of substituting trademarks under article 188(2) of the Revised Penal Code.

Hence, Judge Caguioa ordered Provincial Fiscal (now CFI Judge) Pedro D. Ofiana to file the corresponding information against Sy. In compliance with that directive, Fiscal Ofiana in an information dated June 1, 1972 charged Sy with selling hand pumps with the knowledge that the trademark "Jetmatic Dragon Hand Pump" had been fraudulently used on them to the damage and prejudice of Sea Commercial Co., Inc.

The crime of unfair competition and selling goods with an imitation trademark imputed to Sy belong to the category of crimes against public interest which are divided into (1) forgeries, (2) other falsities and (3) frauds.

The crimes regarded as frauds are classified into (a) machinations, monopolies and combinations and (b) frauds in commerce and industry. Unfair competition and sale of goods with a substitute trademark are frauds in commerce and industry.

Under paragraph 1 of article 189, the crime of unfair competition is committed by "any person who, in unfair competition and for the purpose of deceiving or defrauding another of his legitimate trade or the public in general, shall sell his goods giving them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves, or in the wrapping of the packages in which they are contained, or the device or words thereon or in any other feature of their appearance which would be likely to induce the public to believe that the goods offered are those of a manufacturer or dealer other than the actual manufacturer or dealer".

In the information for unfair competition filed against Sy, it was alleged that he, "in unfair competition and for the purpose of deceiving or defrauding the Sea Commercial Co., Inc. x x x, of its legitimate trade or the public in general, did then and there wilfully x x x sell or offer for sale hand pumps of inferior quality and labelled Jetmatic Dragon Hand Pump and at a lower price and giving them the general appearance of the Jetmatic Dragon hand pumps of the Sea Commercial Co., Inc., as to the outside appearance, including, among others, the color, the embossed words x x x and many other parts both as to the design and the materials used which induced the public to believe that the Jetmatic Dragon Hand Pumps offered are those of the Sea Commercial Co., Inc., to the damage and prejudice of the said" company and the general public."

It is manifest that the information for unfair competition follows substantially the wording or phraseology used in article 189(1).

On the other hand, the crime of selling goods with a substitute or imitation trademark defined in article 188(2) is committed by a person who shall sell articles of commerce, or offer the same for sale, knowing that the trademark has been fraudulently used in such goods because the trademark of another manufacturer or dealer, or a colorable imitation thereof, has been substituted on such goods for the trademark of the real manufacturer or dealer.

In the second information, it was alleged that Sy "in infringement of trademark and for the purpose of deceiving or defrauding the Sea Commercial Co., Inc. x x x, of its legitimate trade and/or the public in general, did then and there wilfully x x x sell and/or offer for sale hand pumps of inferior quality and labelled Jetmatic Dragon Hand Pump at a lower price, accused knowing fully well that the trademark Jetmatic Dragon Hand Pump has been fraudulently used in the said hand pumps, thereby giving them the general appearance of the registered Jetmatic Dragon Hand Pump being sold and/or being offered for sale are those of the Sea Commercial Co., Inc., when in fact they are not, to the damage and prejudice" of the said company and the general public.

The second information uses the wording or phraseology of paragraph 2 of article 188. It should be stressed that in the first information Sy was charged with having sold hand pumps to which he had given the same appearance as the hand pumps sold by Sea Commercial Co., Inc.

The evidence shows that he did not manufacture said hand pumps. Therefore, he could not have given them the appearance of the hand pumps of Sea Commercial Co., Inc. since the embossed features of the said hand pumps

were placed there during the original casting by the manufacturer thereof. Sy could not have perpetrated that fraud because he was not the manufacturer. He was a mere seller of the hand pumps.

But if he was a mere seller, it would not follow that he was not criminally liable for selling those hand pumps. The seller of goods with an imitation trademark is punished under paragraph 2 of article 188. That explains why Judge Caguioa ordered Sy's prosecution under that statutory provision.

Consequently, Sy's arraignment and trial for the offense of unfair competition did not place him in jeopardy of being con-victed of the crime of selling hand pumps with an imitation trade-mark and his instant prosecution for the latter offense, a different offense, does not place him in double jeopardy.

I am also of the opinion that Sy's trial for unfair competition in Criminal Case No. 0290-V amounted to a preliminary investigation of Sy by a Judge of the Court of First Instance for the offense of selling goods with an imitation or substitute trade-mark within the meaning of section 13, Rule 112 of the Rules of Court.

Hence, he is not entitled to another preliminary investi-gation for that offense to be conducted by the fiscal. If another preliminary investigation is to be given to Sy by the fiscal by re-quiring the filing of the affidavits of the complainant and Sy and their witnesses, as provided in Republic Act No. 5180 and Pre-sidential Decrees Nos. 77 and 911, then the same facts alleged in the first preliminary investigation and during the trial of the unfair competition case would be brought out.

That proceeding would be a repetitious and useless ceremony. The purpose of the preliminary investigation is to avoid hasty and malicious prosecution. We cannot say that Judge Caguioa's order for the prosecution of Sy for the crime of selling hand pumps with an imitation trademark is a hasty and malicious prosecution. That order is based on the evidence adduced during the trial of Sy where he was duly heard. That evidence will be used against him in the second case.

However, in fairness to Sy, the second case should be tried not by Judge Caguioa but by any of his colleagues in the Malolos branch of the lower court.

DISSENTING OPINION

ERICTA, J.:

I believe that giving the petitioner another preliminary investigation and another trial under the second information is unnecessary.

The first information clearly charges two offenses, namely, the offense of unfair competition penalized under Article 189, paragraph 1, and the offense of substituting and altering a trademark penalized under Article 188, paragraph 2, both of the Revised Penal Code. That the first information charges unfair competition leaves no room for doubt. Aside from the clear allegations in the information, the fis-cal seemed to have designated the offense as a violation of Article 189, paragraph 1 of the Code. What seems to be debat-able is whether or not the same information also sufficiently charges the offense of substituting and altering trademarks penalized under Article 188, paragraph 2 of the Code.

I am of the firm belief that the first information sufficiently informs the accused of the offense of substituting and altering trademarks penalized under Article 188, paragraph 2, of the Code. Paragraphs 1 and 2 of said article, read as follows:

The penalty of prision correccional in its minimum period or a fine ranging from P500 to P2,000, or both, shall be

imposed upon:

1. Any person who shall substitute the trade name or trademark of some other manufacturer or dealer or a colorable imitation thereof, for the tradename or trademark of the real manufacturer or dealer upon any article of commerce and shall sell the same;
2. Any person who shall sell such articles of commerce or offer the same for sale, knowing that the trade name or trademark has been fraudulently used on such goods as described in the preceeding subdivision.

The first information alleges, among others, that the defendant, "for the purpose of deceiving or defrauding the Sea Commercial Company, Inc. (complainant), of its legitimate trade or the public in general, did then and there willfully, unlawfully and feloniously sell or offer for sale hand pumps of inferior quality and labelled JETMATIC DRAGON HAND PUMP x x x which induced the public to believe that the JETMATIC DRAGON HAND PUMP offered are those of the Sea Commercial Company, Inc., to the damage and prejudice of the Sea Commercial Company, Inc., and the general public."

There is no question that "Jetmatic Dragon Hand Pump" is a trademark. The said information alleges all the elements of the crime as defined in paragraph 2 of Article 188 of the Revised Penal Code. More specifically, the allegations that the defendant had the purpose of "deceiving the complainant or the public"; that the act of selling or offering for sale the said hand pumps were done "wilfully, unlawfully and feloniously"; and that the unlawful act "induced the public to believe that the JETMATIC DRAGON HAND PUMP offered are those of the complainant" to the "damage and prejudice of the complainant and general public," sufficiently convey that the defendant sold his hand pumps "knowing that the trademark has been fraudulently used on such goods," which is the gist of the offense as defined in paragraph 2 of article 188 of the Code.

It is the allegation in the information, not the designation of the offense by the fiscal, that determines the nature of the offense. The designation of the offense by the fiscal is only his conclusion, which, if erroneous, may be corrected by the court. Even if the fiscal fails to designate the nature of the offense, the court, after trial, may convict the defendant of the offense charged in the information and proven during the trial.

I do not share the view of the Solicitor General that an allegation in the information that the trademark in question is registered is necessary. Registration is not an element of the offense as defined by the statute. An information is sufficient if it alleges the elements of the offense defined in the statute. Whether or not proof during the trial of registration of the trademark is necessary for conviction is a question which We are not now called upon to resolve. At any rate, the trial court already pronounced in the dispositive portion of the decision that there is prima facie evidence "that the accused has violated Article 188, paragraph 2 of the Revised Penal Code." Such prima facie evidence may already include proof of registration of the trademark. The complainant could not have been using his trademark for quite sometime without having registered the same in accordance with law.

The first information is quashable for duplicity of charges. But having failed to object, the defendant (petitioner herein) may be convicted of the offenses, or of any one of them, charged in the information and proven during the trial.

In actual practice, when a defendant is accused of two or more separate and distinct offenses in one and the same information without objection and all the offenses charged are proven, the trial court renders a joint decision on the two or more offenses charged. But there is no law prohibiting the trial judge from rendering a decision for one of the offenses in a separate decision, then rendering at a later time another decision for the other offense or offenses.

In the instant case, the trial court has already rendered a judgment acquitting the defendant (petitioner) of one of

the offenses charged, namely, that of unfair competition penalized under Article 189 paragraph 1 of the Code. But it has not yet rendered a judgment of conviction or acquittal with respect to the other offense of substituting and altering trade-marks penalized under Article 188, paragraph 2 of the Code, although it has found prima facie evidence of the same. Neither has the trial court dismissed the first information.

So I suggest the following: 1) the trial court should be directed to render a decision on the charge of violation of the offense of substituting and altering trademarks penalized under Article 188, paragraph 2 of the Code, as charged in the information; 2) the second information may be admitted by the trial court under Rule 110, Section 13, 1st paragraph, of the Rules of Court, as an amendment of the first information, the amendment being only on a matter of form; and 3) to avoid undue prejudice or undue surprise, the trial court may allow the reopening of the case with respect to the charge of violating Article 188, paragraph 2 of the Code so that the defendant may present any additional evidence which he may deem necessary for his defense.

Giving the petitioner the right of another preliminary investigation and requiring that another trial be conducted amount to a ruling by the Court that the first information, which charges the same offense charged in the second information, is already "terminated." (Rule 117 Section 9, Rules of Court). Since the termination is without the express consent of the accused, the second information subjects him to double jeopardy.

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