

ANTONIO PAREDES, IN HIS CAPACITY AS JUDGE, BRANCH II, CITY COURT OF MANILA; ANTONIO J. VILLEGAS, AS MAYOR OF THE CITY OF MANILA; AND LADISLAO J. TOLENTINO, AS CITY ENGINEER OF M...*G.R. No. L-23710. September 30, 1969*

Ponente: TEEHANKEE, J.

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In this appeal by certiorari from the decision of the Court of Appeals dismissing a petition for certiorari and prohibition, we rule in affirmance of the appellate court's decision, that the restrictive provision in Section 2 of Rule 137 of the Rules of Court against appeal or stay of the proceedings when the trial judge denies a motion to disqualify himself and rules in favor of his own competency, does not apply in criminal cases where such disqualification is sought by the prosecution or offended party.

The background facts which gave rise to this action are stated by the appellate court in its decision: "Petitioners Mayor Antonio Villegas and City Engineer Ladislao J. Tolentino, both of the City of Manila, were accused of malicious mischief before the City Court of Manila in Criminal Case No. F-069782. In due course the case was assigned to the petitioner, Judge Antonio Paredes, who presides over Branch II of said court. Respondents Manufacturers Building Inc. and Ambrosio Padilla filed a written motion in said case asking the petitioner Judge either to voluntarily inhibit or disqualify himself from further taking cognizance of the malicious mischief case. In this move, they were verbally joined by Assistant City Fiscal Nazareno Macaraeg who signed the information in said case. The motion for disqualification alleges that the counsel for the accused is the law firm of Paredes, Poblador, Cruz and Nazareno of which former Senator Quintin Paredes, father of Judge Antonio Paredes, is the senior partner. The motion for voluntary inhibition or disqualification was denied by Judge Antonio Paredes principally on the ground that the law firm above-mentioned was not the counsel of record in the malicious mischief case and, therefore, the matter is not covered by Section 1, Rule 137, of the Rules of Court, which, among other things, disqualifies a judge when he is related within the fourth degree of consanguinity or affinity, to the counsel of any of the parties. The motion for reconsideration of the order of denial was also denied. Respondent Manufacturers Building Inc. and Ambrosio Padilla filed a petition for certiorari and prohibition with preliminary injunction with the Court of First Instance of Manila to annul the order of Judge Antonio Paredes and to restrain him from proceeding with the trial of the malicious mischief case. The Court of First Instance of Manila, Branch XXV, presided by Hon. Simeon Gopengco, gave due course to the petition above-mentioned, issued a restraining order on July 29, 1964, and, after the preliminary hearing, ordered on August 4, 1964, the issuance of a writ of preliminary injunction restraining Judge Antonio Paredes from taking cognizance of the malicious mischief case during the pendency of said petition. The instant petition for certiorari and prohibition with preliminary injunction was filed with this Court to annul the orders of the respondent judge Simeon Gopengco and to restrain him from taking cognizance of the petition filed by respondents Manufacturers Building Inc. and Ambrosio Padilla, except to dismiss the case for lack of jurisdiction." [1]

Petitioners' principal contention was that respondent Judge Gopengco acted with grave abuse of discretion in taking cognizance of private respondent's petition and in issuing the writ of preli-minary injunction restraining the trial judge, petitioner City Judge Antonio Paredes, who had denied the motion to disqualify himself, from proceeding with the trial of the malicious mischief case, because he disregarded the provision of Section 2 of Rule 137,[2] of the Rules of Court that "no appeal or stay shall be allowed from, or by reason of, (the trial judge's) decision in favor of his own competency, until after final judgment in the case." The appellate Court rejected this contention, holding that "This restriction, however, should be applicable only to civil cases because the final judgment that may be rendered therein is appealable to the proper court and the issue of whether the judge acted correctly or erroneously in holding that he is not disqualified to take cogni-zance of a case may be raised on appeal from the main decision. But when the disqualification of a judge is sought in a criminal case and the judge rules in favor of his competency, then pro-ceeds to try the case and acquits the accused, there is no more remedy against the ruling in favor of his competency. The judg-ment of acquittal cannot be appealed without violating the consti-tutional injunction against being placed in double jeopardy for the same offense. It is now a well settled principle which admits of no more doubt, and for which there is no more need of citation of authority, that an appeal from a judgment of acquittal in a cri-minal case is violative of the double jeopardy provision of the constitution. Evidently the offended parties in the malicious mischief case have no right to appeal in the event of such a contin-gency and they would have no plain, speedy and adequate remedy in the ordinary course of law against the ruling of Judge Paredes that he is not disqualified to take cognizance of the case. Conse-quently, we are of the opinion that the prohibition in Section 2, of Rule 137, against appeal or stay of the proceedings when the judge denies a motion to disqualify him and rules in favor of his competency does not apply in criminal cases where such disqua-lification is sought." [3]

We affirm the appellate Court's ruling, with the qualifica-tion implied in its rationale although the general statement therein against the non-applicability of the restrictive provision of Section 2, Rule 137 in criminal cases might give a contrary impression, that such restriction against appeal or stay of the proceedings when the trial judge denies a motion to disqualify himself and rules in favor of his own competency does not apply in criminal cases where such disqualification is sought by the prosecution or offended party. For where the prosecution or offended party, as in this case seek the disqualification of the trial judge on one of the grounds expressly provided therefor, to wit, relationship to counsel, and the trial judge decides in favor of his own competency, proceeds to try the case and ren-ders a verdict of acquittal, they evidently would have no right to appeal in such an event and neither would they have any plain, speedy and adequate remedy in the ordinary course of law to have the trial judge's adverse ruling on the motion to disqualify himself reviewed on appeal together with the judgment on the merits, as envisaged in the Rule, since no appeal from the judg-ment of acquittal could possibly be taken by the prosecution by virtue of the double jeopardy provision of the Constitution. Hence, their only means of availing of their right for a review of the trial judge's denial of their motion to disqualify himself from trying the case and to have him so disqualified by a superior court if indeed there exists a valid legal ground for his disqualification was their resort to the extraordinary remedies or special civil actions of prohibition and certiorari. Such an action for prohibition was availed of by the prosecution in the classic case of *People vs. Lopez*, where the disqualification for alleged bias and prejudice of therein respondent judge was sought, but the petition was denied due to the failure of a divided court to arrive at a decision with the necessary majority; it was there pointed out, however, that respondent judge was but one member of a 3-member collegiate court, and that "the actuations of a prejudiced judge may be over-ruled by a majority who do not share the same prejudice." [4] Where, however, it is the accused in a criminal case who seeks the disqualification of the trial judge, the general restriction pro-vided in the rule against appeal or stay of the proceedings when the judge denies the motion and rules in favor of his own compe-tency would apply, as it does in civil cases. In such case, the accused, in the event of his conviction, could raise the correct-ness of the judge's ruling on his non-disqualification with his appeal from the decision on the

merits; and were he to be acquitted, he would have no cause for complaint against the judge's acquittal verdict and ruling of non-disqualification of himself from trying the case and rendering such verdict.

It is pertinent to state here that the restriction provided in the Rule against appeal or stay of the proceedings where the trial judge denies a motion for his disqualification is not an abso-lute rule even in civil cases, and has not been taken as precluding a resort in appropriate cases to the special civil actions of prohi-bition and certiorari before the higher courts for determination, ahead of the judgment on the merits, whether the trial judge com-mitted a grave abuse of discretion amounting to lack or excess of jurisdiction in refusing to disqualify himself.[5] Recently, the Court in *Luque vs. Kayanan*,⁶ considering inter-alia that "respondent's prejudice against a suitor has concretely manifested itself", that "the animosity between respondent judge and petitioner, a party to the case below had developed through a long period of time (and) become patent," and that "respondent judge had by then formed a hardened idea that petitioner (who still had to take the witness stand on his own behalf) is incapable of telling the truth," issued the writs prayed for and declared that respondent judge's "further continuance in the case., would not be in the best interests of justice, which he is bound to serve." Earlier, the Court in an administrative case "resolved to express its view that the ends of justice will be better subserved if respondent judge should inhibit himself from hearing Civil Case No. 300 "which involved the same issues as a criminal case decided by respondent judge that were the object of the litigant's adminis-trative complaint against the judge.⁷

In this appeal, petitioners pursue their "main contention... that assuming that a judge trying a criminal case is disqualified, any judgment rendered by him, after his qualification is challenged, whether of conviction or acquittal, is null and void."⁸ Applied to the instant case, petitioners' argument is that any judgment of petitioner judge acquitting them would be null and void and the pro-secution may file anew the same information against the very same acquitted accused on the theory that their acquittal by a disquali-fied judge is null and void and may be collaterally attacked in the new case. The rule and jurisprudence do not support this conten-tion. Neither of the two sections of Rule 137 provides that the decision rendered by a disqualified judge is null and void. Section 1 provides, on the contrary, that the disqualification of the judge may be waived through "the written consent of all parties in inter-est, signed by them and entered upon the record." And Section 2 requires that any objection that the judge is disqualified must be filed in writing with the judge, stating the grounds therefor. The judge is called upon to determine the question of his disqualifi-cation and whether to proceed with the trial or withdraw therefrom. If he decides that he is not disqualified or if no objection is made, he proceeds with the hearing and his decision is valid, until it is set aside or reversed on appeal by a higher court. As stated above, a decision of acquittal would bar an appeal therefrom by the prosecution by virtue of the double jeopardy provision as well as a review of the correctness of the judge's ruling against his disqualification.

This Court's jurisprudence, likewise contrary to petitioners' contention, holds that the disqualification of a judge is not a matter that affects his jurisdiction and power to act such as to render his decision null and void, so much so that failure on the part of a party, to timely interpose such an objection of disqualifi-cation prior to the decision has been held to be a fatal obstacle to raising such objection on appeal. In *Government of the Philippines vs. Abella*, we held: "We are of the opinion that the exception taken to the competency of Judge Carbella is not well founded. Even supposing that the situation was one where the trial judge, upon having his attention called to the matter, might properly have inhibited himself from acting in the matter, yet it is obvious that he had jurisdiction and power to act; and the fail-ure of the appellants to interpose objection prior to the decision, is a fatal obstacle to raising any objection on this ground later. The attorneys for the appellants should have been familiar with the pleadings in the cause, as well as other documents in the record. Reference to these would at once have revealed the fact that Judge Carballo had participated administratively to the extent above stated. A litigant, having these facts before him, can-not be permitted to speculate upon the action of a court and raise an objection of this sort after decision has been rendered. The grounds of disqualification specified in section 8 of the Code of Civil

Procedure (now Rule 137) supply matter for preliminary exception, and timely objection should be submitted in writing as is required in said section. The inadvertent failure of the court to disqualify himself in the case there mentioned does not supply a ground for reversing the judgment; but of course if this court were of the opinion that the litigant had not had a fair trial, a new trial could be granted. In the case before us Judge Carballo had no personal interest in the controversy, and it is obvious that substantial justice has not suffered. In section 503 of the Code of Civil Procedure this court is prohibited from reversing any cause on merely formal or technical grounds not prejudicial to the ex-cepting party."⁹ We reiterated this doctrine in *Howden & Co., Ltd. vs. Commissioner of Internal Revenue*, holding that: "Finally, appellant would argue that Judge Augusto M. Luciano, who penned the decision appealed from, was disqualified to sit in this case since he had appeared as counsel for the Commissioner of Inter-nal Revenue and, as such, answered plaintiffs' complaint before the Court of First Instance of Manila. x x x Appellants, ins-tead of asking for Judge Luciano's disqualification by raising basic objection in the Court of Tax Appeals, are content to raise it for the first time before this Court. Such being the case they may not now be heard to complain on this point, when Judge Luciano has given his opinion on the merits of the case. A liti-gant cannot be permitted to speculate upon the action of the court and raise an objection of this nature after decision has been ren-dered."¹⁰

The question of a judge's disqualification, therefore, is one that should be timely raised in the first instance, so that it may properly be raised and considered on appeal. At the same time, as we pointed out in the *Abella* case, *supra*, if this Court were of the opinion upon a review of the case that the litigant had not had a fair trial, it would grant a new trial, although the judge may not have been disqualified under Rule 137, not on the ground of lack of jurisdiction but in the best interests of justice. This we did in *Dais vs. Torres*, where we ruled that: "Although a judge may not have been disqualified under said section, never-theless if it appears to this court that the appellant was not given a fair and impartial trial because of the trial judge's bias or pre-judice, this court will order a new trial, if it deems it necessary, in the interest of justice."¹¹

We therefore, overrule petitioners' contention that res-pondents' resort to prohibition and certiorari should not be per-mitted, on their theory that any judgment of acquittal by petitioner judge in the criminal case would be null and void. Such a judg-ment of acquittal would be valid and a bar to further prosecution for the same offense. The decision, even if rendered by a dis-qualified judge would suffer not from any fatal defect of lack of jurisdiction but only from an error reversible in appropriate proceedings. Since the prosecution or offended party would have no right of appeal in the event of such a verdict of acquittal, their recourse to the special civil action of prohibition and certiorari for a timely review of petitioner judge's ruling of his non-disqua-lification, ahead of his judgment on the merits and a possible ver-dict of acquittal which would bar all further recourse, was pro-perly taken.

Petitioners' other assignment of error is that the non-inclusion of the People of the Philippines as a co petitioner of respondents in the special civil action of prohibition and certiorari filed before respondent judge is a jurisdictional ground for dismissal of the action, as the People is an indispensable party thereto. We find no such error. It is admitted by petitioners in their brief that "the fiscal joined the motion for disqualification verbally while the case was in the City Court.¹² The non-joinder of the People in the action was consequently but a formality, which the appellate court properly held could be accordingly corrected by respondent judge in the action pending before him and should not serve as a ground for dismissal of the action, by virtue of the provisions of Rule 3, section 11, providing that "parties may be dropped or added by order of the Court on motion of any party or on its own initiative at any stage of the action and on such terms as are just." Furthermore, as offended parties in the pending criminal case before petitioner judge, it cannot be gainsaid that respondents have sufficient interest and personality as "person(s) aggrieved" by petitioner judge's ruling on his non-disqualification to file the special civil action, under sections 1 and 2 of Rule 65. Recently, in line with the underlying spirit of a liberal construction of the Rules of Court in order to promote their object,¹³ as against the literal interpretation of Rule 110, section 2,

we held, over-ruling the implication of an earlier case, that a widow possesses the right as an offended party to file a criminal complaint for the murder of her deceased husband.¹⁴

It remains for the Court to make a few pertinent observations with reference to the issue of disqualification of petitioner judge from hearing and deciding the criminal case for malicious mischief.¹⁵ While technically the law firm headed by former Senator Quintin Paredes was not the counsel of record in the malicious mischief case, and petitioner judge thus ruled that he was not disqualified by reason of relationship to counsel, it is nevertheless admitted that said law firm was the counsel of petitioner Villegas during the preliminary investigation in the fiscal's office, but withdrew from the case when it was assigned by raffle to the branch presided by petitioner judge.¹⁶ On the other hand, respondents assert that said law firm is the retained and continuing private counsel and/or lawyers' of petitioner Villegas, mentioning among the pending cases handled by it for said petitioner, the preliminary investigation of a libel case filed also by respondent Padilla against him.¹⁷ Without in any way casting any reflection on the fairness and integrity of petitioner judge, but considering the circumstances of the case and that the City Court of Manila has several other branches to whom the case may be re-assigned by raffle, it is the Court's view that it is in the best interests of justice if petitioner judge should inhibit himself from proceeding with the hearing of the case.

ACCORDINGLY, the decision of the Court of Appeals is affirmed, and the petition is dismissed. With costs against petitioners.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, and Capistrano, JJ., concur.

Sanchez and Barredo, JJ., took no part.

Reyes, JBL, J., on official leave.

[1] Petitioners' Brief, pp. 37-38.

[2] Rule 137, sec. 2 provides: "SEC. 2. Objection that judge disqualified, how made and effect. -- If it be claimed that an official is disqualified from sitting as above provided, the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or withdraw therefrom, in accordance with his determination of the question of his disqualification. His decision shall be forthwith made in writing and filed with the other papers in the case, but no appeal or stay shall be allowed from, or by reason of, his decision in favor of his own competency, until after final judgment in the case.

[3] Petitioners. Brief, pp. 46-47.

[4] 78 Phil. 286, 317-318.

[5] Cf. *Pimentel vs. Salonga*, 21 SCRA 160; *Talisay-Silay Milling Co. vs. Teodoro*, 91 Phil. 101; *People vs. Lapuz*, 78 Phil. 286.

7 Resolution in Adm. Case 137, May 6, 1969, cited in *Luque vs. Kayanan*, supra.

8 Petitioners' Brief, p. 21.

9 49 Phil. 374, 377-378, emphasis and note in parentheses supplied; cited in *Araneta vs. Dinglasan*, 84 Phil. 368, 431.

10 L-19392, April 14, 1965.

11 57 Phil. 897, 903.

12 Petitioners' Brief, p. 12.

13 Rule 1, section 2.

14 Del Rosario vs. Mercado, L-25710, August 28, 1969.

15 Criminal case No. F-069782.

16 Petitioners' Brief, p. 5.

17 Respondent's Brief, pp. 4-8

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