

THE CITY FISCAL, CITY OF CEBU, PETITIONER, VS. HON. WOODROW KINTANAR, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH VIII OF THE CITY COURT OF CEBU CITY, RESPONDENT.

G.R. No. L-31842. April 30, 1970

Ponente: DIZON, J.

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DIZON, J.:

This is a petition for certiorari filed by the City Fiscal of Cebu City against the respondent Woodrow Kintanar in his capacity as Presiding Judge of Branch VIII of the City Court.

It appears that on March 18, 1969 an information was filed with the City Court of Cebu City against Atty. Eleno Andales (Criminal Case No. R-29686) charging him with driving or operating motor vehicle No. V-1026 (1967) along Manalili and Magallanes streets, Cebu City, "with a delinquent driver's License" in the morning of March 18, 1968. Said defendant having entered a plea of not guilty, the case was called for trial before the respondent judge. After the prosecution had rested its case, the defendant moved for dismissal upon the ground that the prosecution evidence was not sufficient to establish the offense charged in the information. Thereafter, finding the motion for dismissal well taken, the Court dismissed the case on December 26, 1969. After the denial of the second motion for reconsideration filed by petitioner fiscal, he filed the present petition for certiorari.

The petition must be dismissed upon the ground firstly, that whatever error was committed by the respondent judge' was not an error of 'jurisdiction but one of judgment; se-condly, the order of dismissal - considering the circumstances mentioned heretofore - amounted to and was, in effect, an acquittal - not reviewable neither by appeal nor by certiorari.

WHEREFORE, the petition under consideration is dis-missed, with costs.

Concepcion, C.J., Reyes, JBL, Makalintal, Ruiz Castro, Fernando, and Teehankee, JJ., concur.

Zaldivar and Villamor, JJ., took no part.

Barredo, J., on official leave.

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