

VICTOR DE JESUS, PETITIONER, VS. COURT OF APPEALS, JUDGE EDDIE R. ROJAS, MTCC, BR. II, GENERAL SANTOS CITY, CITY PROSECUTOR FRANKLIN GACAL AND SALUSTIANO SONIDO, RESPONDENTS.

G.R. No. 101630. August 24, 1992

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Petitioner Victor de Jesus, then Director and Finance Officer of Southern Island Colleges, together with his octogenarian stepmother, Eugenia de Jesus, who was then the Directress-Chairman of the Board of Directors, was charged with violation of Section 28 (h) of the Social Security Law for failure to remit the SSS loan amortizations of private respondent Salustiano Sonido, an employee, in the amount of P583.35 covering the period from January to August 1988. The Information, signed by Third Assistant City Prosecutor Andres Lorenzo, Jr., was filed with the Municipal Trial Court in Cities, Br. II, General Santos City, docketed as Crim. Case No. 16886-2, presided by respondent Judge Eddie R. Rojas.

Petitioner filed a motion to quash the Information on the ground that (a) the City Prosecutor was not authorized to file the Information in the absence of prior authority from the SSS; (b) the SSS and not the MTCC has jurisdiction over the case; (c) the criminal action has been extinguished by the sale of his shares in the school before the complaint for estafa was filed against him and his stepmother; and, (d) damage as an element of estafa was not present in view of Sec. 22 (b) of the Social Security Law which guarantees enjoyment of SSS benefits by the employee notwithstanding failure of his employer to remit deductions.

On 27 February 1991, respondent Judge denied the motion to quash for lack of merit.[1]

Petitioner challenged before the Court of Appeals by way of a petition for certiorari, prohibition and mandamus the Order of respondent Judge denying his motion to quash.

On 31 July 1991, the appellate court dismissed the petition holding thus -

"We refrain from any discussion on the merits of this case since it involves an Order of a Municipal Trial Court whose decisions are not directly reviewable by this Court. x x x The instant petition should have been filed with the Regional Trial Court, the proper and competent tribunal." [2]

His motion for reconsideration having been denied by respondent Court of Appeals on 28 August 1991, petitioner now comes to Us seeking inter alia to set aside the resolutions dismissing his petition.

Outright, We discern a procedural misconception by the Court of Appeals of its jurisdiction over matters brought to it by way of petition for certiorari, prohibition and mandamus from Municipal Trial Courts. Obviously, it is error to hold that decisions of Municipal Trial Courts are not directly reviewable by the Court of Appeals, and that such petition should have been filed with the Regional Trial Court being "the proper and competent tribunal."

Under Sec. 9 of B.P. 129, the Court of Appeals has original jurisdiction to issue writs of mandamus, prohibition, certiorari, habeas corpus and quo warranto, whether or not in aid of its appellate jurisdiction. Such jurisdiction is concurrent with that of the Supreme Court[3] and with the Regional Trial Courts, for writs enforceable within their respective regions.[4]

Indeed, the refusal of the Court of Appeals to take cognizance of the petition would have been proper prior to the effectivity of B. P. 129[5] when the writ of certiorari was available in the appellate court only in aid of its appellate jurisdiction. As explained in *Breslin vs. Luzon Stevedoring Co.*[6] -

"A writ of mandamus, prohibition or certiorari against a lower court is said to be in aid of the appellate jurisdiction of the Court of Appeals within the meaning of section 30 of Republic Act No. 296, known as the 'Judiciary Act of 1948,' and the corresponding provision of the former Organic Act of the Court of Appeals, if the latter has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the former, and said writs are issued by the Court of Appeals in the exercise of its supervisory power or jurisdiction over the wrongful acts or omissions of the lower court that are not appealable. But if the Court of Appeals has no appellate jurisdiction it could not issue writs of mandamus, prohibition or certiorari in aid of an appellate jurisdiction which it does not have x x x x"

Perforce, the Resolutions of 31 July and 28 August 1991 must be reversed for want of basis in law.

While We are not unaware of the practice of the Court of Appeals of remanding to the proper Regional Trial Court for appropriate disposition petitions of this nature, yet, this is done only when there is no cogent reason advanced why the appellate court should hear the case. Plainly, therefore, respondent Court of Appeals could still have transmitted the petition to the Regional Trial Court of General Santos City not because the former has no jurisdiction but more of convenience and propriety as the latter court exercises administrative supervision over the Municipal Trial Court as the next higher tribunal in the judicial hierarchy, instead of the Court of Appeals. Indeed, such established practice is not without basis. For, in *Vergara, Sr. v. Suelto*,[7] penned by Chief Justice Andres R. Narvasa (then Associate Justice), this Court discussed quite extensively the concurrent jurisdiction of the Supreme Court, Court of Appeals and Regional Trial Court over judgments and orders of Municipal Courts -

"We turn now to the second question posed x x x as to the propriety of a direct resort to this Court for the remedy of mandamus or other extraordinary writ against a municipal court, instead of an attempt to initially obtain that relief from the Regional Trial Court of the district or the Court of Appeals, both of which tribunals share this Court's jurisdiction to issue the writ. As a matter of policy such a direct recourse to this Court should not be allowed. The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefore. Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another, are not controllable by the Court of Appeals. Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe."

Ordinarily, the next step would be to remand this case to the Court of Appeals to resolve the propriety of the denial of petitioner's motion to quash. But this is no longer necessary. Since the records are with Us, We are now in a position to settle the issue with dispatch. Consequently, We opt to meet the issue right here if only to obviate further delay in this seemingly uncomplicated case.

On the first ground raised by petitioner, Sec. 28 (i) of the Social Security Law provides:

"(i) Criminal action arising from a violation of the provisions of this Act may be commenced by the SSS or the employee concerned either under this Act or in appropriate cases under the Revised Penal Code: Provided, That such criminal action may be filed by the SSS in the city or municipality where the SSS provincial or regional office is located if the violation was committed within its territorial jurisdiction or in Metro Manila, at the option of the SSS."[8]

Clearly, prior consent of the Social Security System (SSS) is not essential before an employee can commence a criminal action arising from a violation of the Social Security Law. In other words, whether under the Social Security Law or "in appropriate cases under the Revised Penal Code", the employee can institute criminal suits independently of the SSS.

On the second ground, petitioner submits that it is the SSS and not the regular courts which is empowered to prosecute the alleged estafa pursuant to Sec. 5 of the Social Security Law. This is untenable. Section 5 provides:

"SEC. 5. Settlement of Disputes.- (a) Any dispute arising under this Act with respect to coverage, benefits, contributions and penalties thereon or any other matter related thereto, shall be cognizable, by the Commission, and any case filed with respect thereto shall be heard by the Commission, or any of its members, or by hearing officers duly authorized by the Commission and decided within twenty days after the submission of the evidence. The filing, determination and settlement of dispute shall be governed by the rules and regulations promulgated by the Commission."[9]

The foregoing defines the "dispute" falling within the coverage of the Social Security Law and lays down the procedure to be followed by the SSS in any case filed before it with respect to such "dispute". Definitely, prosecution of criminal offenses is not alluded to above, as this will require further legislation to clothe the SSS with the necessary jurisdiction. Consequently, the SSS is not vested with legal competence to adjudicate criminal complaints and must necessarily seek recourse in the regular courts for the prosecution of criminal actions arising from violations of the Revised Penal Code and the Social Security Law.[10]

On the third ground, it must be stressed that criminal liability is personal to the offender and cannot be transferred to another by contract. Criminal culpability attaches to the offender upon the commission of the offense, and from that instant, liability appends to him until extinguished as provided by law. The time of filing of the criminal complaint is material only for determining prescription. Consequently, petitioner's reported transfer of his shares in the Southern Island Colleges to Ramon Magsaysay Memorial Colleges did not extinguish his criminal liability nor transfer the same to his vendee or assignee.

On the fourth ground, the argument that there is no estafa for want of damage since the employee's entitlement to SSS benefits is not impaired by his employer's neglect to remit loan payments from his compensation is likewise untenable. It must be noted that petitioner was charged in connection with Sec. 28 (h) of the Social Security Law which states:

"(h) Any employer who, after deducting the monthly contributions or loan amortizations from his employee's compensation, fails to remit the said deductions to the SSS within thirty days from the date they became due shall be presumed to have misappropriated such contributions or loan amortizations and shall suffer the penalties provided in Article Three Hundred Fifteen of the Revised Penal Code,"[11]

and not under Art. 315 of the Revised Penal Code, which is material only in determining the penalty to be imposed.

Section 28 (h) speaks of two elements which must concur: (1) the employer deducts monthly contributions or loan amortizations from his employee's compensation, and (2) said employer fails to remit said deductions to the SSS within 30 days from the date they fall due, after which the employer is ipso facto presumed to have

misappropriated such contributions or amortizations of the employee and accordingly penalized under Art. 315 of the Penal Code. Plainly, damage is not an element in the act punished under Sec. 28 (h) as differentiated from the ordinary estafa wherein deceit and damage are considered essential elements.

Other arguments advanced by petitioner which were not contained in his motion to quash may not be passed upon in this extraordinary petition, for no abuse of discretion may be ascribed to respondent Judge when he was not provided with the opportunity to rule thereon.

WHEREFORE, as regards the Resolutions of 31 July and 28 August 1991 of respondent Court of Appeals, the same are SET ASIDE. However, with respect to the Order of 27 February 1991 of respondent Judge, the writ prayed for is denied and the petition is DISMISSED for lack of merit, hereby AFFIRMING his Order denying petitioner's motion to quash. Consequently, respondent Judge is directed to proceed with the trial of Criminal Case No. 16886-2 pending before his court.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Medialdea, JJ., concur.

[1] Petition, Annex "F-1". Rollo, p. 58.

[2] Rollo, p. 34.

[3] Sec. 5 [1], Art. VIII, Constitution.

[4] Sec. 21, B.P. 129.

[5] January 17, 1983, E.O. No. 864.

[6] 84 Phil. 618, 622-623 (1949).

[7] G.R. No. 74766, December 21, 1987; 156 SCRA 753.

[8] As amended by Sec. 15, P.D. 24, S-1972, Sec. 19, P.D. 735, S-1975, and Sec. 13, P.D. 1202, S-1977.

[9] As amended by Sec. 3, R.A. 2658; Sec. 2, R.A. 4857, and Sec. 3, P.D. 735, S-1975.

[10] Sec. 28 (i), R.A. 1161, as amended.

[11] As amended by Sec. 15, P.D. 24, S-1972.

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