

CESAR VARGAS, ET AL., PETITIONERS AND APPELLANTS, VS. VICENTE S. TUASON, ET AL., RESPONDENTS AND APPELLEES.

G. R. No. 11050. April 30, 1958

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

On February 27, 1956, respondent City Attorney Luis B. Uvero filed with the Municipal Court of the City of Naga, Camarines Sur, two informations for gambling: one against Cesar Vargas and Shea An Chun, docketed as Criminal Case No. 5248, and another against Cesar Vargas and Aniceta Zantua, docketed as Criminal Case No. 5249. In both cases the informations are similar and read as follows:

"That on or about February 22, 1956, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, accused Cesar Vargas, owner of a gambling device, a slot machine wherein a game is played and wagers consisting of money are played and winning therein depends wholly or chiefly upon chance, and accused Shea An Chun, owner and manager of the Shea's Lunch, Naga City, and as such having control and charge of the same, confederating together and mutually helping one another, did, then and there willfully, unlawfully, feloniously and knowingly permit and tolerate to be played therein said game of chance or hazard commonly known as 'Jackpot.'

"That on or about February 22, 1956, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, accused Cesar Vargas, owner of gambling devices, slot machines wherein a game is played and wagers consisting of money are played and winning therein depends wholly or chiefly upon chance and accused Aniceta Zantua, owner and manager of the Cosmos Restaurant, Naga City, and as such having control and charge of the same, confederating together and mutually helping one another, did, then and there wilfully, unlawfully, feloniously and knowingly permit and tolerate to be played therein said game of chance or hazard commonly known as 'jackpot'"

Respondent Judge Vicente S. Tuason of said court gave due course to said cases, ordered the arrest of the petitioners, and, after their plea of not guilty, set the cases for trial on March 8, 1956. Petitioners-appellants, however instead of going to trial on that day, filed a motion to quash the information on the following grounds:

- That the City Attorney had no authority to file the information ;
- That the information contained averments which, if true, would constitute a legal excuse or justification; and
- That the facts charged in the information did not constitute an offense.

After proper hearing and consideration of the memoranda submitted by the parties, the respondent Judge, on March 20, 1956, denied the motion to quash for not being well taken. Not satisfied with this ruling, petitioners-appellants filed with the Court of First Instance of Naga a petition for certiorari with injunction to secure the annulment of the order of the respondent Judge denying petitioners' motion to quash, to prohibit him from further hearing the aforesaid cases on the ground that he had no jurisdiction to try them, and to declare that respondent City Attorney had no authority to file the aforementioned informations. In the petition, they insisted

that the informations contained averments which, if true, would constitute a legal excuse or justification, and that the facts charged in the informations do not constitute an offense under existing laws; that under paragraph N, Section 15 of Republic Act No. 305 (the Charter of Naga City) the Municipal Board has authority to regulate the operation and maintenance of slot machines and to fix the amount of the license fees thereof, and pursuant thereto, the Municipal Board passed and approved Ordinance No. 72, as amended by Ordinance No. 116, which fixed the license fees, so that the operation of the slot machines within the territorial jurisdiction of the City of Naga was allowed and, therefore, there is no cause of action against the petitioners; that, accordingly, the informations filed against them should be quashed and, consequently, the respondent Judge abused his discretion and exceeded his jurisdiction when he failed to grant their motion to quash the informations.

Respondents herein answered the petition alleging that the denial of the motion to quash by the respondent Judge was proper; that the slot machine mentioned in the informations was a gambling device—as it will be shown during the trial of the case—which falls within the provision of Art. 195 of the Revised Penal Code, and is not the slot machine regulated by the Municipal Ordinance No. 72 of the City of Naga; and that the petitioners have still the remedy of appeal against the order of the respondent Judge dismissing the motion to quash.

Thereafter the case was set for hearing, and after proper trial, the lower court, presided by Hon. Perfecto Palacio, denied the petition for the well-founded reasons stated in the decision, which are as follows:

"It appears from this evidence presented that the petitioners were accused by the respondent, City Attorney Luis B. Uvero, of the violation of the gambling law under the provisions of the Revised Penal Code, before the Municipal Court of the City of Naga, (Annexes A and B); that said petitioners filed a motion to quash said criminal cases before said Municipal Court, (Annex C), on the following grounds: that the City Fiscal has no authority to file the information; that the information, although, it contains averments which, if true, would constitute an offense, (Annex C), However, the respondent Judge denied said motion (Annex D),

"The petitioners now come, to this Court and ask that it prohibits the City Attorney of the City of Naga from prosecuting them of the crime of gambling under the provisions of the Revised Penal Code in view of the fact that the provisions of Republic Act No. 305 known as the Charter of the City of Naga, particularly paragraph N of Section 15 thereof, impliedly permitted them to use slot machine in the operation of gambling games as they were authorized by City Ordinance No. 72, series of 1950 of the City of Naga which regulates the use of said slot machine upon payment of a certain fee; and to declare the Municipal Court of the City of Naga presided over by Judge Vicente S. Tuason without authority and jurisdiction to hear and decide said criminal cases.

"The only question to be determined here is whether or not, City Attorney Luis B. Uvero of the City of Naga has authority, as such prosecuting officer, to prosecute the petitioners of the offense of gambling thru the use of slot machine in view of the permission granted to them by Republic Act No. 305 and the City Ordinance No. 72, series of 1950 of the City of Naga by allowing them to pay a license for the operation of the same under certain regulations, and whether or not Municipal Judge Vicente S. Tuason has jurisdiction to try and decide said criminal cases.

"Under the provisions of the Judiciary Act of 1948, (Sec. 87, Rep. Act No. 296) municipal judges and justices of the peace were vested with original jurisdiction to try and decide gambling cases. Likewise, the City Attorney of the City of Naga as prosecuting officer of said city, is empowered and authorised, to prosecute crimes and violations of city ordinances of the City of Naga committed within the territorial jurisdiction of said City, (Section 24, paragraph (G) of Republic Act No. 305). As the petitioners allegedly violated the provisions of the gambling law, (Art. 195 of the Revised Penal Code), within the City of Naga, the City Attorney of said city is perfectly within the authority granted him by law to prosecute the persons who violated said law. In like manner, the Municipal Court of the City of Naga has the exclusive jurisdiction to try and decide said violations of law as granted it by the Judiciary Act of 1948, as amended.

"It is true that the petitioners were permitted by City Ordinance No. 72, series of 1950 to operate the slot machine in their establishments but this fact alone does not exempt them from the . operation of the provisions of Art. 195 of the Revised Penal Code as amended, for the reason that the slot machine which City Ordinance No. 72, series of 1950, allowed them to operate by virtue of their payment of a license fee, is the slot machine which is used for amusement, and not the slot machine used in gambling games. The Court cannot subscribe to the theory of the petitioners that, because Republic Act No. 305, and City Ordinance No. 72, series of! 1950 of the City of Naga, respectively, allowed them to operate slot machine in their establishments, they are permitted or authorized to indulge in gambling thru the use of said device, for the reason that gambling is prohibited and penalized by the Revised Penal Code, and as slot machines are of many types, some of them being used and operated for amusement purposes, and others are used and operated for gambling purposes, as defined in Corpus Juris Civiles, it is clear that the slot machine referred to in Republic Act No. 305 and regulated, by City Ordinance No. 72, series of 1950, of the City of Naga, refers to the slot machine used and operated for amusement purposes only.

"Moreover, even if the petitioners were convicted by the Municipal Court of the City of Naga for the violation of the provisions of Art. 195 of the Revised Penal Code, (Gambling: Law), of which they were charged in Criminal Cases Nos. 5248 and 5249, (Annexes A and B), still they have the remedy of appeal, and therefore, their petition for certiorari and prohibition in this case is without legal ground."

In this jurisdiction, the only assignment of error is as follows:

The lower court erred in not holding that there is no law for which the petitioners may be successfully prosecuted in the light of the charter provision of Republic Act No. 305, otherwise known as the Charter, of the City of Naga, and that Art. 195 of the Revised Penal Code cannot be applied.

Carefully considered, this assignment of error provokes a question which constitutes a matter of defense that should be presented in the trial of the cases filed against the petitioners in the Municipal Court and cannot be entertained in this appeal for, without proper evidence, the Court of First Instance of Naga as well as this Court cannot determine whether the facts involved in the aforesaid criminal cases No. 5248 and 5249 should really fall under the provisions of Republic Act 305 or under Art. 195 of the Revised Penal Code. On this score alone, the present case as well as the appeal taken against the decision rendered therein should be dismissed; but, besides the foregoing reasons, we find that the order of respondent Judge Vicente S. Tuason cannot be the subject matter of certiorari with prohibition for it was entered with jurisdiction and without abuse of discretion. That order constitutes an incident in the trial of said criminal cases Nos. 5248 and 5249 in the Municipal Court of Naga City, and the determination of its correctness, if at all, should be brought on appeal to the Court of First Instance of Naga, after the trial of the cases, and not on certiorari. On the other hand, we find that the information filed against the petitioners aver facts which constitute an offense under Art. 195 of the Revised Penal Code; that they contain no allegation which would constitute a legal excuse or justification of petitioners' responsibility for the violation of law charged against them in said informations, and we see no reason why the respondent City Attorney could not validly file said informations which clearly charge a violation of law committed within the jurisdiction of the Municipal Court of Naga City. Evidently the order of respondent Judge Tuason denying petitioners' motion to quash was well taken and could not be the subject of certiorari which is a remedy intended only to keep an inferior court within its jurisdiction or to correct a grave abuse of discretion.

Wherefore, finding no error in the decision appealed from, the same is hereby affirmed, with costs against the petitioners.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Felix, JJ., concur.

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