

BEN STA. RITA, PETITIONER, VS. THE COURT OF APPEALS, THE PEOPLE OF THE PHILIPPINES AND THE SOCIAL SECURITY SYSTEM, RESPONDENTS.

G.R. No. 119891. August 21, 1995

Ponente: FELICIANO, J.

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FELICIANO, J.:

This is a Petition for Review on Certiorari of the Decision of the Court of Appeals ("CA") in CA-G.R. Sp. No. 34384 which ordered the Regional Trial Court ("RTC"), Branch 92, Quezon City, to reinstate Criminal Case No. Q-92-35426 filed against petitioner Ben Sta. Rita.

Petitioner Sta. Rita was charged in the RTC with violating Section 2(a) in relation to Sections 22(d) and 28(e) of Republic Act No. 1161, as amended, otherwise known as the Social Security Law. The Information alleged that petitioner, "as President/General Manager of B. Sta. Rita Co., Inc. a compulsorily (sic) covered employer under the Social Security Law, as amended, did then and there willfully and unlawfully fail, neglect and refuse and still fails, neglects and refuses to remit to the Social Security System contributions for SSS, Medicare and Employees Compensation for its covered employees." [1]

Petitioner Sta. Rita moved to dismiss said criminal case on the following grounds:

1. That the facts charged do not constitute an offense, and;
2. That the RTC has no jurisdiction over this case. [2]

The RTC sustained petitioner's motion and dismissed the criminal case filed against him. It ruled that the Memorandum of Agreement entered into between the Department of Labor and Employment ("DOLE") and the Social Security System ("SSS") extending the coverage of Social Security, Medical Care and Employment Compensation laws to Filipino seafarers on board foreign vessels was null and void as it was entered into by the Administrator of the SSS without the sanction of the Commission and approval of the President of the Philippines, in contravention of Section 4(a) of R.A. No. 1161, as amended. [3]

The People, through the Solicitor General, filed in the Court of Appeals a petition for certiorari, prohibition and mandamus assailing the order of dismissal issued by the trial court. Respondent appellate court granted the petition and ordered the Presiding Judge of the trial court to reinstate the criminal case against petitioner. A motion for reconsideration thereof was denied by the CA in a Resolution dated 17 April 1995.

Thereafter, petitioner filed in this Court a motion for extension of thirty (30) days from the expiration of reglementary period within which to file a petition for review on certiorari. The Court granted the motion and gave petitioner until 9 June 1995 to file the petition with warning that no further extension will be given. Despite the warning, the petition was filed only on 13 June 1995 or four (4) days after the due date. Moreover, it failed to comply with requirement no. 2 of Circular No. 1-88, as amended and Circular No. 19-91 of the Court as it did not contain an affidavit of service of copies thereof to respondents. It was only on 14 July 1995, through an ex--parte

manifestation, that the affidavit of service was belatedly submitted to this Court.

In the Petition for Review, petitioner Sta. Rita contends that the Filipino seafarers recruited by B. Sta. Rita Co. and deployed on board foreign vessels outside the Philippines are exempt from the coverage of R.A. No. 1161 under Section 8 (j) (5) thereof:

"Terms Defined

EMPLOYMENT - Any service performed by an employee for his employer, except ?

x x x x x x x x

(5) Service performed on or in connection with an alien vessel by an employee if he is employed when such vessel is outside the Philippines

x x x x x x x x"

According to petitioner, the Memorandum of Agreement entered into by the DOLE and the SSS is null and void as it has the effect of amending the aforequoted provision of R.A. No. 1161 by expanding its coverage. This allegedly cannot be done as only Congress may validly amend legislative enactments.

Petitioner prays that the Court set aside the decision of the Court of Appeals ordering the reinstatement of Criminal Case No. Q-92-35426 and that the Order of the RTC dismissing the same be upheld.

It is well-settled in our jurisdiction that the right to appeal is a statutory right and a party who seeks to avail of the right must comply with the rules.[4] These rules, particularly the statutory requirement for perfecting an appeal within the reglementary period laid down by law, must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business.[5] Petitioner's failure to seasonably file the Petition and its failure to comply with the aforequoted Circulars of the Court necessitate the denial of the Petition.

Besides, even if the Petition had been filed on time and had complied with the Circulars, it would still have to be denied as petitioner has failed to show that respondent appellate court committed any reversible error in rendering the assailed decision.

The Court agrees with the CA that the Information filed against petitioner was sufficient as it clearly stated the designation of the offense by the statute, i.e. violation of the Social Security Law, and the acts or omissions complained of as constituting the offense, i.e., petitioner's failure to remit his contributions to the SSS. The CA found that there is prima facie evidence to support the allegations in the Information and to warrant the prosecution of petitioner.

Respondent appellate court correctly upheld the validity of the Memorandum of Agreement entered into between the DOLE and the SSS. Upon the one hand, contrary to the trial court's finding, the Memorandum of Agreement was approved by the Social Security Commission per the Commission's Resolution No. 437, dated 14 July 1988.[6] Upon the other hand, the Memorandum of Agreement is not a rule or regulation enacted by the Commission in the exercise of the latter's quasi-legislative authority under Section 4(a) of R.A. No. 1161, as amended, which reads as follows:

"Sec. 4. Powers and Duties of the Commission. — For the attainment of its main objectives as set forth in section two hereof, the Commission shall have the following powers and duties:

(a) To adopt, amend and rescind, subject to the approval of the President, such rules and regulations as may be necessary to carry out the provisions and purposes of this Act.

x x x x x x x x"

What the Memorandum of Agreement did was to record the understanding between the SSS on the one hand and the DOLE on the other hand that the latter would include among the provisions of the Standard Contract of Employment required in case of overseas employment, a stipulation providing for coverage of the Filipino seafarer by the SSS. The Memorandum of Agreement is not an implementing rule or regulation of the Social Security Commission which, under Section 4(a) abovequoted, is subject to the approval of the President. Indeed, as a matter of strict law, the participation of the SSS in the establishment by the DOLE of a uniform stipulation in the Standard Contract of Employment for Filipino seafarers was not necessary; the Memorandum of Agreement related simply to the administrative convenience of the two (2) agencies of government.

Moreover, the Court finds no merit in petitioner's contention that Section 8 (j) (5) of R.A. No. 1161, as amended, absolutely exempts Filipino seafarers on board foreign vessels from the coverage of the SSS statute. Section 8 (j) (5) simply defines the term "employment" and does not in any way relate to the scope of coverage of the Social Security System. That coverage is, upon the other hand, set out in Section 9 of R.A. No. 1161 as amended, which defines the scope of SSS coverage in the following terms:

"Sec. 9. Compulsory Coverage. — (a) Coverage in the SSS shall be compulsory upon all employees not over sixty years of age and their employers; Provided, x x x

(b) Filipinos recruited in the Philippines by foreign-based employers for employment abroad may be covered by the SSS on a voluntary basis." (As amended by Sec. 2, P.D. No. 177, S-1973 and Sec. 6, P.D. No. 735-S-1975) (Italics supplied)

It will be seen that the Memorandum of Agreement is in line with paragraph 9 (b) of the Social Security statute quoted above. The Memorandum of Agreement provides, inter alia, that:

"x x x x x x x x

NOW THEREFORE, for and in consideration of the foregoing premises, the parties hereto agree and stipulate that one of the conditions that will be imposed by the Department of Labor and Employment in the contract for overseas employment is the registration for coverage of seafarers with the Social Security System, through the manning agencies as the authorized representatives of the foreign employers in conformity with Section 9, paragraph (b) of the Social Security Law (R.A. No. 1161, as amended), subject to the following terms and conditions:

x x x x x x x x"[7]

(Italics supplied)

Thus, the Standard Contract of Employment to be entered into between foreign shipowners and Filipino seafarers is the instrument by which the former express their assent to the inclusion of the latter in the coverage of the Social Security Act. In other words, the extension of the coverage of the Social Security System to Filipino seafarers arises by virtue of the assent given in the contract of employment signed by employer and seafarer; that same contract binds petitioner Sta. Rita or B. Sta. Rita Company, who is solidarily liable with the foreign shipowners/employers.

It may be noted that foreign shipowners and manning agencies had generally expressed their conformity to the inclusion of Filipino seafarers within the coverage of the Social Security Act even prior to the signing of the DOLE--SSS Memorandum of Agreement. Thus, the Whereas clauses of the Memorandum of Agreement state that:

"WHEREAS, in the 74th Maritime Session (ILO) held from September 24 to October 9, 1987 in Geneva, it was agreed that as an internationally accepted principle, seafarers shall have the right to social security protection;

x x x x x x x x

WHEREAS, after a series of consultations with seafaring unions and manning agencies, it was the consensus that Philippine social security coverage be extended to seafarers under the employ of vessels flying foreign flags;

x x x x x x x x [8]

(Italics supplied)

It is, finally, worthy of special note that by extending the benefits of the Social Security Act to Filipino seafarers on board foreign vessels, the individual employment agreements entered into with the stipulation for such coverage contemplated in the DOLE-SSS Memorandum of Agreement, merely give effect to the constitutional mandate to the State to afford protection to labor whether "local or overseas." [9] Nullification of the SSS stipulation in those individual employment contracts, through nullification of the Memorandum of Agreement, constituted serious reversible error on the part of the trial court. That petitioner should seek to deprive his countrymen of social security protection after his foreign principal had agreed to such protection, is cause for dismay and is to be deplored.

The Court of Appeals properly held that the reinstatement of the criminal case against petitioner did not violate his right against double jeopardy since the dismissal of the information by the trial court had been effected at his own instance. [10] There are only two (2) instances where double jeopardy will attach notwithstanding the fact that the case was dismissed with the express consent of the accused. The first is where the ground for dismissal is insufficiency of evidence for the prosecution; and the second is where the criminal proceedings have been unreasonably prolonged in violation of the accused's right to speedy trial. [11] Neither situation exists in the case at bar. There is no legal impediment to the reinstatement of Criminal Case No. Q-92-35426 against petitioner Sta. Rita.

WHEREFORE, the Court Resolved to DENY the Petition for having been filed late, for failure to comply with applicable Court Circulars and for lack of merit. The assailed Decision of the Court of Appeals is hereby AFFIRMED. Costs against petitioner.

Romero, Melo, and Vitug, JJ., concur.

[1] Rollo, p. 38.

[2] Id., p. 48.

[3] Id., p. 68.

[4] Spouses Gil and Elma del Rosario vs. Court of Appeals, G.R. No. 113890 (1995).

[5] Bank of America, NT & SA vs. Gerochi, Jr., 230 SCRA 9 (1994).

[6] Rollo, p. 125.

[7] Id, p. 120.

[8] Id., p. 119.

[9] Article XIII, Section 3, 1987 Constitution.

[10] Rule 117, Section 7, Rules of Court.

[11] People vs. Quizada, 160 SCRA 516 (1988).

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