

PAZ BACABAC, PETITIONER AND APPELLANT, VS. VICENTE F. DELFIN, ETC., GORGONIO D. DRILON, ETC. AND PACIENCIA RAFOLS, RESPONDENTS AND APPELLEES.

G.R. No. 13515. April 29, 1961

Ponente: DIZON, J.

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DIZON, J.:

Petitioner-appellant Paz Bacabac tried to file in the Justice of the Peace Court of Sagay, Occidental Negros, a complaint for slight physical injuries against Paciencia Rafols who was alleged to have maltreated appellant's twelve-year old son, but then acting Justice of the Peace, Francisco H. Ledesma, refused to docket the same on the ground that it was not signed by the offended party nor by the chief of police. As a result, appellant filed in the Court of First Instance of Occidental Negros an action for Mandamus against Judge Ledesma (Civil Case No. 3879). This case was later dismissed upon motion of appellant herself on the ground that Judge Ledesma had already accepted the case, the same having been docketed as Criminal Case No. 1400 of the Justice of the Peace Court of Sagay. Prior to the dismissal of the mandamus case, that is, on November 16, 1956 the incumbent Justice of the Peace of Sagay, respondent Drilon, issued an order inhibiting himself from trying the aforesaid criminal Case for the reason that he had been made a party respondent in the mandamus case above-referred-to. On November 21, 1956 Judge Jose Teodoro, Executive Judge of the Court of First Instance of Occidental Negros, granted Judge Drilon's formal request to be allowed to disqualify himself, and designated respondent Judge Delfin, of the Justice of the Peace Court of Escalante, to try and decide the aforesaid criminal case.

On December 12, 1956 the accused in said criminal case filed a motion to quash upon the ground that the complainant had no authority to file the complaint and on the further ground that the criminal action or liability had been extinguished. Herein appellant filed her opposition thereto and on the same date filed another motion praying that Judge Delfin refrain from continuing with the trial of the case and that the same be referred to Judge Drilon for trial and decision. After several postponements of the hearing on the motion to quash had been granted by Judge Delfin, the motion was finally heard before him on December 27, 1956. The motion was granted and the case was dismissed, with costs de oficio. Instead of appealing from this order of dismissal which has, therefore, become final and executory on March 15, 1957, appellant filed the present action for certiorari with mandamus against Judges Vicente F. Delfin and Gorgonio D. Drilon, and Paciencia Rafols in the lower court. On May 2 of the same year respondents filed their answer with affirmative defenses and a counterclaim for damages. One of their defenses was that the allegations of the petition did not constitute a sufficient cause of action.

At the commencement of the hearing on September 9, 1957, upon suggestion of the trial court, the parties argued the points of law involved. Thereafter the Court granted appellees a period of ten days within which to file a formal motion to dismiss, and a similar period from the filing of said motion for the appellant to answer the same. The motion to dismiss was filed under date of September 17, 1957, based on the insufficiency of the allegations of the petition, but it appears that, prior to that date, appellant had filed a motion objecting to the alleged irregular procedure followed by the court. In view of this objection the trial court set the case for trial on the merits which

was finally, held on November 5, 1957. Thereafter the lower court rendered the appealed order dated December 18, 1957 dismissing the petition with costs. From said order petitioner interposed the present appeal.

The present petition for certiorari and mandamus is for the purpose of securing judgment declaring that appellant had authority to sign the criminal complaint filed in Criminal Case No. 1400; that the criminal action had not yet prescribed; that Judge Delfin had no jurisdiction to take cognizance of said case and that after annulling the proceedings had therein, Judge Drilon be ordered to hear and decide the case.

It does not appear necessary to decide all the questions raised by appellant in her brief.

This attempt to assail by certiorari and mandamus the disqualification of Judge Drilon and the designation in his place of Judge Delfin by the Hon. Jose Teodoro can not be sustained. Appellant could have asked Judge Teodoro to reconsider his order in this matter, but she did not. Her failure in this respect not having been explained, she can not now be allowed to substitute certiorari and mandamus for the ordinary remedy she lost.

On the other hand, the order of dismissal entered by Judge Delfin, whether right or wrong, cannot be assailed by certiorari. It was obviously a filial order considering, that it not only sustained the contention that petitioner herein had no authority to sign the criminal complaint but also held that the criminal action had already prescribed. Petitioner's remedy against the same was an appeal—which is now too late to take.

Lastly, even assuming that the designation of Judge Delfin to act as Justice of the Peace of Sagay and take cognizance of Criminal Case No. 1400 of said court was erroneous, it can not be denied that he was and acted, at least, as a de facto Judge, and his erroneous designation did not in any way affect the jurisdiction of the court he presided.

Premises considered, the order appealed from is hereby affirmed, with costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera and Paredes, JJ., concur.

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