

MEYNARDO L. BELTRAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, AND HON. JUDGE FLORENTINO TUAZON, JR., BEING THE JUDGE OF THE RTC, BRANCH 139, MAKATI CITY, RESPONDENTS.

G.R. No. 137567. June 20, 2000

Ponente: BUENA, J.

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BUENA, J.:

This petition for review, filed under Rule 45 of the 1997 Rules of Civil Procedure, seeks to review and set aside the Order dated January 28, 1999 issued by Judge Florentino A. Tuazon, Jr. of the Regional Trial Court of Makati City, Branch 139 in Special Civil Case No. 98-3056, entitled "Meynardo Beltran vs. People of the Philippines and Hon. Judge Alden Cervantes of the Metropolitan Trial Court of Makati city, Branch 61." The said Order denied petitioner's prayer for the issuance of a writ of preliminary injunction to enjoin Judge Cervantes from proceeding with the trial of Criminal Case No. 236176, a concubinage case against petitioner on the ground that the pending petition for declaration of nullity of marriage filed by petitioner against his wife constitutes a prejudicial question.

The antecedent facts of the case are undisputed:

Petitioner Meynardo Beltran and wife Charmaine E. Felix were married on June 16, 1973 at the Immaculate Conception Parish Church in Cubao, Quezon City.[1]

On February 7, 1997, after twenty-four years of marriage and four children,[2] petitioner filed a petition for nullity of marriage on the ground of psychological incapacity under Article 36 of the Family Code before Branch 87 of the Regional Trial Court of Quezon City. The case was docketed as Civil Case No. Q-97-30192.[3]

In her Answer to the said petition, petitioner's wife Charmaine Felix alleged that it was petitioner who abandoned the conjugal home and lived with a certain woman named Milagros Salting.[4] Charmaine subsequently filed a criminal complaint for concubinage[5] under Article 334 of the Revised Penal Code against petitioner and his paramour before the City Prosecutor's Office of Makati who, in a Resolution dated September 16, 1997, found probable cause and ordered the filing of an Information[6] against them. The case, docketed as Criminal Case No. 236176, was filed before the Metropolitan Trial Court of Makati City, Branch 61.

On March 20, 1998, petitioner, in order to forestall the issuance of a warrant for his arrest, filed a Motion to Defer Proceedings Including the Issuance of the Warrant of Arrest in the criminal case. Petitioner argued that the pendency of the civil case for declaration of nullity of his marriage posed a prejudicial question to the determination of the criminal case. Judge Alden Vasquez Cervantes denied the foregoing motion in the Order[7] dated August 31, 1998. Petitioner's motion for reconsideration of the said Order of denial was likewise denied in an Order dated December 9, 1998.

In view of the denial of his motion to defer the proceedings in the concubinage case, petitioner went to the Regional Trial Court of Makati City, Branch 139 on certiorari, questioning the Orders dated August 31, 1998 and December 9, 1998 issued by Judge Cervantes and praying for the issuance of a writ of preliminary injunction.[8]

In an Order[9] dated January 28, 1999, the Regional Trial Court of Makati denied the petition for certiorari. Said Court subsequently issued another Order[10] dated February 23, 1999, denying his motion for reconsideration of the dismissal of his petition.

Undaunted, petitioner filed the instant petition for review.

Petitioner contends that the pendency of the petition for declaration of nullity of his marriage based on psychological incapacity under Article 36 of the Family Code is a prejudicial question that should merit the suspension of the criminal case for concubinage filed against him by his wife.

Petitioner also contends that there is a possibility that two conflicting decisions might result from the civil case for annulment of marriage and the criminal case for concubinage. In the civil case, the trial court might declare the marriage as valid by dismissing petitioner's complaint but in the criminal case, the trial court might acquit petitioner because the evidence shows that his marriage is void on ground of psychological incapacity. Petitioner submits that the possible conflict of the courts' ruling regarding petitioner's marriage can be avoided, if the criminal case will be suspended, until the court rules on the validity of marriage; that if petitioner's marriage is declared void by reason of psychological incapacity then by reason of the arguments submitted in the subject petition, his marriage has never existed; and that, accordingly, petitioner could not be convicted in the criminal case because he was never before a married man.

Petitioner's contentions are untenable.

The rationale behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.[11]

The pendency of the case for declaration of nullity of petitioner's marriage is not a prejudicial question to the concubinage case. For a civil case to be considered prejudicial to a criminal action as to cause the suspension of the latter pending the final determination of the civil case, it must appear not only that the said civil case involves the same facts upon which the criminal prosecution would be based, but also that in the resolution of the issue or issues raised in the aforesaid civil action, the guilt or innocence of the accused would necessarily be determined.

Article 40 of the Family Code provides:

"The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void."

In *Domingo vs. Court of Appeals*,[12] this Court ruled that the import of said provision is that for purposes of remarriage, the only legally acceptable basis for declaring a previous marriage an absolute nullity is a final judgment declaring such previous marriage void, whereas, for purposes of other than remarriage, other evidence is acceptable. The pertinent portions of said Decision read:

"xxx Undoubtedly, one can conceive of other instances where a party might well invoke the absolute nullity of a previous marriage for purposes other than remarriage, such as in case of an action for liquidation, partition, distribution and separation of property between the erstwhile spouses, as well as an action for the custody and support of their common children and the delivery of the latter's presumptive legitimes. In such cases, evidence needs must be adduced, testimonial or documentary, to prove the existence of grounds rendering such a previous marriage an absolute nullity. These needs not be limited solely to an earlier final judgment of a court declaring such previous marriage void."

So that in a case for concubinage, the accused, like the herein petitioner need not present a final judgment declaring his marriage void for he can adduce evidence in the criminal case of the nullity of his marriage other

than proof of a final judgment declaring his marriage void.

With regard to petitioner's argument that he could be acquitted of the charge of concubinage should his marriage be declared null and void, suffice it to state that even a subsequent pronouncement that his marriage is void from the beginning is not a defense.

Analogous to this case is that of *Landicho vs. Reloval*[13] cited in *Donato vs. Luna*[14] where this Court held that:

"xxx Assuming that the first marriage was null and void on the ground alleged by petitioner, that fact would not be material to the outcome of the criminal case. Parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of the competent courts and only when the nullity of the marriage is so declared can it be held as void, and so long as there is no such declaration the presumption is that the marriage exists. Therefore, he who contracts a second marriage before the judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy."

Thus, in the case at bar it must also be held that parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to judgment of the competent courts and only when the nullity of the marriage is so declared can it be held as void, and so long as there is no such declaration the presumption is that the marriage exists for all intents and purposes. Therefore, he who cohabits with a woman not his wife before the judicial declaration of nullity of the marriage assumes the risk of being prosecuted for concubinage. The lower court therefore, has not erred in affirming the Orders of the judge of the Metropolitan Trial Court ruling that pendency of a civil action for nullity of marriage does not pose a prejudicial question in a criminal case for concubinage.

WHEREFORE, for lack of merit, the instant petition is DISMISSED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

[1] Amended complaint, Annex "E," Petition, Rollo, p. 61.

[2] Annex "E," Rollo, p. 61.

[3] Petition, p. 3; Rollo, p. 14.

[4] Petition, p. 3; Rollo, p. 14.

[5] Petition, Annex "F," Rollo, pp. 69-70.

[6] Petition, annex "H," Rollo, pp. 80-81.

[7] Petition, Annex "I," Rollo, pp. 82-83.

[8] Petition, Annex "J," Rollo, pp. 84-100.

[9] Petition, Annex "A," Rollo, pp. 33-39.

[10] Petition, Annex "C," Rollo, pp. 52-54.

[11] *Carlos vs. Court of Appeals*, 268 SCRA 25 (1997)

[12] 226 SCRA 572 (1993)

[13] 22 SCRA 731 (1968)

[14] 160 SCRA 441 (1988)

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