

**MARIANO BENITEZ ALIAS YU BON CHIONG AND RUFINO IBAÑEZ,
PETITIONERS, VS. HERMOGENES CONCEPCION, JR., IN HIS
CAPACITY AS CITY FISCAL OF MANILA AND UY LIAM CHIU ALIAS
ONG HO, RESPO...**

G.R. No. 14646. May 30, 1961

Ponente: PAREDES, J.

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PAREDES, J.:

This is a petition to prohibit the respondent Hermogenes Concepcion, Jr., in his capacity as City Fiscal of Manila, from proceeding with the investigation of a criminal charge (I. S. [Investigation Slip] No. 15190) for falsification of deeds of real estate mortgage.

On May 4, 1946, petitioner Yu Bon Chiong, as Debtor, petitioner Rufino Ibañez, as Mortgagor, and Ong Ho, as another mortgagor, and Ching Siok Eng (wife of Petitioner Yu Bon Chiong) also as a mortgagor, executed in favor of the Philippine National Bank a real estate mortgage to secure the payment of Yu Bon Chiong's indebtedness in the amount of P50,000.00. The mortgage was amended on March 26, 1947, to secure the payment of the increased indebtedness of petitioner Yu Bon Chiong which had risen to P170,000.00. Yu Bon Chiong failed to pay the indebtedness, so that on December 17, 1949, the Philippine National Bank filed with the CFI of Rizal, Civil Case No. 994, against both petitioners herein, Ching Siok Eng (wife of Chiong) and respondent Ong Ho, for the foreclosure of the mortgages. Against a decision in favor of the bank, the defendants in said case appealed to the Court of Appeals which certified it to this Court, being G. R. No. L-14244.

On July 24, 1957, respondent Ong Ho filed a complaint in the CFI of Manila (Civil Case No. 33251), against the Philippine National Bank, petitioners Yu Bon Chiong, alias Mariano Benitez, Rufino Ibañez and Heirs of Ching Siok Eng, for the annulment of the two deeds of mortgage, claiming that the signatures purporting to be his in said documents were forgeries.

The defendants in said case No. 33251 adopted the special defense of the pendency of another case between the same parties involving the same subject matter. During the hearing of the special defense, Ong Ho raised the issue that he was not the same Ong Ho involved in Civil Case No. 994.

On June 16, 1958, respondent Ong Ho filed a criminal complaint before the respondent City Fiscal of Manila (I. S. No. 15190), charging the herein petitioners of falsification of the deeds of mortgage involved in Civil Case No. 994. On July 2, 1958, petitioners filed a motion before the respondent City Fiscal, for the dismissal of the criminal complaint, on the ground that civil prejudicial questions are involved which should first be resolved. On September 24, 1958, the respondent City Fiscal, denied the motion to dismiss or suspend the proceedings in the criminal case and set the same for hearing. The motion for reconsideration of the order denying the motion to dismiss was also denied.

Claiming that respondent City Fiscal, in denying the motion to dismiss or suspend the proceedings in I.S. No,

15190, and the motion for reconsideration filed thereto, acted in excess of jurisdiction or with grave abuse of discretion and that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law, petitioners filed the present action for prohibition, with preliminary injunction. Respondent City Fiscal interposed Special and/or Affirmative Defenses, which were adopted in substance by respondent Ong Ho.

Is the question in the civil case prejudicial so as to warrant the suspension of the hearings and/or investigation of the criminal case at the City Fiscal's office? This seems to be the dominant issue for our consideration.

No dispute arises from the fact that both civil case No. 33251 and criminal case I.S. No. 15190 arose from the same transactions and/or facts. The general rule is—where both a civil and a criminal case arising from the same facts are filed in court, the criminal case takes precedence [Rule 107, sec. 1 (b)]. An exception to this general rule would be—if there exist prejudicial questions which should be resolved first before action could be taken in the criminal case and when the law provides that both the civil and criminal case can be instituted simultaneously (Art. 33, new Civil Code). A prejudicial question has been defined as—

"* * * One based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused." (Civil Code Annotated by Padilla, Vol. I, 1956 Ed., p. 83; see also *De Leon vs. Mabanag*, 70 Phil., 202, as to the definition of the term).

"Under the foregoing doctrine, for a civil case to be considered prejudicial to a criminal action as to cause the suspension of the latter pending its (civil case) final determination, it must appear not only that the said civil case involves facts intimately related to those 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." (*D.S. Mendiola, et al., vs. Hon. H. Macadaeg, et al.*, 111 Phil., 169).

In Civil Case No. 33251, for annulment of the deed of mortgage, the issue is that the signatures of Ong Ho appearing therein are forged. In the criminal case, I.S. No. 15190, the issue is likewise the falsification of the deeds in question. It appearing that the principal issues in both cases are the same, and/or arise from the same facts, it stands to reason that it is not necessary that the civil case be determined first before taking up the criminal case. This being the case, the proposition is simply reduced to a matter of preferences. In the case of *Pisalbon, et al., vs. Tesoro, et al.*, 92 Phil., 931: 49 Off. Gaz. [11] 1398, one Estefania Pisalbon found in the records of the cadastral case an affidavit purporting that she renounced her rights over the land, subject of the cadastral case, to Eugenia Pisalbon, subscribed and sworn to before Notary Public Felix Villaflores. Estefania filed a complaint with the Justice of the Peace of Asingan, Pangasinan, against the Notary Public for Falsification of Document, The Justice of the Peace without conducting a hearing or investigation, dismissed the complaint on the ground that he could not proceed with the criminal case until the Court of First Instance of Pangasinan had decided the Cadastral case in which the alleged falsified affidavit had been presented. The CFI of Pangasinan denied the petition for certiorari and mandamus against the Justice of the Peace, on the ground that since the alleged falsified affidavit had been presented in the cadastral case, the criminal case should be suspended until after the cadastral case had been terminated. On Appeal to this Court, we ruled—

"The Court of First Instance of Pangasinan erred in holding that the criminal case should be suspended. In the present proceedings, the civil case does not involve a question pre-judicial to the criminal case, for to whomsoever the land may be awarded after all the evidence has been presented in the civil case, may not affect the alleged crime committed by the notary public, which is the subject of the criminal case. But, even supposing that both the civil and the criminal case involve the same questions and one must precede the other, it should be the civil which should be suspended rather than the criminal, to await the result of the latter"(Section 1, Rule 107; *Almeda, et al. vs. Abaroa*, 8 Phil. 178; See also par. 2, Art. 35, N.C.C.)

In view of all the foregoing, the petition for prohibition is denied, and the writ of preliminary injunction issued is dissolved. With costs against petitioners.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Dizon, De Leon, and Natividad, JJ., concur.

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