

JOAQUIN QUIMSING, PETITIONER AND APPELLANT, VS. CAPT. ALFREDO LACHICA, ETC., ET AL., RESPONDENTS AND APPELLEES.

G.R. No. 14683. May 30, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from a decision of the Court of First Instance of Iloilo dismissing the petition in this case, as well as the counterclaim of respondents herein, without costs.

Petitioner Joaquin Quimsing is the owner and manager of a duly licensed cockpit, located in the District of Molo, City of Iloilo. On February 13, 1958, the cockpit was raided by members of the city police force and the Constabulary, under the command of Capt. Alfredo Lachica and Lt. Narciso Aliño Jr., upon the ground that it was being illegally operated on that day, which was Thursday, not a legal holiday. Quimsing claimed that the cockpit was authorized to operate on Thursdays by an ordinance of the City Council of Iloilo, approved on October 31, 1956. This notwithstanding, Capt. Lachica allegedly threatened to raid the cockpit should cockfighting be held therein, thereafter, on Thursdays. Moreover, Quimsing and nine (9) other persons were arrested and then charged in the Municipal Court of Iloilo with a violation of Article 199 and 2286 of the Revised Administrative Code.

Quimsing, in turn, commenced the present action, in the Court of First Instance of Iloilo, against Major Cesar Lucero, as the then provincial commander of the Constabulary, and Capt. Alfredo Lachica and Lt. Narciso Aliño Jr., as incumbent PC officer in charge and acting chief of police, respectively, of the Iloilo City Police. In his petition, Quimsing set up two (2) causes of actions one for the recovery from respondents, in, their private capacity, of compensatory damages, as well as moral and exemplary damages allegedly sustained in consequence of the raid and arrest effected on February 13, 1958, upon the ground that the same were made illegally and in bad faith, because cockfighting on Thursdays was, it is claimed, authorized by Ordinances Nos. 5 and 58 of the City of Iloilo, in relation to Republic Act No. 938, and because Quimsing was at odds with the city mayor of Iloilo; and another for a writ of preliminary injunction, and, after trial, a permanent injunction, restraining respondents, in their official capacity, and/or their agents, from stopping the operation of said cockpit on Thursdays and making any arrest in connection therewith.

In their answer, respondents alleged that the raid and arrest aforementioned were made in good faith, without malice and in the faithful discharge of their official duties as law enforcing agents, and that, pursuant to the aforementioned provisions of the Revised Penal Code and the Revised Administrative Code, petitioner cannot legally hold cockfightings on Thursdays, despite said ordinances of the City of Iloilo. Respondents, likewise, set up a P150,000 counterclaim for moral and exemplary damages.

After due hearing, the Court of First Instance of Iloilo rendered judgment dismissing the petition, as well as respondents' counterclaim. Hence this appeal by petitioner herein, who maintains that:

"1. The lower court erred in not disqualifying the city fiscal from representing the respondents-appellees in the first cause of action of the petition where they are sued in their personal capacity;

"2. The lower court erred in not disqualifying the city fiscal from asking the invalidity of an ordinance of the City of Iloilo;

"3. The lower court erred in declaring Ordinance No. 5, series of 1954, as amended by Ordinance No. 58, series of 1956, of the City of Iloilo as illegal;

"4. The lower court erred in not awarding damages to the petitioner."

The first three assignments of error are related to petitioner's second cause of action, whereas the fourth assignment of error refers to the first cause of action. Hence, we will begin by considering the last assignment of error.

At the outset, we note that the bad faith imputed to respondents herein has not been duly established. In fact, there is no evidence that Major Lucero had previous knowledge of the raid and arrest that his co-respondents intended to make. What is more, petitioner would appear to have included him as respondent merely upon the theory of command responsibility, as provincial commander of the constabulary in the province and city of Iloilo. However, there is neither allegation nor proof that he had been in any way guilty of fault or negligence in connection with said raid and arrest.

As regards Capt. Lachica and Lt. Aliño Jr., the records indicate that they were unaware of the city ordinances relied upon by petitioner herein. Indeed, they appeared to have been surprised when petitioner invoked said ordinances. Moreover, there is every reason to believe that they were earnestly of the opinion, as His Honor the Trial Judge was, that cockfighting on Thursdays is, despite the aforementioned ordinances, illegal under Article 199 of the Revised Penal Code, in relation to sections 2285 and 2286 of the Revised Administrative Code. Although petitioner maintains that such opinion is erroneous, the facts of record sufficiently warrant the conclusion that Capt. Lachica and Lt. Aliño Jr. had acted in good faith and under the firm conviction that they were faithfully discharging their duty as law enforcing agents.

In the light of the foregoing and of the other circumstances surrounding the case, and inasmuch as the assessment of moral and exemplary damages "is left to the discretion of the court, according to the circumstances of each case" (Art. 2216, Civil Code of the Philippines), it is our considered view that respondents herein should not be held liable for said damages. Neither should they be sentenced to pay compensatory damages, the same not having been proven satisfactorily. Hence, the fourth assignment of error is untenable.

The first assignment of error is based upon section 64 of the Charter of the City of Iloilo (Commonwealth Act No. 158), pursuant to which the city fiscal thereof "shall represent the city in all civil cases wherein the city or any officers thereof in his official capacity is a party". Although this section imposes upon the city fiscal the duty to appear in the cases specified, it does not prohibit him from representing city officers sued as private individuals on account of acts performed by them in their official capacity, specially when, as in the case at bar, they claim to have acted in good faith and in accordance with a legal provision, which they earnestly believed, as the lower court believed, should be construed in the manner set forth in their answer. Again, under petitioner's second cause of action, respondents are sued in their official capacity. This fact and the circumstances under which respondents performed the acts involved in the first cause of action sufficiently justified the appearance of the City Fiscal of Iloilo on their behalf.

We need not pass upon the merits of the second assignment of error, the same not being essential to the determination of this case, for, regardless of whether or not it is proper for the City Fiscal of Iloilo, as such, to assail the validity of an ordinance thereof, it cannot be denied that respondents herein may do so in their defense.

Referring now to the third assignment of error, Article 199 of the Revised Penal Code provides:

"The penalty of arresto menor or a fine not exceeding 200 pesos, or both, in the discretion of the court, shall be imposed upon:

- Any person who directly or indirectly participates in cockfights, by betting money or other valuable things, or who organizes cockfights at which bets are made, on a day other than those permitted by law.
- Any person who directly or indirectly participates in cockfights, by betting money or other valuable things, or organizes such cockfights, at a place other than a licensed cockpit."

Respondents maintain that this legal provision should be construed in relation to sections 2285 and 2286 of the Revised Administrative Code, reading:

"SEC. 2285. Restriction upon cockfighting.—Cockfighting shall take place only in licensed cockpits and, except as provided in the next succeeding section hereof, only upon legal holidays and for a period of not exceeding three days during the celebration of the local fiesta. No card game or games of chance of any kind shall be permitted on the premises of the cockpit."

"SEC. 2286. Cockfighting at fairs or carnivals.—In provinces where the provincial board resolves that a fair or exposition of agricultural and industrial products of the province, a carnival, or any other act which may redound to the promotion of the general interests thereof, shall be held on a suitable date or dates, the council of the municipality in which such fair, exposition, or carnival is held may, by resolution of a majority of the council, authorize the cockfighting permitted at a local fiesta to take place for not to exceed three days during said exposition, fair, or carnival, if these fall on a date other than that of the local fiesta. Where this action is taken, cockfighting shall not be permitted during the local fiesta unless a legal holiday occurs at such period in which case cockfighting may be permitted upon the holiday."

Petitioner assails, however, the applicability of these two (2) provisions to the case at bar, upon the ground that said provisions form part of Chapter 57 of the Revised Administrative Code—which chapter is entitled "Municipal Law"—governing regular municipalities, not chartered cities, like the City of Iloilo, for, "except as otherwise specially provided", the term "municipality", as used in that Code and in said section 2286, does not include chartered city, municipal district or other political "division" (Section 2, Revised Administrative Code). Petitioner's contention is well-taken, but it does not follow therefrom that he was entitled to hold cockfights on Thursdays.

Pursuant to section 21 of Commonwealth Act No. 158, otherwise known as the Charter of the City of Iloilo:

"Except as otherwise provided by law, the Municipal Board shall have the following legislative powers * * * to tax, fix the license fee for, and regulate, among others, theatrical performances * * * and places of amusements (par. j) * * *."

Moreover, under section 1 of Republic Act No. 938, as amended by Republic Act No. 1224:

"The municipal or city board or council of each chartered city and the municipal council of each municipality and municipal district shall have the power to regulate or prohibit by ordinance, the establishment, maintenance and operation of night clubs, cabarets, dancing schools, pavilions, cockpits, bars, saloons, bowling alleys, billiard pools, and other similar places of amusement within its territorial jurisdiction: Provided, however, That no such places of amusement mentioned herein shall be established, maintained and/or operated within a radius of two hundred lineal meters in the case of night clubs, cabarets, pavilions, or other similar places, and fifty lineal meters in the case of dancing schools, bars, saloons, billiard pools, bowling alleys, or other similar places, except cockpits, the distance of which shall be left to the discretion of the municipal or city board or council, from any public building, schools, hospitals and churches: Provided, further, That no municipal or city ordinance fixing distances at which such places of amusement may be established, or operated shall apply to those already licensed and operating at the time of the enactment of such

municipal or city ordinance, nor will the subsequent opening of any public building or other premises from which distances shall be measured prejudice any place of amusement already then licensed and operating, but any such place of amusement established within fifty lineal meters from any school, hospital or church shall be so constructed that the noise coming therefrom shall not disturb those in the school, hospital or church, and, if such noise causes such disturbance then such place of amusement shall not operate during school hours when near a school, or at night when near a hospital, or when there are religious services when near a church: Provided, furthermore, That no minor shall be admitted in any bar, saloon, cabaret, or night club employing hostesses: And provided, finally That this Act shall not apply to establishments operating by virtue of Commonwealth Act Numbered Four hundred eighty-five nor to any establishment already in operation when Republic Act numbered Nine hundred seventy-nine took effect."

The question for determination is whether the power of the Municipal Board of Iloilo, under section 21 of its charter, to "regulate * * * places of amusement", as broadened by Republic Act No. 938, as amended, to include "the power to regulate * * * by ordinance the establishment, maintenance and operation of * * * cockpits", carries with it the authority to fix the dates on which "cockfighting" may be held. In this connection, it should be noted that said Republic Act No. 938, as amended, applies, not only to "the municipal or city board or council of each chartered city", but, also, to "the municipal council of each municipality or municipal district". Consequently, an affirmative answer to the question adverted to above would necessarily imply, not merely an amendment of sections 2285 and 2286 of the Revised Administrative Code, but, even, a virtual repeal thereof, for then local boards or councils could authorize the holding of cockfighting, not only on legal holidays, but on any day and as often as said boards or councils may deem fit to permit, whether it be during a fair, carnival, or exposition of agricultural and industrial products of the province, or not. Thus, the issue boils down to whether Republic Act No. 938, as amended, gives local governments a blanket authority to permit cockfighting at any time and for as long as said governments may wish it.

Upon mature deliberation, we hold that the answer must be in the negative. To begin with, repeals and even amendments by implication are not favored, whereas an affirmative answer would entail a vital amendment, amounting, for all practical purposes, to a repeal, of sections 2285 and 2286 of the Revised Administrative Code. Secondly, grants of power to local governments are to be construed strictly, and doubts in the interpretation thereof should be resolved in favor of the national government and against the political subdivisions concerned. Thirdly, it is a matter of common knowledge that cockfighting is one of the most widespread vices of our population, and that the government has always shown a grave concern over the need of effectively curbing its evil effects. The theory of petitioner herein presupposes that the Republic of the Philippines has completely reversed its position and chosen, instead, to place the matter entirely at the discretion of local governments. We should not, and can not adopt, such premise except upon a clear and unequivocal expression of the will of Congress, which, insofar as said premise is concerned, is not manifest from the language used in Republic Act No. 938, as amended.

Lastly, "cockfights" and "cockfighting" are regulated separately by our laws. Thus, section 2243 (i) of the Revised Administrative Code empowers municipal councils "to regulate cockpits". Yet, the authority of said council over "cockfighting" is found in sections 2285 and 2286 of said Code, not in said section 2243 (i). Similarly, Article 199 of the Revised Penal Code punishes, not illegal "cockpits", but "illegal cockfighting". What is more, participation in cockfights "on a day other than those permitted by law", is dealt with in said article separately from participation in cockfights "at a place other than a licensed cockpit".

So, too, the authority of local governments, under Republic Act No. 938, as amended, to "regulate * * * the establishment, maintenance and operation of * * * cockpits", does not necessarily connote the power to regulate "cockfighting", except insofar as the same must take place in a duly licensed "cockpit". Again, the first and

second proviso in section 1 of said Act, regulating the distance of cockpits and places of amusement therein mentioned from "any public building, schools, hospitals and churches" and the third proviso of the same section, prohibiting the admission of minors to some of those places of amusement, suggest that the authority conferred in said provision may include the power to determine the location of cockpits, the type or nature of construction used therefor, the conditions to be observed for the protection of persons therein, the number of cockpits that may be established in each municipality and/or by each operator, the minimum age of the individuals who may be admitted therein, and other matters of similar nature—as distinguished from the days on which cockfighting shall be held and the frequency thereof.

In short, we are of the opinion that the city ordinances relied upon by petitioner herein, authorizing cockfighting on Thursdays, are invalid.

Wherefore, the decision appealed from is hereby affirmed, without special pronouncement as to costs. It is so ordered.

Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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