

ABUNDIO MERCED, PETITIONER, VS. HON. CLEMENTINO V. DIEZ, ETC. ET AL., RESPONDENTS.*G.R. No. 15315. August 26, 1960*

Ponente: LABRADOR, J.

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This is a petition for a writ of certiorari with prohibition to prohibit the judge presiding the Court of First Instance of Negros Oriental, Hon. Clementino V. Diez, from proceeding further in the Criminal Case No. V-6520, entitled People of the Philippines vs. Abundio Merced, until after final termination of Civil Case No. R-5387, for the annulment of the marriage of petitioner Abundio Merced with Elizabeth Ceasar, also pending in same court.

The record disclose the following proceedings in the court a quo: On January 30, 1958, Abundio Merced filed a complaint for annulment of his second marriage with Elizabeth Ceasar. The complaint is docketed as Civil Case No. R-5387. The complaint alleges that" defendant Elizabeth Ceasar and her relatives forced, threatened and intimidated him into signing an affidavit to the effect that he and defendant had been living together as husband and wife for over five years, which is not true that this affidavit was used by defendant in securing their marriage of exceptional character, without the need for a marriage license; that he was again forced, threatened and intimidated by defendant and her relatives into entering the marriage with her on August 21, 1957 before Municipal Judge Medardo A. Conde; that immediately after the celebration of the marriage plaintiff left defendant and never lived with her; that the defendant wrote him on October 29, 1957, admitting that he was forced into the marriage and asking him to go to Cebu to have the marriage annulled, but he refused to go for fear he may be forced into living with the defendant. Merced prays for annulment of the marriage and for moral damages in the amount of P2,000. On March 3, 1958, Elizabeth Ceasar filed her answer to the complaint. In her answer, she denies the material allegations of the complaint and avers as affirmative defenses that neither she nor her relatives know of plaintiff's previous marriage to Eufrocina Tan; that sometime in July, 1957, plaintiff asked her mother to intercede on their behalf to secure her father's consent to their marriage as plaintiff could not concentrate on his studies without marrying Elizabeth, but that her mother advised him to finish his studies first; that sometime in April, 1957, defendant learned that plaintiff was engaged to marry Eufrocina Tan, but plaintiff, upon being confronted with such discovery, showed her a letter which he wrote breaking off his engagement with Tan. As a counterclaim defendant asks P50.000 as moral damages for the deceit, fraud and insidious machinations committed upon her by plaintiff.

On February 19, 1958, after plaintiff had filed Civil Case No. R-5387 defendant Elizabeth Ceasar tiled a criminal complaint for bigamy against plaintiff Abundio Merced with the office of the City Fiscal of Cebu. On April 7, 1958 the Assistant City Fiscal filed Criminal Case No. V-6520, charging Merced with bigamy for the second marriage. The information reads:

"The undersigned Assistant Fiscal of the City of Cebu accuses Abundio Merced of the crime of bigamy, committed as follows:

That on or about the 21st day of August, 1957, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused Abundio Merced, being previously united In lawful marriage with Eufrocina Tan, and without the said marriage having been legally dissolved, did then and there wilfully unlawfully, and feloniously contract a second marriage with Elizabeth Ceasar.

Contrary to Article 349 of the Revised Penal Code." (Annex "2".)

Abundio Merced filed a motion to hold the trial of said criminal case in abeyance until final termination of Civil Case No. R-538Y. Reason alleged for the motion is that the civil action involves facts which if proved will determine the innocence of the accused. After an opposition thereto was filed by the assistant provincial fiscal, the court granted the motion. However, upon motion for reconsideration filed by the fiscal, the order was set aside and another entered denying the motion of accused for suspension of the criminal proceedings, which last order is the one sought herein to be annulled. The court held in its last order that inasmuch as by virtue of the decision of the Supreme Court; in the case of *People vs. Mendoza*, 95 Phil., 845; 60 Off. Gaz. [10], 4767, judicial declaration of nullity of a second and bigamous marriage is not necessary, there is no need in this case to decide the nullity of the second marriage, or to determine and declare the existence of the grounds for annulling the same, but that said grounds should be used as a defense in the criminal action. A motion to reconsider the second order of the court haying been denied, petition herein was filed.

When the petition for certiorari with prohibition was filed, the petitioner secured from this Court a writ of preliminary injunction to enjoin respondent judge from proceeding further in the criminal case.

Before this Court the sole question raised is whether an action to annul the second marriage is a prejudicial question in a prosecution for bigamy.

The definition and the elements of a prejudicial question have been set forth by us as follows:

"Prejudicial question has been defined to be that which arises in a case, the resolution of which (question) is a logical antecedent of the issue involved in said case, and the cognizance of which pertains to another Tribunal (Cuestion prejudicial, es la que surge en un pleito o causa cuya resolucion sean antecedente logico de la cuestion-objeto del pleito o causa y cuyo conocimiento corresponda a los Tribunales de otro orden o jurisdiccion.—Enciclopedia Juridica Española, p. 228). The prejudicial question must be determinative of the case before the court; this is its first element. Jurisdiction to try said question must be lodged in another tribunal; this is the second element. In an action for bigamy for example, if the accused claims that the first marriage is null and void and the right to decide such validity is vested in another tribunal, the civil action for nullity must first be decided before the action for bigamy can proceed; hence, the validity of the first marriage is a prejudicial question." (*People vs. Aragon*, 94 Phil., 357; 50 Off. Gaz., No. 10, 4863).

In order that a person may be held guilty of the crime of bigamy, the second and subsequent marriage must have all the essential elements of a valid marriage, were it not for the subsistence of the first marriage. This was the ruling of this Court in *People vs. Dumpo*, 62 Phil., 246, where we said:

"It is an essential element of the crime of bigamy that the alleged second marriage, having all the essential requisites, would be valid were it not for the subsistence of the first marriage. It appearing that the marriage alleged to have been contracted by the accused with Sabdapal, her former marriage with Hassan being undissolved, cannot be considered; as such, according to Mohammedan rites, there is no justification, to hold her guilty of the crime charged in the information." (*People vs. Dumpo*, 62 Phil., 246.)

One of the essential elements of a valid marriage is that the consent thereto of the contracting parties must be freely and voluntarily given. Without the element of consent a marriage would be illegal and void. (Section 29, Act No. 3613, otherwise known as the Marriage Law.) But the question of invalidity cannot ordinarily be decided

in the criminal action for bigamy but in a civil action for annulment. Since the validity of the second marriage, subject of the action for bigamy, cannot be determined in the criminal case and since prosecution for bigamy does not lie unless the elements of the second marriage appear to exist, it is necessary that a decision in a civil action to the effect that the second marriage contains all the essentials of a marriage must first be secured.

We have, therefore, in the case at bar, the issue of the validity of the second marriage, which must be determined before hand in the civil action, before the criminal action can proceed. We have a situation where the issue of the validity of the second marriage can be determined or must first be determined in the civil action before the criminal action for bigamy can be prosecuted. The question of the validity of the second marriage is, therefore, a prejudicial question, because determination of the validity of the second marriage is determinable in the civil action and must precede the criminal action for bigamy.

Spanish jurisprudence, from which the principle of prejudicial question has been taken, requires that the essential element determinative of the criminal action must be cognizable by another court. This requirement of a different court is demanded in Spanish jurisprudence because Spanish courts are divided according to their jurisdictions, some courts being exclusively of civil jurisdiction, others of criminal jurisdiction. In the Philippines where our courts are vested with both civil and criminal jurisdiction, the principle of prejudicial question is to be applied even if there is only one court before which the civil action and the criminal action are to be litigated. But in this case the court when exercising its jurisdiction over the civil action for the annulment of marriage is considered as a court distinct and different from itself when trying the criminal action for bigamy.

Our conclusion that the determination of the validity of the marriage in the civil action for annulment is a prejudicial question, insofar as the criminal action for bigamy is concerned, is supported by Mr. Justice Moran in his dissenting opinion in *De Leon vs. Mabanag*, 70 Phil., 207 thus:

"La regla general es que cuando hay una cuestion civil y otra criminal sobre un mismo delito u ofensa, la segunda debe verse antes que la primera, por la razon de que las formas de un juicio criminal son las mas a proposito para la averiguacion de un delito, y no las de un juicio civil. Esta regla tiene, sin embargo, una excepcion, y es la que se refiere a una cuestion civil prejudicial. Una cuestion civil es de caracter prejudicial y debe resolverse antes que una cuestion criminal, cuando versa sobre un hecho distinto y separado del delito, pero tan intimamente ligado a el que determina la culpabilidad o inocencia del acusado. Por ejemplo, una accion criminal por bigamia."

The majority decision in said case of *De Leon vs. Mabanag* also sustains the theory that when a civil action is pending in court, in which the validity of a document claimed to be false and fictitious is in issue, the fiscal may not prosecute the person who allegedly executed the false document because the issue of the validity of the instrument is sub judice and the prosecuting officer should be ordered to suspend the criminal action until the prejudicial question has been finally determined. Thus the Court said:

"Hablando en terminos generales la facultad del Fiscal y su deber de perseguir los delitos no deben ser controlados ni coartados por los tribunales; pero no hay duda que esa facultad puede ser regulada para que no se abuse de ella. Cuando un miembro del Ministerio Fiscal se desvia de la ley y entorpece la recta administracion de justicia procesando a una persona por hechos constitutivos de delito que se encuentran sub-judice y de los cuales se propone una cuestion prejudicial administrativa, es deber de los tribunales llamarle la atencion y obligarle que suspenda toda accion criminal hasta que la cuestion prejudicial administrativa se haya decidido finalmente." (*De Leon vs. Mabanag*, 70 Phil., 207.)

The case of *People vs. Mendoza*, supra, upon which the trial court and the respondents rely, presents a different set of facts from the case at bar. So is the ruling therein as contained in the syllabus. In said case of *People vs. Mendoza*, Mendoza was charged with and convicted of bigamy for a marriage with one Carmencita Panlillo,

contracted in August, 1949. Mendoza was married for the first time in 1936 with Josefa de Asis; then married for a second time with Olga Lema; and then married for the third time to Panlillo in 1949. On February 2, 1943, Josefa de Asis died. The court citing the provisions of Article 29 of the Marriage Law, held that the second marriage of appellant Mendoza with Lema was by operation of law null and void, because at the time of contracting said second marriage in 1941, appellant's former wife Josefa de Asis was still living. This marriage of appellant with Lema being null and void at the time the appellant contracted the third marriage, the impediment of the second marriage did not exist. Hence the appellant was acquitted of bigamy for the 1949 marriage because Ms previous marriage with Lema¹ on 1941, by operation of law, was void ab initio.

In the case at bar, in order that petitioner may be held guilty of the crime of bigamy, the marriage which he contracted for the second time with Elizabeth Ceasar, must first be declared valid. But its validity has been questioned in the civil action. This civil action must be decided before the prosecution for bigamy can proceed.

For the foregoing considerations, the petition for the issuance of a writ of certiorari and prohibition is hereby granted. The order of the court denying the petition of the herein petitioner to prohibit the fiscal from prosecuting the case for bigamy, Criminal Case. No. V-6520, entitled *People vs. Abundio Merced*, is hereby set aside and the preliminary injunction issued by this Court to that effect is hereby made permanent. So ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

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