

IN RE: PETITION FOR CONTEMPT AGAINST FRANCISCO F. GONZALES IV. HERMOGENES CONCEPCION, JR., PETITIONER AND APPELLEE, VS. FRANCISCO F. GONZALES IV, RESPONDENT AND APPELLANT.

G.R. No. 15638. April 26, 1962

Ponente: PAREDES, J.

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PAREDES, J.:

"In connection with Criminal Case No. 47152—Court of First Instance, Manila, entitled "People of the Philippines vs. Secretary Jaime Hernandez", the City Fiscal, pursuant to Sec. 38 (b) of Rep. Act No. 409, as amended by Rep. Act No. 1201, issued a subpoena duces tecum to Francisco F. Gonzales IV, in his capacity as Secretary of "Avegon, Inc." to appear before him (City Fiscal), on March 24, 1959, at 10:00 a. m., and to bring the following books and/or documents of the Avegon, Inc.:

- Minute book containing all the resolutions of the Board of Directors since 1953 up to the present;
- All books of accounts of the Avegon, Inc. including subsidiary records and all supporting vouchers, receipts and documents from 1953 up to the present;
- Audited financial statements, trial balances for supporting schedules for the said period.

The subpoena was duly served, despite of which Gonzales did not appear. For such failure, the City Fiscal on March 24, 1959, filed a petition with the CFI of Manila (Sp. Proc. No. 47870), praying that Gonzales, be required to appear before said Court and show cause why he should not be punished for contempt.

On April 2, 1959, the CFI ordered Gonzales to show cause, in writing, within five (5) days from receipt of copy of petition, why he should not be punished for contempt of Court and set the hearing for April 11, 1959.

The answer of Gonzales, filed on April 10, 1959, gave five reasons why he should not be guilty of contempt, to wit: (1) lack of authority of the City Fiscal to issue the subpoena in question; (2) that same is unreasonable and oppressive; (3) that it is void, because it is an attempt at a fishing expedition, thus constituting unreasonable search and seizure; (4) that its only purpose was to harass Avegon Inc.; and (5) the subpoena is defective. The City Fiscal replied, after which the case was submitted on the pleadings.

On June 1, 1959, the lower court handed down a decision the dispositive portion of which reads—

"Finding respondent Francisco F. Gonzales IV guilty of contempt as charged, he is hereby sentenced to pay a fine of Two Hundred Pesos (P200.00) to appear before petitioner at such time or dates as the latter may designate and produce the records called for in the said subpoena duces tecum, and to pay the costs."

Respondent Gonzales elevated the case to Us on a singular issue—"Whether or not the City Fiscal has the power under the Charter of Manila or any other law to issue a subpoena in a criminal case pending in court."

Respondent-appellant maintains that the City Fiscal's power to issue subpoena is limited to cases pending preliminary investigation by him or his assistants; that this limitation is defined in the charter of the city when it provided that:—

"* * * * *

"The City Fiscal shall cause to be investigated all charges of crimes and violations of ordinances and have the necessary informations or complaints prepared or made against the persons accused. He or any of his assistants may conduct such investigations by taking oral evidence of reputed witnesses, and for this purpose may issue subpoena, summon witnesses, to appear and testify under oath before him, and the attendance or evidence of any absent or recalcitrant witness may be enforced by application to the municipal court or the Court of First Instance. * * *." (Sec. 38-B, Rep. Act. No. 409, as amended by R.A. No. 1201).

The above provision is substantially the same as section 1687 of the Revised Administrative Code, which also confines the authority of provincial Fiscals to issue subpoena during the preliminary investigations of criminal complaints.

Thus defined, the power of the City Fiscal to issue subpoena extends only to cases pending investigations before him or his assistants. After a criminal charge has been investigated by him and the corresponding complaint or information filed in court, the investigation ceases to be that of the Fiscal's Office, but of the Court, which then has the sole power to issue processes in connection therewith. In the case under consideration, the information has been filed. There is no indication whatsoever in the subpoena that a re-investigation of the criminal case pending trial in court, was requested by the accused, in which case the Fiscal's Office might or could have re-opened the investigation and justify the issuance of the subpoena duces tecum in question. If, as surmised by the trial court, the purpose of the subpoena was for the Fiscal to prepare for trial, the same could have been addressed to the court trying the criminal case, so that said court would issue the necessary processes. As the purpose of the subpoena duces tecum under consideration was not clearly shown, it would seem reasonable to conclude that, as alleged by the appellant, the City Fiscal was embarking in a fishing expedition for evidence. The grant of the power to issue subpoena, under the facts obtaining in the case at bar, being dubitable, We are inclined to rule against such grant. And considering that contempt partakes of the nature of a criminal offense, doubt should be resolved in favor of the respondent-appellant.

Moreover, the fact that appellant brought the stock and transfer book and other records Of the corporation when the City Fiscal subpoenaed him, in the course of the preliminary investigation, belies any intention on his part to act contumely against the summons of the City Fiscal under consideration. No less than Judge Arsenio Solidum himself, had denied to issue an order requiring appellant to deposit certain specified corporate records with the court upon petition of the Fiscal, after the information had already been filed in court, on the ground that the City Fiscal, according to said Judge, has the power under the law to compel the production and surrender of the corporate records in court to be used during the trial, by the issuance of a subpoena duces tecum by the court itself at the opportune time and upon application of the parties.

Conformably with the foregoing, the decision appealed from is hereby REVERSED, and another entered, exonerating the respondent-appellant from the charges of contempt, without costs.

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

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