

DEMETRIO B. ENCARNACION, PETITIONER, VS. JOSE L. BALTAZAR, JUSTICE OF THE PEACE OF SAN FERNANDO, PAMPANGA, AND UNION C. KAYANAN, PROVINCIAL FISCAL OF PAMPANGA, RESPONDENTS.

G.R. No. 16883, March 27, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

On December 18, 1958, respondent Provincial Fiscal of Pampanga filed with the Court of First Instance of Pampanga an information (Criminal Case No. 3477) charging petitioner Demetrio B. Encarnacion with the crime of serious slander by deed, defined and penalized under Article 359 of the Revised Penal Code, to wit:

"That on December 17, 1958, in a public place in the office and in the presence of the Provincial Fiscal and several other persons, municipality of San Fernando, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Demetrio B. Encarnacion, with deliberate intent to cast dishonor, discredit and contempt against one Amando M. Dizon, and in serious disregard to the official proceedings then being conducted before the Provincial Fiscal wherein the said Amando M. Dizon was testifying in his own behalf in a preliminary investigation of a libel case, and without sufficient provocation on the latter's part, the said accused did then and there willfully, unlawfully and feloniously slap, hit and strike with his hand said Amando M. Dizon on the face, as a result of which the latter was exposed to public shame; ridicule and embarrassment.

"That in the Commission of the crime the following aggravating circumstances were attendant:

"(a) That the same was committed in contempt of or with insult to the Provincial Fiscal of Pampanga, a person in authority;

"(b) That the same was committed in a place where public authorities are engaged in the discharge of their duties;

"(c) That the same was committed with evident premeditation;

"(d) That the same was committed with abuse of superior strength or with the aid of armed persons who insure or afford impunity;

"(e) That the same was committed with treachery, when the complainant did not reasonably expect such act of the accused. "All contrary to law."

Pursuant to the above information, the Court of First Instance of Pampanga, assuming jurisdiction over the case, issued the corresponding warrant for the arrest of petitioner, fixed the amount of his bail bond, and, after petitioner had filed the bond, ordered his provisional release.

On August 3, 1959, petitioner filed with the Court of First Instance of Pampanga a motion to quash the information on the grounds that (1) the facts charged do not constitute the offense of slander by deed; and (2) the court trying the case has no jurisdiction over the offense, if any.

On August 17, 1959, the Court of First Instance of Pampanga issued an order remanding the case to the Justice of the Peace Court of San Fernando, Pampanga, as follows:

"ORDER

"Let this case remanded to the Justice of the Peace of San Fernando, Pampanga for resolution of the motion to quash, trial and judgment under the provisions of Section 87 of the Judiciary Act of 1948, as amended by Republic Act No. 2613.

"SO ORDERED.

The records of the case were received by the Justice of the Peace Court of San Fernando on August 20, 1959.

Hearing of the motion to quash was set by the Justice of the Peace Court of San Fernando on September 7, 1959, but the same was postponed several times, upon petitioner's motion. It was finally heard on November 21, 1959. After oral argument by the parties, they were given time within which to file their respective memorandum. However, no memorandum was presented and, instead, petitioner filed a petition dated December 15, 1959 for the hearing of the motion to quash, submitting the same for the court's resolution on December 22, 1959. The Justice of the Peace Court of San Fernando reserved its resolution on said petition and on the motion to quash itself to a later date. On December 28, 1959, it issued an order denying the motion to quash. From this order, petitioner filed a motion for reconsideration on February 8, 1960.

On March 3, 1960, petitioner filed with the Justice of the Peace Court of San Fernando a motion praying that it "declare itself without jurisdiction" over the case, on the ground that it has been originally instituted in the Court of First Instance of Pampanga, and the latter has acquired jurisdiction over the same, to the exclusion of any court with concurrent jurisdiction. On March 12, 1960, said court issued an order denying said motion for reconsideration (of February 8, 1960), as well as said motion to declare itself without jurisdiction (of March 3, 1960), and ruled:

"Section 87 of the Judiciary Act of 1948, before it was amended by Republic Act 2613 which took effect on August 1, 1959, provides: "Justices of the Peace in the capital of provinces may, by assignment of the respective district judge in each case, have like jurisdiction as the Court of First Instance to try parties charged with an offense committed within the province in which the penalty provided by law does not exceed imprisonment for two years and four months, or a fine of two thousand pesos, or both such imprisonment and fine and in the absence of the district judge, shall have like jurisdiction within the province as the Court of First Instance to hear applications of bail."

"From the context of this provision of law, it is safe to infer that when the Court of First Instance assigns a case to the Justice of the Peace of the provincial capital the jurisdiction acquired thereby by the latter is special in nature and not concurrent, for the reason that before the assigning court could exercise the power given to it to assign, it must have necessarily acquired first jurisdiction over the same. In case falling within the concurrent jurisdiction of two courts the action may be filed in either of them and the one first acquiring jurisdiction thereof will perforce exclude the other. But the present case could only been filed directly with the Court of First Instance as the penalty provided for the crime charged was beyond the original jurisdiction of this court to try it. Hence the rule exclusion invoked by the movant does not apply in the present case.

"Wherefore and for the Foregoing Reasons, the motion for reconsideration dated February 8, 1960, and the motion dated March 3, 1960, are hereby both denied.

"So Ordered"

From this order, petitioner brought to us this present petition for certiorari on April 26, 1960, with a prayer for preliminary injunction to restrain respondent Justice of the Peace of San Fernando from proceeding with the trial

of the case. In due time, we issued the preliminary injunction prayed for.

The petition is meritorious. It appears that petitioner is charged of the crime of serious slander by deed the penalty for which is *arresto mayor* in its maximum period, to *prision correccional* in its minimum period, i.e., from 4 months and 1 day, to 2 years and 4 months (Art 359, Revised Penal Code). Prior to the enactment, on August 1, 1959, of Republic Act No. 2613 (amending Section 87 [c] of Republic Act No. 296, known as the Judiciary Act of 1948), it was the Court of First Instance which had exclusive original jurisdiction over said crime. Said court may, however, assign the case to the Justice of the Peace Court in the capital of a province, which, in trying the party charged with said offense, exercises a delegated or special jurisdiction. Section 87 (c) of Republic Act No. 296, provides:

"Justice of the peace the capitals of provinces may, by assignment of the respective district judge in each case, have like jurisdiction as the Court of First Instance to try parties charged with an offense committed within the province in which the penalty provided by law does not exceed imprisonment for two years and four months, or a fine of two thousand pesos, or both such imprisonment and fine, and, in the absence of the district judge, shall have like jurisdiction within the province as the Court of First Instance to hear applications for bail." (Italics supplied.)

As amended by Republic Act No. 2613, the above provision now reads:

"Justices of the peace in the capitals of provinces and Judges of Municipal Courts shall have like jurisdiction as the Court of First Instance to try parties charged with an offense committed within the province in which the penalty provided by law does not exceed *prision correccional* or imprisonment for not more than six years or fine not exceeding three thousand pesos or both, and in the absence of the district judge, shall have like jurisdiction within the province as the Court of First Instance to hear application for bail." (Italics supplied.)

Under this amended provision, Justices of the Peace in provincial capitals and Judges of the Courts of First Instance have concurrent jurisdiction over the offense of slander by deed, of which petitioner is charged.

It is to be noted that the assignment of the case to respondent Justice of the Peace, Of San Fernando (on August 17, 1959), was made by the Court of First Instance of Pampanga after Section 87 (c) of Republic Act No. 296 abovequoted was already amended by Republic Act No. 2613 which took effect on August 1, 1959. In line, the assignment was made when the Court of First Instance of Pampanga had no longer exclusive original but concurrent jurisdiction over the case. Said assignment is, evidently, erroneous, for well-settled is the rule that "where several courts have concurrent jurisdiction of the same offense, the court which first acquires jurisdiction of the prosecution (the Court of First Instance of Pampanga in the instant case) retains it to the exclusion of the others." (People vs. Blanco, 85 Phil., 296; People vs. Colicio 88 Phil., 196; and Nenaria, et al. vs. Veluz 91 Phil., 473. It follows that in denying petitioner's motion to quash and in taking cognizance of the case, respondent Justice of the Peace of San Fernando acted without jurisdiction entitling petitioner to the remedy of *certiorari*.

Respondents rely on the cases of People vs. Pegarum (58 Phil., 715) and People vs. Ferrer y Rodriguez (92 Phil., 172; 48 Off. Gaz., [10] 4362), arguing that since the Court of First Instance of Pampanga had, at the time of the filing of the information against petitioner, the authority under Section 87 (c) of Republic Act No. 296 to assign the trial of the case to the Justice of the Peace Court of San Fernando, it retained said authority to assign the case even after the amendment of said section by Republic Act No. 2613. We do not agree to this conclusion drawn by respondent from the cases cited. Those cases merely set down the rule that jurisdiction of a court to try a criminal action is determined by the law in force at the time of instituting the action and not at the time of the commission of the crime, and that ordinarily the subsequent happening of events will not operate to wrest jurisdiction already attached. Here in the instant case, by the passage of Republic Act No. 2613, the Court of First Instance is not divested of its jurisdiction to try the case of grave slander by deed; it merely made the jurisdiction concurrent with

the justice of the peace in provincial capitals and withdrew the power to assign the case to the latter court. We do not think the ruling in the two cited cases applies to the case at bar. To hold otherwise would lead to the absurd result of a court assigning the trial of a case to another court of concurrent or equal jurisdiction.

As to respondents' claim that petitioner failed to initially attack the jurisdiction of the Justice of the Peace Court of San Fernando, suffice it to say that the question of jurisdiction may be raised at any stage of the proceedings, even on appeal (1 Moran, Comments on the Rules of Court [1952 Ed.] 213, citing Roxas vs. Rafferty, 37 Phil., 957; Government vs. American Surety Co., 11 Phil., 203).

For all the foregoing, the petition for certiorari is hereby granted; and the injunction heretofore issued by this Court made permanent. Respondent Justice of the Peace of San Fernando, Pampanga, is directed to immediately return the records of Criminal Case No. 3477 (serious slander by deed) originally instituted against petitioner in the Court of First Instance of Pampanga, to the same court, for proceedings in accordance with law. Without costs. So ordered.

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

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