

JOSE P. VELEZ AND JESUS P. VELEZ, PETITIONERS, VS. HON. GUSTAVO VICTORIANO, IN HIS CAPACITY, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, MIGUEL CUENCO AND THE COURT OF AP...

G. R. No. 18114. June 29, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

Petitioner ask the review and reversal of an order of the Honorable Gustavo Victoriano, acting as judge of the Court of First Instance of Manila, ordering the issuance of warrants of arrest against the petitioners in Criminal Cases Nos. 25217 to 25234, and 52535 to 52536 of the Court of First Instance of Manila, and of an order of the Court of Appeals denying petitioners' petition to review and reverse the above-mentioned orders of Judge Gustavo Victoriano in the above-mentioned criminal cases against the petitioners herein.

The facts giving rise to this proceeding may be summarized as follows: Respondent Miguel Cuenco filed with the city fiscal of Manila complaints against the petitioners herein for alleged violation of Section 16 of the Coal Land Act (Act 2719, as amended by R. A. 740). Petitioners moved to quash the complaints on the ground that the offenses charged were not cognizable by the Court of First Instance of Manila but pertained to the jurisdiction of the Cebu courts. The motion was first denied by the fiscal investigating the charges, deferring the resolution of the motion to quash until the preliminary investigation would be finished. Thereafter said fiscal found as follows:

"Uncontrovertible and clear, the reports in question were actually prepared, signed and sworn in Cebu City, and that in the filing of the same they were eoursed thru the Mineral District No. 4, also in Cebu City. However, it can also be noted as clear and undisputable that all said reports in. question were addressed and submitted to the Director of Mines, Manila."

As a result he denied the motion to quash. Appeal having been taken against this dismissal to the city fiscal, the latter denied the appeal.

So on January 8, 1960, petitioner herein filed a petition for prohibition in the Court of First Instances of Manila, Civil Case No. 42841, against Fiscal Concepcion and Miguel Cuenco, charging that fiscal Concepcion committed a grave abuse of discretion in denying there motion for the dismissal of the charges filed against them before the fiscal; The r petition was denied by Judge Lantin on April 7,1960.

On May 26, 1960, informations for perjury under the Coal Land Act were filed by Fiscal F. Mayo against petitioners Jose P. Velez (Criminal Cases Nos. 25217-25234) and against Jesus P. Velez (Criminal Cases Nos. 52535-52536). Thereupon Judge Victoriano, before whom the cases were presented, caused the issuance of warrants of arrest against the accused. Petitioners herein asked for a suspension of the execution of the warrants of arrest, which Judge Victoriano granted. So Miguel Cuenco filed a motion for the reconsideration of the order suspending the issuance of the warrants of arrest and for the execution of said warrants of arrest. Opposition was filed by the petitioners but Judge Victoriano on August 3, 1960, directed that the warrants of arrest be re-issued.

So the petitioners herein filed a petition for certiorari and prohibition against Judge Victoriano in the Court of Appeals, but on August 31, 1960, said Court refused to give due course to the petition on the ground that the offense is transitory and the issuance of injunction and prohibition is premature. A motion to reconsider this order was denied by the Court of Appeals. Subsequently, on January 20, 1961, the Court of Appeals set aside the writ of preliminary injunction suspending the arraignment of the accused and thereafter denied also a motion to reconsider the said order. Hence, the filing of this petition with this Court attacking the resolution of the Court of Appeals that the offenses of perjury with which the petitioners were charged were transitory, and that the Manila courts have jurisdiction thereof.

There are two grounds upon which the petition is based, namely, that respondent Miguel Cuenco is not an offended party and, therefore, has no standing and no rights to commence the action by his complaint before the city fiscal, and that perjury is not a transitory offense, hence it is the Court of First Instance of Cebu that has jurisdiction to take cognizance of the offense, all the acts having been performed within the province of Cebu. : On the right of respondent Miguel Cuenco to file the action before the city fiscal of Manila and take part in the proceedings therein by filing a motion for reconsideration, respondent Cuenco alleges that the funds that are being utilized by the accused Velezes, petitioners herein, form part of the funds of the Bisaya Land Transportation Company, of which respondent Miguel Cuenco owns 23% interest, and consequently he has a right to denounce the violation of the law.

On the second issue, respondent Miguel Cuenco contends that the action of perjury with which petitioners were charged in the Court of First Instance of Manila, is cognizable by the Court of First Instance of Manila because it is within the jurisdiction of said court that the offense of perjury, or that of giving false evidence, was committed, citing the case of U.S. vs. Canete, 30, Phil., 371, 378, 380. It is also claimed that the present petition does not lie because the petition for prohibition had already been decided in the Court of Appeals and any not be raised again in this Court. All appeal by certiorari from any order of the Court of Appeals always lies in the discretion of this Court. So the objection is hereby overruled.

The first question raised in the petition, that Miguel Cuenco has no right to intervene in the proceedings, must be overruled. The claim in the answer that the money used by petitioners belongs to the Bisaya Land Transportation Company has not been denied. But even if it were true that respondent Miguel Cuenco is an informer, the giving of information to the fiscal about the violation of the Coal Land Act is not an act of interference with the authority of the fiscal to investigate and take the course of action that he deems proper in view of the facts found. Aside from giving information respondent Miguel Cuenco only asked for reconsideration of the order of the court suspending the issuance of the warrants of arrest. It does not appear that it is because of this act alone that the warrants of arrest were issued, but to the fact that the action brought in the Court of First Instance of Manila was properly filed. In other words the participation of Miguel Cuenco did not go beyond giving information, the actions filed against respondents were determined exclusively by the fiscal of Manila and by the Judge before whom the complaints were filed.

As to the venue of the action of perjury of which the petitioners were charged, we note that the provisions of law violated by them is section 16 of the Coal Land Act, which provides:

Section 16. All statements, representations, or reports required, unless otherwise specified, by the Secretary of Agriculture and Natural Resources under this Act, shall be upon oath and in such form and upon such blanks as the Secretary of Agriculture and Natural Resources may specify, and any person making false oath, representation, or report shall be subject to punishment as for perjury."

Even if it were true that the affidavits obtained by the petitioners were completely prepared in the City of Cebu

and presented to an agent or a regional division of the Director of Mines, the Court of First Instance of Manila has jurisdiction thereof because the affidavits were to be presented to the Director of Mines whose office is in the City of Manila. As stated in the case of U.S. vs. Canete, supra:

"* * * It is immaterial where the affidavit was subscribed and sworn, so long as it appears from the information that the defendant, by means of such affidavit, 'swore to' and knowingly submitted false evidence, material to a point at issue, in a judicial proceeding pending in the Court of First Instance of Iloilo Province. The gist of the offense charged is not the making of the affidavit in Manila, but the intentional giving of false evidence in the Court of First Instance of Iloilo Province by means of such affidavit."

In accordance with the above decision of this Court, it is the Court of First Instance of Manila that had jurisdiction of the offenses committed because the affidavits involved were considered presented before the Director of Mines, in his office in the City of Manila.

In view of the foregoing considerations the petition should be, as it hereby is, denied, with costs against the petitioners.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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