

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. AMADOR GOMEZ, CRESENCIO I. RICHARDS, J. BOYARSKI, PRUDENCIO UY, EDUARDO VELOSO, LEONCIO SORONIO, IGNACIO DAGTAHAN AND LAURA G...

G.R. No. 22345. May 29, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

The State has filed this petition for certiorari to assail, as allegedly a nullity, an order of the Court of First Instance of Cebu dismissing an information for copra overshipment in violation of Section 4 of Monetary Board Circular 31 in relation to section 34 of Republic Act 265.

At the request of the Monetary Board, the Secretary of Justice designated Special Prosecutor Enrique A. Agana to investigate and prosecute crimes and offenses in connection with copra exportation from the Philippines.

Special Prosecutor Agana, acting pursuant to said designation, filed in the Court of First Instance of Cebu on December 6, 1962, jointly with the Fiscal of Cebu City, against seven persons, an information for alleged overshipment, overexport and/or smuggling out of the Philippines, from February 1961 to March 1961, in Cebu City, of 1,700 long tons of Philippine copra valued at \$255,000, in excess of the quantity duly licensed to be exported, contrary to Section 4, Circular 31 of the Monetary Board in relation to Section 34 of Republic Act 265. Accused were: Cresencio I. Richards, Richard J. Boyarski, Prudencio Uy (who were then general manager, assistant manager, and warehouseman, respectively, of Corominas, Richards & Co., Inc.), Laura Gingo, Eduardo R. Veloso, Leoncio Soronio and Ignacio Dahan (then representatives of the Philippine Coconut Administration, Bureau of Internal Revenue, Bureau of Customs and Philippine Constabulary, respectively, to the Export Coordination Committee).

Subsequent to the filing of the information, defendants filed motions to quash and for bills of particulars. The same were eventually denied; and by September 27, 1963, all of the accused had entered pleas of not guilty. The court thereafter set the case for hearing on October 23 and 24, 1963.

Notice of said trial was served on Assistant Fiscal Rafael Ybañez of Cebu City. Special Prosecutor Agana, however, was not separately furnished a notice.

As a result, on October 23, 1963, Special Prosecutor Agana was not present when the case was called for trial. At said time, he was attending to another case in Tacloban City. Assistant Fiscal Ybañez, who appeared, manifested that he was not ready for trial, the records of the case being with the Special Prosecutor, who was the one actively handling the case. Furthermore, he submitted to the court a telegram to him from one Evangelista stating that the Chief of the Export Department (Central Bank) just received a subpoena in the case for the date in question, that Special Prosecutor Agana was at Tacloban City, and requesting that he ask for postponement. A similar wire from one "F.R. Evangelista" was addressed to the court and received by it.

Then "the Court tried to sound out the six accused" - except Laura Gingo, whose counsel filed a motion for post-ponement - "whether they are agreeable to either a postponement of the trial or a dismissal of the case without prejudice, but Atty. Eddy A. Dean, Atty. Luis Guerrero, and Atty. Cesar Kintanar informed the Court that the accused whom they represent oppose vigorously the postponement of the trial and likewise object to a provisional dismissal.* Whereupon respondent Judge ordered the case dismissed, except as to defendant Laura Gingo.

A motion for reconsideration, filed by Special Prosec-utor Agana, was opposed by defendants Veloso, Soronio and Datahan, upon the ground of double jeopardy. Said motion having been denied by the court on October 31, 1963, the Special Prosecutor instituted on January 20, 1964, the present action for certiorari.

Respondents six accused filed their answer, and, later, their memoranda. Respondent Judge also separately filed an answer.

In their answer and memoranda, respondents accused raise two arguments: first, that the petition fails upon the merits because respondent Judge did not act without or in excess of jurisdiction or with grave abuse of discretion tantamount thereto; and, second, that the petition, if granted, would place them in double jeopardy.

A return to the sources of the double jeopardy rule reveals that originally it was held to prohibit only a subsequent prosecution in a new and independent cause. After the ruling of the United States Supreme Court, however, in *Kepner v. United States*,^[1] a case from the Philip-pines, the rule was extended to an appeal in the same case by the prosecution after jeopardy had attached, there-by in effect viewing such appeal as presenting a new and separate jeopardy, repugnant to the fundamental law's provision against double jeopardy. And, since then, the stand in *Kepner* has repeatedly been adopted here.^[2] For that matter, it is set forth in Section 2 of Rule 122 of the Rules of Court, thus:

"SEC. 2. Who may appeal. - The People of the Philippines can not appeal if the defendant would be placed thereby in double jeopardy. In all other cases either party may appeal from a final judgment or ruling or from an order made after judgment affecting the substantial rights of the appellant."

The present case, however, is not an appeal by the prosecution asserting a dismissal to be erroneous; it is a petition for certiorari, assailing the order of dismissal as invalid and a nullity, for having been made with grave abuse of discretion tantamount to lack, or excess, of jurisdiction. It stands to reason that if petitioner's submission is sustained, there would in effect be no order of dismissal to speak of, since it would be legally non-existent. And thus, there would be no dismissal or termination of the case as a basis for the plea of double jeopardy.

Accordingly, respondents' second argument on double jeopardy would be in point only if their first - on validity (not simply correctness) of the dismissal order - proves tenable.

Now the record shows the dismissal order to have been capriciously issued. All the delay prior to the first date set for trial, which lasted almost ten months after the filing of the information, was caused by the defendants who presented several motions to quash and for bills of particulars, which, as respondent Judge later conceded, were "devoid of serious legal bases" and pre-mised only on "trivial grounds".^[3] The prosecution's mani-festation that it was not ready for trial on said first day amounted to a motion for postponement. It was the first postponement asked for by the prosecution, predicated upon reasonable ground. Since the reason given for the dismissal order was the delay that so far attended the case, and since said delay was attributable to the defense rather than to the prosecution, the dismissal was totally devoid of reason. Specially is this true, considering that previously, respondent Judge granted several motions for postponement of arraignment presented by the defendants, and even Richards' motion to leave for the United States before he was finally arraigned upon his return (Respondent Judge's Answer, p. 7). Furthermore, defense moves resulted in about ten months delay. And the prosecution's first

request for postponement was denied, altho one of the accused also requested for postponement. The dismissal was therefore purely capricious. It amounted to grave abuse of discretion tantamount to excess of jurisdiction. Such a dismissal order, made sua sponte, for no proper reason at all, is void for being issued without authority. And being void, it cannot terminate the proceedings. The same jeopardy that attached continues, the cause not having been terminated, thereby rendering the defense of double jeopardy without merit (People v. Cabero, 61 Phil. 121, 125).

A purely capricious dismissal of an information, as herein involved, moreover, deprives the State of fair opportunity to prosecute and convict. It denies the prosecution its day in court. Accordingly, it is a dismissal without due process and, therefore, null and void. A dismissal invalid for lack of a fundamental prerequisite, such as due process, will not constitute a proper basis for the claim of double jeopardy (People v. Balisican, L-26376, August 31, 1966; Tilghman v. Mayo [Fla.] 82. So. 2d 136; McCleary v. Hudspeth, 124 F. 2d 445).

Finally, respondent Judge states in his answer here-in, that he took into account matters not in the record and outside of judicial notice, which provided a real though unstated reason for his dismissal order. Said mat-ter was an alleged dinner invitation from a stranger, styled as Col. Miguel M. Moreno, extended thru Assistant City Fiscal Ybañez, which he regarded as suspicious and unusual; that after some investigation as to this man, he concluded that "the indications were to the effect that some 'pillos' and opportunists were making the Court of First Instance of Cebu the unwitting forum for extortion and exploitation of persons charged with crime." (Respondent Judge's Answer, pp. 4-7).

Such consideration of extraneous matters by respondent Judge, albeit in good faith, rendered the dismissal as one affected with partiality and bias, making it null and void, for lack of another fundamental prerequisite to due process in a criminal case, namely, an impartial Judge, not moved by prejudice or bias (Becker v. Webster, 171 F 2d 762; Wharton v. People, 90 P 2d 615; 16A C.J.S. 834).

Respondent Judge states in his answer that it is his "hope and expectation" that this Court "would give vindication to his actuations"; that should this Court, however, resolve otherwise and nullify the same, ordering the case to proceed upon trial on the merits, he prays that "he should be disqualified therefrom and that the case should be ordered re-raffled among the other five branches of the Court of First Instance of Cebu". Stated as reason for the prayer is that "in all frankness, he has lost all respect in the manner the special prosecutor, Atty. Enrique A. Agana, has been prosecuting the case."

In justice to Special Prosecutor Agana, it should be pointed out that respondent Judge, in his order of October 23, 1963, said:

"x x x In fairness, however, to Special Prosecutor Agana, the Court finds satisfactory his explanation that his failure to personally appear before this Court on October 23, 1963 was due to reasons beyond his control, and that it was due to the fact that by a curious coincidence he was designated by the Secretary of Justice, in Administrative Order No. 375, dated October 17, 1963, and had to leave Manila for Leyte, to assist the Provincial Fiscal in the prosecution and investigation of old crimes and offenses arising within said province. The Court likewise finds satisfactory the further explanation of Special Prosecutor Enrique A. Agana that his not having vigorously resisted the various motions for (1) another preliminary investigation before arraignment, (2) bill of particulars, and (3) motions for dismissal filed by the defense during the early stages of this case was due to the fact that he considered them all to be devoid of serious legal bases, and that he knew all along that the presiding Judge of this Court was fully aware of the trivial nature of the grounds for those various motions. x x x"

Now considering that the Revised Rules of Court, already in effect when respondent Judge filed his answer herein containing the prayer to be disqualified from the case, altho not yet in effect when the proceedings at issue were

taken in the court below, states in Section 1 of Rule 137 that, "A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons" other than the usual grounds for disqualification, this Court, after considering all the circumstances of the case, finds as reasonable, respondent Judge's afore-stated request for disqualification from further sitting in the Richards case, and We rule that he is thereby deemed, in light of the new Rules, to have inhibited himself from further taking cognizance of the case.

WHEREFORE, the petition for certiorari is granted and respondent Judge's dismissal order of October 23, 1963, in Criminal Case No. V-9350 of the Court of First Instance of Cebu is hereby declared null and void and without legal effect. Respondent Judge is, at his re-quest, deemed to have inhibited himself from taking further cognizance of said case, and said case is hereby ordered to be proceeded to trial upon the merits by another Judge of the same Court to be chosen by raffle in accordance with Section 7 of Rule 22, Revised Rules of Court. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Regala, Zaldivar, Sanchez, and Castro, JJ., concur.
Dizon, J., in the result.

* See CFI Order of October 23, 1963, Petition, Annex E. p. 3.

[1] 195 U.S. 100.

[2] E.g., Trono v. U.S., 11 Phil. 725; Peo v. Ang Cho Kio, 50 O.G. 3563; Peo v. Pomeroy, L-8229, Nov. 28, 1955; People v. Flores, April 29, 1958.

[3] See Order of Respondent Judge dated Oct. 31, 1963, Petition, Annex H, p. 9.

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