

JULIAN G. GINETE, PETITIONER, VS. HON. UBALDO Y. ARCANGEL, AS JUDGE OF THE COURT OF FIRST INSTANCE OF SORSOGON AND LUIS G. DE CASTRO, RESPONDENTS.*G.R. No. 28358. December 08, 1967*

Ponente: ZALDIVAR, J.

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Acting on the verified petition in the above-en-titled case, an original special civil action for cer-tiorari, praying: (a) that the proceedings had before respondent Judge of the Court of First Instance of Sor-sogon in its Election Case No. 2225 be annulled upon the ground of lack of jurisdiction; (b) that the order of respondent Judge, dated November 27, 1967, in said election case, providing for the recount of the votes cast for the candidates for mayor in Precinct No. 41 of Bulan, Sorsogon, be declared null and void for having been issued without jurisdiction or with grave abuse of discretion; and (c) that pending resolution by this Court of the instant petition a writ of preliminary injunction be issued to restrain the lower court from proceeding with the recount of the votes in said Pre-cinct No. 41; and

IT APPEARING: That petitioner Julian G. Ginete and respondent Luis G. de Castro were opposing candidates for the office of mayor in the municipality of Bulan, pro-vince of Sorsogon, in the elections held on November 14, 1967; that during the canvass made by the Municipal Board of Canvassers of Bulan, on November 19, 1967, it was shown that the copy of the election return for Precinct No. 41 in said municipality, which was delivered by the munici-pal treasurer of Bulan to the municipal board of canvas-sers, had been tampered, in that in the entry of votes for the candidates for mayor there were alterations and/or erasures such that it appeared that candidate Julian G. Ginete was credited with 116 votes while candidate Luis G. de Castro was credited with 64 votes, whereas in the duplicate copy of the election return furnished by the Board of Inspectors of Precinct No. 41 to the representa-tive of the Nacionalista Party it appeared that Ginete was credited with 106 votes and De Castro with 84 votes, thereby indicating a difference in the entry of votes credited to those two candidates in those copies of the election return for the same precinct; that on the basis of the said discrepancy, herein respondent De Castro filed a petition in the Court of First Instance of Sorsogon for the recount of votes cast for the candidates for mayor in said Precinct No. 41, docketed as Election Case No. 2225, but in the petition thus filed herein petitioner Ginete was not made a party respondent; that although herein pe-titioner Ginete was not included as respondent in the petition for recount and was not notified of the date of the hearing of the petition, when said petition was call-ed for hearing by respondent Judge on November 25, 1967, petitioner Ginete appeared at the hearing through his counsel, Atty. Jaime G. Fortes, who orally moved for the dismissal of the petition upon the ground that the court has no jurisdiction to hear the petition because the petition did not include candidate Ginete who would be af-fected by the recount as party respondent therein; and said counsel at the same time prayed the court to allow candidate Ginete to intervene and for that purpose that he be given a period of five days to file an answer to the petition for recount; that respondent Judge did not entertain the motion to dismiss and the motion to intervene and file an answer, but proceeded to hear the evidence of candidate De Castro (petitioner below) in support of his

pe-tition for recount; that during the hearing, counsel for herein petitioner Ginete cross-examined the witnesses pre-sented by herein respondent De Castro and objected to the exhibits that were presented as evidence; that at the hear-ing herein respondent De Castro presented, besides testimo-nial and other documentary evidence, the copy of the elect-ion return of Precinct No. 41 of Bulan, which had been deli-vered by the board of inspectors of said precinct to the municipal treasurer, and which was the very same copy which the municipal treasurer delivered to the municipal board of canvassers for the purposes of the canvass of the result of the election for municipal mayor of Bulan; that De Castro also presented the certified photostatic copy of the copy of the election return from said Precinct No. 41 which was sent to the Commission on Elections, and it was shown by competent evidence that the copy of the election return of Precinct No. 41 of Bulan in the possession of the Commis-sion on Elections was photographed by authority of the Com-mission on Elections and the photographic copy was duly certified by Atty. Emilio Aguila who is the Executive Of-ficer of the Commission on Elections; that at the hearing it was shown that the election return of Precinct No. 41 which came from the municipal treasurer contained erasures and/or alterations in the entry of votes for the candidates for municipal mayor, and in said copy as altered it appear-ed that candidate Ginete obtained 116 votes while candidate De Castro obtained 64 votes; that, on the other hand, in the certified photostatic copy of the copy of the election return of said precinct in the possession of the Commission on Elections, it appeared that candidate Ginete obtained 106 votes while candidate De Castro obtained 84 votes; that it was also shown at the hearing that according to the earlier tabulation in the office of the municipal treasurer of the votes cast for the candidates for mayor, candidate De Castro had obtained 12 votes more than candidate Ginete, but if the copy of the election return that came from the municipal treasurer which appeared to have been tampered would be considered, Ginete would obtain 18 votes more than De Castro; that on the basis of the evidence presented at the hearing, respondent Judge Urbano Y. Arcangel issued the order of November 27, 1967, now in question, providing for a recount of the votes cast for the candidates for mayor in Precinct No. 41 of Bulan, Sorsogon, and likewise issued a writ of preliminary injunction enjoining the municipal board of canvassers from proceeding with the canvass of the results of the election for municipal mayor of Bulan until after the recount of the votes in Precinct No. 41; and

CONSIDERING: That while the petition for recount filed in the court below by herein respondent De Castro originally suffered from a defect which would have ren-dered respondent Judge without jurisdiction to entertain the same because of the failure to include therein candidate Ginete as party respondent, the fact that candidate Ginete appeared at the hearing of the petition, through counsel who asked for the dismissal of the petition and even cross-examined the witnesses, that procedural or jurisdictional defect had been cured by the voluntary ap-pearance of herein petitioner Ginete before the court; that respondent Judge had issued the questioned order of November 27, 1967, after considering the difference in the entry of votes accredited to the candidates for mayor ap-paring in the copy of the election return of Precinct No. 41 that was furnished by the municipal treasurer of Bulan to the municipal board of canvassers, on the one hand, and in the duly certified photostatic copy of the copy of said election return in the possession of the Commission on Elections, on the other; that the order of November 27, 1967 of respondent Judge in Election Case No. 2225 pro-viding for the recount of the votes cast for candidates for mayor in Precinct No. 41 is, therefore, in consonance with the provisions of Section 163 in relation to Section 168 of the Revised Election Code, so that the implementa-tion of that order should immediately be done, and in con-nection with the proceedings for the recount petitioner Julian G. Ginete should be allowed to intervene; and it being the settled ruling of this Court that laws govern-ing election cases must be liberally construed, and that technical and procedural barriers should not be allowed to stand if they constitute an obstacle to the determina-tion of the true will of the electorate in the choice of their elective officials; the Court

RESOLVED: To dismiss the instant petition for cer-tiorari with preliminary injunction.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, JBL, Makalintal, Bengzon, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Dizon J., no part.

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