

PEDRO R. ARTECHE, PETITIONER, VS. MARIANO L. DE LA ROSA, JUDGE OF FIRST INSTANCE OF SAMAR, RESPONDENT.

G.R. No. 40055. October 18, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

This is an application for a writ of certiorari, prohibition, mandamus, and injunction. In his verified petition filed July 22, 1933 the petitioner prayed this court:

"(1) To order the immediate issuance of a writ of injunction, requiring the respondent, Hon. Mariano L. de la Rosa, Judge of the Court of First Instance, Catbalogan, Samar, to immediately desist and refrain from further proceeding in, and from taking any further cognizance of, criminal case No. 8635 of his court, entitled 'The People of the Philippine Islands vs. Pedro R. Arteche', until further orders are received by him from this Honorable Supreme Court, in accordance with section 517 of the Code of Civil Procedure;

"(2) To render a decision, after due hearing hereof, declaring that the respondent, Hon. Mariano L. de la Rosa, Judge of the Court of First Instance of Samar, has exceeded and irregularly exercised his jurisdiction, has manifestly abused his judicial discretion, and has arbitrarily applied the judicial power vested in him, and compelling said respondent to reconsider and vacate his order dated July 7, 1933 (Exhibit I), and enter another definitely dismissing the information and absolving the accused in said criminal case No. 8635 of his court, entitled 'The People of the Philippine Islands vs. Pedro R. Arteche', as earnestly prayed for by the Provincial Fiscal of Samar in his motion therein dated July 3, 1933 (Exhibit H); or directly issuing an order annulling said order of the respondent of July 7, 1933 (Exhibit I), and ordering for the definite dismissal of the above-mentioned criminal case against the petitioner herein; or, if such be not feasible;

"(3) To order the issuance of the writ of prohibition disqualifying and restraining the respondent, Hon. Mariano L. de la Rosa, Judge of the Court of First Instance of Samar, from taking any further cognizance of said criminal case No. 8635 of said court, entitled 'The People of the Philippine Islands vs. Pedro R. Arteche', in order that another Judge of the Court of First Instance be designated and assigned by the Honorable, the Secretary of Justice, to hear and decide said criminal case; and to grant to the petitioner herein such other and further relief as justice and equity may warrant; with the costs of these proceedings, in all cases, against the respondent."

We shall not attempt to summarize all the allegations of the petition. Suffice it to say that the petitioner was a candidate for provincial governor of Samar in the last general elections and was elected, but his election was declared null and void by the respondent judge in civil case No. 2709 of the Court of First Instance of Samar on August 22, 1931, and on appeal to this court said decision was affirmed on September 13, 1932 (G. R. No. 36300)[1]. Petitioner's name was included in the list of those persons whose election was approved by the Governor-General and who were directed to qualify and assume office in accordance with law. After consulting the Chief of the Executive Bureau and the Secretary of Justice, the petitioner, acting in accordance with their opinion, assumed the office of provincial governor of Samar on October 16, 1931, notwithstanding the fact that his election had been declared null and void by the respondent judge in the aforementioned decision, which was

then pending on appeal in this court.

On September 20, 1932 Jose Quisumbing, provincial fiscal of Samar, charged the petitioner in the Court of First Instance of that province with a violation of the Election Law for having taken possession of the office of provincial governor, when he knew that he was disqualified and without any right to assume said office (criminal case No. 8635). After considering the evidence presented by the fiscal, the respondent judge issued an order for the arrest of the petitioner herein, who appeared and waived his right to a preliminary investigation and prayed that the hearing be set for December 15, 1932 and that the clerk of the court be instructed to issue a subpoena duces tecum to the respondent judge to appear and produce defendant's communication regarding the taking of his oath of office and a copy of respondent's answer thereto. The petitioner next filed in said case a petition for the inhibition and disqualification of the respondent judge on the ground that he was a principal and indispensable witness for the defense. The motion and petition were both denied on the ground that there was no legal basis therefor.

On July 3, 1933, Patricio C. Ceniza as provincial fiscal of Samar filed a motion praying that the case against the petitioner herein be dismissed for the reasons set forth in said motion and because the fiscal could not positively prove that the accused assumed the office of provincial governor of Samar knowing that he was disqualified therefor. The respondent judge denied said motion on the ground that the facts and conclusions of law alleged therein were insufficient to justify the dismissal of the case. The allegations of the petitioner respecting the contrary action taken by the respondent judge on the motion of the fiscal in the case of Rodrigo A. Daza are irrelevant as far as the present case is concerned.

A preliminary injunction was issued by this court in accordance with the prayer of the petition.

The respondent judge in his answer quotes the communications between the petitioner and himself that the petitioner desired to have the respondent judge produce as a witness in court, and states that they are in the custody of the clerk of the Court of First Instance of Samar and at the disposition of the petitioner. They are nothing more than the request of the petitioner that the respondent judge administer the oath of office of governor to him, and the answer of the respondent judge that he was unable to comply with the request.

It is apparent from the foregoing statement of facts that the petitioner as the defendant in the criminal case for a violation of the Election Law had no valid reason for calling the respondent judge as a witness, but was merely endeavoring by indirect methods to prevent the respondent judge from trying the case.

It is likewise apparent that there was no valid reason for objecting to the competency of the respondent judge, who declined to withdraw from the case, because he was not disqualified in accordance with the provisions of section 8 of the Code of Civil Procedure, and as we have already stated there was no valid reason for calling him as a witness. Furthermore, the second paragraph of section 8 of the Code of Civil Procedure provides that when it is claimed that a judge is disqualified, he shall proceed with the trial or withdraw therefrom in accordance with his determination of the question of his disqualification, but that no appeal or stay of action shall be allowed from, or by reason of, his decision in favor of his own competency, until after final judgment in his court.

The denial of the fiscal's motion for the dismissal of the complaint against the petitioner was clearly a judicial act within the discretion of the respondent judge, and "mandamus will not lie to control or review the exercise of the discretion of any court when the act complained of is either judicial or quasi-judicial." (26 Cyc., 158; *Frank & Co. vs. Clemente*, 44 Phil., 30.) Mandamus may be availed of to require a judge to decide a question, but not to decide it in any particular way.

As to the allegation of the petitioner that he "has not been, and will not be given a fair, impartial and just hearing

in the aforecited criminal case, and a judgment of conviction is manifestly contemplated against the petitioner by the respondent," his complaint as to what has already taken place is without justification, and as to the trial which is to be held, is premature. As to the merits of petitioner's defense in the criminal action, we do not deem it proper at this time to express any opinion. In any event if he should be deprived of a fair and impartial trial or erroneously convicted, he may exercise his right of appeal to this court, and under the circumstances of the case that is a plain, speedy, and adequate remedy. The preliminary injunction heretofore issued is set aside, and the petition is denied, with the costs against the petitioner.

Avanceña, C. J., Street, Hull, and Butte, JJ., concur.

[1] Tanseco vs. Arteché, 57 Phil., 227.

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