

FELIX V. KATIPUNAN ET AL., PETITIONERS, VS. FRANCISCO ZANDUETA, JUDGE OF FIRST INSTANCE OF RIZAL, ET AL., RESPONDENTS.*G. R. No. 42071. July 20, 1934*

Ponente: GODDARD, J.

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The herein petitioners instituted a joint election contest proceeding in the Court of First Instance of Rizal on June 11, 1934, in which the offices of municipal president, vice-president municipal councilors of the town of Binangonan, Rizal, were involved. After receiving copies of the motion of protest, the respondents, in that proceeding, filed a motion in which they prayed for the dismissal of the protest upon the ground that the Court of First Instance of Rizal had no jurisdiction to hear decide an election contest in which all of the above-mentioned offices were contested in one protest. This motion of dismissal is based upon the following provision of section 479 of the Administrative Code, as amended by Act No. 3834, approved November 5, 1931:

"La protesta * * * se referira a cargos especificos: Entendiendose, sin embargo, que las protestas sobre cargos de vicepresidente y concejales podran unirse en una sola mocion de protesta."

The original bill in which this law was embodied was in the Spanish language. The English translation is practically meaningless.

This amendment permits the filing of a joint election protest by candidates for the offices of vice-president municipal councilors prohibits a candidate for the office of municipal president from joining in such a protest. The reason for the adoption of this amendment is the fact that the new Election Law, Act No. 3387, provides for an appeal to this court from a decision of the Court of First Instance in an election contest proceeding in which the office of municipal president is involved; whereas, the decision of the Court of First Instance is final in such a proceeding in which the offices of vice-president municipal councilors are in question. The object being to avoid bringing to this court the whole record, including all of the evidence, in a case, only part of which is appealable to prevent unnecessary expense probable confusion.

After due hearing the respondent judge, Francisco Zandueta, in an order dated June 25, 1934, held as follows:

"Estimo que el escrito o mocion de protesta presentada en este asunto adolece del defecto de partes demadas o recurridas, por cuanto que segun la Ley ultimamente aprobada por la Legislature, No. 3834 'La protesta * * * se refiere a cargos especificos: Entendiendose, sin embargo, que las protestas sobre cargos de vicepresidente y concejales podrian unirse en una sola mocion de protesta', y habiendose incluido en una sola mocion de protesta tanto la que se refiere al cargo de presidente, como al de vicepresidente y concejales, parece ser que la objecion formulada en la mocion de los recurridos de fecha junio 21, 1934, merece cierta consideracion. Pero el defecto que se nota en el escrito de protesta no despoja, sin embargo, en absoluto de la jurisdiccion del Juzgado para conocer del asunto. Podria existir una confusion de jurisdiccion por el estado en que se encuentra el escrito de protesta, pero semejante defecto no es motivo suficiente para el sobreseimiento definitivo de la protesta.

"Por lo tanto, a menos que los recurrentes enmienden su escrito de protesta en el sentido de poner este en el estado de ser visto por sus meritos y subsane los defectos apuntados en la mocion de los recurridos dentro del plazo de tres dias desde que reciban copia de esta orden, sera sobresefda la protesta."

The present action of certiorari was brought on the ground that the respondent judge had exceeded his jurisdiction abused his judicial discretion in ruling as he did in the order copied above. The respondent judge has not answered.

The petitioners pray that the order of the respondent judge be annulled that he be ordered to proceed with the hearing of the protest decide the same upon its merits. The respondents pray that this action of certiorari be denied; that the lower court be declared without jurisdiction to hear decide the election protest in question that this court order the dismissal of the petitioners' motion of protest.

The joint protest of the herein petitioners was filed in good faith. They allege a common ground of action. The same evidence will be relied upon by all of them under section 114 of the Code of Civil Procedure all persons having an interest in the subject of the action in obtaining the relief demed should be joined as plaintiffs, or, if any person having an interest in the subject of the action, in obtaining the relief demed, refuses to join as plaintiff, he may be made a defendant.

The only question before this court is whether the respondent judge exceeded his jurisdiction abused his discretion by ordering the petitioners to amend their joint protest.

Does the fact that the petitioners united in filing a protest, in which Felix V. Katipunan is contesting the election of one of the respondents as municipal president the other petitioners are contesting the election of one of the respondents as municipal vice-president some of them as town councilors, deprive the respondent judge of his jurisdiction to order the petitioners to amend their protest?

The only question raised by the motion of the respondents praying for the dismissal of the protest is that there is a misjoinder of the protesting parties. A demurrer on the ground of a defect or misjoinder of parties does not raise the question of the jurisdiction of the court to try the action. A motion to dismiss on the same ground is in effect a demurrer does not raise the question of the jurisdiction of the court to proceed with the trial order the amendment of the pleadings in case there is a defect or misjoinder of parties.

The petitioners should be allowed to amend their protest the party or parties excluded therefrom should be allowed to file a separate protest as of the date of the filing of the joint protest of the petitioners.

Certiorari denied, without costs.

Malcolm, Villa-Real, Imperial, Butte, JJ., concur.

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