

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. AUGUSTO A. SANTOS, DEFENDANT AND APPELLEE.

G. R. No. 44291. August 15, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This case is before us by virtue of an appeal taken by the prosecuting attorney from the order of the Court of First Instance of Cavite which reads as follows:

"ORDER

"When this case was called tot trial for the arraignment, counsel for the accused appeared stating that in view of the ruling laid down by this court in criminal case No. 6785 of this court, holding that the penalty applicable is under section 83 of Act No. 4003 which falls within the original jurisdiction of the justice of the peace court, he requests that the case be remanded to the justice of the peace court of Cavite which conducted the preliminary investigation, so that the latter may try it, being within its original jurisdiction.

"We agree that it falls within the jurisdiction of the corresponding justice of the peace court, but it being alleged in the information that the infraction was committed within the waters of the Island of Corregidor, the competent justice of the peace court is that of Corregidor, not Cavite.

"Wherefore, we decree the dismissal of this case, cancelling the bond filed by the accused, with costs de oficio, without prejudice to the filing by the prosecuting attorney of a new information in the justice of the peace court of Corregidor, if he so deems convenient. It is so ordered."

In support of his appeal the appellant assigns as the sole alleged error committed by the court a quo its having dismissed the case on the ground that it does not fall within its original jurisdiction.

On June 18, 1930, the provincial fiscal of Cavite filed against the accused-appellee Augusto A. Santos an information which reads as follows:

"The undersigned Provincial Fiscal accuses Augusto A. Santos of violation of section 28 of Fish and Game Administrative Order No. 2 and penalized by section 29 thereof committed as follows:

"That on or about April 29, 1935, within 1,500 yards north of Cavalry Point, Corregidor Island, Province of Cavite, P. I., the said accused Augusto A. Santos, the registered owner of two fishing motor boats Malabon II and Malabon III, did then and there willfully, unlawfully and criminally have his said boats, manned and operated by his fishermen, fish, loiter and anchor without permission from the Secretary of Agriculture and Commerce within three (3) kilometers from the shore line of the Island of Corregidor over which the naval and military authorities of the United States exercise jurisdiction.

"Contrary to law.

"Cavite, Cavite, June 18, 1935."

Section 28 of Administrative Order No. 2 relative to fish and game, issued by the Secretary of Agriculture and

Commerce, provides as follows:

"28. Prohibited fishing areas.—No boats licensed in accordance with the provisions of Act No. 4003 and this order to catch, collect, gather, take, or remove fish and other sea products from Philippine waters shall be allowed to fish, loiter, or anchor within 3 kilometers of the shore line of islands and reservations over which jurisdiction is exercised by naval or military authorities of the United States, particularly Corregidor, Pulo Caballo, La Monja, El Fraile, and Carabao, and all other islands and detached rocks lying between Mariveles Reservation on the north side of the entrance to Manila Bay and Calumpan Point Reservation on the south side of said entrance: Provided, That boats not subject to license under Act No. 4003 and this order may fish within the areas mentioned above only upon receiving written permission therefor, which permission may be granted by the Secretary of Agriculture and Commerce upon recommendation of the military or naval authorities concerned.

"A violation of this paragraph may be proceeded against under section 45 of the Federal Penal Code."

The above quoted provisions of Administrative Order No. 2 were issued by the then Secretary of Agriculture and Natural Resources, now Secretary of Agriculture and Commerce, by virtue of the authority vested in him by section 4 of Act No. 4003 which reads as follows :

"SEC. 4. Instructions, orders, rules and regulations.—The Secretary of Agriculture and Natural Resources shall from time to time issue such instructions, orders, rules and regulations consistent with this Act, as may be necessary and proper to carry into effect the provisions thereof and for the conduct of proceedings arising under such provisions."

The herein accused and appellee Augusto A. Santos is charged with having ordered his fishermen to manage and operate the motor launches Malabon II and Malabon III registered in his name and to fish, loiter and anchor within three kilometers of the shore line of the Island of Corregidor over which jurisdiction is exercised by naval and military authorities of the United States, without permission from the Secretary of Agriculture and Commerce.

These acts constitute a violation of the conditional clause of section 28 above quoted, which reads as follows:

"Provided, That boats not subject to license under Act No. 4003 and this order may fish within the areas mentioned above (within 3 kilometers of the shore line of islands and reservations over which jurisdiction is exercised by naval and military authorities of the United States, particularly Corregidor) only upon receiving written permission therefor, which permission may be granted by the Secretary of Agriculture and Commerce upon recommendation of the military or naval authorities concerned." (Within parenthesis ours.)

Act No. 4003 contains no similar provision prohibiting boats not subject to license from fishing within three kilometers of the shore line of islands and reservations over which jurisdiction is exercised by naval and military authorities of the United States, without permission from the Secretary of Agriculture and Commerce upon recommendation of the military and naval authorities concerned. Inasmuch as the only authority granted to the Secretary of Agriculture and Commerce, by section 4 of Act No. 4003, is to issue from time to time such instructions, orders, rules and regulations consistent with said Act, as may be necessary and proper to carry into effect the provisions thereof and for the conduct of proceedings arising under such provisions; and inasmuch as said Act No. 4003, as stated, contains no provisions similar to those contained in the above quoted conditional clause of section 28 of Administrative Order No. 2, the conditional clause in question supplies a defect of the law, extending it. This is equivalent to legislating on the matter, a power which has not been and cannot be delegated to him, it being exclusively reserved to the then Philippine Legislature by the Jones Law, and now to the National Assembly by the Constitution of the Philippines. Such act constitutes not only an excess of the regulatory power conferred upon the Secretary of Agriculture and Commerce, but also an exercise of a legislative power which he

does not have, and therefore said conditional clause is null and void and without effect (12 Corpus Juris, 845; Rubi vs. Provincial Board of Mindoro, 39 Phil., 660; U. S. vs. Ang Tang Ho, 43 Phil., 1; U. S. vs. Barrias, 11 Phil., 327).

For the foregoing considerations, we are of the opinion and so hold that the conditional clause of section 28 of Administrative Order No. 2, issued by the Secretary of Agriculture and Commerce, is null and void and without effect, as constituting an excess of the regulatory power conferred upon him by section 4 of Act No. 4003 and an exercise of a legislative power which has not been and cannot be delegated to him.

Wherefore, inasmuch as the facts with the commission of which Augusto A. Santos is charged do not constitute a crime or a violation of some criminal law within the jurisdiction of the civil courts, the information filed against him is dismissal, with the costs de oficio. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, Recto, and Laurel, JJ., concur.

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