

CHUA KE ET AL., PETITIONERS, VS. QUIRICO ABETO, JUDGE OF FIRST INSTANCE OF MANILA, BENITO GAERLAN ET AL., RESPONDENTS.

G. R. No. 44831. October 08, 1936

Ponente: DIAZ, J.

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DIAZ, J.:

The herein petitioners, who are at the same time the plaintiffs in civil case No. 44053 of the Court of First Instance of Manila, entitled "Chua Ke and Cu Peng, plaintiffs, vs. Benito Gaerlan (alias Tiu Siong Bio) and Tan Ay (alias Ong Bi), defendants," obtained in the course of said case the order of September 16, 1933, requiring the respondent Benito Gaerlan, as defendant therein, to transfer as soon as possible the sum of P25,000, which constituted a part of the assets of "Benito Gaerlan & Co." of which he was the manager, and which he had sent to China, from the Bank of Amoy, where he had deposited it, to any local bank, in order to be at the disposal of the court (Exhibits H and I).

Upon observing that the respondent did not take the necessary steps to comply with said order of September 16, 1933 (Exhibit I), notwithstanding the lapse of time from that date up to October 5th of said year, the petitioners, on October 6th of said year, filed a motion in the case in question praying that the respondent be compelled to comply therewith under pain of contempt of court. The lower court, considering the reasons given by the respondent and without warning him, granted him an additional period of one month to comply with the order in question (Exhibits J, K and L), said period to be counted from the 14th of said month and year.

Thinking later that he would not be able to make the transfer of the P25,000 from the Bank of Amoy to Manila within the additional period granted him for the reason that to negotiate said transfer he would have to go to China, which, he claims, was not possible because it would be tantamount to abandoning his case, the respondent asked for permission to give a bond of P25,000 to secure the presentation of the sum in question by him in due time (Exhibit M). In its order of November 15, 1933, the lower court, with the consent of the petitioners, permitted the respondent to file the bond offered, but on the condition that the attorney for the petitioners should first examine the terms and conditions thereof before it is approved (Exhibit N). The bond which the respondent filed shortly afterwards, by virtue of said order, especially contained the following condition:

"* * * under the condition that when so required by the Court of First Instance of Manila, or any court of competent jurisdiction, we shall account to the partnership, Benito Gaerlan & Co., or to its duly authorized representative the said sum of twenty-five thousand pesos (P25,000), Philippine currency, solely to the extent of whatever rights, interests and participation the plaintiffs may have therein up to the said sum of P25,000."

As nine months had elapsed from the time the respondent had filed his bond of P25,000, and more than one year from the time he received the order to place the P25,000 in question at the disposal of the court, without his doing anything in compliance therewith, the petitioners, on August 29, 1934, asked among other things that the respondent be given a peremptory period to deliver said sum to the receiver in civil case No. 44053, and to file

another bond to secure payment by him also of the accrued interest thereon from December 31, 1930, until fully paid (Exhibit O). The lower court, after hearing the parties and considering their reasons stated in their pleadings (Exhibits P and Q), ordered the respondent to deliver to the receiver on or before November 30, 1934, or immediately after presenting his evidence to the referee, the said sum of P25,000 with all the accrued interest thereon from the time it was deposited in the Bank of Amoy (Exhibits R and V). Instead of taking advantage of the new opportunity granted him by the lower court to comply with the order requiring him to bring the said sum of P25,000 to the Philippines, the respondent, on July 29, 1935, filed a motion praying for the reduction of the bond of P25,000 filed by him to P9,000 only, alleging that the participation of the petitioners in the P25,000 in question did not and could not exceed 36 per cent thereof on the ground that the capital contributed by him to the partnership was P64,000, and therefore his participation in the assets of said partnership was more than P50,000, or more than double P25,000. After hearing the parties, the lower court, in an order of October 22, 1935, decided to grant the petition of the respondent by reducing his former bond of P25,000 to P10,000 only, giving him a period of ten days to file said new reduced bond. As the petitioners' motion for the reconsideration of this order failed, because the lower court denied it in an order of November 19, 1935 (Exhibit A-11), they filed this petition for certiorari, alleging that the respondent judge acted in excess of his jurisdiction and abused his discretion.

The respondents, in their answer, maintain that the lower court in so proceeding, acted absolutely within its jurisdiction without having committed any abuse of discretion, because equity and justice so demanded.

Before discussing the question so raised, it is advisable to know in order to better solve it, some of the facts not disputed by the parties and those appearing from their pleadings and the documents attached thereto, which are as follows:

In a deed executed by the petitioners and the respondent Benito Gaerlan on April 1, 1930, the three formed a general partnership under the name Benito Gaerlan & Co., with a capital of P100,000, Philippine currency, to engage in the purchase and sale of flour, sugar, and Philippine and European groceries, establishing it on Nueva Street, in the City of Manila. Of the partnership capital agreed upon, P64,000 would belong to the respondent Benito Gaerlan, P29,000 to the petitioner Chua Ke, and P7,000 to the petitioner Cu Peng, the three binding themselves to contribute said three sums to the partnership in order to cover their respective quotas. They agreed that the respondent Benito Gaerlan should take charge of the management, direction and administration of the partnership; that the partnership should last five years to be counted from March 1, 1930, unless they agreed to dissolve it prior to said period; that the profits, after deducting the expenses, should be divided into 13 equal parts, 3 belonging to the manager and the other 10 to the three of them in proportion to the capital contributed by each; that the losses should be assumed proportionately by all of them, and that the profits and losses should be balanced annually in order to enter them in the books of the partnership.

For failure of the respondent as manager of the partnership Benito Gaerlan & Co. to perform many of the duties incumbent upon him as such, and for having misapplied the funds of the partnership, as claimed by the petitioners, the latter instituted said civil case No. 44053, to ask for the dissolution thereof, after a liquidation of its assets. Incidentally, they asked for the appointment of a receiver to take charge of the partnership while in the process of liquidation, and the lower court appointed one who performed said task at least until the month of April, 1935, when he filed his final report in compliance with the order of March 30th of said year (Exhibits 6 and 7). After having discovered that Benito Gaerlan had deposited P25,000 of the partnership funds as his in the Bank of Amoy, they also incidentally asked that Gaerlan be ordered to bring said money to Manila and place it at the disposal of the court. The court so ordered but it later permitted him, with the consent of the petitioners, to file the said P25,000 bond to secure delivery by him of said sum to the partnership Benito Gaerlan & Co. or to its duly authorized representative, when the court so require. Said bond is precisely what the lower court reduced to P10,000 in the order which gave rise to this certiorari proceeding.

It should be noted that when the question relative to the reduction "of the bond was raised before the lower

court (October 22, 1935), the respondent judge had before him the data from the receiver's reports of March 30, 1933, and November, 1934, and the statements of Accountant and Auditor Galicano Tayag, who was appointed by the petitioners themselves, Exhibit 2 and its annexa Exhibits 2-1 and 5 being copies thereof. According to said evidence, the respondent Benito Gaerlan's assets in the partnership, at least at that time, were greater than what the petitioners might expect as their share after the liquidation.

Now, where could the respondent judge have exceeded his jurisdiction, or where could he have abused his discretion? It is well settled in this jurisdiction that certiorari lies to correct not only excesses of jurisdiction but also manifest abuses of discretion. (De Castro and Morales vs. Justice of the Peace of Bocaue, 33 Phil., 595; Valdez vs. Querubm, 37 Phil, 774; Leung Ben vs. O'Brien, 38 Phil., 182; Larrobis vs. Wislizenus and Smith, Bell & Co., 42 Phil, 401; Westminster Bank vs. Torres and K. Nassoor, Inc., 57 Phil., 422.) 'There is no doubt that the respondent judge had jurisdiction and authority to accept the bond offered by the respondent Benito Gaerlan. The giving of said bond was only an incident in the principal case submitted to it for decision, and said case is among those clearly falling under the jurisdiction of the Courts of First Instance. On the other hand, the petitioners themselves consented to the giving of said bond; also carefully examined the terms and conditions thereof through their attorneys; and later induced the respondent judge to approve and accept it. Therefore, if the respondent judge had jurisdiction to fix the amount of said bond and to accept it, he unquestionably also had jurisdiction to reduce it if there were justifiable motives therefor, which certainly existed, taking into consideration the above-stated reports of the receiver and the statement of the accountant and auditor, and the very terms of the bond the amount of which was reduced. It should not be forgotten that the obligation secured by the said bond was not the exemption of the respondent Benito Gaerlan from every action for contempt of court, but the delivery by him to Benito Gaerlan & Co. or to its duly authorized representative of the sum of P25,000 "solely to the extent of whatever rights, interests and participation the plain- tiffs may have therein, up to the said sum of P25,000, as stated in said bond."

According to the data which the respondent judge had before him, he could properly use the discretion permitted him by the law to reduce or not to reduce the bond of the respondent Benito Gaerlan. Even if he had chosen not to reduce it, the obligation of the sureties who subscribed it could in no way be more than that of answering for the petitioners' participation in the P25,000. Such and nothing more is simply the scope of the bond in question, according to the very terms thereof. If it were to appear that the liability of the respondent Benito Gaerlan is more than P10,000, the reduction of his bond to said sum does not mean that he is exempted from paying the difference.

Perhaps—although this is improbable, taking into consideration the facts already of record—the respondent judge erred in reducing the bond of the respondent Benito Gaerlan to P10,000 only; but at all events his error is an error of judgment which cannot be corrected by certiorari, because, as already stated, remedies of this kind only serve to correct judicial acts performed without or in excess of jurisdiction, or with abuse of discretion, and never to correct errors. (Gala vs. Cui and Rodriguez, 25 Phil., 522; Napa vs. Weissenhagen, 29 Phil., 180; Government of the Philippine Islands vs. Judge of First Instance of Iloilo and Bantillo, 34 Phil., 157; Bustos vs. Moir and Fajardo, 35 Phil., 415.)

In view of all the foregoing, it is held that the petition for certiorari is without merit, and it is therefore denied with the costs to the petitioners. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, and Horrilleno, JJ., concur.

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