

JOSE M. BAES, PETITIONER, VS. JUDGE OF FIRST INSTANCE OF LAGUNA AND PROVINCIAL FISCAL OF LAGUNA, RESPONDENTS.

G. R. No. 45780. December 29, 1937

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a petition, for the issuance by this court of a writ of mandamus addressed to the Honorable Judge of the Court of First Instance of Laguna directing him to admit and give due course to the appeal taken by the petitioner, Rev. Fr. Jose M. Baes, from his order of September 10, 1937, denying the appeal interposed by said petitioner from the order issued by said respondent judge, dismissing the petitioner's complaint against Enrique Villarosa, Alejandro Lacbay and Bernardo del Rosario, for the crime of "offending the religious feelings" provided for and punished in article 133 of the Revised Penal Code.

The pertinent facts necessary for the resolution of the legal question raised in this petition are as follows:

On April 22, 1937, the petitioner, Rev. Fr. Jose M. Baes, filed a criminal complaint in the justice of the peace court of Lumban, Province of Laguna, which reads as follows:

"The undersigned Parish Priest of the Roman Catholic Church of the Parish of Lumban, Province of Laguna, Philippines, after being duly sworn, charges Enrique Villarosa, Alejandro Lacbay and Bernardo del Rosario of the crime against religious worship, committed as follows:

"That on April 14, 1937, at about 9 o'clock a. m., in this municipality of Lumban, Province of Laguna, Philippines, and within the jurisdiction of this court, the above-named accused, while conducting the funeral services of a deceased person named Antonio Macabigtas, according to the rites of a religious sect known as 'Iglesia de Cristo', voluntarily, unlawfully and criminally caused said funeral to pass, as it in fact passed, through the courtyard of the Roman Catholic Church in front thereof, which courtyard belongs to and is devoted to the religious worship of said church, against the opposition of the undersigned complainant who, by means of force and threats of maltreatment, was compelled by the above-named accused to give way to the funeral through said courtyard. Act committed with grave profanation of the place, in public offense to the religious feelings of the catholics of this municipality, and in violation of article 133 of the Revised Penal Code."

When the complaint was called for hearing for the preliminary investigation of the facts charged therein, and the accused having been informed of the charges, the latter pleaded not guilty of the crime charged and waived the preliminary investigation. After the case had been forwarded to the Court of First Instance of Laguna and docketed therein as criminal case No. 11189, the respondent provincial fiscal, instead of filing an information for the trial of the accused before said court, presented a motion for dismissal of the case, on the ground that the act imputed to him does not constitute the crime charged, according to the spirit of article 133 of the Revised Penal Code.

On August 31, 1937, the respondent judge, deciding said motion, issued the following order:

"Upon consideration of the motion for dismissal filed by the Provincial Fiscal and of the opposition, together with the corresponding memorandum, filed by Attorney Crispin Oben, and the court being of the opinion that the fiscal's motion is well founded;

"Said petition is hereby granted, and this case is ordered dismissed, without prejudice to the filing by the fiscal of another information for the crime he may find to have been committed by the accused.

"It is so ordered."

From said order, the complainant interposed an appeal to this court, which was opposed by the respondent provincial fiscal.

On September 10, 1937, the respondent judge issued the following order:

"The opposition of the Provincial Fiscal, dated September 10, 1937, to the notice of appeal filed by Atty. Crispin Oben, dated September 7, 1937, in representation of the offended party in this case, being well founded;

"Said appeal cannot be allowed.

"It is so ordered."

Having been notified of this latter order, the complainant filed a motion for reconsideration thereof on September 13, 1937. Said motion was denied by means of the following order:

"The motion for reconsideration presented by Atty. Crispin Oben for the private prosecution, dated September 14, 1937, not being well founded, is hereby denied.

"So ordered."

The only question to be decided in this case is whether or not the respondent judge failed to comply with his duty in refusing to admit the appeal interposed by the complainant, the herein petitioner Rev. Fr. Jose M. Baes, from an order to dismiss a complaint, upon petition of the prosecuting attorney and over the opposition of said complainant, on the ground that the act imputed to the accused does not constitute the crime charged.

In opposing the appeal interposed by the complainant, the respondent provincial fiscal based his opinion upon the decision rendered by this court in the case of *Gonzalez vs. Court of First Instance of Bulacan* (36 Off. Gaz., 2059). In said case the motion for dismissal filed by the provincial fiscal and granted by the Court of First Instance of Bulacan, was not based on the ground that the act imputed to the accused did not constitute the crime charged, but on the fact that the evidence adduced at the preliminary investigation, conducted by the said fiscal to determine whether or not the criminal act imputed to said accused had been committed by him and whether or not he was criminally liable therefor, was not sufficient to establish his guilt. This court then stated what the respondent provincial fiscal quotes in his opposition to the admission of the complainant's appeal, which is as follows:

"Furthermore it could not have been the intention of 'the authors of General Orders, No. 58, to grant to the person injured by the commission of an offense the right to appeal from an order of dismissal issued upon petition of the promotor fiscal himself, because the appeal would not serve its purpose which is the review of the evidence upon which' the motion for dismissal was based, taking into consideration the fact that the proceeding followed in the preliminary investigation conducted by justices of the peace for the arrest of the accused, in the preliminary investigation had to determine whether the crime complained of has been committed and that there is reasonable ground to believe that the party charged has committed it, and in that conducted by the promotor fiscal, after the case is forwarded to the Court of First Instance, is summary and the

testimony of the witnesses does not appear in writing. The only data relied upon by the judge in determining whether or not the case should be dismissed are those furnished by the promotor fiscal in his motion or those acquired by the court itself *motu proprio*, which, if forwarded to this court by virtue of an appeal, are insufficient to determine whether or not the promotor fiscal and the lower court have erred in dismissing the case."

Therefore, there is no analogy between said case and the one under consideration. The question involved in the Gonzalez case, *supra*, was purely one of fact the determination of which rested on the sound discretion of the fiscal and the judge. In said case the dismissal thereof did not prevent the complainant from resuming his complaint for the same offense against the same accused, by alleging the same criminal facts, provided he adduced additional evidence to convince said fiscal of the sufficiency thereof to establish, at least *prima facie*, the existence of such facts. In the case before this court, the question raised is one, of law, that is, the determination of whether or not the facts alleged in the complaint constitute the crime charged. Once the fiscal, as well as the judge, has formed the opinion that such facts do not constitute the crime charged, the complainant is prevented from again filing the same complaint with the same allegations of fact, unless the fiscal, or the judge, as the case may be, changes his opinion. Thus the qualification of a crime rests on the absolute and final discretion of the fiscal and of the judge, rendering it impossible for any superior court to correct whatever error they might have committed.

The question before this court is similar to the one raised and decided in the case of *United States and Concepcion Lucia Sebastiana vs. Perez* (1 Phil., 203), wherein this court, through one of its former Chief Justices, the late Don Victorino Mapa, laid down the following doctrine:

"Both the Government and the private prosecutor have a right to perfect an appeal from an order sustaining a demurrer to a criminal complaint."

The order issued by the respondent judge, upon petition of the likewise respondent provincial fiscal of Laguna, dismissing the complaint filed by the petitioner, from which the latter unsuccessfully attempted to appeal, was based on the same legal ground on which the order of dismissal issued in the above-cited case was based, that is, that the facts alleged in the information do not constitute the crime charged. If this court laid down the above-quoted doctrine in said case, there is no reason why the same doctrine should not be followed in this case, at least by analogy.

The American doctrine on this point is stated in 38 C. J., 610, paragraph 88, as follows:

"Where a court declines jurisdiction by mistake of law, erroneously deciding as a matter of law and not as a decision upon the facts that it has no jurisdiction, and either declines to proceed or disposes of the case, the general rule is that a mandamus to proceed will lie from any higher court having supervisory jurisdiction, unless there is a specific and adequate remedy by appeal, writ of error, or other method of review."

In this case, the respondent judge refuses to admit the appeal because he believes with the provincial fiscal, his co-respondent, that the act imputed to the accused does not constitute the crime charged. This is a conclusion of law reviewable by appeal which the offended party, as a component of the people interested in the prosecution of public crimes, may interpose before a higher court of competent jurisdiction.

For the foregoing considerations, this court is of the opinion and so holds that the party injured by a crime may appeal from an order of dismissal issued by a competent judge upon motion of the prosecuting attorney, based on the insufficiency of the facts alleged in the complaint to constitute the crime charged.

Wherefore, the remedy applied for is granted and it is ordered that a writ of mandamus be issued directing the petitioner and to give due course thereto, with the costs *de oficio*. So ordered.

Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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