

**MACARIO DE CHAVEZ, PETITIONER, VS. BUENAVENTURA OCAMPO,
JUDGE OF FIRST INSTANCE OF BATANGAS, AND JUAN BUENAFE,
RESPONDENTS.***G.R. No. 46090. August 08, 1938*

Ponente: CONCEPCION, J.

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The legal question to be decided in this controversy is whether or not a protest presented to the clerk of court at his house before 12 o'clock midnight on the last day of the second week following the proclamation of a municipal mayor should be considered as filed within the period prescribed by law.

On December 21, 1937, the respondent Juan Buenafe was proclaimed municipal mayor-elect of Batangas, of the province of the same name, by the board of canvassers.

At 11.40 p. m. on January 4, 1938, petitioner Macario de Chavez submitted to the clerk of the Court of First Instance of Batangas, E. S. Ilustre, in the latter's house, a motion of protest against the proclaimed mayor, based upon the grounds of fraud and irregularities committed in the election, and paid to said clerk on that same occasion the amount of P16 for docket fees. The clerk wrote at the top of the first page of the original of the protest a note saying: "Received; Jan. 4, 1938 at 11.40 p. m. at my home" and signed "E. S. Ilustre", and on the duplicate copy thereof, which petitioner kept, he likewise wrote another note saying: "Received the original and copy together with P16 registration fee—this 4th day of January, 1938 at 11.40 p. m. at my home. E. S. Ilustre."

Upon being notified of the protest, respondent filed a motion with the court praying for its dismissal, alleging that the same had been filed outside of the period of two weeks from the date of the proclamation for, as shown by the stamp of its receipt appearing on the first page and by official receipt issued for docket fees, it was filed on January 5, 1938. Another of the grounds alleged was that the court did not acquire jurisdiction over the case because respondent was notified of the motion of protest on January 26, 1938 when, according to law, he should have been so notified within twenty days following the filing thereof.

By its order of March 7, 1938 sustaining the motion of respondent, the court dismissed the protest upon the first ground but overruled the same upon the second ground. This led to the filing of the present petition for mandamus from this court ordering the respondent judge to reinstate the motion of protest and proceed to hear and decide the same upon its merits.

As a preliminary question respondent maintains that reconsideration of the order of dismissal not having been sought in the lower court, the petition for mandamus should be dismissed without further proceedings in accordance with the ruling in this jurisdiction to the effect that this court cannot consider any petition for any of the special remedies provided in the Code of Civil Procedure without a showing that petitioner had filed a motion for reconsideration in the lower court of the order whose legality is assailed. The ruling invoked by respondent rests upon the principle that issues which Courts of First Instance are bound to decide should not be, summarily taken from them and submitted to this court without first giving them opportunity to dispose of the same with due

deliberation. (*Herrera vs. Barretto and Joaquin*, 25 Phil., 245.) For this reason, when a definite question has been properly raised, argued, and submitted to the lower court and had been wholly decided by the latter, a motion for reconsideration of the same question is no longer necessary as a condition precedent to the filing of a petition for certiorari in this court. (*Municipal Council of Masantol vs. Guevara*, 44 Phil., 580.)

In the instant case, respondent having raised in the Court of First Instance of Batangas and the latter having decided the same questions of fact and of law which are now addressed to this court through the present petition for mandamus, the respondent's contention cannot be sustained.

Coming now to the principal point discussed in the motion for dismissal, we have the provision of section 479 of the Election Law to the effect that an election protest should be filed within two weeks from the day following the proclamation of the election result by the board of canvassers. The proclamation in the present case having taken place on December 21, 1937, the two weeks or the fourteen days of which they are composed, began to run from December 22d to expire on January 4, 1938, at twelve o'clock in the evening. (Sec. 13, Revised Administrative Code; *Manalo vs. Sevilla*, 24 Phil., 609.)

The protest having been filed at 11.40 p. m., on January the 4th, as per the note and the signature of the clerk of court at the top of the first page of petitioner's motion, we conclude that the protest was filed within the period provided by law for the purpose.

Respondent contends that the official stamp appearing at the top of the first page of petitioner's motion shows that the motion of protest was filed on January 5, 1938, and the docketing fees were paid on the same date. This is the allegation in the motion to dismiss the protest, but in the same motion respondent did not deny specifically, nor even generally, the allegation in paragraph 6 of the motion of protest to the effect that this was filed at 11.40 p. m., on January 4, 1938. This fact not having been denied, the controversy boils down to a determination of which of the two alleged dates should be taken into consideration as the true date of the filing of the protest. This is what has been done by the trial court in the appealed order, proceeding from the assumption of the existence of the notes and the stamp of the trial court.

In answering the petition for mandamus, respondent argues that there is no evidence on the notes appearing at the top of the motion of protest and on the signature of the clerk of court, Ilustre. To this it is a sufficient answer that if respondent had denied in any way the allegations of petitioner in his motion of protest, the latter would have been under the necessity of proving them, but there being no such denial there is likewise no obligation to adduce such proof.

The notes and the signature of the cleric of court being, as we believe, authentic, according to which the motion of protest was filed at 11.40 p. m. on January 4, 1938, we conclude that this is the true date of the filing of the protest, within the legal period, and not January 5, 1938, as evidenced by the official stamp of the trial court. When the clerk of court received the motion, he did not then have the stamp of the court nor the docket in which to enter the said motion, and to remedy the deficiency, he did the following day what he could not do the night before. This is all that happened.

The next question at hand is whether the motion of protest can be considered as legally presented in view of the fact that it was delivered in the house of the clerk of court. In the first place, the motion was handed over to E. S. Ilustre in his capacity as clerk of court and the latter received it as such. It would hardly be reasonable to contend otherwise as this would involve the supposition that petitioner had a different intention in delivering his motion to the clerk of court and that the latter was likewise actuated by a different intention in receiving it; both suppositions being contrary to the natural course and order of human events.

In the second place, the motion having been delivered to the clerk of court outside of office hours, and the latter, on the other hand, not being under any duty to remain in court up to midnight on January 4th, it cannot be rationally held that the said motion should have been filed in court instead of in the house of the clerk of court. The fact is purely accidental; the important thing is that the motion had been presented and accepted before twelve o'clock on the night of January 4th, and this had been done.

Wherefore, we conclude that the motion of protest delivered to the clerk of the Court of First Instance at his house at 11.40 on the night of January 4, 1938, should be considered as duly filed within the period marked by law, in view of the fact that, the proclamation of the municipal mayor-elect in the instant case took place on December 21, 1937, and the period of two weeks allowed by law for the filing of the protest commenced to run on the 22d of said month of December and expired at twelve o'clock on the night of January 4, 1938.

In view of all the foregoing, and reversing the order of March 7, 1938, we order the issuance of a writ of mandamus directing the Court of First Instance of Batangas to hear and decide the motion of protest of the petitioner on its merits. So ordered.

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

RESOLUTION

August 31, 1938

CONCEPCION, J.:

Respondent has filed a motion asking for the reconsideration of our decision promulgated on the 8th instant.

It is based upon an alleged error of fact consisting, according to respondent, in that it was taken for granted that in the motion of protest there was an allegation that the same was filed in the house of the clerk of court at 11.40 p. m., on January 4, 1938, and that this allegation had not been denied by respondent in his answer.

In our decision we said the following:

"At 11.0 p. m. on January 4, 1938, petitioner Macario de Chavez submitted to the clerk of the Court of First Instance of Batangas, E. S. Ilustre, in the latter's house, a motion of protest against the proclaimed mayor, based upon the grounds of fraud and irregularities committed in the election, and paid to said clerk on that same occasion the amount of P16 for docket fees. The clerk wrote at the top of the first page of the original of the protest a note saying: 'Received; Jan. 4, 1938 at 11.40 p. m., at my home' and signed 'E. S. Ilustre', and on the duplicate copy thereof, which petitioner kept, he likewise wrote another note saying: 'Received the original and copy together with P16 registration fee—this 4th day of January, 1938 at 11.40 p. m. at my home. E. S. Ilustre.'"

The first note was marked Exhibit 1 and the second marked Exhibit 2. Both notes were presented as evidence at the trial and were admitted without any objection by respondent. These facts are corroborated by the statement made by the court in the appealed order as follows:

"Without passing upon whether or not petitioner had presented the original of his motion together with the amount of P16 as docketing fees to Mr. E. S. Ilustre in the latter's house, on January 4, 1938 at 11.40 p. m., the court is of the opinion that the original should be understood * * *."

From what has been just quoted, the inference is clear that petitioner adduced as evidence the aforesaid notes, otherwise the trial court could not have stated what it did in the quoted paragraph.

But the most convincing token that said notes marked Exhibits 1 and 2 were presented as evidence is the following paragraph which we likewise quote from the appealed order, to wit:

"Moreover, as evidenced by the note written at the top middle part of the first page of the motion of protest which gave rise to this action, Mr. E. S. Ilustre received said motion not in his capacity as clerk of court but as an ordinary citizen and outside of office hours."

The trial court could not have made the statement contained in the aforequoted paragraph if the note Exhibit 1 had not been presented as evidence.

We, therefore, reiterate, in amplification of the grounds of our decision, that had respondent denied the authenticity of the notes Exhibits 1 and 2, petitioner would not have limited himself to presenting them as evidence, but would have adduced further evidence of their authenticity.

Upon the other hand, the note Exhibit 1 was notoriously exposed to view, being found in the middle upper part of the first page of the motion of protest, as alleged in paragraph 6 of the petition for mandamus filed with this court. When respondent filed his motion for dismissal before the trial court and saw the official stamp, Exhibit A, marked at the top of the first page of the motion of protest, he must have also seen beside or near the stamp the note Exhibit 1, which states: "Received; Jan. 4, 1938 at 11.40 p. m. at my home, E. S. Ilustre." Hence, when he filed his said motion to dismiss, respondent should have denied the note if he wanted to impugn the fact of the filing of the motion of protest as to the date, hour and place stated in the note. Respondent neither did so then nor at the trial when the said note Exhibit 1 and the other Exhibit 2 were presented as evidence, and he may not now raise for the first time before this court the question of the authenticity of said notes.

As to the clerical error consisting in the citation in the decision of paragraph 6 of the motion of protest, instead of paragraph 6 of the petition for mandamus, the same does not furnish any serious or solid argument justifying the reconsideration of our decision.

The facts are there substantially and clearly stated, and the essential thing under those facts and the law is, that the motion of protest was filed within the legal period before the Court of First Instance of Batangas.

In another writing in amplification of the motion for reconsideration, the respondent states that "if a doctrine is to be established that on the last day of the filing of an election protest it is legal and valid to file the same shortly before 12 o'clock on the night of said day in the house of the clerk of court, this would constitute a dangerous doctrine, because in such case the clerk would have to leave open the doors of his house until 12 o'clock on the night of the last day in order to be ready to receive a motion of pretest to be filed, and as this is not practicable for we believe that nobody can compel the clerk of court to receive any writing in his house outside of office hours, the result would be that the act of receiving a motion or election protest in the house of the clerk of court would become discretionary on his part. The Election Law has fixed a reasonable period within which to file a protest in case the legality of the election of a proclaimed candidate is questioned and there is no reason why the said protest should not be filed during office hours. We see no merit in this argument.

The motion is denied. So ordered.

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

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