

ANACLETO R. TOLENTINO, PETITIONER, VS. JOSE R. CARLOS, JUDGE OF FIRST INSTANCE OF BENGUET, MOUNTAIN PROVINCE, AND COMMONWEALTH OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 46180. August 30, 1938*

Ponente: IMPERIAL, J.

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This is a petition for certiorari to set aside the writ of attachment issued by the respondent judge in civil case No. 643 of the Court of First Instance of the Mountain Province.

On February 11, 1938, the fiscal of the City of Baguio filed an information against the petitioner charging him with malversation of public funds in the City of Baguio, during the period from January 1 to February 8, 1938. The information alleged that the petitioner being then the postmaster in the post office of Baguio and an official of the Commonwealth of the Philippines and having under his custody public funds in the amount of P23,863.92 and postage stamps valued at P3,197.98, or a total of P27,061.90, which funds and postage stamps belonged to the Commonwealth of the Philippines, and being under the legal duty to keep custody thereof, account therefor, and return the same in due time to the said Government, willfully, illegally and criminally misappropriated the said property, failed to account therefor, and took the same for his own use and benefit. The criminal case thus filed against him was docketed under No. 1602. On February 12, 1938, the said fiscal filed against the same petitioner civil case No. 643 of the Court of First Instance of Benguet, Mountain Province. The suit had for its purpose the recovery from the petitioner of the same public funds and postage stamps in the amount of P27,061.90. The complaint alleged that the petitioner had under his custody the said public funds and postage stamps in his capacity as postmaster of the Baguio post office, that as such public official he was under a duty to account therefor and to return the same to the Commonwealth of the Philippines, that he was required to return and deliver the said property but he could not do so because he took and misappropriated the same for his own use and benefit to the prejudice of its owner. To secure a preliminary attachment of all the property of the petitioner the complaint likewise alleged that the plaintiff Commonwealth had a good cause of action against the petitioner, that the obligation assumed by the latter was not sufficiently secured, that the petitioner had misappropriated public property consisting of the money sought to be recovered, and that he had disposed of his property or was trying to alienate the same to defraud the Commonwealth of the Philippines. At the end of the complaint Conrado Alcaraz, auditor of the City of Baguio, made a verified statement stating that he had read the allegations of the complaint and that the same were true according to his best knowledge and belief. In view of the verified petition and allegations of the complaint, the respondent judge issued the writ of attachment and an officer of the court attached the petitioner's property. The latter moved to dissolve the attachment, but the motion was denied.

The petitioner contends that the writ of attachment thus issued is null and void because: (1) the affidavit in support thereof is insufficient and fatally defective; (2) the Commonwealth of the Philippines did not file any bond before issuing the attachment, as required by section 427 of the Code of Civil Procedure; (3) the complaint filed in civil case No. 643 does not state any valid or legal cause of action inasmuch as under its allegations the

action brought, if any, was ex delicto, arising from the crime of malversation of public funds alleged in the information filed in criminal case No. 1602; and (4) the respondent judge did not acquire jurisdiction, or acted without it, or abused his discretion in issuing the writ of attachment.

- The petition for attachment was included in the complaint which was filed, and at the end of the latter appears the verified statement of the auditor of the City of Baguio wherein he avers that all the allegations of the complaint are true and correct to his knowledge and belief. No petition or verified statement was filed separately to obtain the attachment. The sworn statement of the auditor necessarily covered the allegations of the complaint to the effect that the petitioner was a postmaster and public official, that he had the property described under his custody, that it was his legal duty to account therefor and to return the same to the Commonwealth, that he refused or he failed to return the same upon demand, that he misappropriated the said property to the prejudice of its owner, that the value of the property was not sufficiently secured, and that the petitioner had disposed of his property or was trying to alienate the same in fraud of the Commonwealth of the Philippines. In these circumstances, we are of the opinion, and so hold, that the verified statement was sufficient and valid (sections 424, in connection with 412 and 426, Code of Civil Procedure; *Central Capiz vs. Salas*, 43 Phil., 930).

- Section 427 of the Code of Civil Procedure provides that before the issuance of a writ of attachment, the applicant therefor or any person in his name, should file a bond in favor of the defendant for an amount not less than P400 nor more than the amount of the claim, answerable for damages in case it is shown that the attachment was obtained illegally or without sufficient cause; but in the case at bar the one who applied for and obtained the attachment is the Commonwealth of the Philippines, as plaintiff, and under the theory that the State is always solvent it was not bound to post the required bond and the respondent judge did not exceed his jurisdiction in exempting it from such requirement. It is not necessary to discuss the validity of Act No. 3531, as amended by Act No. 4108, because they both refer to the bond to be filed when a third party claim is presented under an attachment levied in execution of a judgment.

- The principal ground of the petition is that, the obligation relied upon in the civil action having arisen from the crime which gave rise to the prosecution for malversation of public funds, the civil action cannot be maintained until final judgment has been rendered in the criminal case. Article 1089 of the Civil Code provides that obligations are created by law, by contract, by quasi-contract, and by acts or omissions or by those in which any kind of fault or negligence occurs; and article 1092 provides that civil obligations arising from crimes or misdemeanors shall be governed by the provisions of the Penal Code. Article 114 of the Spanish Criminal Procedure, enforced in this jurisdiction in a supplementary character (*Rakes vs. Atlantic, Gulf & Pacific Co.*, 7 Phil., 359; *Almeida Chan Tanco vs. Abaroa*, 8 Phil., 178; 218 U. S., 476; 54 Law. ed., 1116; 40 Phil., 1056; *U. S. vs. Namit*, 38 Phil., 926; *Alba vs. Acuña and Frial*, 53 Phil., 380), provides that "when a criminal proceeding is instituted for the judicial investigation of a crime or misdemeanor, no civil action arising from the same act can be prosecuted; but the same shall be suspended, if there be one, in whatever stage or state it may be found, until final sentence in the criminal proceeding is pronounced." The petitioner relies upon these provisions, especially the latter, in contending that the civil action does not lie and that there being no cause of action in the civil suit filed by the Commonwealth, the latter is not entitled to the writ of attachment. Inasmuch as the prohibition in article 114 that no civil action be brought when a criminal action has been filed, is conditioned upon the circumstance that the former is based upon the same fact as that of the criminal action, it is necessary to ascertain if the action brought by the Commonwealth in the civil case is based upon the same facts which constitute the crime of malversation of public funds which is the basis of the criminal case. In the complaint filed in the civil case, it is alleged, as already stated, that the petitioner was a postmaster and public official who had custody of the property sought to be recovered, charged with the legal duty to return and deliver the same upon demand to the Commonwealth of the Philippines, and that he refused to return and deliver said property when he was required to

do so by the auditor of the City of Baguio. These allegations alone constitute sufficient cause of action under action 633 of the Revised Administrative Code providing that every officer of the Government of the Philippine Islands whose duties permit or require the possession or custody of Government funds or property shall be accountable and directly responsible therefor. It is true that the complaint sets out allegations which are substantially a reproduction of those in the information for malversation of public funds filed in the criminal case, but these allegations, in connection with the civil action, are unnecessary and may be overlooked. The complaint could have been demurred to on the ground of ambiguity because it alleged two different and independent causes of action; but as no demurrer was interposed and as the complaint was not ordered amended, the Commonwealth may try to prove and confine itself to the action *ex lege* by abandoning the action *ex delicto*.

- The respondent judge had full jurisdiction to issue the attachment applied for in the civil case (section 425 of the Code of Civil Procedure) and he did not abuse the discretion conferred upon him by law in granting the writ because the plaintiff Commonwealth had complied with the requirements of sections 424, in connection with 412 and 426 of the Code of Civil Procedure.

For the foregoing reasons, the writ prayed for is denied, with the costs to the petitioner. So ordered.

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

CONCURRING AND DISSENTING

CONCEPCION, J.:

I concur with the majority as to the dispositive part of the foregoing decision, but I cannot subscribe to the view that the action brought by the fiscal of the City of Baguio against the petitioner is civil in nature, with a life of its own independent of the criminal liability arising from the crime of malversation of public funds committed by the said petitioner while he was postmaster of the Baguio post office. Granting the allegations of the complaint, which we cannot disregard as they are really material, the action sought to be enforced therein is properly a civil action based upon the criminal liability arising from the crime with which the petitioner was charged in the information lodged in the Court of First Instance of the Mountain Province. Nonetheless I am of the opinion that, notwithstanding the filing of the criminal action one day before the presentation of the complaint in the civil case to recover from the petitioner, defendant in said case, the same public funds and postage stamps valued at P27,061.90, the filing of the said complaint is perfectly legal inasmuch as it is not prohibited by any law. Article 114 of the Spanish Criminal Procedure of 1882, applicable in the Philippines in a supplementary character, as provided in section 1 of General Orders, No. 58 and rule 95 of the Provisional Law for the application of the former Penal Code (see citations in majority decision), reads as follows:

"Art. 114. When a criminal proceeding is instituted for the judicial investigation of a crime or misdemeanor, no civil action arising from the same act can be prosecuted; but the same shall be suspended, if there be one, in whatever stage or state it may be found, until final sentence in the criminal proceeding is pronounced."

The underlined portion clearly shows the nerve center of the legal provision: it prohibits the prosecution of a civil action upon the same fact which has given rise to the criminal action for the judicial investigation of a crime or misdemeanor; but it does not prohibit the simple filing of a civil complaint. If the complaint had already been filed before the commencement of the criminal action, its prosecution should be suspended, and the same thing, in my humble opinion, should be done if the civil action had been instituted, as in the present case, one day after the presentation of the information. What the law seeks to avoid with the aforesaid prohibition is the existence of two

contradictory judgments, that is, the judgment in the criminal case and that in the civil case, inasmuch as there should be substantial agreement between the one and the other under the provisions of article 742 of the Spanish Criminal Procedure, reading:

"Art. 742. In said judgment there shall be decided all questions arising in the trial, and the accused shall be condemned or acquitted not only of the principal offense and offenses connected therewith but also of any incidental misdemeanors which may have been proven in the case; and the tribunal, at this stage of the proceedings, can not dismiss the case in respect to the accused persons who ought not to be condemned.

"All questions referring to civil liability and responsibility which, arise in the trial shall also be decided in the said judgment."

(See Almeida Chan Tanco vs. Abaroa, 8 Phil., 178; 218 U. S., 476; 54 Law. ed., 1116; 40 Phil., 1056.)

I am, therefore, of the opinion that what is prohibited is the prosecution of the civil action, while the criminal case is pending; but not the filing of the complaint, before or one day after the presentation of the information.

To hold otherwise would be to frustrate or hold in ridicule the ends of justice and of equity. If the civil complaint could not be filed one day after the presentation of the information, and there being no way to ask for the attachment of the property of the accused in the criminal case (U. S. vs. Namit, 88 Phil, 926), nor of the appointment of a receiver, as a result of the filing of the complaint, remedies which may be necessary to guarantee the execution of said judgment in due time, the civil action would turn out to be a myth or a joke injurious to the rights of the offended party should a decision be rendered against the defendant and the same cannot be executed because the plaintiff was not seasonably permitted to secure its execution.

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