

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. BENITO R. PADILLA AND ALFRED VON AREND, DEFENDANTS AND APPELLANTS.

G.R. No. 47027. February 04, 1941

Ponente: LAUREL, J.

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LAUREL, J.:

On October 27, 1938, in criminal case No. 57235 of the Court of First Instance of Manila, Benito R. Padilla and Alfred Von Arend were charged with a violation of Commonwealth Act No. 108, in relation to Commonwealth Act No. 138. The information filed against them by the fiscal of Manila is of the following tenor:

"That on and during the period between December, 1936 to August, 1938, both dates inclusive, in the City of Manila, Philippine Islands, Benito R. Padilla, a Filipino citizen, and Alfred Von Arend, a German citizen, voluntarily, illegally and criminally, with intent to evade the provisions of Article 4 of Commonwealth Act No. 138, which require Philippine or United States citizenship before the exercise or enjoyment of the privilege established in said article, acting jointly and conniving with each other, executed the following acts, to wit: (a) the former permitting the latter and for the latter's corporation, known as the 'Insular Drug Co.' an entity which is not domestic under the provisions of said Act, because 75% of its capital stock belongs to neither Filipino or American, and of which Alfred Von Arehd is the president and general manager, to make use, as in effect made use of his name and of his mercantile domestic firm, known as the 'Padilla Central Distributors', in the official auctions for the supply to the Government and its branches of articles, materials and equipment for public use; and (b) the latter making use, in said official auctions, of the name of the former and that of his commercial firm to the benefit of said corporation, both the accused having gained from the transactions which resulted from such illegal practice, in violation of Article 1 of Commonwealth Act No. 138."

Upon his request, Alfred Von Arend was granted a separate trial, although by agreement of the parties all the evidence presented by the prosecution and the defense in the trial of Alfred Von Arend were offered and admitted in Padilla's. The trial court, on July 25, 1939, rendered judgment finding the two accused guilty of the offense charged, and sentenced each of them to an indeterminate penalty of from two years to four years, to pay a fine of P2,000, with subsidiary imprisonment in case of insolvency, and to pay one-half of the costs. Both have appealed to this Court.

Counsel for Von Arend makes the following assignment of errors:

"I. The trial court erred in ruling that Commonwealth Act No. 108 had any connection with Commonwealth Act No. 138 or that it punished any deviation from the preferences provided by that law.

"II. The trial court erred in not finding that Commonwealth Act No. 108 as interpreted by the trial court was enacted in violation of Article VI, sec. 12(1) of the Constitution of the Philippines.

"III. The trial court erred in holding that Commonwealth Act No. 108 as applied to Alfred Von Arend in this

case did not deprive him of his liberty and property without due process of law contrary to Article III, section 1, subsections 15 and 17 of the Constitution of the Philippines. "IV. The trial court erred and acted contrary to Article

III, sec. 1, subsections 15 and 17 of the Constitution of the Philippines in convicting Alfred Von Arend on the basis of evidence not offered at the trial.

"V. The trial court erred in, not properly complying with the provisions of section 33 of the Code of Criminal Procedure.

"VI. The trial court erred in not holding that Commonwealth Act No. 138 was unconstitutional and void as being contrary to an act of the Congress of the United States. "VII. The trial court erred in not dismissing the information in this case on the ground that more than one crime is charged therein.

"VIII, The trial court erred in not holding that section 4 of Commonwealth Act No. 138 was enacted contrary to the provisions of section 1, subsection 17, of the Ordinance Appended to the Constitution of the Philippines and is consequently void and ineffective.

"IX. The trial court erred in finding that Padilla Central Distributors and Benito R. Padilla were mere figureheads or dummies.

"X. The trial court erred in disregarding the testimony establishing the Government's practice of awarding contracts to the lowest bidder regardless of whether such bidder was a domestic or a foreign entity.

"XI. The trial court erred in making findings of facts contrary to the clear weight of evidence." Counsel for Padilla assigns the following errors:

"I. In not holding that the facts charged in the information do not constitute a public offense and that Act No. 138 is unconstitutional.

"II. In holding that the Padilla Central Distributors' was organized by the accused Benito R. Padilla as a mere nominal entity or name in which the 'Insular Drug Co., Inc.,' made sales to the Government to evade the provisions of Commonwealth Act No. 138.

"III. In holding that the 'Padilla Central Distributors' was managed and administered by the 'Insular Drug Co., Inc.,

"IV. In holding that the accused Benito R. Padilla had in bad faith willfully withheld from the Pharmaceutical Board or the person in charge of issuing permits certain pertinent information when exhibits '12' and '13' were issued.

"V. In finding the accused Benito R. Padilla guilty of the crime charged in the information."

The principal question to be determined is whether or not a violation of Commonwealth Act No. 138, commonly known as the "Flag Law", may be prosecuted under Commonwealth Act No. 108, entitled "An Act to punish acts of evasion of the laws on the nationalization of certain rights, franchises or privileges." Other points raised in the briefs will be taken up in the course of this opinion.

It appears that shortly after the approval of Commonwealth Act No. 138, or on December 16, 1936, Benito R. Padilla resigned from the Insular Drug Company, where he had been employed as a selling agent for seven years, and organized the "Padilla Central Distributors" capitalized at P1,000 (Exhibit A) for the distribution and sale of medicine, chemical products, and clinical, surgical and laboratory equipment. At the same time, he opened with his old employer a credit account in the amount of P5,000, secured by his own and his wife's savings deposit, to enable him to purchase drugs and other chemicals and facilitate his business transactions. In addition, he was

allowed a small space in the offices of the Insular Drug Company, and also the use of the latter's telephone, warehouse and delivery cars. To assist him in the venture, he appointed Serafin Enriquez, secretary-treasurer of the Insular Drug Company, and Bartolome Salapong, cashier of the same firm, as his attorney-in-fact and bookkeeper, respectively. Serafin Enriquez, as attorney-in-fact, prepared and submitted all the bids of the Padilla Central Distributors for pharmaceutical supplies needed by the Government, and was successful in winning for it most of the contracts as the lowest domestic bidder. The open-account agreement stipulated the amount of P5,000 as the limit of Padilla's credit, but the finding of the lower court is that this limit had always been exceeded, the lowest instance being in January, 1938, when Benito R. Padilla's account totalled P5,692.88. As most of the government contracts were awarded to the Padilla Central Distributors as the lowest domestic bidder under the provisions of Commonwealth Act No. 138, and as all the requisitioned supplies were taken from the Insular Drug Company, the sales of the latter increased in volume, and its president and general manager, defendant Alfred Von Arend, for a period comprised between January, 1937 and June, 1938, received dividends amounting to P16,186, besides P1,000 as monthly salary and P200 as monthly expenses. Benito R. Padilla, for the same period, due to the 2-5 per cent discount granted by the Insular Drug Company, made a gross pro fit of P5,003.31 and a net profit of P2,652.26. (Exhibit 25, Resume of Capitulation Statement.)

It is admitted that Commonwealth Act No. 108 does not provide for any penalty for the violation of any of its provisions. Section 1 of Commonwealth Act No. 108, however, provides that "in all cases in which any constitutional or legal provision requires Philippine or United States citizenship as a requisite for the exercise of enjoyment of a right, franchise or privilege, any citizen of the Philippines or the United States who allows his name or citizenship to be used for the purpose of evading such provision, and any alien or foreigner profiting thereby, shall be punished by imprisonment for not less than two nor more than ten years, and a fine of not less than two thousand nor more than ten thousand pesos." In Commonwealth Act No. 138, a domestic entity is defined as "any citizen of the Philippines or of the United States habitually established in business and engaged in the manufacture or sale of the merchandise covered by his bid, or any corporate body or commercial company duly organized and registered under the laws of the Philippines of whose capital 75 per centum is owned by citizens of the Philippines or of the United States, or both." Section 4 of the same Act emphasizes that "whenever several bidders shall participate in the bidding for supplying articles, materials and equipment for any of the dependencies mentioned in section one of this Act for public use, public buildings, or public works, the award shall be made to the domestic entity making the lowest bid, provided that it is not more than fifteen per centum in excess of the lowest bid made by a bidder other than a domestic entity." We are of the opinion that any citizen of the Philippines or of the United States who knowingly allows his name or citizenship to be used so that a person not so qualified may enjoy the privilege granted to domestic entities by Commonwealth Act No. 138, as well as any alien or foreigner profiting thereby, is guilty of violation of Commonwealth Act. No. 108.

The Insular Drug Company of which the appellant, Alfred Von Arend, is president and general manager, is a foreign entity because 75 per centum of its capital is not owned by Filipino or American citizens. On the other hand, the Padilla Central Distributors, as organized by the appellant, Benito R. Padilla, which is a domestic entity, enjoys the privilege afforded by Commonwealth Act No. 138. The lower court found that the organization by the Padilla Central Distributors was but an ingenious scheme to evade the requirements of Commonwealth Act No. 138 for the following reasons: (1) Benito R. Padilla did not invest a single centavo in the Padilla Central Distributors for the reason that the Insular Drug Company, through Alfred Von Arend, furnished him all the articles ordered by the Government. Von Arend accounted for his operating capital on paper, and eventually they shared in the profits realized with the award of government contracts to the Padilla Central Distributors. (2) The pledge agreement (Exhibit I) between Benito R. Padilla and the Insular Drug Company was but a device to dispel the suspicion of business competitors and the authorities. The pledge contract was not notarialized, it was never

honored considering the monthly excess of Padilla's account over the quota therein specified. Although Benito R. Padilla and his wife had assigned their bank passbooks to Von Arend to answer for their credit, Padilla always indorsed the government warrants to the Insular Drug Company which collected the face value of said warrants. (3) Benito R. Padilla opened his office in the Insular Drug Company, and was allowed to use the latter's telephone, warehouse and delivery truck. This disproves the pretended independence of the Padilla Central Distributors from the Insular Drug Company. (4) Padilla's employees, Serafin Enriquez and Bartolome Salapong, are salaried men of the Insular Drug Company, and Padilla's claim that they were paid by him was not accepted by the lower court. (5) Benito R. Padilla had no tangible investment in the Padilla Central Distributors, and it was Serafin Enriquez, his attorney-in-fact, and the secretary-treasurer of the Insular Drug Company, who supervised all the business transactions, from the formal submission of the bids to the endorsement of the government warrants to the Insular Drug Company. These are conclusions of facts which we are not inclined to disturb.

The lower court also found that the appellant, Alfred Von Arend, had profited by the scheme, for the reason that under section 4 of the Flag Law, the Insular Drug Company being a foreign entity would have had to bid 15 per cent lower to successfully outbid a domestic entity or a domestic bidder. With the establishment of the Padilla Central Distributors which submitted bids as a domestic entity, the Insular Drug Company stood to lose only 2-5 per cent as a discount to Padilla. The advantage afforded by this arrangement is proved by the fact that, as hereinabove stated, between the period comprised between September, 1937, and June, 1938 alone, Alfred Von Arend, as president, general manager, and controlling stockholder of the Insular Drug Company, received as dividends the sum of P16,186, in addition to his monthly salary and expenses of P1,000 and P200, respectively; and Benito R. Padilla, for the same period, realized a gross profit of P5,003.31.

It is contended, however, that notwithstanding the infringement of section 4 of Act No. 138, the defendants cannot be punished therefor since the said Act No. 138 imposes no penal sanction whatsoever, and the penalty provided by Act No. 108 cannot be correctly extended to and applied in this case. This argument is, in our opinion, without merit. The very title of Act No. 108 gives unmistakable notice of the legislative intent and purpose of punishing all "acts of evasion of the laws of the nationalization of certain rights, franchises or privileges," and section 1 of the same Act applies the punishment provided therein to "all cases in which any constitutional or legal provision requires Philippine or United States citizenship as a requisite for the exercise or enjoyment of a right, franchise or privilege." Under Act No. 108 any legal provision, whether existing at the time of the passage of said Act No. 108 or promulgated thereafter, would fall within its scope, so long as said legal provision requires Philippine or United States citizenship as a requisite for the enjoyment of a right, franchise or privilege. One of such legal provisions is section 4 of Commonwealth Act No. 138. While "statutes prescribing punishments or penalties should not be extended further than their terms reasonably justify" (*Snowden v. Brown*, 60 Fla. 212, 53 So. 548, 549), this rule of strict construction is subordinate to the rule of reasonable, sensible construction having in view the legislative purpose and intent, and giving effect to the same. It is not to be so unreasonably applied as to defeat the true intent and meaning of the enactment found in the language actually used. (*Chapman v. Lake*, 151 So. 399, 402-403.) Although not so expressly stated, Act No. 138 is cumulative of Act No. 108; and it is no objection that one statute creates an offense and another Act provides for its punishment.

It is also urged that Acts Nos. 108 and 138 are unconstitutional: as to the former, because its provisions are vague and uncertain, covered more than one subject, and deprived Alfred Von Arend of his liberty and property without due process of law; and as to the latter, because it is contrary to Act No. 428 of the 72nd Congress of the United States. We have examined these Commonwealth Acts and are of the opinion that they are constitutional. Commonwealth Act No. 108 is sufficiently clear, and prescribes with reasonable certainty the elements of the offense that it punishes. It embraces only one general subject, to wit, the punishment of acts of evasion of the laws on the nationalization of certain rights, franchises or privileges, which subject is fairly suggestive of, and not

foreign to, its intent and purpose. It does not deprive Alfred Von Arend, or any person for that matter, of liberty and property without due process of law. As to Commonwealth Act No. 138, this cannot be said to be antagonistic to Act No. 428 of the 72nd Congress of the United States. Fundamentally, it is in harmony with the congressional enactment.

The judgment of the lower court as to Alfred Von Arend is affirmed in all respects. As to Benito R. Padilla, the Court feels that as a Filipino citizen he has proved himself lacking in civic consciousness and responsibility as to require censure and punishment at once prompt and severe, in order to enliven the confidence of the people in their Government and their institutions. The penalty, in his case, is accordingly increased to a minimum imprisonment of four (4) years to a maximum imprisonment of six (6) years and a fine of P4,000, with subsidiary imprisonment in case of insolvency, both appellants to pay the costs. So ordered.

Avancena, C. J., Imperial, Diaz, and Horrilleno, JJ., concur.

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