

MARCELO DIMAUNAHAN, PETITIONER-APPELLANT, VS. HON. DIEGO ARANAS AND A. M. VERGARA, RESPONDENTS-APPELLEES.

G.R. No. 49046. November 22, 1943

Ponente: OZAETA, J.

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OZAETA, J.:

Appellant is the offended party in criminal case No. 1 of the justice of the peace court of Alitagtag, Batangas, filed by the chief of police against Apolonio Jumarang and Geronimo Jumarang, for less serious physical injuries alleged to have been committed on January 13, 1943. An attempt was subsequently made by the chief of police to amend the complaint by charging the accused with frustrated homicide instead of less serious physical injuries, but the amended complaint was rejected by the justice of the peace. On March 6, 1943, before the accused were arraigned on the original complaint, the private prosecutor tendered a second amended complaint (exhibit C) charging the accused with serious physical injuries, but the chief of police refused to sign it and the justice of the peace denied the oral petition of the private prosecutor to order the chief of police to sign it. The private prosecutor, announcing his intention to institute a mandamus proceeding in the Court of First Instance, objected to the arraignment of the accused upon the original complaint. The objection was overruled, and the accused were arraigned.

On March 11, 1943, appellant filed a petition for mandamus against the justice of the peace and the chief of police of Alitagtag to compel the latter to sign the second amended complaint exhibit C, and the former to accept said complaint; and, in the meantime, to restrain the justice of the peace from going ahead with the trial of said criminal case No. 1. Upon the filing of said petition the Court of First Instance issued the following order:

"Habiendose presentado una peticion de mandamus con una peticion de interdicto en la demanda que precede, Se ordena al Sr. Diego C. Aranas, Juez de Paz de Alitagtag, Batangas, que suspenda toda ulterior actuacion en la causa criminal No. 1 contra Apolonio Jumarang y Geronimo Jumarang, por lesiones menos graves, hasta nueva orden."

On July 7, 1943, the trial court, after hearing the case, entered the following order:

"Apareciendo del examen cuidadoso de estos autos que en la demanda no se incluyeron todas las partes interesadas; que es discrecional de parte del jefe de policia recurrido firmar la denuncia enmendada objeto de este recurso, segun su criterio basado de los hechos al mismo sometidos, y que la referida denuncia enmendada no esta firmada como requiere la ley;

"Por falta de meritos, se sobresee esta causa sin especial pronunciamiento en cuanto a las costas. Asi se ordena.

"Batangas, Batangas, julio 7, 1943.

(Sgd.) "Modesto Castillo

"Modesto Castillo

Juez."

From that order the petitioner has appealed to this Court. In the meantime, and on August 2, 1943, the justice of the peace called criminal case No. 1 for trial and then and there dismissed it for nonappearance of the offended party and his witnesses. In a motion filed by the petitioner-appellant herein on September 1, 1943, he prays this Court to "issue an order requiring the reinstatement of the said criminal case No. 1, to vacate the order of dismissal and to arrest the accused," upon the ground that the hearing of said criminal case and the entry of the order of dismissal were in violation of the trial court's injunction. Action upon said motion was deferred until the consideration of the case on the merits.

We find the order appealed from to be correct in every respect. It is patent that mandamus does not lie here against either the chief of police or the justice of the peace. To subscribe and swear to a criminal complaint is not a ministerial but a discretionary act of a peace officer. To coerce him by mandamus to perform such an act would make him a mere robot and nullify the oath.

All criminal actions must be commenced either by complaint or information. (Section 1, Rule 106.) "Complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or other employee of the Government or governmental institution in charge of the enforcement or execution of the law violated." (Section 2, *id.*) Thus, under the law the offended party himself may subscribe and swear to the complaint in question. The correct procedure for him to follow was to ask for the dismissal of the original complaint for less serious physical injuries and to file another complaint for serious physical injuries, subscribed and sworn to by himself. The justice of the peace would have to accept it and give it due course by holding the preliminary investigation required by Rule 108. Should the justice of the peace refuse to issue the warrant of arrest after the preliminary investigation, and should the offended party be dissatisfied with the action of the justice of the peace, he could appeal to the provincial fiscal. This goes to show that appellant has not been excluded from the use and enjoyment of a right; he simply did not know how to exercise his right.

We have now to consider appellant's motion to vacate the order of dismissal of criminal case No. 1 entered by the justice of the peace during the pendency of this appeal. The question to determine is whether the first order issued by the trial court, which may be considered as a temporary injunction, was ipso facto dissolved by the judgment dismissing the action, notwithstanding the appeal from said judgment and notwithstanding the absence of an express provision therein dissolving the injunction.

In an action for injunction, the judgment granting, dissolving, or denying an injunction is immediately operative, unless otherwise ordered by the court. (See section 4, Rule 39.) But in an action in which the writ of preliminary injunction has been issued as an auxiliary remedy, does the judgment of dismissal ipso facto dissolve the writ of preliminary injunction notwithstanding an appeal? In the cases of *Watson vs. Enriquez*, 1 Phil., 480, and *Sitia Teco vs. Ventura*, 1 Phil., 497, the trial court, in rendering judgment in favor of the defendants, dissolved the temporary injunction theretofore issued by it. This Court held that the dissolution was operative notwithstanding the appeal from the judgment. This Court quoted with approval from *Knox Company vs. Harshman*, 132 U.S., 14, that "when an injunction has been dissolved, it cannot be revived except by a new exercise of judicial power, and no appeal by a dissatisfied party can of itself revive it." It was also held in said cases that the trial court "has the power, if the purposes of justice require it, to order a continuance of the status quo until a decision should be made by the appellate court or until that court should order to the contrary."

In the instant case the trial court did not dissolve the temporary injunction it had issued. Thus, we have here the converse of the *Watson* and *Sitia Teco* cases. There it was held that once an injunction has been dissolved, it stays dissolved unless revived by another order. Here we have an injunction which has not been dissolved and which, therefore, should remain in force, unless otherwise ordered by the court, until the case is finally decided. In the instant case the appeal, which was expressly admitted by the trial court, would have been a moot case if the court

had dissolved the temporary injunction. That is evidently the reason why the trial court refrained from dissolving it in the order of dismissal. The injunction ordered the justice of the peace to suspend all further action in criminal case No. 1 "hasta nueva orden." We hold, therefore, that in view of the absention by the trial court from expressly dissolving the temporary injunction, and in view of the appeal from the judgment of dismissal, the temporary injunction was not dissolved but remained in force until the appeal was finally decided. Hence the actuations of the justice of the peace in violation of said injunction were null and void.

Wherefore, the judgment appealed from is affirmed, without prejudice to the right of the appellant to present a new complaint against Apolonio Jumarang and Geronimo Jumarang for either less serious physical injuries or serious physical injuries. No finding as to costs.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

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