

**LEONILO C. DONATO, PETITIONER, VS. HON. ARTEMON D. LUNA,
PRESIDING JUDGE, COURT OF FIRST INSTANCE OF MANILA,
BRANCH XXXII: HON. JOSE FLAMINIANO, CITY FISCAL OF MANILA;
PAZ B. AB...**

G.R. No. 53642. April 15, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

In this petition for certiorari and prohibition with preliminary injunction, the question for the resolution of the Court is whether or not a criminal case for bigamy pending before the Court of First Instance of Manila should be suspended in view of a civil case for annulment of marriage pending before the Juvenile and Domestic Relations Court on the ground that the latter constitutes a prejudicial question. The respondent judge ruled in the negative, We sustain him.

The pertinent facts as set forth in the records follow. On January 23, 1979, the City Fiscal of Manila acting thru Assistant City Fiscal Amado N. Cantor filed an information for bigamy against herein petitioner. Leonilo C. Donato with the Court of First Instance of Manila, docketed as Criminal Case No. 43554 and assigned to Branch XXXII of said court. The information was filed based on the complaint of private respondent Paz B. Abayan.

On September 28, 1979, before the petitioner's arraignment, private respondent filed with the Juvenile and Domestic Relations Court of Manila a civil action for declaration of nullity of her marriage with petitioner contracted on September 26, 1978, which action was docketed as Civil Case No. E-02627. Said civil case was based on the ground that private respondent consented to entering into the marriage, which was petitioner Donato's second one, since she had no previous knowledge that petitioner was already married to a certain Rosalinda R. Maluping on June 30, 1978. Petitioner Donato's answer in the civil case for nullity interposed the defense that his second marriage was void since it was solemnized without a marriage license and that force violence, intimidation and undue influence were employed by private respondent to obtain petitioner's consent to the marriage. Prior to the solemnization of the subsequent or second marriage, petitioner and private respondent had lived together and deported themselves as husband and wife without the benefit of wedlock for a period of at least five years as evidenced by a joint affidavit executed by them on September 26, 1978, for which reason, the requisite marriage license was dispensed with pursuant to Article 76 of the New Civil Code pertaining to marriages of exceptional character.

Prior to the date set for the trial on the merits of Criminal Case No. 43554, petitioner filed a motion to suspend the proceedings of said case contending that Civil Case No. E-02627 seeking the annulment of his second marriage filed by private respondent raises a prejudicial question which must first be determined or decided before the criminal case can proceed.

In an order dated April 7, 1980. Hon. Artemon D. Luna denied the motion to suspend the proceedings in Criminal Case No. 43554 for bigamy. Respondent judge's basis for denial is the ruling laid down in the case of Landico vs.

Relova.[1] The order further directed that the proceedings in the criminal case can proceed as scheduled.

A motion for reconsideration was filed by herein petitioner thru counsel citing as one of his grounds for suspension of proceedings the ruling laid down by this Court in the case of *De la Cruz vs. Ejercito*,[2] which was a much later case than that cited by respondent judge in his order of denial.

The motion for reconsideration of the said order was likewise denied in an order dated April 14, 1980, for lack of merit. Hence, the present petition for certiorari and prohibition with preliminary injunction.

A prejudicial question has been defined to be one which arises in a case, the resolution of which question is a logical antecedent of the issue involved in said case, and the cognizance of which pertains to another tribunal.[3] It is one based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined.[4] A prejudicial question usually comes into play in a situation where a civil action and a criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in a criminal case.[5]

The requisites of a prejudicial question do not obtain in the case at bar. It must be noted that the issue before the Juvenile and Domestic Relations Court touching upon the nullity of the second marriage is not determinative of petitioner Donato's guilt or innocence in the crime of bigamy. Furthermore, it was petitioner's second wife, the herein private respondent Paz B. Abayan who filed the complaint for annulment of the second marriage on the ground that her consent was obtained through deceit.

Petitioner Donato raised the argument that the second marriage should have been declared null and void on the ground of force threats and intimidation allegedly employed against him by private respondent only sometime later when he was required to answer the civil action for annulment of the second marriage. The doctrine elucidated upon by the case of *Landicho vs. Relova*[6] may be applied to the present case. Said case states that:

"The mere fact that there are actions to annul the marriages entered into by the accused in a bigamy case does not mean that 'prejudicial questions' are automatically raised in civil actions as to warrant the suspension of the criminal case. In order that the case of annulment of marriage be considered a prejudicial question to the bigamy case against the accused, it must be shown that the petitioner's consent to such marriage must be the one that was obtained by means of duress, force and intimidation to show that his act in the second marriage must be involuntary and cannot be the basis of his conviction for the crime of bigamy. The situation in the present case is markedly different. At the time the petitioner was indicted for bigamy on February 27, 1963, the fact that two marriage ceremonies had been contracted appeared to be indisputable. And it was the second spouse, not the petitioner who filed the action for nullity on the ground of force, threats and intimidation. And it was only on June 15, 1963, that petitioner, as defendant in the civil action, filed a third-party complaint against the first spouse alleging that his marriage with her should be declared null and void on the ground of force, threats and intimidation. Assuming that the first marriage was null and void on the ground alleged by petitioner, the fact would not be material to the outcome of the criminal case. Parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of the competent courts and only when the nullity of the marriage is so declared can it be held as void, and so long as there is no such declaration the presumption is that the marriage exists. Therefore, he who contracts a second marriage before the judicial declaration of nullity of the first marriage assumes the risk of being prosecuted for bigamy. The lower court therefore, has not abused, much less gravely abused, its discretion in failing to suspend the hearing as sought by petitioner."

In the case at bar, petitioner has not even sufficiently shown that his consent to the second marriage has been

obtained by the use of threats, force and intimidation.

Petitioner calls the attention of this Court to the fact that the case of *De la Cruz vs. Ejercito* is a later case and as such it should be the one applied to the case at bar. We cannot agree. The situation in the case at bar is markedly different. In the aforesaid case it was accused Milagros dela Cruz who was charged with bigamy for having contracted a second marriage while a previous one existed. Likewise, Milagros dela Cruz was also the one who filed an action for annulment on the ground of duress, as contradistinguished from the present case wherein it was private respondent Paz B. Abayan, petitioner's second wife, who filed a complaint for annulment of the second marriage on the ground that her consent was obtained through deceit since she was not aware that petitioner's first marriage was still subsisting. Moreover, in *De la Cruz*, a judgment was already rendered in the civil case that the second marriage of De la Cruz was null and void, thus determinative of the guilt or innocence of the accused in the criminal case. In the present case, there is as yet no such judgment in the civil case.

Pursuant to the doctrine discussed in *Landicho vs. Relova*, petitioner Donato cannot apply the rule on prejudicial questions since a case for annulment of marriage can be considered as a prejudicial question to the bigamy case against the accused only if it is proved that the petitioner's consent to such marriage was obtained by means of duress, violence and intimidation in order to establish that his act in the subsequent marriage was an involuntary one and as such the same cannot be the basis for conviction. The preceding elements do not exist in the case at bar.

Obviously, petitioner merely raised the issue of prejudicial question to evade the prosecution of the criminal case. The records reveal that prior to petitioner's second marriage on September 26, 1978, he had been living with private respondent Paz B. Abayan as husband and wife for more than five years without the benefit of marriage. Thus, petitioner's averments that his consent was obtained by private respondent through force, violence, intimidation and undue influence in entering a subsequent marriage is belied by the fact that both petitioner and private respondent executed an affidavit which stated that they had lived together as husband and wife without benefit of marriage for five years, one month and one day until their marital union was formally ratified by the second marriage and that it was private respondent who eventually filed the civil action for nullity.

Another event which militates against petitioner's contentions is the fact that it was only when Civil Case No. E-02627 was filed on September 28, 1979, or more than the lapse of one year from the solemnization of the second marriage that petitioner came up with the story that his consent to the marriage was secured through the use of force, violence, intimidation and undue influence. Petitioner also continued to live with private respondent until November 1978, when the latter left their abode upon learning that Leonilo Donato was already previously married.

In the light of the preceding factual circumstances, it can be seen that the respondent Judge did not err in his earlier order. There is no pivotal issue that must be preemptively resolved in Civil Case No. E-02627 before proceedings in the criminal action for bigamy can be undertaken.

Accordingly, there being no prejudicial question shown to exist, the order of denial issued by the respondent judge dated April 14, 1980 should be sustained.

WHEREFORE, in view of the foregoing, the instant petition is hereby DISMISSED for lack of merit. We make no pronouncement as to costs.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Griño-Aquino, JJ., concur.

[1] 22 SCRA 731.

[2] 68 SCRA 1.

[3] People vs. Aragon, 94 Phil. 357; Isip vs. Gonzales, 39 SCRA 255; Rojas vs. People, 57 SCRA 243.

[4] Librado vs. Coscolluela, Jr., 116 SCRA 303.

[5] Ibid.

[6] 22 SCRA 73.

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