

NILO A. MALANYAON, PETITIONER-APPELLANT, VS. HON. ESTEBAN M. LISING, AS JUDGE OF THE CFI OF CAMARINES SUR, BR. VI, AND CESARIO GOLETA, AS MUNICIPAL TREASURER OF BULA, CAMARINES ...

G.R. No. 56028. July 30, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

The question which is presented to Us for resolution in this petition for review concerns the interpretation of Section 13 of R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act which stipulates:

"Sec. 13. Suspension and loss of benefits. - Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him."

The facts are stated in the Order dated October 3, 1980, of the respondent judge:

"The late Mayor S.B. Pontanal is one of the accused in Criminal Case No. P-339 for Violation of the Anti-Graft and Corrupt Practices Act. Upon the filing of the case against him in court and after hearing, he was suspended from office and during his incumbency he died. Due to his death the charge against him in Criminal Case No. P-339 was dismissed. Petitioner now contends that any disbursement of funds by the respondent, Cesario Goleta, in his capacity as Municipal Treasurer in favor of the heirs of the late Mayor for salaries corresponding to the period he was under suspension and other benefits will be illegal and contrary to the provisions of Section 13 because said late Mayor S.B. Pontanal was not acquitted of the charge against him."

Nilo A. Malanyaon, the petitioner, was formerly a member of the Sangguniang Bayan of Bula, Camarines Sur. He filed an action "to declare illegal the disbursement made by Cesario Goleta as Municipal Treasurer of the Municipality of Bula, Camarines Sur, to Venancia Pontanal, widow of the late Mayor S.B. Pontanal, in the amount of P5,000.00 representing a portion of the salary of the late Mayor as such mayor of said municipality during the period of his suspension from August 16, 1977 up to November 28, 1979, and to restrain or prevent respondent Cesario Goleta as such Municipal Treasurer of the aforementioned municipality from further paying or disbursing the balance of the claim." (Par. 1 of the Order, *supra*.) However, the respondent judge dismissed the action on the ground that "the criminal case against the late Mayor S.B. Pontanal due to his death amounted to acquittal."

We grant the petition and set aside the Order of the court *a quo*.

It is obvious that when the statute speaks of the suspended officer being "acquitted" it means that after due hearing and consideration of the evidence against him the court is of the opinion that his guilt has not been proved beyond

reasonable doubt. Dismissal of the case against the suspended officer will not suffice because dismissal does not amount to acquittal. As aptly stated in *People v. Salico*, 84 Phil. 722, 732-733[1949]:

"Acquittal is always based on the merits, that is, the defendant is acquitted because the evidence does not show that defendant's guilt is beyond a reasonable doubt; but dismissal does not decide the case on the merits or that the defendant is not guilty. Dismissal terminates the proceeding, either because the court is not a court of competent jurisdiction, or the evidence does not show that the offense was committed within the territorial jurisdiction of the court, or the complaint or information is not valid or sufficient in form and substance, etc. The only case in which the word dismissal is commonly but not correctly used, instead of the proper term acquittal, is when, after the prosecution has presented all its evidence, the defendant moves for the dismissal and the court dismisses the case on the ground that the evidence fails to show beyond a reasonable doubt that the defendant is guilty; for in such case the dismissal is in reality an acquittal because the case is decided on the merits. If the prosecution fails to prove that the offense was committed within the territorial jurisdiction of the court and the case is dismissed, the dismissal is not an acquittal, inasmuch as if it were so the defendant could not be again prosecuted before the court of competent jurisdiction; and it is elemental that in such case the defendant may again be prosecuted for the same offense before a court of competent jurisdiction."

Respondents invoke Art. 81, No. 1 of the Revised Penal Code which provides that "Death of the accused pending appeal extinguishes his criminal and civil liability." We do not see the relevance of this provision to the case at bar. For one thing the case against Mayor Pontanal was not on appeal but on trial. For another thing the claim for back salaries is neither a criminal nor a civil liability. It is in fact a right provided the conditions of the law are present.

WHEREFORE, finding the petition to be well-taken, the same is hereby granted, the order of the court a quo is hereby set aside and another one is entered declaring illegal the payment of municipal funds for the salaries of the late Mayor S.B. Pontanal during his suspension from office and ordering the respondent treasurer to retrieve payments so far disbursed. No pronouncement as to costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., and De Castro, JJ., concur.

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