

TEODULO M. PALMA, SR., PETITIONER, VS. HON. CARLOS O. FORTICH, AS GOVERNOR OF BUKIDNON, AND THE SANGGUNIAN PANLALAWIGAN OF BUKIDNON, RESPONDENTS.

G.R. No. 59679. January 29, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for Certiorari and Prohibition with prayer for Preliminary Injunction seeking: (a) to prohibit the respondents from continuing with the hearing and investigation of Administrative Case No. 2 filed by respondent Governor of Bukidnon against petitioner Mayor Teodulo M. Palma, Sr. of the Municipality of Don Carlos, Province of Bukidnon and (b) to nullify Resolution No. 82-87 passed by respondent Sangguniang Panlalawigan of Bukidnon, suspending him from office.

The undisputed facts of this case are:

On March 30, 1981, the Assistant Provincial Fiscal Vivencio P. Estrada of Bukidnon, at the instance of the offended parties Nelia Arandel, Clerk-typist and Susan Palamine, Clerical Aide, both of the Office of the Mayor of the Municipality of Don Carlos, Province of Bukidnon, filed with the Court of First Instance of the same province, Criminal Cases Nos. 2795, 2796 and 2797 against petitioner Teodulo M. Palma, Sr., the duly elected and qualified Mayor of said Municipality.

By virtue of the aforesaid three (3) separate cases, said offended parties in a sworn joint letter complaint, requested respondent Provincial Governor for an immediate administrative investigation for the purpose of suspending Mayor Palma from office pending final determination of these cases. (Rollo, p. 6). Attached to said letter are: three (3) copies of the Information for Acts of Lasciviousness against the Mayor (Annexes "B", "C" and "D"; Petition, Rollo, pp. 7-9); the statements of the offended parties (Annexes "1-A" and "2"; Comment, Rollo, pp. 30-34; Respondent's Brief, p. 3, Rollo, p. 60). Treating the same as a formal letter complaint, respondent Governor formally informed the Mayor of the administrative charge against him for Misconduct in Office (Annex "E", Petitioner; Rollo, p. 10). Forthwith, the record of the administrative case against the Mayor was forwarded to the Sangguniang Panlalawigan of the province of Bukidnon. Said body, after receipt thereof, set the case for hearing on April 13, 1981 (Annex "F", Petition, Rollo, p. 11). After the hearing where complainants were required to testify and then cross-examined by petitioner's counsel, the former petitioned for the preventive suspension of the Mayor which was granted by respondent Sangguniang Panlalawigan in its Resolution No. 82-87 (Annex "G", Petition, Rollo, p. 42).

The Mayor accepted his preventive suspension from office as shown in his Office Order dated February 15, 1982 (Annex "3", Comment of Respondent; Rollo, p. 35). Nonetheless, he filed this petition.

In the resolution of April 24, 1982 of the First Division of this Court (Rollo, p. 14), respondents were required to comment on the petition. The same was filed on May 3, 1982 (Rollo, pp. 25-35) while on June 14, 1982 petitioner filed an urgent motion for immediate issuance of Temporary Restraining Order (Rollo, pp. 37-39). In the

resolution of June 16, 1982 (Rollo, p. 40) the motion of petitioner to file therein a reply (Rollo, pp. 19-23) to respondents' comment was granted; the petition was given due course and a temporary restraining order was issued enjoining the respondents from continuing with the hearing and/or investigation of the administrative case and from enforcing the order of suspension against petitioner. Petitioner's brief was filed on September 9, 1982 (Rollo, p. 57) while respondents' brief was filed on September 27, 1982 (Rollo, p. 60). On October 1, 1982, the offended parties moved (Rollo, pp. 62-64) for intervention and for admission of their attached brief (Rollo, p. 66) which was granted and the aforesaid brief noted in the resolution of October 20, 1982 (Rollo, p. 68). Thereafter, the case was calendared for decision. (Rollo, p. 67).

The only issue raised in Petitioner's Brief is as follows:

WHETHER OR NOT THE FILING AND PENDENCY OF THE AFORESAID THREE (3) SEPARATE INFORMATION FOR "ACTS OF LASCIVIOUSNESS" AGAINST AN ELECTIVE LOCAL OFFICIAL WOULD CONSTITUTE "MISCONDUCT IN OFFICE" WITHIN THE MEANING OF SECTION 5 OF REPUBLIC ACT NO. 5185 WHICH MAY WARRANT THE FILING OF AN ADMINISTRATIVE COMPLAINT AGAINST HIM AND/OR HIS SUSPENSION FROM OFFICE.

There appears to be no controversy as to the filing of the criminal cases against the petitioner. The principal issue centers on the filing of the administrative case and consequent preventive suspension of petitioner based solely on the filing of the above-mentioned criminal cases.

Petitioner contends that "Acts of Lasciviousness" although how numerous, do not fall within the category of "malfeasance and misfeasance" or "misconduct in the office" contemplated in Section 5 of R.A. No. 5185, and therefore cannot be the basis of the filing of a separate administrative case against an elective official and the preventive suspension of the latter.

Respondents, alleging otherwise, maintain that the lascivious acts of the petitioner constitute misconduct under Article XIII, Section 1 of the 1973 Constitution, re: "Accountability of Public Officers."

However, on September 1, 1983, petitioner filed a Manifestation and Prayer (Rollo, pp. 69-71) informing this Court that the three criminal cases filed against him were all dismissed by the Regional Trial Court of Bukidnon, Branch X in an Order dated February 24, 1983. (Annex "A", Rollo, pp. 72-79). Thus, on the premise that the administrative case in question as well as the resulting preventive suspension is now bereft of any legal basis, petitioner now prays that judgment be rendered in accordance with his prayer in the petition.

But, before the instant petition could be decided by the Supreme Court, the Provisional Constitution also known as the Freedom Constitution was promulgated in Proclamation No. 3, dated March 25, 1986, by President Corazon C. Aquino.

Article III, Section 2 thereof, reads:

"All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successors, if such is made within a period of one year from February 25, 1986."

Under the above quoted provision of the Freedom Constitution, an incumbent Mayor, elected under the 1973 Constitution may be replaced by an "Officer-in-charge a specie of successor considered as within the ambit of the provision." (G.R. No. 73770, Topacio, Jr. v. Pimentel; G.R. No. 73811, Velasco v. Pimentel; G.R. No. 73823, Governors of the Phil. v. Pimentel; G.R. No. 73940, The Municipal Mayors League of the Phil., et al. v. Pimentel; and G.R. No. 73970, Solis v. Pimentel, et al., RESOLUTION; Court En Banc dated April 10, 1986).

Coming back to the case at bar, it appears from the records of the Ministry of Local Government that petitioner

who was obviously elected under the 1973 Constitution, has been replaced by OIC Fabian Gardones as Mayor of Don Carlos, Cagayan.

Thus, the question now confronting the Court, is whether or not, under the succeeding developments, the issue in the case at bar has become moot and academic.

As a general rule, dismissal of an administrative case does not necessarily follow the dismissal of a criminal case, the former requiring as it does, only preponderance of evidence while the latter requires proof beyond reasonable doubt.

However, in administrative actions against municipal officers, the Supreme Court in *Festijo v. Crisologo, et al.* (17 SCRA 868, 869 [1966]), classified the grounds for suspension under two categories, namely: (1) those related to the discharge of the functions of the officer concerned (neglect of duty, oppression, corruption or other forms of maladministration of office) and (2) those not so connected with said functions. Under the second category, when the crime involving moral turpitude is not linked with the performance of official duties, conviction by final judgment is required as a condition precedent to administrative action.

The ground for filing of the administrative action in the case at bar and the suspension of petitioner Mayor is misconduct allegedly committed in the form of lascivious acts of the latter.

Misconduct has been defined as "such as affects his performance of his duties as an officer and not only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer." (*Lacson v. Roque, et al.*, 92 Phil. 456).

Now, as to whether or not, such misconduct of petitioner affects his performance of his duties as an officer and not only his character as a private individual, has been laid to rest by the ruling of the Supreme Court in an analogous case where it was held that while "it is true that the charges of rape and concubinage may involve moral turpitude of which a municipal official may be proceeded against x x x but before the provincial governor and board may act and proceed against the municipal official, a conviction by final judgment must precede the filing by the provincial governor of the charges and trial by the provincial board." (*Mindano v. Silvosa, et al.*, 97 Phil. 144-145 [1955]).

Indeed, there is merit in petitioner's contention that the same ruling applies to acts of lasciviousness which falls under the same classification as crimes against chastity. In the instant case, not only is a final judgment lacking, but the criminal cases filed against the petitioner were all dismissed by the trial court, for insufficiency of evidence, on the basis of its findings that the attendant circumstances logically point to the existence of consent on the part of the offended parties. (Order, Crim. Cases Nos. 2795, 2796 and 2797, RTC, Br. X, Malaybalay, Bukidnon, Rollo, pp. 77-79). Under the circumstances, there being no showing that the acts of petitioner Mayor are linked with the performance of official duties such as "neglect of duty, oppression, corruption, or other form of maladministration of office" (*Festijo v. Crisologo, et al.*, supra, pp. 872-873), there appears to be no question that the pending administrative case against him should be dismissed for lack of basis and the restraining order issued by the Court should be made permanent.

Nonetheless, the replacement of petitioner Mayor by the Officer-in-Charge Fabian Gardones has rendered the issues of removal and suspension from office, moot and academic.

PREMISES CONSIDERED, judgment is hereby rendered DISMISSING: (a) the administrative case filed against the petitioner for lack of basis and (b) subject petition for having become moot and academic.

SO ORDERED.

Fernan, (Chairman), Alampay, Gutierrez, Jr., Padilla, and Bidin, JJ., concur.

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