

**REPUBLIC OF THE PHILIPPINES & TRADERS ROYAL BANK,
PETITIONERS, VS. ELFREN PARTISALA AND HON. MIDPANTAO L.
ADIL, IN HIS CAPACITY AS PRESIDING JUDGE OF THE 2ND BRANCH
OF THE COURT...**

G.R. No. 61997. November 15, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a special civil action for certiorari. Off-hand it can be said that the petition is frivolous. It was also filed in the wrong court — the Court of Appeals. True the Court of Appeals has "original jurisdiction to issue writs of mandamus, prohibition, injunction, certiorari, habeas corpus, and all other auxiliary writs and process in aid of its appellate jurisdiction" (Sec. 30, Judiciary Act, as amended) but true also is that the Supreme Court has exclusive jurisdiction on final judgments and decrees of inferior courts in "cases in which only errors or questions of law are involved." (Sec. 17, *idem.*) This is such a case so that the Court of Appeals had to certify it to Us.

In Criminal Case No. 10997 of the Court of First Instance of Iloilo, Elfren Partisala was accused of estafa upon complaint of his employer The Traders Royal Bank. He pleaded guilty and was forthwith "sentenced to suffer an indeterminate imprisonment of from Four (4) Years, two (2) Months and One (1) Day, minimum, to Six (6) Years of prison correccional, maximum, together with all the accessory penalties provided for by law and to pay the costs." He was also ordered to reimburse to the bank the amount malversed. Immediately after he was sentence, Partisala filed an application for probation. Three weeks later, an assistant provincial fiscal and the private prosecutor opposed the application for probation. They argued that Partisala can best be rehabilitated in prison and if he is set free he might commit other crimes. There followed a reply to the opposition; a supplement to the opposition; a memorandum to support the application; and a rejoinder to the reply. So far, so good.

But before the trial judge could act on the application which appears to have attracted attention beause the Sangguniang Bayan of Calinog, Iloilo, in special session passed a resolution wherein it "RESOLVED to manifest, as this Body do hereby manifest, the alarm and vehement sentiment of the people of this Municipality over the reprehensible conduct of Elfren Partisala for his abstraction and misappropriation of the peoples' savings and deposits and other funds of the Calinog Branch of the Traders Royal Bank," the Acting Provincial Fiscal no less intervened. He sought to educate the trial judge by filing a "MOTION TO CORRECT ERROR IN COMPUTATION OF PENALTY AND TO HOLD IN ABEYANCE PETITION FOR PROBATION." He advanced the proposition that Partisala should have been sentenced to a penalty higher than six years which would then make him ineligible for probation. (Sec. 9, par. a, Probation Law, as amended.) But even the learned fiscal was not absolutely certain as to the correct penalty. Firstly, he said the penalty "is between 6 years, 8 months, 21 days to 8 years." But alternatively he said that the imposable penalty can also "be in the medium period of prison mayor, which has a range of from 8 years 1 day to 10 years." He asked that the sentenced imposed on Partisala be "corrected."

Predictably, the trial judge denied the motion. He gave two reasons for the denial, namely:

"1. The motion is in the nature of a motion for reconsideration. As such it should have been filed before the sentence of the accused became final. It is elementary that a motion for reconsideration should be based on the same grounds as those for a new trial for the two remedies are the same. Under Rule 121, Section 1, a motion for new trial should be filed before the finality of a conviction.

"Under P.D. No. 968, the Probation Law, a convict who files a petition for probation automatically waives his right to appeal and therefore his conviction becomes final. Therefore, the instant motion is filed out of time.

"2. The motion, if granted will place the accused in double jeopardy. (People vs. Taruc, G.R. No. L-8229, Nov. 28, 1955; People vs. Ang Cho Kio, L-6687-6688)."

A motion for reconsideration was filed but denied. In the meantime, the trial judge granted Partisala's application for probation.

The instant petition prays that the orders of the trial judge denying the motion to correct, denying the motion to reconsider the denial, and granting the application for probation be annulled; that the correct penalty be imposed on Partisala; and that his application for probation be denied.

We do not have to decide whether or not the penalty which the trial judge imposed on Partisala is correct. For correct or not, it is a valid sentence because the trial judge had jurisdiction to impose it. So for the reasons given by him when he denied the motion to correct, the sentence was already beyond his reach, including this Court.

It is to be noted the Republic of the Philippines is one of the petitioners herein. The one who signed the petition for the Republic is a mere second assistant provincial fiscal, albeit he is the Officer-in-Charge of the Iloilo Provincial Fiscal's Office. We make it known that only the Solicitor General can bring or defend actions on behalf of the Republic of the Philippines. Henceforth actions filed in the name of the Republic of the Philippines if not initiated by the Solicitor General will be summarily dismissed.

WHEREFORE, the petition is dismissed for lack of merit. The preliminary injunction which was issued by the Court of Appeals is hereby dissolved. No costs.

SO ORDERED.

Makasiar, Concepcion, Jr., Guerrero, Escolin, Relova and Gutierrez, Jr., JJ., concur.
Fernando, C.J., De Castro, Melencio-Herrera, Plana and Vasquez, JJ., in the result.
Aquino, J., the People of the Philippines not the Republic, should be the petitioner.
Teehankee, J., took no part.

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