

**MANUEL V. BALA, PETITIONER, VS. THE HON. JUDGE ANTONIO M. MARTINEZ, THE PEOPLE OF THE PHILIPPINES, AND PAUL AYANG-ANG, PROBATION OFFICER, MANILA PROBATION OFFICE NO. 4, RESPONDE...**

*G.R. No. 67301. January 29, 1990*

Ponente: SARMIENTO, J.

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**SARMIENTO, J.:**

The petitioner by this Petition for Certiorari and Prohibition with Preliminary Injunction and/or Temporary Restraining Order seeks the reversal of the order dated April 2, 1984 of the then Court of First Instance (CFI), now Regional Trial Court (RTC), of Manila, Branch XX.[1] The decretal portion of the assailed order reads:

WHEREFORE, for the reasons above-stated, the motion to dismiss and/or strike out motion to revoke probation, filed by Manuel Bala, thru counsel, should be, as it is hereby DENIED, for lack of merit.

Let the motion be set for continuation of hearing on April 25 & 27, at 8:30 o'clock in the morning.

SO ORDERED.

The petitioner had been indicted for removing and substituting the picture of Maria Eloisa Criss Diazen which had been attached to her United States of America passport, with that of Florencia Notarte, in effect falsifying a genuine public or official document. On January 3, 1978, the trial court adjudged petitioner Manuel Bala in Criminal Case No. 24443, guilty of the crime of falsification of a public document. The dispositive portion of the judgment states:

WHEREFORE, in view of the foregoing, the Court finds the accused Manuel Bala y Valdellon guilty beyond reasonable doubt of the crime of falsification of a public or official document defined and penalized under article 172 of the Revised Penal Code, without any mitigating or aggravating circumstances. Applying the Indeterminate Sentence Law, he is hereby sentenced to an indeterminate penalty of not less than ONE (1) YEAR AND ONE (1) DAY and not exceeding THREE (3) YEARS, SIX (6) MONTHS & TWENTY-ONE (21) DAYS of prison correccional, to pay a fine of P1,800.00 with subsidiary imprisonment in case of insolvency at the rate of P8.00 for each day, and to pay the cost. He shall be credited with the period of preventive imprisonment that he may have undergone in accordance with law.

The petitioner seasonably appealed, but the Court of Appeals, on April 9, 1980, affirmed in toto the lower court's decision.

After the case had been remanded to the court of origin for execution of judgment,[2] the petitioner applied for and was granted probation by the respondent judge in his order dated August 11, 1982. The petitioner was then placed under probation for a period of one (1) year, subject to the terms and conditions enumerated therein.

On September 23, 1982, the probationer (petitioner) asked his supervising probation officer for permission to transfer his residence from BF Homes to Phil-Am Life Subdivision in Las Piñas, specifically 33 Jingco Street.

The probation officer verbally granted the probationer's request as he found nothing objectionable to it.

By the terms of the petitioner's probation, it should have expired on August 10, 1983,[3] one year after the order granting the same was issued. But, the order of final discharge could not be issued because the respondent probation officer had not yet submitted his final report on the conduct of his charge.

On December 8, 1983, respondent People of the Philippines, through Assistant City Fiscal Jose D. Cajucom of Manila, filed a motion to revoke the probation of the petitioner before Branch XX of the Regional Trial Court (RTC) of Manila, presided over by the respondent judge.[4] The motion alleged that the petitioner had violated the terms and conditions of his probation.

On January 4, 1984, the petitioner filed his opposition to the motion on the ground that he was no longer under probation,[5] his probation period having terminated on August 10, 1983, as previously adverted to. As such, no valid reason existed to revoke the same, he contended.

As if to confirm the Manila Assistant City Fiscal's motion to revoke the petitioner's probation, the respondent probation officer filed on January 6, 1984, a motion to terminate Manuel Bala's probation, at the same time attaching his progress report on supervision dated January 5, 1984.[6] The same motion, however, became the subject of a "Manifestation," dated January 30, 1984, which stated that the probation officer was not pursuing the motion to terminate dated January 6, 1984; instead, he was submitting a supplemental report[7] which recommended the revocation of probation "in the light of new facts, information, and evidences."

Thereafter, the petitioner filed a motion to dismiss and/or strike out the motion to revoke probation, questioning the jurisdiction of the court over his case inasmuch as his probation period had already expired. Moreover, his change or residence automatically transferred the venue of the case from the RTC of Manila to the Executive Judge or the RTC of Makati which latter court includes under its jurisdiction the Municipality of Las Piñas, the probationer's place of residence, invoking Section 13, P.D. No. 968, which provides:

Sec. 13. Control and Supervision of Probationer. x x x

Whenever a probationer is permitted to reside in a place under the jurisdiction of another court, control over him shall be transferred to the Executive Judge of the Court of First Instance of that place, and in such a case, a copy of the probation order, the investigation report and other pertinent records shall be furnished to said Executive Judge. Thereafter, the Executive Judge to whom jurisdiction over the probationer is transferred shall have the power with respect to him that was previously possessed by the court which granted the probation.

As stated at the outset, the respondent judge denied the motion to dismiss for lack of merit.

Hence, this petition.

The present law on probation, Presidential Decree (P.D.) 1990, which amends section 4 of P.D. 968, clearly states that "no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction."

However, in the case at bar, P.D. 1990 is inapplicable. P.D. 1990 which went in force on January 15, 1985 can not be given retroactive effect because it would be prejudicial to the accused.

It is worthy to note, that what was actually resolved and denied was the motion to dismiss and/or strike out the motion to revoke probation which disposed of only the issue of the petitioner's transfer of residence. The motion did not touch on the issue of the timeliness to revoke probation. The respondent judge has not yet heard and received evidence, much less acted on the matter. Accordingly, the Solicitor General submits that the present petition is premature.

The Court finds no merit in the petition.

Probation is revocable before the final discharge of the probationer by the court, contrary to the petitioner's submission.

Section 16 of PD 968[8] is clear on this score:

Sec. 16. Termination of Probation. — After the period of probation and upon consideration of the report and recommendation of the probation officer, the court may order the final discharge of the probationer upon finding that he has fulfilled the terms and conditions of his probation and thereupon the case is deemed terminated.

Thus, the expiration of the probation period alone does not automatically terminate probation. Nowhere is the ipso facto termination of probation found in the provisions of the probation law. Probation is not co-terminous with its period. There must first be issued by the court of an order of final discharge based on the report and recommendation of the probation officer. Only from such issuance can the case of the probationer be deemed terminated.

The period of probation may either be shortened or made longer, but not to exceed the period set in the law. This is so because the period of probation, like the period of incarceration, is deemed the appropriate period for the rehabilitation of the probationer. In the instant case, a review of the records compels a revocation or the probation without the need of further proceedings in the trial court which, after all, would only be an exercise in futility. If we render justice now, why should we allow the petitioner to further delay it. Probationer Manuel Bala failed to reunite with responsible society. Precisely he was granted probation an order to give him a chance to return to the main stream, to give him hope — hope for self-respect and a better life. Unfortunately, he has continued to shun the straight and narrow path. He thus wrecked his chance. He has not reformed.

A major role is played by the probation officer in the release of the probationer because he (probation officer) is in the best position to report all information relative to the conduct and mental and physical condition of the probationer in his environment, and the existing institutional and community resources that he may avail himself of when necessary. Indeed, it is the probation officer who primarily undertakes the supervision and reform of the probationer through a personalized, individualized, and community-based rehabilitation program for a specific period of time. On the basis of his final report, the court can determine whether or not the probationer may be released from probation.

We find it reprehensible that the respondent probation officer had neglected to submit his report and recommendation. For, as earlier discussed, without this report, the trial court could not issue the order of final discharge of the probationer. And it is this order of final discharge which would restore the probationer's suspended civil rights. In the absence of the order of final discharge, the probation would still subsist, unless otherwise revoked for cause and that is precisely what we are going to do. We are revoking his probation for cause.

The petitioner, by applying for probation and getting it, consented to be emancipated from the yoke if not stigma of a prison sentence, pledging to faithfully comply with the conditions of his probation, among which are:

x x x

4. To be gainfully employed and be a productive member of society;

x x x

6. To cooperate fully with his program of supervision and rehabilitation that will be prescribed by the

Probation Officer."[9]

These conditions, as the records show, were not complied with. This non-compliance has defeated the very purposes of the probation law, to wit:

- (a) promote the correction and rehabilitation of an offender by providing him with individualized treatment;
- (b) provide an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence; and
- (c) prevent the commission of offenses.[10]

By his actuations, probationer-petitioner Manuel V. Bala has ridiculed the probation program. Instead of utilizing his temporary liberty to rehabilitate and reintegrate himself as a productive, law abiding, and socially responsible member of society, he continued in his wayward ways — falsifying public or official documents.

Specifically, on April 30, 1984, the Regional Trial Court of Manila, National Capital Judicial Region, Branch XXX, convicted the petitioner, along with two other persons, Lorenzo Rolo y Punzalan and Efren Faderanga y Fesalbon, for falsification of public and/or official documents (U.S. Passports), under Article 172, in relation to Article 171, of the Revised Penal Code, in five separate informations, in Criminal Cases Nos. 29100, 29101, 29102, 29103, and 29107. The trial court imposed upon each of them in all five (5) cases a prison term of "two (2) years of prision correccional, as minimum, to four (4) years also of prision correccional, as maximum, to pay a fine of P2,000, the accessory penalties thereof, and to pay the costs." On appeal, the Court of Appeals affirmed the judgment of the RTC with modification by granting restitution of the amounts they collected from the offended private parties. The judgment has since become final. As a matter of fact, for failure of the petitioner to appear for execution of judgment despite notice, the trial court ordered the arrest of Manuel Bala on July 10, 1989. A warrant of arrest against Bala was issued on July 12, 1989 and this warrant has not yet been implemented because Bala absconded. These facts are evident and constitute violations of the conditions of his probation. Thus, the revocation of his probation is compelling.

At any time during probation, the court may issue a warrant for the arrest of a probationer for violation of any of the conditions of probation. The probationer, once arrested and detained, shall immediately be brought before the court for a hearing which may be informal and summary, of the violation charged. x x x If the violation is established, the court may revoke or continue his probation and modify the conditions thereof. If revoked, the court shall order the probationer to serve the sentence originally imposed. An order revoking the grant of probation or modifying the terms and conditions thereof shall not be appealable.[11]

(Emphasis supplied.)

The probation having been revoked, it is imperative that the probationer be arrested so that he can serve the sentence originally imposed. The expiration of the probation period of one year is of no moment, there being no order of final discharge as yet, as we stressed earlier. Neither can there be a deduction of the one year probation period from the penalty of one year and one day to three years, six months, and twenty-one days of imprisonment because an order placing the defendant on "probation" is not a "sentence," but is in effect a suspension of the imposition of the sentence.[12] It is not a final judgment but an "interlocutory judgment" in the nature of a conditional order placing the convicted defendant under the supervision of the court for his reformation, to be followed by a final judgment of discharge, if the conditions of the probation are complied with, or by a final judgment if the conditions are violated."[13]

Lastly, probation is a mere privilege. Privilege is a peculiar benefit or immunity conferred by law on a person or group of persons, not enjoyed by others or by all; special enjoyment of a good or exemption from an evil; it is a

special prerogative granted by law to some persons.[14] Accordingly, the grant of probation rests solely upon the discretion of the court. This discretion is to be exercised primarily for the benefit of organized society, and only incidentally for the benefit of the accused.[15] If the probationer has proven to be unrepentant, as in the case of the petitioner, the State is not barred from revoking such a privilege. Otherwise, the seriousness of the offense is lessened if probation is not revoked.

On the second assigned error, the petitioner argues that his transfer of residence automatically transferred jurisdiction over his probation from the Manila Regional Trial Court to the same court in his new address.

We disagree.

In criminal cases, venue is an element of jurisdiction.[16] Such being the case, the Manila RTC would not be deprived of its jurisdiction over the probation case. To uphold the petitioner's contention would mean a depreciation of the Manila court's power to grant probation in the first place. It is to be remembered that when the petitioner-accused applied for probation in the then CFI of Manila, he was a resident of Las Piñas, as he is up to now, although in a different subdivision. As pointed out earlier, he merely moved from BF Homes to Philam Life Subdivision, 33 Jingco Street, also in Las Piñas.[17] On the other hand, pursuing the petitioner's argument on this score to the limits of its logic would mean that his probation was null and void in the first place, because then the Manila CFI was without jurisdiction to grant him probation as he was a resident of Las Piñas.

It is therefore incorrect to assume that the petitioner's change of abode compels change of venue, and necessarily, control over the petitioner, to the Executive Judge of the RTC of his new residence. Thus, in the apportionment of the regional trial courts under Batas Pambansa Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980, Las Piñas is one among the municipalities included in the National Capital Judicial Region (Metro Manila) with a seat at Makati.[18] Needless to say, the Regional Trial Court in Makati, like the Manila Regional Trial Court, forms part of the Regional Trial Court of the National Capital Region.[19] Accordingly, the various branches of the regional trial courts of Makati or Manila under the National Capital Region, are coordinate and co-equal courts, the totality of which is only one Regional Trial Court. Jurisdiction is vested in the court, not in the judges. In other words, the case does not attach to the branch or judge.[20] Therefore, in this case, RTC Branch XX of Manila, which granted the probation, has not lost control and supervision over the probation of the petitioner.

The petitioner also claims that he had verbally obtained permission to transfer residence from his probation officer. This would not suffice; the law is very explicit in its requirement of a prior court approval in writing. Section 10 of PD 968 categorically decrees that the probationer must

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(j) reside at premises approved by it (court) and not to change his residence without its prior written approval;

\* \* \*

Further, such written approval is required by the[21] probation order of August 11, 1982 as one of the conditions of probation, to wit:

(3) To reside in BF Homes, Las Piñas and not to change said address nor leave the territorial jurisdiction of Metro Manila for more than twenty-four (24) hours without first securing prior written approval of his Probation Officer.

In the light of all the foregoing and in the interest of the expeditious administration of justice, we revoke the probation of the petitioner for violations of the conditions of his probation, instead of remanding the case to the

trial court and having the parties start all over again in needless protracted proceedings.[22]

WHEREFORE, the Petition is DISMISSED and the probation of the petitioner is hereby REVOKED. Further, the trial court is ORDERED to issue a warrant for the arrest of the petitioner and for him to serve the sentence originally imposed without any deduction. Costs against the petitioner.

**SO ORDERED.**

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

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[1] Judge Antonio M. Martinez, presiding.

[2] Rollo, 3.

[3] Id., 8.

[4] Id., 156.

[5] Id., 156.

[6] Id., 127.

[7] Id., 89.

[8] P.D. 968 (1976), Section 8.

[9] Order, Crim. Case No. 24443, dated August 11, 1982, rollo, 24.

[10] P.D. No. 968, sec. 2.

[11] Id., sec. 15.

[12] Baclayon v. Mutia, G.R. No. 59298, April 30, 1984, 129 SCRA 148.

[13] Supra, 154.

[14] WORDS AND PHRASES, Vol. 33, p. 734.

[15] Tolentino v. Alconcel, G.R. No. 63400, March 18, 1983, 121 SCRA 92.

[16] Ragpala v. Tubod, G.R. No. 15375, 109 Phil. 373.

[17] Rollo, 29.

[18] BP 129, sections 13 and 14.

[19] Id., section 13.

[20] Bacalso vs. Ramolete, G.R. No. L-22488, October 26, 1967, 21 SCRA 519, 524.

[21] Rollo, 137.

[22] Lianga Bay Logging Co., Inc. v. C.A., G.R. No. L-37783, January 28, 1988, 157 SCRA 357.

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