

NICOLAS NUÑEZ Y ENRILE, PETITIONER, VS. THE HON. CHAS. A. LOW, RESPONDENT.

G.R. No. 6760. March 29, 1911

Ponente: TRENT, J.

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TRENT, J.:

This is an original application made in this court, praying for a writ of certiorari, directing the clerk of the Court of First Instance of the Moro Province to certify to this court for review the entire record of a certain case entitled "The United States of America vs. Edward Dworak," charged with the crime of illegal detention and for a preliminary injunction against the respondent, the Hon. Chas. A. Low, judge of the Court of First Instance for said province, during the pendency of this action.

The only question presented by the petition at this time is whether or not the petitioner is entitled to a preliminary injunction; that is, whether the facts are sufficient to justify this court in restraining the respondent judge, by the extraordinary equitable remedy of certiorari, from proceeding with that criminal case which is pending before him.

From the petition presented and the exhibits which form a part thereof the following facts appear:

In the month of June, 1910, Edward Dworak, Captain of Philippine Scouts, U. S. Army, was stationed and in command of troops at the barrio of Isabela, municipality of Zamboanga, Moro Province, and at the same time acting councilman for said barrio. On the 9th of that month Captain Dworak received from the wife of one Doroteo Saavedra a verbal complaint that she had been illtreated by her husband. Thereupon the captain ordered Saavedra to appear before him. Saavedra declined to obey this order. Captain Dworak then proceeded to Saavedra's house, placed him under arrest, and took him to the captain's office where an investigation was made which was followed by an order given by the captain directing Saavedra to be confined in the local jail or guardhouse for the period of fifteen days and to pay a fine of P15. This order was carried into effect by the troops under the captain's command. After Saavedra had served the fifteen days' confinement and paid the fine he was released. Subsequently thereto and on the 3d of August of the same year the said Saavedra filed in the Court of First Instance of the Moro Province a criminal complaint against Captain Dworak, charging him with the crime of illegal detention. A preliminary examination followed and the Hon. Herbert D. Gale, then judge of the Fourteenth Judicial District, issued on the 16th of December, 1910, an order holding the defendant, Dworak, in the sum of P3,000 to appear before the Court of First Instance to answer said charge. In the same order, and upon his own motion, Judge Gale disqualified Connor, the provincial attorney, and Captain Ansell, assistant provincial attorney, from conducting the prosecution against Dworak, and appointed Nicolas Nunez, a member of the Zamboanga bar and petitioner in the case under consideration, special prosecuting attorney to represent the Government in said criminal case. On or about January 1, 1911, Judge Gale was relieved from duty as judge of the Fourteenth District and appointed judge at large, and Judge Low was transferred to the Fourteenth District. the prosecuting attorney presented on the 27th of December, 1910, a motion asking the court to annul that part of the order of December 16th which disqualified him and his assistant from conducting the prosecution against Dworak. This motion was

heard by the respondent judge, who, by order dated January 20, 1911, amended and set aside that part of the order of December 16, 1910, disqualifying Connor and his assistant, and directed them to proceed with the case according to law.

As to whether or not the Court of First Instance was justified under the facts then before it in issuing the two orders (dated December 16, 1910, and January 20, 1911), we can not and do not now determine. The only question before us at this time is one of law; that is, did the court exceed its jurisdiction in issuing the annulling order? The determination of this question necessarily involves the validity of the order of December 16. This order was based upon the provisions of section 11 of Act No. 83, as amended by section 1 of Act No. 223, section 1 of Act No. 1443, and section 1 of Act No. 1699, which section, as thus amended, provides:

* * * * *

"Whenever the provincial fiscal is absent from the province, or fails or refuses to e his duty by reason of illness or other cause, or by reason of personal interest in a prosecution or other matter is disqualified to act therein as provincial fiscal, the judge of the Court of First Instance for the province is authorized and required to appoint a temporary fiscal, who shall be paid out of the provincial treasury the same compensation per day as that provided by law for the regular provincial fiscal for the days actually employed. The fiscal thus temporarily appointed shall discharge all the duties of the provincial fiscal as provided by law which the regular provincial fiscal fails or is unable to perform. * * *"

Judge Low was of the opinion that the above provisions of law are not applicable to the Moro Province and that the court was without authority to suspend the attorney and assistant attorney for that province and appoint a temporary fiscal to represent the Government in that criminal case. In passing upon these questions he said:

"The court is of the opinion that Act No. 83 does not apply to the Moro Province, which was established under Act No. 787 and which act fully provides how the said Moro Province shall be governed. The entire scheme of government for this province is different from that provided by Act No. 83 for provinces in general. Nowhere in said Act establishing the Moro Province can a provision be found similar to section 11 of Act No. 83, as amended by Act No. 223, conferring on the judge of the Court of First Instance for the province authority to suspend the attorney of the province or the assistant attorney, and 'to appoint a, temporary provincial fiscal,' etc. Moreover there is no such officer in the Moro Province as the provincial fiscal. There is an attorney and an assistant attorney for the Moro Province. The assistant attorneys are empowered to act as district fiscals under the supervision of the attorney for the Moro Province. There is no such officer as the 'provincial fiscal,' referred to in Act No. 83. The powers and duties of the. attorney and his assistants are fully set forth in the Act and it not appearing that the judge of this court have the power or authority conferred on him by law to suspend either of the above-named officers or to appoint a special fiscal to act in these places, that portion of the order is hereby set aside and amended and the information herein signed by Sr. Nicolas Nunez, as special fiscal, ordered stricken from the files, and the attorney for the Moro Province, and his assistants, are directed to proceed in this case according to law."

It will be noted, that the respondent held that the Court of First Instance of the Moro Province is without authority to appoint, under any circumstances, a temporary prosecuting officer to represent the Government in any criminal cause. In this we think he erred.

The provincial fiscal shall represent the provincial and Insular governments in his province in all actions or prosecutions in the Court of First Instance in the manner provided by law. "He shall be an officer of the court and subject to officials directions in relation to official matters pending in the Court of First Instance." (Sec. 62, Organic Act No. 136.)

Act No. 787 is "An Act providing for the organization and government of the Moro Province." Section 9 of this

Act, as amended by section 2 of Act No. 1699, provides that the provincial attorney shall, when the public interests require it, appear and take charge of the prosecutions for the Government in any court within the province.

"Who shall prosecute crimes in the Moro Province. - The prosecution of criminal offenses in the Courts of First Instance of Jolo, Bongao, Zamboanga, Cotabato, and Davao, shall be conducted by the provincial attorney for the Moro Province, until the legislative council shall, in its discretion, provide for the appointment of fiscals assigned to assist the provincial attorney in this work in one or more of the districts of the province. * * * (Sec. 21, Act No. 867.)

"The prosecution of offenses held in Iligan, in the district of Lanao, and Dapitan, in the subdistrict of Dapitan, of the Moro Province, shall be conducted by the provincial attorney for the Moro Province, or by the provincial fiscal of Misamis, at the request and under the supervision of the provincial attorney for the Moro Province. * * * (Sec. 22, Act No. 867.)

The powers and duties of provincial fiscals and the provincial attorney for the Moro Province, with reference to criminal prosecutions, are of the same character. They conduct and supervise the prosecution of criminal offenses in their respective provinces. In most of the provinces the provincial fiscal, not having any deputy, is required to personally direct the prosecution of all cases, while in the Moro Province the attorney must appear and personally take charge of the prosecution of cases when the public interests require it, but otherwise the prosecution of all such cases is under his supervision and control. In these matters he, as well as the provincial fiscals, is an officer of the court and subject to its discretion.

The provision of law authorizing and directing the judge of the Court of First Instance to appoint a temporary fiscal when the regular fiscals fail or refuse to discharge their duty, is not found in Act No. 83, known as "The Provincial Government Act," except as has been added thereto by subsequent legislation. This authority was granted under Act No. 223, which provided that the judge of the Court of First Instance for the province is authorized and required to appoint a temporary provincial fiscal under those circumstances. The word "provincial" was dropped in the amendatory Act, No. 1699. The phrase "The judge of the Court of First Instance for the province is authorized and required to appoint a temporary fiscal," is general in its nature. It applies, in the absence of explicit exceptions, to all Courts of First Instance outside of the city of Manila with equal force. There is no provision in Act No. 787, or its amendments, taking this power from the court. If the provincial fiscal fails or refuses to discharge his duty in the prosecution of criminal cases, the judge of the Court of First Instance is not only authorized but is required to appoint a temporary fiscal to represent the Government in such cases. The attorney for the Moro Province and his assistant stand in the same position as a provincial fiscal with reference to this matter. If the Court of First Instance for the Moro Province did not have authority to appoint a temporary fiscal when the exigencies of the service demanded it, it might occur that the whole court machinery, with reference to criminal cases, would be impeded on account of the refusal on the part of the attorney, or his assistant, to perform their duties. The presiding judge of the Court of First Instance for the Moro Province has the power to cause the prosecution of criminal cases to go forward, and if the officer designated by law to prosecute such criminal cases fails or refuses to perform his duty, then the judge or court must relieve such officer temporarily and appoint a qualified person to take his place.

The motion presented by the attorney for the Moro Province on the 27th day of December, asking the court to annul that part of the order of December 16, 1910, disqualifying him from representing the prosecution in the criminal case against Edward Dworak was acted upon on the 20th of the following month and granted. The same court that issued the order annulled it. It is not a question of Judge Gale issuing the order and Judge Low annulling it; it is a question of the power of the Court of First Instance to issue and annul said order. The fact that different judges took part can not alter or diminish the power of the court - it was one and the same court. The true

test is, would Judge Gale have had authority to annul that order in case he had passed upon the motion? We think he would have had such authority. This being true, Judge Low had exactly the same authority that Judge Gale would have had. When the order of December 16 was issued the court had certain facts before it upon which said order was based. When the court annulled this order on January 20 it might have had different and sufficient facts upon which to base this annulling order. The special attorney on his appointment became an officer of the court, subject to its direction. The court, if justified by the facts, had authority, under the law, to relieve him and direct the regular provincial attorney to take charge of the case.

The petitioner relies upon the doctrine enumerated' in the case of *Orais vs. Escano* (14 Phil. Rep., 208). In this case the Court of First Instance, Hon. Charles E. Burritt presiding, issued on the 21st of September, 1905, an order granting the administratrix permission to sell certain property. The same court, Hon. William F. Morris presiding, annulled and set aside the said order on the 24th of June, 1907. From this last order the defendant appealed. The Supreme Court held that under the facts as presented the Court of First Instance erred in setting aside said order. That part of the opinion which refers to the facts is as follows (p. 212):

"It is not shown that the purchaser of the property, Jacinta Escaño, had received any notice of the motion to set aside the sale. Nearly two years had elapsed between the sale and the motion. The sale was made under an order of the court. The purchaser had a right to believe that the court had complied with the law and that she had, therefore, obtained a good title. Whether she had obtained a good title or not she certainly was entitled to notice before any action was taken by the court by which she should be deprived of her title."

It is true that the court, continuing, said:

"Judges of coordinate jurisdiction, acting within the same jurisdiction, should not annul or set aside orders made by other judges of equal jurisdiction, until some new fact or condition is presented. The parties should be compelled to take their exception and wait for a final decision, and if not then corrected, to appeal from alleged illegal orders. As a general rule, a judge has no power to review, on the same facts, the decisions of a coordinate judge, the remedy being by appeal."

The decision of the court rests upon the facts as above stated, and not upon these propositions of law. The judge who issued the annulling order succeeded the judge who issued the original order, as presiding judge of the court wherein the case was pending, and, therefore, had precisely the same authority and jurisdiction with regard to that case as his predecessor would have had in the event he had continued as presiding judge until the motion praying the issuance of the annulling order was submitted. It was one and the same court that issued both orders. If Judge Burritt and Judge Norris had been holding court in Leyte at the same time, and if one had issued the order and the other annulled it while they were both acting in the same province, then the question might have been different.

The facts as alleged in the petition in the case at bar are not sufficient to justify this court in issuing the preliminary injunction. In reaching this conclusion we have unavoidably discussed and practically decided the petitioner's right to his principal remedy. In other words, we have held that under the law the Court of First Instance for the Moro Province has the same power, with reference to the questions under consideration, as courts of other provinces have, and that the court had authority, under the law, to issue the two orders of December 16 and January 20. The allegations in the complaint do not show such an abuse of discretion as would warrant us in issuing an order to show cause and allow this case to go forward.

The preliminary injunction prayed for is, therefore, denied, and if an amended petition is not filed within sixty days, the case will be dismissed, with costs de oficio. So ordered.

Arellano, C. J., Carson and Moreland, JJ., concur.

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