

AVELINA CONDE, PETITIONER, VS. HON. FELIX MAMENTA, JR., AS PRESIDING JUDGE OF BRANCH LXX OF THE REGIONAL TRIAL COURT, THIRD JUDICIAL REGION (ZAMBALES), AND THE PEOPLE OF THE PHI...

G.R. No. 71989. July 07, 1986

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The sole legal issue in this case certified to us by the Inter-mediate Appellate Court is whether or not petitioner, Avelina E. Conde, can be prosecuted criminally for her failure to pay the increased monthly rental of a market stall leased to her by a municipal (public) corporation.

Petitioner was one of the stall holders in the public market of Masinloc, Zambales, paying a monthly rental of P27.00. On June 28, 1980, the Sangguniang Bayan of Masinloc passed Municipal Ordinance No. 3-A, series of 1980, fixing the rates of monthly rentals of market stalls. The new rates increased petitioner's rental to P140.02. The Municipal Treasurer tried to collect the new rental fees from petitioner but she refused to pay on the ground that the increased rate was ex-cessive and she had questioned the increase before the Ministry of Local Government and Community Development.

On February 1, 1982, a criminal complaint was filed against petitioner by the Acting Station Commander of the INP, Masinloc, Zambales, before the 2nd Municipal Circuit Court of Masinloc and Palauig, Zambales, charging her with violation of Section 5 B.05, Article B, Chapter V, Revenue Code of Masinloc, Zambales, as amended, allegedly committed as follows:

"That on or, about October 1, 1980 up to December 31, 1981 at Public Market, Masinloc, Zambales and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent inspite of several demands from the Municipal Treasurer for her to pay did then and there willfully, unlawfully and feloniously refuse and ignore to pay the monthly dues of the stall she occupies/operates at a total amount of Two Thousand Six Hundred Forty and 37/100 Pesos (P2,640.37) Philippine Currency, to include surcharge to the damage and prejudice of the Municipal Government of Masinloc, Zambales."

The Trial Court considered petitioner's refusal to pay the monthly stall rentals and to vacate the space as "tantamount to economic sabotage to the Municipal Government of Masinloc, Zambales" and "convicted" her in a Decision dated July 15, 1983, the dispositive portion of which reads:

"WHEREFORE, prosecution having proven beyond reasonable doubt the violation by the accused of Section 5B.05, Article B, Chapter V, Revenue Code of Masinloc, Zambales and Municipal Ordinance No. 3-A, Series of 1980, accused Avelina Conde is hereby ordered to:

- Immediately vacate the stalls and premises she is occupying within the Public Market of the Municipality of Masinloc, Zambales;

- To pay to the Municipal Treasurer of the Municipality of Masinloc, Zambales the amount of Four Thousand Seven Hundred One Pesos and Sixty Four Centavos (P4,701.64) representing the monthly rental and surcharges of the stalls occupied by the accused from October 1, 1980 to December 31, 1982;

- To pay a monthly rental and surcharges of P140.82 from January 1, 1983 up to the time she actually vacate the premises or stalls in the Public Market.

Without pronouncement as to cost."

Petitioner appealed to the Regional Trial Court of Zambales, which, on May 9, 1984, affirmed in toto the appealed Decision.

Further appealing to the Intermediate Appellate Court, the latter Court, in turn, elevated the case to us as one within this Court's exclusive jurisdiction.

Was the criminal prosecution in order?

We rule in the negative.

Municipal Ordinance No. 3-A, Series of 1980, of the Municipality of Masinloc, Zambales, increasing the monthly rentals of market stalls, reads in full:

"ORDINANCE NO. 3-A
Series 1980

AN ORDINANCE AMENDING ARTICLE B (MARKET FEES) SECTION 58-03 (IMPOSITION OF FEES)
OF THE MASINLOC REVENUE CODE.

Be it ordained by the Sangguniang Bayan of Masinloc, Zambales that:

Section 1. All stalls and space occupants in the Masinloc Public Market shall pay to the duly authorized market collector of the municipality a monthly rental at a fixed rates as follows:

PUBLIC MARKET (NEW)

Front Side ----- P80.00/month

South Side ----- 60.00/month

North Side ----- 80.00/month

INSIDE STALLS

6 sq. m. - standard size ----- P30.00/month
and P3.00 for every sq. m. in

excess thereof.

OUTSIDE STALLS

6 sq. m. standard size ----- P22.00/month
and P2.00 for every sq. m. in
excess thereof.

Rice Dealers ----- P20.00/month

FOR OLD NEW MARKET

6 sq. m. standard size ----- P30.00/month
and P3.00 for every sq. m. in

excess thereof.

Section 2. This Ordinance shall take effect on October 1, 1980.

On motion of Vice-Mayor Porfirio F. Elamparo, duly seconded by A B Kagawad Aquilino O. Edaña, Jr., the foregoing ordinance was unanimously approved.

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While Section 5 B.05, Article B, Chapter V, Revenue Code of Masinloc, Zambales, specifically alleged in the criminal Complaint as having been violated, provides:

"Section 5 B.05 - Surcharge for late or non-payment of fees.

"a) The lessee of a space, stall, tienda or booth who fails to pay the monthly rental fee shall pay a surcharge of twenty-five percent (25%) of the total rent due. Failure to pay the rental fee for three (3) consecutive months shall cause automatic cancellation of the contract of lease of space or stall. The space or stall shall then be declared vacant and subject to adjudication to any interested applicant.

"b) Any person occupying or using space than what is duly leased to him shall pay twice the regular rate for the space so occupied.

"c) Any person occupying more space than what is duly leased to him shall pay twice the regular rate for such extra space." [1]

It should be noted that neither one of the following enactments makes non-payment of fees an offense nor provides for punishment for violation. The judgment itself is bereft of any criminal sanction. The surcharge imposed by Section 5 B.05 for late or non-payment of monthly rentals is not a penalty under criminal law but an additional amount added to the usual charge. It is more of an administrative penalty, which should be recoverable only by civil action.

There being no offense defined nor punishment prescribed, a criminal action will not lie, and the Municipal Circuit Trial Court was without criminal jurisdiction over the matter. Criminal jurisdiction is the authority to hear and try a particular offense and impose the punishment provided by law. [2]

ACCORDINGLY, the criminal complaint against petitioner is hereby ordered dismissed, without prejudice to the right of the Municipal Government of Masinloc, Zambales, to collect, in a civil action if need be, the unpaid rentals and surcharge due from petitioner.

SO ORDERED.

Abad Santos, (Chairman), Yap, Narvasa, and Cruz, JJ., concur.

[1] Rollo, p. 53.

[2] *People vs. Mariano*, 71 SCRA 600 (1976).

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