

JUANITO PAJARO, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN (SECOND DIVISION), RESPONDENT.

G.R. No. 82001. April 15, 1988

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The lone legal issue raised in this petition for certiorari and prohibition is whether the Sandiganbayan may proceed with the arraignment and trial of the petitioner for a violation of the Anti-Graft and Corrupt Practices Act under the following information filed by the Tanodbayan on August 22, 1986:

"The undersigned Asst. Provincial Fiscal for the Province of Pangasinan and Deputized Tanodbayan Prosecutor hereby accused JUANITO A. PAJARO, OIC of the Office of the Treasurer of Dagupan City, of the crime of VIOLATION OF SEC. 3 of RA 3019 OTHERWISE KNOWN AS THE ANTI-GRAFT AND CORRUPT PRACTICES ACT, committed as follows:

"That in or about January, 1982, and for the period subsequent thereto, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Juanito A. Pajaro, in order to give undue advantage and unwarranted benefits in the discharge of his official administrative functions to the McAdore International Palace and Modesta Movierama of Dagupan City, a delinquent taxpayer, thru manifest partiality, and evident bad faith or gross inexcusable negligence, did then and there, wilfully, unlawfully and feloniously accept and agree to the promissory note of the McAdore International Palace and Movierama which would oblige itself to pay its delinquent taxes for a lesser rate of interest and within the period not fixed by the Local Tax Code but within a period of five (5) years in monthly installments and which condones the payment of surcharges of 50% on the amount due, to the damage and prejudice of the government of Dagupan City, Philippines.

"Contrary to Sec. 3 of RA 3019 (ANTI GRAFT AND CORRUPT PRACTICES ACT)."

despite the fact that the Court of Appeals in its final judgment in the special civil action which was filed by the complainant against the petitioner to declare said promissory note null and void (CA-G.R. No. SP 07493, April 30, 1987, formerly Civil Case No. D-6217, CFI of Dagupan City) affirmed the dismissal of the action by the trial court on the grounds that the promissory note was not illegal, it was not a contract between the City and McAdore, it did not confer undue advantage and benefits to the taxpayer, and it did not prejudice the City. It may be mentioned at this juncture that the Tanodbayan, after a reinvestigation of the case, moved to withdraw the information on August 25, 1987, which motion the Sandiganbayan denied, hence, this petition.

On November 27, 1981, an action was filed by the City of Dagupan against the McAdore International Palace, hereinafter referred to as "McAdore" for brevity, to collect amusement taxes due the city for the month of November 1978, and from August 1979 up to May 1981 with surcharges and interest (Civil Case No. D-5923, Court of First Instance of Dagupan City). McAdore did not answer the complaint, but two months later, on February 3, 1982, its chairman of the board, Archbishop Federico Limon, offered to pay in monthly installments over a period of five (5) years all its tax delinquencies up to December 1981 with surcharges and interests in the

amount of P515,392.18. The petitioner Juanito Pajaro, OIC of the Office of the City Treasurer, accepted the promissory note. McAdore was declared in default in Civil Case No. D-5923, and on October 7, 1983 a decision was rendered ordering it to pay the City P253,079.29 as unpaid amusement taxes, P125,945.92 as surcharges and P29,490.69 as interests or a total of P408,515.90 (Annex A). It did not appeal.

On April 28, 1982, a concerned citizen, Victor Llamas Jr., accused Pajaro in the Tanodbayan with having violated Section 3 of RA 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, for having given undue advantage and benefits to a delinquent taxpayer, McAdore, by allowing it to pay its unpaid amusement taxes in monthly installments, instead of collecting said taxes within the period fixed in the Local Tax Code, thus causing damage and prejudice to the City Government.

While his complaint was still being investigated by the Tanodbayan, Llamas, without waiting for the result of the investigation, filed on June 18, 1982, a special civil action for mandamus against Pajaro, the City Mayor and Atty. Venancio Nava ("Atty. Victor Llamas Jr. vs. Mayor Cipriano Manaois, Juanita Pajaro and Atty. Venancio Nava, defendants", Civil Case No. 0-6217) in the Court of First Instance of Dagupan City), pleading two causes of action. Under the second cause of action he prayed for the annulment of McAdore's promissory note for its tax liabilities to the City Government and asked the Court to issue a writ of mandamus to compel Pajaro to immediately collect McAdore's unpaid amusement taxes with surcharges and interest.

The mandamus action was dismissed on January 28, 1985 upon the finding of the trial judge that the promissory note "binds McAdore alone" and did not preclude the Treasurer from collecting "any deficiency or balances if ever any exists." It further found that the treasurer could not collect the tax by distraint because "it is of judicial knowledge that the McAdore has already been foreclosed by the Development Bank of the Philippines and that its theater is, for the present, under a different management." (Annex C.) Llamas appealed to the Court of Appeals.

On August 22, 1986, the Assistant Provincial Fiscal Pedro Y. Fernandez, as Deputized Tanodbayan Prosecutor, with the approval of the Tanodbayan, filed the information against Pajaro.

On January 19, 1987, Pajaro filed a motion for reconsideration and reinvestigation.

On April 30, 1987, the Court of Appeals (11th Division) (CA-G.R. No. SP-07493) affirmed the decision of the lower court dismissing Llamas' mandamus suit.

On August 25, 1987, the Tanodbayan, in a 5-page resolution recommended the dismissal of the case against Pajaro and withdrawal of the information which it had filed against him in the Sandiganbayan.

On January 20, 1988 the Sandiganbayan's Second Division denied the Tanodbayan's motion to withdraw the information "for lack of merit". It pointed out that the accused's reasons for accepting the promissory note "is a matter which he may explain or prove during the trial."

On February 12, 1988, Pajaro filed a motion for reconsideration of the Sandiganbayan's resolution, citing as additional ground therefor, the Court of Appeals decision in CA-G.R. No. SP 07493 finding that McAdore's promissory note was not illegal and that its acceptance by Pajaro did not prejudice the City Government of Dagupan.

The motion for reconsideration was denied by the Sandiganbayan on February 15, 1988, hence, this petition for certiorari.

The comment which the Solicitor General filed for the respondent Sandiganbayan argues that the Sandiganbayan had valid reasons to disallow the Tanodbayan's motion to withdraw the information against Pajaro. They are:

- That by accepting the promissory note of McAdore which allows the taxpayer to pay its delinquent taxes

within five (5) years, petitioner violated the Local Tax Code (PD 231, Sec. 13, Art. I, Chapter II), which provides that the amusement tax should be paid within the first 20 days of the month next following that for which it is due.

- That Pajaro violated the Local Tax Code which requires payment of 14% interest for delinquent taxes instead of the 6% interest provided in the promissory note.
- That by accepting the promissory note, petitioner in effect waived the right of the City to collect the taxes by distraint and levy as the City is compelled to resort to court action to recover on the promissory note.
- That petitioner showed "unusual concern" for McAdore by recommending to the City Legal Officer the withdrawal of the collection suit against McAdore.

However, those reasons have become untenable in view of the Court of Appeals' decision in CA-G.R. No. SP 07493, April 30, 1987.

- The petitioner did not violate Sec. 13 of the Local Tax Code which requires the taxpayer to pay the amusement tax within 20 days of the month next following that for which it is due. The taxpayer's delay in paying the tax makes him liable to pay a 50% surcharge and 14% interest on the unpaid tax. The petitioner incurred no liability for the taxpayer's default. He did not violate any law by allowing the taxpayer to pay his tax arrears, surcharges and interests in monthly installments. As held by the Court of Appeals:

"There is no law which prohibits, for in fact common sense and practice allows the local government treasurer to accept tax payments by installments subject to payment too of the surcharges and interests due under the law."

- The petitioner, in accepting McAdore's promissory note, did not waive the surcharges nor reduce the interests. The certification of the Revenue Collector (Annex B Motion for Reconsideration and Re-Investigation) shows that McAdore's promissory note for P515,392.18 included the amusement taxes for November 1978, August 1979 up to December 1981, the 50% surcharge, 14% interest (which amounted to only P509,324.87) and an additional 6% interest on the installments. The Sandiganbayan's assumption that the 14% interest on the delinquent taxes was reduced to 6% is therefore not correct. As found by the Court of Appeals:

"Nothing in said exhibit leads one to the notion that the surcharges and interests have been condoned. Indeed, Exh. G. (the promissory note) expressly referred to the taxpayer's payment in installment 'including surcharge and interest'; and in fact, the taxpayer's proposal included the payment of an additional 6% per annum interest owing, presumably, to the installment arrangement."

- The Court of Appeals also declared that the promissory note was not a contract between McAdore and the City Government:

"The promissory note binds McAdore alone. Hence, said note did not constitute a contract between the taxpayer and the City Government of Dagupan."

The Dagupan City Government was not barred from suing to collect the taxes, as it did in fact sue to collect them in Civil Case No. D-5923.

McAdore did not contest the tax suit. On top of that, by executing the promissory note in question, McAdore admitted tax liabilities (P515,392.18) greater than what the City collected in Civil Case No. D-5923, which was only P408,515.90. These facts provoked the Court of Appeals to hold that:

"x x x whether the aforesaid promissory note is regarded as a binding contract or not, no prejudice is inflicted on the interests of the City concerned."

Those factual findings of the Court of Appeals have taken the wind out of the sails of the prosecution in Criminal Case No. 12093. They have resolved the issue of whether the petitioner, by accepting McAdore's promissory note, acted with manifest partiality, bad faith or gross inexcusable negligence, and gave "undue advantage and unwarranted benefits" to McAdore, thereby causing damage and prejudice to the City Government of Dagupan City.

To continue the prosecution of the petitioner despite the Court of Appeals' finding that his acceptance of McAdore's promissory note was not illegal and did not unduly benefit McAdore, nor did it cause damage and prejudice to the City Government of Dagupan, would in effect diminish the authority and jurisdiction of the second highest court of the land, and denigrate the binding force of its final judgment. This differentiating circumstance makes the ruling in *Crespo vs. Mogul*, 151 SCRA 462, inapplicable to this case. In the *Crespo* case, the question was whether the trial court was bound by the opinion/instructions of the Undersecretary of Justice to the Fiscal to dismiss the case. Here, the question is whether the Sandiganbayan is bound by the finding of the Court of Appeals that the facts which would constitute the basis for the prosecution of the petitioner for a violation of the Anti-Graft and Corrupt Practices Law, do not exist. Those findings of the Court of Appeals are identical with the findings of the Tanodbayan.

In view of the findings of the Court of Appeals in CA-G.R. No. SP 07493, April 30, 1987, the prosecution of petitioner in the Sandiganbayan should be discontinued for the Sandiganbayan may not review, revise, or reverse the findings of the Court of Appeals in relation to which the Sandiganbayan, a special court with special and limited jurisdiction, is inferior.

WHEREFORE, the petition for certiorari and prohibition is granted. The Sandiganbayan is ordered to dismiss Criminal Case No. 12093.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, and Cortes, JJ., concur.

Sarmiento, J., No part. Cortes and Reyna were my associates before my appointment to the Court.

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