

TEODORO B. CRUZ, JR., PETITIONER, VS. COURT OF APPEALS, FIFTEENTH DIVISION, RESPONDENTS.

G.R. No. 83754. February 18, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

Petitioner Teodoro B. Cruz, Jr. raises procedural issues in this petition to review the decision of the respondent Court of Appeals in C.A.-G.R. SP No. 11771 dated April 29, 1988, and its resolution of June 6, 1988, denying his motion for reconsideration.

The petitioner was charged before the Regional Trial Court of Makati, along with several others, in four separate informations for estafa thru falsification of public documents.

It was alleged that the petitioner, together with Melania Guerrero, who produced a special power of attorney claimed to have been executed by the late Clemente Guerrero, had conspired with their co-accused in selling some properties of the decedent to the widow's sister, Luz Andico, through fictitious deeds of sale notarized by the petitioner sometime in November and December of 1980.

Upon arraignment on June 1, 1984, the petitioner and his co-accused entered a plea of not guilty. Subsequently, the petitioner filed a motion to dismiss on the ground that the four informations "(did) not charge an offense." At the hearing on this motion, the petitioner submitted testimonial and documentary evidence which was not refuted by the prosecution. For its part, the prosecution submitted no evidence at all but later moved to deny the motion.

The motion to dismiss was eventually denied by the trial court,[1] as so was the subsequent motion for reconsideration.[2] The petitioner questioned the denial of the motions before this Court, which referred the case to the Court of Appeals. On April 29, 1988, the respondent court[3] dismissed the petition, holding inter alia as follows:

Petitioner unabashedly admits that the motion to dismiss in the instant criminal cases was filed after the arraignment so that the cases could not be refiled again considering the principle of double jeopardy. But this precisely begs the issue. The respondent Court, then presided over by Judge Madayag, cited as ground of the denial of the motion to dismiss - to avoid technicalities that may arise later. This is interrelated to the first ground in the denial - interest of substantial justice that the prosecution could adduce evidence during the trial. Thus, to hold otherwise is to sanction a shrewd maneuver by petitioner wherein he files a motion to quash/dismiss after arraignment, presents his evidence supporting his ground therefor, and without the State being able to present its evidence in chief. Under the circumstances, what is needed is a full-blown hearing.

x x x

Moreover, assuming that the procedure pursued by the petitioner in outright presenting his evidence in support of his motion to dismiss, although the prosecution has not as yet presented its evidence in chief, is sanctioned by the Rules, still the respondent Court, under the circumstances, did not abuse its discretion in denying the motion to dismiss and subsequently, the motion for reconsideration. Respondent Court must have been not

convinced of the evidence presented, hence, its judicial prerogative to deny the dismissal of the charges.

What is essential and important is for the petitioner to show by his own evidence that the documents, subject of the charges, were prepared and notarized by him clearly prior to the death of Clemente Guerrero on June 24, 1980 and not simply prior to the months of November and December, 1980 when the offense was committed, as alleged in the Information because each Information may be amended as regards the date of the commission of the offense without impairing the rights of the petitioner (*People v. Gerardo Rivera, et al.*, 33 SCRA 746). The amendment will only be a matter of form and will not "affect the nature and essence of the crime as originally charged."

The petitioner is now before us on certiorari and faults the above-quoted decision on the following grounds:

- (1) The court proceedings on petitioner's motion to dismiss are clearly sanctioned by law and jurisprudence.
- (2) The prosecution is in estoppel to question said proceedings.
- (3) The informations do not charge an offense.
- (4) There exists a variance between the allegations in the information and the evidence presented in the motion to dismiss.
- (5) The documents were notarized on their stated dates.
- (6) Substantial justice demands the dismissal of the informations filed against herein petitioner.

The petition must fail.

It is axiomatic that a complaint or information must state every single fact necessary to constitute the offense charged; otherwise, a motion to dismiss/quash on the ground that it charges no offense may be properly sustained. The fundamental test in considering a motion to quash on this ground is whether the facts alleged, if hypothetically admitted, will establish the essential elements of the offense as defined in the law.[4]

Contrary to the petitioner's contention, a reading of the informations will disclose that the essential elements of the offense charged are sufficiently alleged. It is not proper therefore to resolve the charges at the very outset, in a preliminary hearing only and without the benefit of a full-blown trial. The issues require a fuller examination. Given the circumstances of this case, we feel it would be unfair to shut off the prosecution at this stage of the proceedings and to dismiss the informations on the basis only of the petitioner's evidence, such as it is.

It is clear that the trial judge did not commit grave abuse of discretion when he denied the motion to dismiss on the grounds that "(a) interest of substantial justice that the prosecution could adduce evidence during the trial; and (b) to avoid technicalities that may arise later." [5] On the contrary, his action was authorized under *U.S. v. Barredo*, [6] where this Court said:

Upon a motion of the provincial fiscal to dismiss a complaint upon which an accused person has been remanded for trial by a justice of the peace, it rests in the sound discretion of the judge whether to accede to such motion or not. Ordinarily, of course, he will dismiss the action in accordance with the suggestion of an experienced fiscal who has personally investigated the facts. But if he is not satisfied with the reason assigned by the fiscal, or if it appears to him from the record of the proceedings in the court of the justice of the peace, or as a result of information furnished by the private prosecutor, or otherwise, that the case should not be dismissed, he may deny the motion.

Indeed, as pointed out by the Solicitor General, this denial was proper because the petitioner failed to controvert in his motion to dismiss the following substantial circumstances alleged in the affidavit complaint:

(1)

That the vendee, Luz Andico (sister of the accused Melania Guerrero), has no visible means to purchase said properties;

(2)

That the capital gains taxes for the alleged sales were paid only in December 1980, when it should have been paid within 30 days from the date of the sale (National Internal Revenue Code);

(3)

That the Deeds of Sale were presented for registration to the registries concerned only in November and December, 1980;

(4)

That the antedating of the documents was made possible by the fact that notary public Teodoro B. Cruz, Jr. (herein petitioner) as late as March, 1981 had not submitted his notarial report together with the copies of the documents he notarized for 1980.

The petitioner's contention that the questioned transactions were already in existence before the months of November and December 1980, when they were supposedly falsified, is a matter of defense best examined during the trial rather than in the preliminary hearing on his motion to dismiss. The prosecution should be given ample opportunity to prove the allegations in the informations at the appropriate time, and that is the trial itself. The proper time to offer it, following the normal procedure prescribed in Rule 119, Section 3 of the Rules of Court, is after the prosecution shall have presented its own evidence during the trial. This is in accord with *People v. Cadabis*,^[7] where this Court held:

Save where the Rules expressly permit the investigation of facts alleged in a motion to quash, the general principle is that in the hearing of such motion only such facts as are alleged in the information, and those admitted by the fiscal, should be taken into account in the resolution thereof. Matters of defense can not be produced during the hearing of such motions, except where the rules expressly permit, such as extinction of criminal liability, prescription and former jeopardy. (Emphasis supplied).

But we do not agree with the ruling of the respondent court that the motion to quash should have been filed before the petitioner and his co-accused were arraigned, conformably to Section 1 of Rule 117 of the Rules of Court, which provides:

Section 1. Time to move to quash. - At any time before entering his plea, the accused may move to quash the complaint or information.

It is true that a person who does not move to quash a complaint or information until after he has pleaded is deemed to have waived all objections then available which are grounds of a motion to quash.^[8] However, this is subject to exception. By express provision of Sec. 8 of the same rule, failure to assert certain grounds in a motion to quash filed prior to the plea does not operate as a waiver of the right to invoke them later. Even after arraignment, a motion to dismiss the information may be filed if it is based on the ground that: (a) the information charges no offense; (b) the trial court has no jurisdiction; (c) the penalty or the offense has been extinguished; and

(d) that double jeopardy has attached.

The petitioner contends that the prosecution is now estopped from questioning the motion to dismiss, having participated without objection in the hearing thereof and not having controverted the evidence adduced by the movant at that time. This is untenable. Estoppel does not lie against the government because of the supposedly mistaken acts or omissions of its agents. As we declared in *People v. Castañeda*,^[9] "there is the long familiar rule that erroneous application and enforcement of the law by public officers do not block subsequent correct application of the statute and that the government is never estopped by mistake or error on the part of its agents."

It remains to observe that an order denying a motion to quash is interlocutory and therefore not appealable, nor can it be the subject of a petition for certiorari. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. The petitioner should have proceeded with the trial of the case in the court below, without prejudice to his right, if final judgment is rendered against him, to raise the same question before the proper appellate court.

The procedure was well defined in *Acharon v. Purisima*,^[10] thus:

x x x Moreover, when the motion to quash filed by Acharon to nullify the criminal cases filed against him was denied by the Municipal Court of General Santos his remedy was not to file a petition for certiorari but to go to trial without prejudice on his part to reiterate the special defenses he had invoked in his motion and, if, after trial on the merits, an adverse decision is rendered, to appeal therefrom in the manner authorized by law. This is the procedure that he should have followed as authorized by law and precedents. Instead, he took the usual step of filing writ of certiorari before the Court of First Instance which in our opinion is unwarranted it being contrary to the usual course of law.

Where it is clear that the information does not really charge an offense, the case against the accused must be dropped immediately instead of subjecting him to the anxiety and inconvenience of a useless trial. The accused is entitled to such consideration. And indeed, even the prosecution will benefit from such a dismissal because it can then file a corrected information provided the accused had not yet pleaded and jeopardy has not yet attached. There is no point in proceeding under a defective information that can never be the basis of a valid conviction.

But such is not the situation in the case at bar. As already observed, the challenged informations are not insufficient on their face and neither did the evidence presented at the preliminary hearing justify their dismissal even before the trial had commenced. If "substantial justice" is to be accorded by this Court, as the petitioner insists, then the step it must take is to sustain the denial of the motion to dismiss and allow the criminal cases to follow their normal course. That is what we rule now.

WHEREFORE, the petition is DENIED. Criminal Cases Nos. 7332, 7333, 7334 and 7335 are remanded to the Regional Trial Court of Makati, Branch 145, for further proceedings. Costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] By Judge Job Madayag.

[2] By Judge Consuelo Ynares Santiago.

[3] Kalalo, J., ponente, with M.T. Reyes and Ordoñez-Benitez, JJ. concurring.

[4] U.S. v. Pompeya, 31 Phil. 245; *People v. De la Rosa*, 98 SCRA 190.

[5] Rollo, p. 97.

[6] 32 Phil. 444.

[7] 97 Phil. 829.

[8] *People v. Casiano*, 1 SCRA 478; *Palanca v. Querubin*, 30 SCRA 738.

[9] 165 SCRA 327.

[10] 13 SCRA 309.

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