

**ALEJANDRO RAS, PETITIONER, VS. HON. JAINAL D. RASUL, DISTRICT JUDGE OF THE COURT OF FIRST INSTANCE OF BASILAN, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

*G.R. Nos. 50441-42. September 18, 1980*

Ponente: TEEHANKEE, J.

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**TEEHANKEE, J.:**

This is a petition brought by the petitioner to review and set aside the order of respondent Judge dated December 12, 1978 in Criminal Case No. 240 of the Court of First Instance of Basilan denying petitioner's motion as accused therein to suspend proceedings due to the existence of a prejudicial question in Civil Case No. 73 of the same court. Finding the petition and the Solicitor General's concurrence therewith to be meritorious, this Court hereby grants the petition and accordingly sets aside the questioned order and hereby enjoins the respondent Judge from further proceeding with Criminal Case No. 73 until Civil Case No. 240 is finally decided and terminated.

A chronological statement of the antecedent facts follows:

On or about April 27, 1978, Luis Pichel filed a complaint against petitioner Alejandro Ras and a certain Bienvenido Martin before the Court of First Instance of Basilan, docketed therein as Civil Case No. 73 praying for the nullification of the deed of sale executed by Alejandro Ras in favor of his co-defendant Bienvenido Martin and for the declaration of the prior deed of sale allegedly executed in his favor by the defendant Alejandro Ras as valid.

In their answer, the defendants (the Ras spouses) alleged that they never sold the property to Pichel and that the signatures appearing in the deed of sale in favor of plaintiff Pichel (in Civil Case No. 73) were forgeries and that therefore the alleged deed of sale in Pichel's favor sought to be declared valid was fictitious and inexistent.

While Civil Case No. 73 was being tried before the Court of First Instance of Basilan, the Provincial Fiscal of Basilan filed on or about September 5, 1978 an Information for Estafa in the same court against Alejandro Ras arising from the same alleged double sale subject matter of the civil complaint filed by Luis Pichel. The case was docketed as Criminal Case No. 240 of the Court of First Instance of Basilan.

On November 6, 1978, petitioner, through counsel, filed a "Motion for Suspension of Action" in said Criminal Case No. 240 claiming that the same facts and issues were involved in both the civil and criminal case and that the resolution of the issues in the civil case would necessarily be determinative of the guilt or innocence of the accused.

The Provincial Fiscal of Basilan filed his opposition on December 4, 1978.

In his Order of December 12, 1978, the respondent judge saw no prejudicial question and accordingly denied the motion. Hence, the present petition.

A prejudicial question is defined as that which arises in a case the resolution of which is a logical antecedent of

the issue involved therein, and the cognizance of which pertains to another tribunal. The prejudicial question must be determinative of the case before the court but the jurisdiction to try and resolve the question must be lodged in another court or tribunal.[1] It is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused.[2]

For a civil case to be considered prejudicial to a criminal action as to cause the suspension of the criminal action pending the determination of the civil, it must appear not only that the civil case involves the same facts upon which the criminal prosecution is based, but also that the resolution of the issues raised in said civil action would be necessarily determinative of the guilt or innocence of the accused.[3]

On the basis of the issues raised in both the criminal and civil cases against petitioner and in the light of the foregoing concepts of a prejudicial question, there indeed appears to be a prejudicial question in the case at bar, considering that petitioner Alejandro Ras' defense (as defendant) in Civil Case No. 73 of the nullity and forgery of the alleged prior deed of sale in favor of Luis Pichel (plaintiff in the civil case and complaining witness in the criminal case) is based on the very same facts which would be necessarily determinative of petitioner Ras' guilt or innocence as accused in the criminal case. If the first alleged sale in favor of Pichel is void or fictitious, then there would be no double sale and petitioner would be innocent of the offense charged. A conviction in the criminal case (if it were allowed to proceed ahead) would be a gross injustice and would have to be set aside if it were finally decided in the civil action that indeed the alleged prior deed of sale was a forgery and spurious.

The Solicitor General in his comment expressed his concurrence with the petition thus: "The petitioner Alejandro Ras claims in his answer to the complaint in Civil Case No. 73 that he had never sold the property in litigation to the plaintiff (Luis Pichel) and that his signatures in the alleged deed of sale and that of his wife were forged by the plaintiff. It is, therefore, necessary that the truth or falsity of such claim be first determined because if his claim is true, then he did not sell his property twice and no estafa was committed. The question of nullity of the sale is distinct and separate from the crime of estafa (alleged double sale) but so intimately connected with it that it determines the guilt or innocence of herein petitioner in the criminal action."

Wherefore, the Order of respondent judge in Criminal Case No. 240 dated December 12, 1978 is hereby set aside. The temporary restraining order issued by this Court on May 16, 1979 is hereby made permanent and respondent judge is enjoined from proceeding with the arraignment and trial of Criminal Case No. 240 until and unless Civil Case No. 73 shall have been finally decided and terminated adversely against petitioner. No costs.

Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

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[1] Rojas vs. People, 57 SCRA 246; People vs. Aragon, 94 Phil. 357; See also Zapanta vs. Montessa, 4 SCRA 510.

[2] Benitez vs. Concepcion, 2 SCRA 178.

[3] Mendiola vs. Macadaeg, 1 SCRA 593.

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