

THE PEOPLE OF THE PHILIPPINES, AND THE FAMILY BANK AND TRUST COMPANY (FORMERLY FAMILY SAVINGS BANK), PETITIONERS, VS. HON. BENIGNO M. PUNO AS PRESIDING JUDGE, COURT OF FIRST INS...

G.R. Nos. 61864-69. May 08, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This special civil action for certiorari seeks to set aside and nullify the orders of respondent Judge Benigno M. Puno in Criminal Cases Nos. 3485, 3486, 3487, 3488, 3489 and 3490, all entitled "People of the Philippines v. Hernani Palillo" filed before the then Court of First Instance of Quezon, Branch II with station at the City of Lucena, to wit: a) the order dated July 30, 1982, granting respondent Palillo's Motion to Dismiss dated July 30, 1982 and ordering the dismissal of the aforementioned cases, the dispositive portion of which reads:

"WHEREFORE, the Court finding the Motion to Quash filed by the accused TENABLE, hereby DISMISSES the above-entitled cases.

"With costs de oficio.

"SO ORDERED." (p. 27, Rollo)

and b) the order dated August 26, 1982, denying the separate motions for reconsideration of the order dated July 30, 1982 filed by petitioner People of the Philippines (People) and petitioner Family Bank and Trust Company (Family), which reads:

"AFTER a careful and thorough study of the allegations in the Motions for Reconsideration, dated August 3 and 13, 1982, filed by the Prosecution, together with the Opposition dated August 12, 1982 and the Supplemental Opposition dated August 21, 1982, filed by the Defense, the Court finds the said motion(s) without merit and, therefore, denies the same.

"SO ORDERED." (p. 28, Rollo)

The facts of these cases are not in dispute. On December 23, 1981, the City Fiscal filed against the accused an information (Criminal Case No. 10323) for six (6) counts of violations of Batas Pambansa Blg. 22, with the City Court of Lucena, Branch I.

On March 3, 1982, the accused was arraigned by the court and she pleaded not guilty to the charge.

In compliance with a directive of the Ministry of Justice contained in a letter from the Chief State Prosecutor dated March 9, 1982 in connection with the criminal charges against private respondent Palillo, the Office of the City Fiscal filed on March 22, 1982 six separate criminal informations for violation of Batas Pambansa Blg. 22 before the then Court of First Instance of Quezon, docketed therein as Criminal Cases Nos. 3485, 3486, 3487, 3488, 3489 and 3490, all entitled "People of the Philippines v. Hernani Palillo," to wit:

Criminal Case No. 3485:

That on or about the 28th day of January, 1980, in the City of Lucena, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously issue and make out Check No. AA37-54332 dated January 28, 1980, in the amount of P85,000.00, drawn against the Consolidated Bank and Trust Company, but when said check was presented for payment the same was dishonored and was refused payment for the reason that the drawer thereof, the herein accused, did not have sufficient funds in said bank; and that thereafter, despite notice by the complainant herein, the Family Savings Bank, Lucena Branch, Lucena City, the accused failed and refused to deposit with said bank the necessary amount to cover the said check, to the damage and prejudice of the aforesaid complainant in the aforestated sum of P85,000.00 Philippine Currency.

Contrary to law. (pp. 32-33, Rollo)

Criminal Case No. 3486:

That on or about the 28th day of January, 1980 in the City of Lucena, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously issue and make out Check no. AA37-54329 dated January 28, 1980, in the amount of P85,000.00, drawn against the Consolidated Bank and Trust Company, but when said check was presented for payment the same was dishonored and was refused payment for the reason that the drawer thereof, the herein accused, did not have sufficient funds in said bank; and that thereafter, despite notice by the complainant, herein the Family Savings Bank, Lucena Branch, Lucena City, the accused failed and refused to deposit with said bank the necessary amount to cover the said check; to the damage and prejudice of the aforesaid complainant in the aforestated sum of P85,000.00, Philippine Currency.

"Contrary to law." (pp. 34-35, Rollo)

Criminal Case No. 3487:

"That on or about the 28th day of January, 1980, in the City of Lucena, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously issue and make out Check No. AA37-54330 dated January 28, 1980, in the amount of P85,000.00, drawn against the Consolidated Bank and Trust Company, but when said check was presented for payment the same was dishonored and was refused payment for the reason that the drawer thereof, the herein accused, did not have sufficient funds in said bank; and that thereafter, despite notice by the complainant herein, the Family Savings Bank, Lucena Branch, Lucena City, the accused failed and refused to deposit with said bank the necessary amount to cover said check, to the damage and prejudice of the aforesaid complainant in the aforestated sum of P85,000.00, Philippine currency.

"Contrary to Law." (pp. 36-37, Rollo)

Criminal Case No. 3488:

"That on or about the 28th day of January, 1980, in the City of Lucena, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously issue and make out Check No. AA37-54328 dated January 28, 1980, in the amount of P85,000.00, drawn against the Consolidated Bank and Trust Company, but when said check was presented for payment the same was dishonored and was refused payment for the reason that the drawer thereof, the herein accused, did not have sufficient funds in said bank; and that thereafter, despite notice by the complainant herein the Family Savings Bank, Lucena Branch, Lucena City, the accused failed and refused to desposit with said bank the necessary amount to cover the said check, to the damage and prejudice of the aforesaid complainant in the aforestated sum of P85,000.00, Philippine Currency.

"Contrary to Law." (pp. 38-39, Rollo)

Criminal Case No. 3489:

"That on or about the 28th day of January, 1980, in the City of Lucena, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously issue and make out Check No. AA37-54331 dated January 28, 1980, in the amount of P85,000.00, drawn against the Consolidated Bank and Trust Company, but when said check was presented for payment the same was dishonored and was refused payment for the reason that the drawer thereof, the herein accused, did not have sufficient funds in said bank; and that thereafter, despite notice by the complainant herein, the Family Savings Bank, Lucena Branch, Lucena City, the accused failed and refused to deposit with said bank the necessary amount to cover the said check, to the damage and prejudice of the aforesaid complainant in the aforestated sum of P85,000.00, Philippine Currency.

"Contrary to law." (pp. 40-41, Rollo)

Criminal Case No. 3490:

"That on or about the 28th day of January, 1980, in the city of Lucena, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously issue and make out Check No. AA37-54334 dated January 28, 1980, in the amount of P85,000.00, drawn against the Consolidated Bank and Trust Company, but when said check was presented for payment the same was dishonored and was refused payment for the reason that the drawer thereof, the herein accused, did not have sufficient funds in said bank; and that thereafter, despite notice by the complainant herein, the Family Savings Bank, Lucena Branch, Lucena City, the accused failed and refused to deposit with said bank the necessary amount to cover the said check, to the damage and prejudice of the aforesaid complainant in the aforestated sum of P85,000.00, Philippine currency.

"Contrary to law." (pp. 42-43, Rollo)

On April 5, 1982, the City Fiscal filed a Motion to Withdraw Criminal Case No. 10323, pending before the City Court of Lucena, on the ground that proper informations have been filed with the Court of First Instance of Quezon.

The counsel for the accused filed an Opposition to the Motion to Withdraw on the ground that the filing of so-called proper informations with the Court of First Instance of Quezon is not a legal ground to withdraw the above-entitled case, considering that the City Court of Lucena had already acquired jurisdiction over the case and the accused had already been arraigned and had pleaded not guilty to the charge.

On April 16, 1982, the City Court issued an order, dismissing Criminal Case No. 10323, for lack of jurisdiction.

Subsequently, upon motion of private respondent through counsel, Criminal Cases Nos. 3485, 3486, 3487, 3488, 3489 and 3490 pending in various branches of the Court of First Instance of Quezon, were consolidated for trial before Branch II of the aforesaid CFI, presided by the respondent judge.

On July 28, 1982, private respondent was again arraigned, now before the Court of First Instance of Quezon, Branch II and she entered a plea of "Not Guilty" in all aforesaid six (6) criminal cases.

After entering her plea of "Not Guilty," private respondent filed on the same day a Motion to Dismiss the aforementioned six (6) criminal cases on the ground of double jeopardy, claiming that the City Court of Lucena City had already acquired jurisdiction over Criminal Case No. 10323 and that, therefore, the dismissal of the last mentioned case, the very case bearing the same causes of action as the six (6) criminal cases, constituted a dismissal on the merits.

On July 29, 1982, the City Fiscal filed an Opposition to the aforesaid Motion to Dismiss, citing as grounds therefore that the private respondent had not been placed in jeopardy before the City Court since she was arraigned under a defective information before the latter Court and such court had no jurisdiction over the offense charged in Criminal Case. No. 10323.

On July 30, 1982 the respondent CFI judge issued the first questioned order granting private respondent's motion to dismiss all the six (6) criminal informations filed against her.

On August 5, 1982, the complainant through Assistant City Fiscal Elviro Q. Quitain of Lucena City filed a motion for reconsideration of the said order.

On August 12, 1982, private respondent filed an Opposition to the City Fiscal's motion for reconsideration.

In the meantime, the A.M. Perez and Associates Law Office, through Atty. Dante T. Ramos, filed its formal appearance on August 12, 1982 as private prosecutor in behalf of the Family Bank and Trust Company (herein private petitioner) under the direct control and supervision of the City Fiscal in the six (6) criminal cases before the CFI of Quezon.

On August 16, 1982, with the conformity of the City Fiscal, the private prosecutor through the above-named counsel filed its own Motion for Reconsideration of the respondent judge's order of dismissal.

On August 23, 1982, private respondent Palillo through counsel filed a supplemental opposition to the prosecution's motions for reconsideration.

On August 26, 1982, respondent Judge issued the second questioned order, denying both the City Fiscal and the private prosecutor's motions for reconsideration for lack of merit.

Hence, this petition which the City Fiscal and the private prosecutor jointly filed directly with this Court.

In his comment, the Solicitor General recommended that the questioned orders of the respondent judge be reversed and set aside and that the case be remanded to the court a quo for trial.

On the other hand, the counsel for the herein private respondent, after four (4) motions for extension of time, failed to file his own comment.

Accordingly, on March 2, 1983, this Court issued a resolution dispensing with the private respondent's comment, giving due course to the petition and declaring the case submitted for decision.

In support of their petition, petitioners contend that, in issuing the orders complained of, respondent judge acted with grave abuse of discretion and/or in excess or lack of jurisdiction because:

- a) The respondent judge was without jurisdiction to inquire into, much less reverse the City Court's finding contained in its order dated April 16, 1982 that the City Court had no jurisdiction over Criminal Case No. 10323, the latter order having long become final and constituted res judicata between the parties thereto.
- b) The respondent judge had no jurisdiction to pass upon the issue of jurisdiction of the City Court over Criminal Case No. 10323, such competence being in law reserved only to the Supreme Court.
- c) The respondent judge's holding that the City Court had concurrent jurisdiction with Court of First Instance of Lucena over the offense charged under Criminal Case No. 10323 and that the dismissal of said case thereby precludes further prosecution of the accused under the six (6) cases before the Court of First Instance of Quezon finds no valid support in law and jurisprudence.
- d) The orders complained of effectively denies the prosecution of its day in Court and of its right to due process.

e) The respondent judge gravely abused its discretion in not finding that the accused, herein respondent PALILLO, has waived the defense of double jeopardy and is thus estopped from setting up said defense (p. 78, Rollo).

The main issue in this petition is whether or not the dismissal of Criminal Case No. 10323 pending before the City Court of Lucena, Branch I, for lack of jurisdiction and the subsequent filing of other informations (Criminal Cases Nos. 3485-3490) with the respondent Court against the same private respondent for the same offenses had placed her in double jeopardy.

A careful scrutiny of the circumstances of these cases would clearly show that no double jeopardy exists. It is a settled rule that to raise the defense of double jeopardy, the following requisites must concur: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense, or the second offense includes or is necessarily included in the offense charged in the first information, or is an attempt to commit the same or is a frustration thereof (*People v. City Court of Manila*, G.R. No. L-36528, September 24, 1987, 154 SCRA 175; *Ada v. Virola*, G.R. Nos. 82346-47, April 17, 1989, 172 SCRA 336).

And legal jeopardy attaches only: (a) upon a valid indictment; (b) before a competent court; (c) after arraignment; (d) a valid plea having been entered; and (e) the case was dismissed or otherwise terminated without the express consent of the accused (*Tangan v. People of the Philippines*, G.R. No. 73963, Nov. 5, 1987, 155 SCRA 435).

As correctly found by the City Court of Lucena, jurisdiction over the offenses charged in Criminal Case No. 10323 exclusively pertains to the Court of First Instance of Quezon.

Section 1 of Batas Pambansa Blg. 22 provides for a penalty of imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine or imprisonment at the discretion of the court.

The Judiciary Reorganization Act of 1948 provides that the municipal judges in the capitals of provinces and sub-provinces and judges of city courts shall have like jurisdiction as the Court of First Instance to try parties charged with an offense committed within their respective jurisdictions, in which the penalty provided by law does not exceed prison correccional or imprisonment for not more than six years or fine not exceeding six thousand pesos or both x x x. (Section 87).

In determining whether a criminal case is within the jurisdiction of a Municipal or City Court, the maximum punishment that might be imposed is controlling, and the fact that the minimum punishment is within its jurisdiction is immaterial.

Taking into account the amount of each check which is P85,000.00 upon which the court may base the alternative imposable penalty of fine pursuant to BP. BLg. 22, as alleged in the information filed in the City Court, it is clear that the latter has no jurisdiction to try the case considering that the imposable fine will be P85,000.00 at the very least up to the amount of P170,000.00 which is way beyond the maximum amount of P6,000.00 from which the City Court may validly draw concurrent jurisdiction over the case. It is this alternative penalty of fine and not the penalty of imprisonment which divests the City Court of its jurisdiction to try Criminal Case No. 10323. Hence, the City Court of Lucena correctly dismissed said case and since the dismissal was based on lack of jurisdiction, it did not constitute a bar to the prosecution of the same offense in the proper court. (*U.S. v. Bernardo*, G.R. No. 6027 19 Phil. 265; *Cristobal v. People* G.R. No. 1-1542, 84, Phil. 473)

It is noteworthy that the Motion to Withdraw Criminal Case No. 10323 and the subsequent filing of the six (6)

criminal informations with the Court of First Instance were made compliance with the directive of the Ministry of Justice. Clearly, these were designed to correct the error committed with respect to the filing of the information in Criminal Case No. 10323. Nevertheless, the Court finds that the error does not constitute substantial prejudice to private respondent considering that no evidence yet has ever been presented and the private respondent was never exposed to trial. Thus, the proceedings in Criminal Cases Nos. 3485-3490 were as though the accused was being tried and prosecuted under an original information. The constitutional mandate against putting a person twice in jeopardy of punishment for the same offense is to protect the accused from going through a trial a second time. But, since the first proceeding was dismissed for lack of jurisdiction and the State was not afforded the right to present its own evidence to substantiate the allegations in the information, there is no second jeopardy to speak of. Contrary to the stand of the private respondent in its motion to quash Criminal Cases Nos. 3485-3490, the City Court's order of dismissal cannot be considered as a judgment of acquittal since, as already pointed out, the said court has no jurisdiction to try the case.

Moreover, the assailed order of dismissal of Criminal Cases Nos. 3485-3490 unjustly deprives the State of its right to due process.

This Court had occasion to rule in *People v. Pablo*, G.R. No. L-37271, June 25, 1980 (98 SCRA 289) that the court should bear in mind that it is the guardian of the rights of the accused as well as of the people at large, and that it should not unduly force the accused to go to trial, or for light cause, jeopardize the rights or interest of the public. The rights of the offended parties, who usually take active part in the trial, are equally entitled to the protection offered by the courts to the public at large in the trial of a criminal case. (*People v. Declaro*, G.R. No. 64362, February 9, 1989, 170 SCRA 142)

In the earlier case of *Silvestre v. Military Commission No. 21*, G.R. No. L-46366, March 8, 1978, 82 SCRA 19, We ruled that:

"The State is entitled to due process in criminal cases, that is, it must be given the opportunity to present its evidence in support of the charge. The Court has always accorded this right to the prosecution and, where the right had been denied, had promptly annulled the offending court action. We have heretofore held that a purely capricious dismissal of an information deprives the State of fair opportunity to prosecute and convict, it denies the prosecution its day in court. For this reason, it is a dismissal (in reality an acquittal) without due process, and, therefore null and void. Such dismissal is invalid for lack of a fundamental pre-requisite, that is, due process, and, consequently, will not constitute a proper basis for the claim of double jeopardy. We have likewise held that a trial court may not arbitrarily deny a timely and well-founded motion of the prosecution for reconsideration of an order of dismissal or acquittal and that such arbitrary refusal to reopen the case will be set aside to give the State its day in court and an opportunity to prove the offense charged against the accused and to prevent miscarriage of justice, especially when no substantial right of the accused would be prejudiced thereby." (*People v. Navarro, etc.*, 63 SCRA 264).

We disagree, however, with the petitioner's contention that respondent judge had no jurisdiction to pass upon the issue of jurisdiction of the City Court over Criminal Case No. 10323. Respondent Court obviously has the competence to pass upon the issue of the city court's jurisdiction over the first information. It should be pointed out that in order to resolve whether or not an accused has been placed twice in jeopardy, the court should first determine whether or not a first jeopardy had legally attached. As already discussed before, a legal jeopardy attaches only if the court which first tried the offense is a court of competent jurisdiction. And since the herein private respondent interposed the defense of double jeopardy on the basis that the city court had validly acquired jurisdiction over Criminal Case No. 10323, it is necessary for the respondent court to pass upon the said issue.

Anent the contention of petitioner that private respondent had waived the defense of double jeopardy when she

failed to plead the said defense at the time of arraignment, suffice it to say that the promulgation of the 1985 Rules on Criminal Procedure had effectively granted to an accused the right to invoke the defense of double jeopardy even after arraignment. Thus, Sec. 8, Rule 117 of the New Rules provides:

"Sec. 8. Failure to move to quash or to allege any ground therefore. - The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash, or failed to allege the same in said motion shall be deemed a waiver with the grounds of a motion to quash except the grounds of no offense charged, lack of jurisdiction over the offense charged, extinction, of the offense or penalty and jeopardy, as provided for in paragraphs (a), (b), (f) and (h) of Section 3 of this Rule." (underscoring supplied).

Notwithstanding the foregoing disquisitions with respect to the procedural issues raised, this petition warrants the issuance of the writ of certiorari prayed for, there being no double jeopardy in this case.

ACCORDINGLY, the petition is GRANTED and the assailed orders are hereby REVERSED and SET ASIDE. These cases are hereby REMANDED to the appropriate Regional Trial Court of Quezon to which Criminal Cases Nos. 3485, 3486, 3487, 3488, 3489 and 3490 are assigned to proceed with the trial on the merits against private respondent.

SO ORDERED.

Narvasa, C.J., Cruz, Grino-Aquino, and Bellosillo, JJ., concur.

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