

EDITHA T. DALMAN, PETITIONER, VS. THE CITY COURT OF DIPGLOG CITY, BR. II AND VICENTA L. AMATONG, RESPONDENTS.

G.R. Nos. 63194-96. January 21, 1985

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is about two public school teachers who had a misunderstanding and the off-shoot was the filing by the private respondent of a civil case for damages for alleged slight physical injuries. The petitioner filed a counterclaim for damages. The private respondent also filed two separate criminal cases against the petitioner for slight physical injuries (Criminal Case No. B-21590) and grave oral defamation (Criminal Case No. B-21601).

Subsequently, the private respondent filed a motion to withdraw the civil case for damages on the ground that the barangay referral required by P.D. No. 1508 had not been complied with. She also requested that her claim for damages be litigated in the two criminal cases.

The petitioner objected to the motion of the private respondent on the ground that her counterclaim would be prejudiced but she did not controvert the averment that there was no previous compliance with P.D. No. 1508.

The lower court allowed the withdrawal of the civil case for lack of jurisdiction and for the civil damages to be pursued in the two criminal cases.

Before this Court the petitioner seeks the following reliefs:

- To dismiss Criminal Case No. B-21590 for lack of jurisdiction; [No mention is made of the other criminal case.]
- To affirm the dismissal of Civil Case No. 2239;
- To reinstate the counterclaim of the petitioner and to allow her to present evidence to prove her cause of action thereon; and
- For costs against private respondent. " (Rollo, p. 9.)

The petition is without merit. The petitioner does not object to the dismissal of the civil case but nonetheless wants her counterclaim therein to subsist. Impossible. A person cannot eat his cake and have it at the same time. If the civil case is dismissed, so also is the counterclaim filed therein.

As to the dismissal of Criminal Case No. B-21590, the question of jurisdiction was never raised in said case before the trial court. It cannot be done at this stage and level.

WHEREFORE, the petition is dismissed for lack of merit with costs against the petitioner. The temporary restraining order is lifted.

SO ORDERED.

Makasiar, J., Chairman, Aquino, Concepcion, Jr., Escolin, and Cuevas, JJ., concur.

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