43 Phil. 304

[G. R. No. 18913. April 15, 1922]

RAFAEL A. DIMAYUGA AND TEOFILO FAJARDO, PLAINTIFFS, VS. RAMON FERNANDEZ, MAYOR OF THE CITY OF MANILA, LUIS P, TORRES, CITY FISCAL, JOHN W. GREEN, CHIEF OF POLICE, DEFENDANTS.

D E C I S I O N

STATEMENT

This is a petition for a writ of prohibition, in which the plaintiffs allege that they are citizens and inhabitants of the Philippine Islands, residing1 in the city of Manila. The defendant Ramon Fernandez is the Mayor, the defendant Torres, the fiscal, and the defendant Green, the chief of police of the city of Manila.

It is alleged that the plaintiffs are Chiropractic Doctors, practicing their profession in the city of Manila, and that they are graduates of reputable American universities, and have complied with all of the rules and regulations of such universities, which are required for the issuance of the degree of Doctor of Chiropractics, and that a chiropractor is a mechanic whose duty it is to see that human anatomy is in working order, without the use of any kind of drugs or medicines internally or externally. That such treatment is practical and economical, and is not dangerous, and that it is officially recognized in a large number of States in the United States, and that as a science it has earned a place among the learned professions and in the Philippine Islands. “That the plaintiffs are exercising the profession of chiropractics after having duly paid the license fee required by Internal Revenue Law.” That the plaintiff, Dimayuga, appeared before the Honorable Secretary of the Interior, the Honorable Director of Health and the Board of Medical Examiners, for the purpose of submitting to, and taking, an examination, if any was required. That he was advised that he could practice his profession so long as there is no express provision against it. That the Board of Medical Examiners informed plaintiff that it could not give him any examination, because no one of its members had any knowledge of chiropractics. That the Director of

Health held that he did not have any objection to the plaintiff's practicing chiropractics in the Philippine Islands so long as there is no complaint against Mistreatment. "That there is no law prohibiting directly or indirectly or regulating in any manner the practice of chiropractics in Philippine Islands." That the defendants, with full knowledge of such facts, and in flagrant violation of the constitutional rights of the plaintiffs, are, with the use of force, about to arrest and persecute them in the exercise of their profession in the city of Manila, and to illegally prohibit their practice, as evidenced by a written opinion of Mr. Torres, as fiscal of the city of Manila, and that their arrest would be without any legal right or authority. That, on account of such illegal acts, the plaintiffs have been damaged in the sum of P10,000, and they have no speedy or adequate remedy at law.

The defendants demurred to the complaint upon the ground:

First. That the acts alleged do not constitute a cause of action;

Second. That this court has no jurisdiction; and,

Third. That the plaintiffs have an adequate remedy at law.

It also appears that in September, 1921, a complaint was filed against the plaintiff, Dimayuga, in the Court of First Instance of Manila, charging him with the illegal practice of medicine, and that the charge is still pending in that court.

At the time the petition was presented here, upon the showing then made and upon the filing of an approved bond, a temporary restraining order was granted against the defendants.

JOHNS, J.:

At the argument on the demurrer, many legal questions were discussed, including the constitutionality of the medical act, the decision of which, under our view of this case, is unnecessary to this opinion. It is true, as respondents contend, that, as a general rule, a court of equity will not restrain the authorities of either a state or municipality from the enforcement of a criminal law, and among the earlier decisions, there was no exception to that rule. By the modern authorities, an exception is sometimes made, and the writ is granted, where it is necessary for the orderly administration of justice, or to prevent the use of the strong arm of the law in an oppressive or vindictive manner, or a multiplicity of actions.

In legal effect, that was the decision of this court in Kwong Sing vs. City of Manila (41 Phil, 103).

The writ of prohibition is somewhat *sui generis*, and is more or less in the sound legal discretion of the court and is intended to prevent the unlawful and oppressive exercise of legal authority, and to bring about the orderly administration of justice.

It appeared at the argument, and was not denied, that last September, one of the plaintiffs was arrested for the illegal practice of his profession in Manila, and that the case is now pending in the criminal court.

The legal questions upon which the petitioners now rely can be raised and decided in the trial of that case, and, if they are sound, should be sustained by the court which has jurisdiction of the case.

It appears that the defendants are acting upon the written advice of the city attorney as to the construction of the law. The Mayor had a right to ask that official for his legal opinion and rely upon it, and he had a right to give it. The record simply shows that the defendants are seeking to discharge their official duties as they understand them, and there is no evidence that either of them are acting from malicious or dishonest motives. Neither is there any evidence that the defendants are threatening plaintiffs with daily arrest or a number of oppressive prosecutions, or that they are disposed to involve them in expensive litigation.

The Court of First Instance first acquired jurisdiction of the criminal prosecution against one of the plaintiffs, and the defense there would involve the legal questions presented here, and could be raised in the trial of that case.

It does not appear that defendants are threatening to, or will, make numerous arrests of the plaintiffs at least until such time as the law of the case is finally settled. There is no allegation that Fiscal Torres was not acting in good faith in the giving of his advice, or that he is not honest in his opinion. The very most that is charged against him is that he is mistaken in the construction of a law, which has never been judicially construed and which can be construed in the case now pending, to which one of the plaintiffs is a party.

The fact that the criminal charge was filed in September, 1921, and that up to date only one complaint has been filed, and that from one cause or another the case has not yet been decided, is strong evidence that there has not been, and is not, any disposition on the part of

the defendants to make numerous arrests and involve the plaintiffs in oppressive litigation.

For such reasons, and upon the record now before us, we decline to pass upon the constitutional questions presented and hold that the temporary injunction should be dissolved and the demurrer sustained, with leave to plaintiffs to file an amended complaint within ten days from the promulgation of this decision. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, and *Ostrand, JJ.,* concur.

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