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SUPREME COURT
SECOND DIVISION

THE PEOPLE OF THE PHILIPPINES,
***Petitioner*,**

-versus-

G.R. No. L-27935
August 16, 1985

HONORABLE JUAN L. BOCAR, Presiding Judge of Branch XVI, Court of First Instance of Manila, and CESAR URBINO, JOSE GIGANTE and SERAPION CLAUDIO,
***Respondents*.**
x----------x

D E C I S I O N

MAKASIAR, *J.*:

Before Us is a special civil action seeking the annulment of the order of the respondent Court of First Instance of Manila (now the Regional Trial Court) dated July 7, 1967 in Criminal Case No. 85798 for theft entitled "People of the Philippines vs. Cesar S. Urbino, Jose Gigante and Serapion Claudio" dismissing said case, thus:

> "Upon a summary investigation of this case the Court is of the opinion that the same is more civil than criminal. The issue is who is the owner of the logs. Both parties claim ownership and

both claim that they can prove ownership. During the summary investigation the accused acknowledged to have taken the logs from the compound in the pier in good faith, without any intention to steal them from anybody.

"In view thereof, the Court orders the case dismissed, costs de oficio and the cancellation of the bond filed by the accused.

"SO ORDERED" (p. 18, rec.).

On March 28, 1967, the assistant fiscal for Manila filed before the respondent Court the following information:

"The undersigned accuses CESAR S. URBINO, JOSE GIGANTE and SERAPION CLAUDIO of the crime of theft, committed as follows:

"That on or about October 1, 1965, in the City of Manila, Philippines, the said accused, conspiring and confederating together with three others whose true names, identities and whereabouts are still unknown, and helping one another, did then and there willfully, unlawfully and feloniously, with intent of gain and without the knowledge and consent of the owner thereof, take, steal and carry away the following property, to wit:

"Six (6) pieces of Dao Veneer 1 Grade Exportable round logs, valued at — P7,104.62 all valued at P7,104.62 belonging to one JUAN B. BAÑEZ, JR. to the damage and prejudice of the said owner in the aforesaid sum of P7,104.62, Philippine currency.

"Contrary to law.

"CARLOS GALMAN CRUZ
Assistant Fiscal"
(p., 10, rec.).

On May 3, 1967, the three accused, upon arraignment, pleaded "not guilty" (p. 2, rec.).

Proceedings were had on July 7, 1967. On said date, the respondent Judge conducted a "summary investigation" directing questions to the complainant as well as to the accused. At the end of the "investigation, " the respondent Judge issued the order under review.

On July 12, 1967, the City Fiscal's Office received a copy of the lower court's order dated July 7, 1967.

On July 18, 1967, the private prosecutors in the case filed a "motion for reconsideration" (pp. 3 & 19-27, rec.); and on August 8, 1967, the City Fiscal's Office joined the private prosecutors in their motion for reconsideration (pp. 3 & 28, rec.).

On August 9, 1967, respondent Court issued an order denying the motion for reconsideration (pp. 29-30, rec.). A copy of said order was received by the City Fiscal's Office on August 11, 1967.

The question is: Whether or not respondent Court committed grave abuse of discretion amounting to lack of jurisdiction in issuing the order dated July 7, 1967.

We find for petitioner.

It is not disputed that the Office of the City Fiscal of Manila had conducted a preliminary investigation on the complaint of Juan B. Bañez, Jr., and that as a result thereof an information was filed before respondent Court for theft against the three accused. On May 3, 1967, the three accused were arraigned, and all three pleaded "not guilty" of the charge. The propriety and validity of both the information and the arraignment are not contested. The issues having been joined, the case was ready for trial on the merits.

The subsequent proceedings, however, was marred with irregularities.

It is evident from the brief transcript of the proceedings held on July 7, 1967 that the parties were not placed under oath before they answered the queries of the respondent Judge (pp. 11-17, rec.). Verily, no evidence in law had as yet been entered into the records of the case

before respondent Court. Respondent Court's issuance of the questioned dismissal order was arbitrary, whimsical and capricious, a veritable abuse of discretion which this Court cannot permit.

Moreover, it is clear from the same transcript that the prosecution never had a chance to introduce and offer its evidence formally in accordance with the Rules of Court (pp. 11-17, rec.). Verily, the prosecution was denied due process.

Where the prosecution is deprived of a fair opportunity to prosecute and prove its case, its right to due process is thereby violated (Uy vs. Genato, L-37399, 57 SCRA 123 [May 29, 1974]; Serino vs. Zosa, L-33116, 40 SCRA 433 [Aug. 31, 1971]; People vs. Gomez, L-22345, 20 SCRA 293 [May 29, 1967]; People vs. Balisacan, L-26376, 17 SCRA 1119 [Aug. 31, 1966]).

The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted of their jurisdiction. Thus, the violation of the State's right to due process raises a serious jurisdictional issue (Gumabon vs. Director of the Bureau of Prisons, L-30026, 37 SCRA 420 [Jan. 30, 1971]) which cannot be glossed over or disregarded at will. Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction (Aducayen vs. Flores, L-30370, [May 25, 1973] 51 SCRA 78; Shell Co. vs. Enage, L-30111-12, 49 SCRA 416 [Feb. 27, 1973]). Any judgment or decision rendered notwithstanding such violation may be regarded as a "lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its head" (Aducayen vs. Flores, supra).

Respondent Judge's dismissal order dated July 7, 1967 being null and void for lack of jurisdiction, the same does not constitute a proper basis for a claim of double jeopardy (Serino vs. Zosa, supra).

The constitutional guarantee is that "no person shall be twice put in jeopardy of punishment for the same offense" (Sec. 22, Art. IV, 1973 Constitution). Section 9, Rule 117 of the Rules of Court (substantially reproduced as Section 7, Rule 117 in the 1985 Rules on Criminal Procedure, made effective on January 1, 1985) clarifies the guarantee as follows:

> "Former conviction or acquittal or former jeopardy. — When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information."

Thus, apparently, to raise the defense of double jeopardy, three requisites must be present: (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 as that in the first.

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 (People vs. Ylagan, 58 Phil. 851). The lower court was not competent as it was ousted of its jurisdiction when it violated the right of the prosecution to due process.

In effect, the first jeopardy was never terminated, and the remand of the criminal case for further hearing and/or trial before the lower courts amounts merely to a continuation of the first jeopardy, and does not expose the accused to a second jeopardy.

In People vs. Gomez, et al., supra, We said:

> "The dismissal was therefore purely capricious. It amounted to grave abuse of discretion tantamount to excess of jurisdiction. Such a dismissal order, made sua sponte for no proper reason at all, is void for being issued without authority. And being void, it

cannot terminate the proceedings. The same jeopardy that attached continues, the cause not having been terminated, thereby rendering the defense of double jeopardy without merit (People vs. Cabero, 61 Phil. 121, 125).

"A purely capricious dismissal of an information, as herein involved, moreover, deprives the State of fair opportunity to prosecute and convict. It denies the prosecution its day in court. Accordingly, it is a dismissal without due process and, therefore, null and void. A dismissal invalid for lack of a fundamental prerequisite, such as due process, will not constitute a proper basis for the claim of double jeopardy" (People vs. Balisacan, L-26376, August 31, 1966, Tilghman vs. Mago [Fla.] 82 So. 2d 136; McCleary vs. Hudspeth, 124 F. 2d. 445).

WHEREFORE, THE ORDER OF RESPONDENT JUDGE DATED JULY 7, 1967 IN CRIMINAL CASE NO. 85798 DISMISSING SAID CASE IS HEREBY SET ASIDE AS NULL AND VOID. CRIMINAL CASE NO. 85798 IS REMANDED TO THE COURT A QUO FOR TRIAL ON THE MERITS. NO COSTS.

SO ORDERED.

Aquino, *J., (Chairman)*, Concepcion, Jr., Escolin, Cuevas and Alampay, *JJ.*, concur.
Abad Santos, *J.*, is on leave.

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