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deprive the people of their right to elect their officers. When the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason of such faults or misconduct to practically overrule the will of the people."

ACCORDINGLY, the resolution and order, dated August 13 and October 19, 1982, respectively, of public respondent Director Cresenciano B. Trajano of the Bureau of Labor Relations, Ministry of Labor, Manila in BLR Case No. A-0100-82 (RO4-A-LRD-M-9-35-81) are SET ASIDE and, the petition for expulsion of herein union officers in RO4-A-LRD-M-9-35-81 is hereby DISMISSED for having been rendered moot and academic by the election of herein union officers in the general membership meeting/election held on October 4, 1982.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Gutierrez, Jr., and *de la Fuente, JJ.,* concur.

SECOND DIVISION

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

EDITHA T. DALMAN, *petitioner, vs.* THE CITY COURT OF DIPOLOG CITY, BR. II and VICENTA L. AMATONG, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; ACTION FOR DAMAGES; DISMISSAL OF CASE INCLUDES DISMISSAL OF COUNTERCLAIM.—** 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.

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2. ID.; CRIMINAL PROCEDURE; QUESTION OF JURISDICTION; ISSUE IF NOT RAISED IN THE LOWER COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— 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.

APPEARANCES OF COUNSEL

Victoriano DL. Lacaya, Jr., for petitioner.
Isagani S. Amatong for private respondent.

RESOLUTION

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:

"1. To dismiss Criminal Case No. B-21590 for lack of jurisdiction; [No mention is made of the other criminal case.]

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2. To affirm the dismissal of Civil Case No. 2239;

3. To reinstate the counterclaim of the petitioner and to allow her to present evidence to prove her cause of action thereon; and

4. 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, Aquino, Concepcion Jr., and *Cuevas, JJ.*, concur. *Escolin, J.*, in the result.

FIRST DIVISION

[G.R. No. L-38338. January 28, 1985]

IN THE MATTER OF THE INTESTATE ESTATE OF ANDRES G. DE JESUS AND BIBIANA ROXAS DE JESUS, SIMEON R. ROXAS & PEDRO ROXAS DE JESUS, *petitioners, vs.* ANDRES R. DE JESUS, JR., *respondent.*