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FIRST DIVISION

[G.R. No. L-36703. July 31, 1974]

GOTARDO FLORDELIS and RAFAEL BOLLOZOS, the latter in his capacity as Asst. Fiscal of Tagbilaran, Bohol, *petitioners, vs.* **THE HON. HERACLEO CASTILLO, as City Judge, Branch I, Tagbilaran, Bohol, MERLIN O. MAR, MARCELINO T. MACAPOBRE, JR., DELFIN EPE, GRACIANO LIGAN, PHILIP COLLYER and ANTONIO CUAJAO,** *respondents.*

SYLLABUS

1. **CRIMINAL PROCEDURE; SUSPENSION OF CRIMINAL ACTION BY REASON OF PREJUDICIAL QUESTION; DOCTRINE OF PREJUDICIAL QUESTION COMES INTO PLAY WHEN A CIVIL AND CRIMINAL ACTION BOTH PEND.**— As clearly delineated in Article 36 of the New Civil Code and Section 5 of Rule 111 of the Rules of Court, and as uniformly applied in numerous decisions of this Court, the doctrine of prejudicial question comes into play generally in a situation where a civil action and a criminal action both pend and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case.

2. **ID.; ID.; ID.; TAX EVASION ISSUE PENDING RESOLUTION IN AN ADMINISTRATIVE CASE DOES NOT CONSTITUTE A PREJUDICIAL QUESTION IN THE CASE AT BAR.**— Private respondents lodged with the Department of Education and Culture an administrative complaint charging petitioner with tax evasion. The petitioner reacted by filing with the court *a quo* a complaint for perjury against the private respondents. The respondent judge provisionally dismissed the complaint for perjury on the ground that the tax evasion issue pending resolution in the administrative case constitutes a prejudicial question. HELD: The resolution provisionally dismissing the perjury case should be set

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aside. No civil action pends nor has any been instituted. The complaint filed by private respondents is merely an administrative one. Moreover, neither success nor failure of the private respondents to prove their tax evasion charge against the petitioner in the administrative case can attain the character of a final determination binding and conclusive upon the court in the criminal action so as to foreclose the issue of guilt or innocence of the private respondents upon the perjury indictment.

3. ID.; DOUBLE JEOPARDY; DISMISSAL OF A CASE UPON EXPRESS APPLICATION OF DEFENDANT DOES NOT BAR ANOTHER PROSECUTION FOR THE SAME OFFENSE.— When a criminal case is dismissed upon the express application of the defendant, the dismissal is not a bar to another prosecution for the same offense, because the defendant's action in having the same dismissed constitutes a waiver of his constitutional prerogative against double jeopardy as he thereby prevented the court from proceeding to trial on the merits and rendering a judgment of conviction against him.

APPEARANCES OF COUNSEL

Cristeto O. Cimagala for petitioners.
Paulino Clarin for private respondents.
Hon. Heracleo Castillo for and in his own behalf.

DECISION

RUIZ CASTRO, *J.*:

This is a petition for review of the resolution of March 30, 1973 of the City Court of Tagbiliran, Bohol (Branch I) in its criminal case 4640, ordering "the provisional dismissal of this case" in view of the alleged existence of an unresolved prejudicial question in an administrative case.

The essential facts are not controverted.

On November 29, 1972 the private respondent teachers of the Bohol School of Arts and Trades of Tagbilaran City, namely, Merlin O. Mar, Marcelino T. Macapobre, Jr., Delfin Epe, Graciano Ligan, Philip Collyer and Antonio Cuajao (hereinafter referred to as the

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private respondents), lodged with the Department of Education and Culture a sworn administrative complaint against the petitioner principal teacher Gotardo Flordelis (hereinafter referred to as the petitioner), that recites several counts, one of which accuses the latter as "a tax evader by refusing to pay his income tax for many years now and for misdeclaring the sales of his business under the pretext of his son's name."

The petitioner reacted by filing a complaint for perjury against the private respondents. After a preliminary investigation at which testimonial and documentary evidence was adduced by the parties, the second assistant city fiscal (Rafael Bollozos) of Tagbilaran, Bohol resolved (1) that the administrative complaint imputes to the petitioner two distinct and separate criminal offenses, namely, income tax evasion, and misdeclaration of the sales of his business (sale of furniture); (2) that upon the evidence submitted, the allegation that the petitioner misdeclared the sales of his business "has some semblance of truth which can be the basis of good faith"; and (3) that with respect, however, to the charge that the petitioner had evaded his income tax obligations, the private respondents "failed to adduce evidence to substantiate their charge." An information for perjury was accordingly filed against the private respondents, which information pertinently recites as follows:

"That, on or about the 29th day of November, 1972, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and moved by hate and personal resentment, did then and there willfully, unlawfully and feloniously, with malice aforethought and with deliberate attempt to bismirch the good name, reputation and integrity of one Gotardo Flordelis, Principal In-Charge of the Bohol School of Arts and Trades, write, execute and sign a verified administrative complaint against said Gotardo Flordelis and have it filed with the office of the Honorable Secretary of Education and Culture, declaring therein a false statement, particularly under Count No. 11 thereof, which charges said Gotardo Flordelis that 'He (referring to Mr. Flordelis) is a tax evader by refusing to pay his income tax for many years now x x x' which statement the accused herein fully well know to be false and malicious and constitutive of an untruthful narration of facts x x x."

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On March 27, 1973 the private respondents, upon arraignment before the City Court of Tagbilaran, pleaded not guilty. Contemporaneously they filed a motion to quash the information on the grounds (1) that the facts recited therein do not constitute an offense; and (2) that it contains averments which, if true, would constitute a legal excuse or justification.

On March 30, 1973 the respondent judge, resolving the said motion, provisionally dismissed the case and ordered the release from custody of the private respondents, on the sole ground that the tax evasion issue pending resolution in the administrative case before the Department of Education and Culture constitutes a pre-judicial question which should first be resolved before the criminal action may proceed.

On April 23, 1973 the petitioner, joined by the assistant city fiscal, filed the present petition for review. They here contend (1) that the doctrine of pre-judicial question was incorrectly applied below; and (2) that the criminal case should have been merely suspended as provided in Section 5, Rule 111, *infra*, of the Rules of Court, instead of being provisionally dismissed, which dismissal may later be pleaded by the private respondents as a bar in double jeopardy.

1. We rule that the doctrine of pre-judicial question has no application to the situation below.

Article 36 of the new Civil Code states:

"Pre-judicial questions, which must be decided before any criminal action may be instituted or may proceed, shall be governed by rules of court which the Supreme Court shall promulgate and which shall not be in conflict with the provisions of this Code."

The implementing provision of the Rules of Court is Section 5 of Rule 111, which reads:

"Sec. 5. *Suspension by reason of pre-judicial question.* — A petition for the suspension of the criminal action based upon the pendency of a pre-judicial question in a *civil case*, may only be presented by any party before or during the trial of the *criminal action*." (italics ours)

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As clearly delineated in the aforecited provisions of the new Civil Code and the Rules of Court, and as uniformly applied in numerous decisions of this Court,[1] the doctrine of prejudicial question comes into play generally in a situation where a civil action and a criminal action both pend and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case.

In the case at bar, no civil action pends, nor has any been instituted. The complaint is merely an administrative one. Moreover, neither success nor failure of the private respondents to prove their tax evasion charge against the petitioner in the administrative case can attain the character of a final determination binding and conclusive upon the court in the criminal action so as to foreclose the issue of guilt or innocence of the private respondents upon the perjury indictment.

2. The petitioner's apprehension that double jeopardy may set in is unwarranted. The record shows that the quashal of the information below was explicitly and actively sought by the private respondents.

When a criminal case is dismissed upon the express application of the defendant, the dismissal is not a bar to another prosecution

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[1] Berbari *vs.* Concepcion, 40 Phil. 837 (1920); Aleria *vs.* Mendoza, 83 Phil. 427 (1949); People *vs.* Aragon, 94 Phil. 357 (1954); Brito-Sy *vs.* Malate Taxicab & Garage, Inc., 102 Phil. 482 (1957); Mendiola *vs.* Macadaeg, 1 SCRA 593; Benitez *vs.* Concepcion, 2 SCRA 178; Zapanta *vs.* Montesa, 4 SCRA 510; Jimenez *vs.* Averia, 22 SCRA 1380. In Buenaventura *vs.* Ocampo (55 SCRA 271) the doctrine of pre-judicial question was held inapplicable because no criminal case but merely an administrative case and a civil suit were involved. The Court, however, held that, in view of the peculiar circumstances of that case, the respondents' suit for damages in the lower court was premature as it was filed during the pendency of an administrative case against the respondents before the POLCOM. "The possibility cannot be overlooked," said the Court, "that the POLCOM may hand down a decision adverse to the respondents, in which case the damage suit will become unfounded and baseless for wanting in cause of action."

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for the same offense, because the defendant's action in having the same dismissed constitutes a waiver of his constitutional prerogative against double jeopardy as he thereby prevented the court from proceeding to trial on the merits and rendering a judgment of conviction against him.[2]

"The doctrine of estoppel is in quintessence the same as the doctrine of waiver: the thrust of both is that a dismissal, other than on the merits, sought by the accused in a motion to dismiss, is deemed to be with his express consent and bars him from subsequently interposing the defense of double jeopardy on appeal or in a new prosecution for the same offense."[3]

ACCORDINGLY, the resolution of the court *a quo* of March 30, 1973 is set aside, and the said court is hereby ordered to reinstate the perjury case against the private respondents and to proceed with the trial thereof in accordance with law. No costs.

Makalintal, C.J., Teehankee, Makasiar, Esguerra, and *Muñoz Palma, JJ.*, concur.

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[2] People *vs.* Obsania, 23 SCRA 1249.

[3] *Ibid.*; see also People *vs.* Garcia Sy, 30 SCRA 150.