

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
EN BANC**

MANUEL F. CABAL,
Petitioner,

-versus-

**G.R. No. L-19052
December 29, 1962**

**HON. RUPERTO KAPUNAN, JR., and
THE CITY FISCAL OF MANILA,**
Respondents.

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DECISION

CONCEPCION, J.:

This is an original Petition for *Certiorari* and Prohibition with Preliminary Injunction, to restrain the Hon. Ruperto Kapunan, Jr., as Judge of the Court of First Instance of Manila, from further proceeding in Criminal Case No. 60111 of said court, and to set aside an order of said respondent, as well as the whole proceedings in said criminal case.

On or about August 2, 1961, Col. Jose C. Maristela of the Philippine Army filed with the Secretary of National Defense a letter-complaint charging petitioner Manuel F. Cabal, then Chief of Staff of the Armed Forces of the Philippines, with "graft, corrupt practices, unexplained wealth, conduct unbecoming of an officer and gentleman, dictatorial

tendencies, giving false statements of his assets and liabilities in 1958 and other equally reprehensible acts". On September 6, 1961, the President of the Philippines created a committee of five (5) members, consisting of former Justice Marceliano R. Montemayor, as Chairman, former Justices Buenaventura Ocampo and Sotero Cabahug, and Generals Basilio J. Valdez and Guillermo B. Francisco, to investigate the charge of unexplained wealth contained in said letter-complaint and submit its report and recommendations as soon as possible. At the beginning of the investigation, on September 15, 1961, the Committee, upon request of complainant, Col. Maristela, ordered petitioner herein to take the witness stand and be sworn to as witness for Maristela, in support of his aforementioned charge of unexplained wealth. Thereupon, petitioner objected, personally and through counsel, to said request of Col. Maristela and to the aforementioned order of the Committee, invoking his constitutional right against self-incrimination. The Committee insisted that petitioner take the witness stand and be sworn to, subject to his right to refuse to answer such questions as may be incriminatory. This notwithstanding, petitioner respectfully refused to be sworn to as a witness or take the witness stand. Hence, in a communication dated September 18, 1961, the Committee referred the matter to respondent City Fiscal of Manila, for such action as he may deem proper. On September 28, 1961, the City Fiscal filed with the Court of First Instance of Manila a "charge" reading as follows:

"The undersigned hereby charges Manuel F. Cabal with contempt under section 580 of the Revised Administrative Code in relation to sections 1 and 7, Rule 64 of the Rules of Court, committed as follows:

"That on or about September 15, 1961, in the investigation conducted at the U.P. Little Theater, Padre Faura, Manila, by the Presidential Committee, which was created by the President of the Republic of the Philippines in accordance with law to investigate the charges of alleged acquisition by respondent of unexplained wealth and composed of Justice Marceliano Montemayor, as Chairman, and Justices Buenaventura Ocampo and Sotero Cabahug and Generals Basilio Valdez and Guillermo Francisco, as members, with the power, among others, to compel the

attendance of witnesses and take their testimony under oath, respondent who was personally present at the time before the Committee in compliance with a subpoena duly issued to him, did then and there willfully, unlawfully, and contumaciously, without any justifiable cause or reason, refuse and fail and still refuse and fail to obey the lawful order of the Committee to take the witness stand, be sworn and testify as witness in said investigation, in utter disregard of the lawful authority of the Committee and thereby obstructing and degrading the proceedings before said body.'

"Wherefore, it is respectfully prayed that respondent be summarily adjudged guilty of contempt of the Presidential Committee and accordingly disciplined as in contempt of court by imprisonment until such time as he shall obey the subject order of said Committee."

This charge, docketed as Criminal Case No. 60111 of said court, was assigned to Branch XVIII thereof, presided over by respondent Judge. On October 2, 1961, the latter issued an order requiring petitioner to show cause and/or answer the charge filed against him within ten (10) days. Soon thereafter, or on October 4, 1961, petitioner filed with respondent Judge a motion to quash the charge and/or order to show cause, upon the ground: (1) that the City Fiscal has neither authority nor personality to file said charge and the same is null and void, for, if criminal, the charge has been filed without a preliminary investigation, and, if civil, the City Fiscal may not file it, his authority in respect of civil cases being limited to representing the City of Manila; (2) that the facts charged constitute no offense, for section 580 of the Revised Administrative Code, upon which the charge is based, violates due process, in that it is vague and uncertain as regards the offense therein defined and the fine imposable therefor and that it fails to specify whether said offense shall be treated as contempt of an inferior court or of a superior court; (3) that more than one offense is charged, for the contempt imputed to petitioner is sought to be punished as contempt of an inferior court, as contempt of a superior court and as contempt under section 7 of Rule 64 of the Rules of Court; (4) that the Committee had no power to order and require petitioner to take the witness stand and be sworn to, upon the

request of Col. Maristela, as witness for the latter, inasmuch as said order violates petitioner's constitutional right against self-incrimination.

By resolution dated October 14, 1961, respondent Judge denied said motion to quash. Thereupon, or on October 20, 1961, petitioner began the present action for the purpose adverted to above, alleging that, unless restrained by this Court, respondent Judge may summarily punish him for contempt, and that such action would not be appealable.

In their answer, respondents herein allege, inter alia, that the investigation being conducted by the Committee above referred to is administrative, not criminal, in nature; that the legal provision relied upon by petitioner in relation to preliminary investigations (Section 38-C, Republic Act No. 409, as amended by Republic Act No. 1201) is inapplicable to contempt proceedings; that, under section 580, of the Revised Administrative Code, contempt against an administrative officer is to be dealt with as contempt of a superior court; that petitioner herein is charged with only one offense; and that, under the constitutional guarantee against self-incrimination, petitioner herein may refuse, not to take the witness stand, but to answer incriminatory questions.

At the outset, it is not disputed that the accused in a criminal case may refuse, not only to answer incriminatory questions, but, also, to take the witness stand (3 Wharton's Criminal Evidence, pp. 1959-1960; 98 C.J.S., p. 264). Hence, the issue before us boils down to whether or not the proceedings before the aforementioned Committee is civil or criminal in character.

In this connection, it should be noted that, although said Committee was created to investigate the administrative charge of unexplained wealth, there seems to be no question that Col. Maristela does not seek the removal of petitioner herein as Chief of Staff of the Armed Forces of the Philippines. As a matter of fact he no longer holds such office. It seems, likewise, conceded that the purpose of the charge against petitioner is to apply the provisions of Republic Act No. 1379, as amended, otherwise known as the Anti-Graft Law, which authorizes the forfeiture to the State of property of a public officer or

employee which is manifestly out of proportion to his salary as such public officer or employee and his other lawful income and the income from legitimately acquired property. Such forfeiture has been held, however, to partake of the nature of a penalty.

“In a strict signification, a forfeiture is a divestiture of property without compensation, in consequence of a default or an offense, and the term is used in such a sense in this article. A forfeiture, as thus defined, is imposed by way of punishment not by the mere convention of the parties, but by the lawmaking power, to insure a prescribed course of conduct. It is a method deemed necessary by the legislature to restrain the commission of an offense and to aid in the prevention of such an offense. The effect of such a forfeiture is to transfer the title to the specific thing from the owner to the sovereign power. (23 Am. Jur. 599) (Emphasis ours.)

“In Black’s Law Dictionary a ‘forfeiture’ is defined to be ‘the incurring of a liability to pay a definite sum of money as the consequence of violating the provisions of some statute or refusal to comply with some requirement of law.’ It may be said to be a penalty imposed for misconduct or breach of duty.” (Com. vs. French, 114 S.W. 255.)

As a consequence, proceedings for forfeiture of property are deemed criminal or penal, and, hence, the exemption of defendants in criminal case from the obligation to be witnesses against themselves are applicable thereto.

“Generally speaking, informations for the forfeiture of goods that seek no judgment of fine or imprisonment against any person are deemed to be civil proceedings in rem. Such proceedings are criminal in nature to the extent that where the person using the res illegally is the owner of rightful possessor of it, the forfeiture proceeding is in the nature of a punishment. They have been held to be so far in the nature of criminal proceedings that a general verdict on several counts in an information is upheld if one count is good. According to the authorities such proceedings, where the owner of the property appears, are so far considered as quasicriminal proceedings as

to relieve the owner from being a witness against himself and to prevent the compulsory production of his books and papers.” (23 Am. Jur. 612; Emphasis ours.)

“Although the contrary view formerly obtained, the later decisions are to the effect that suits for forfeitures incurred by the commission of offenses against the law are so far of a quasi-criminal nature as to be within the reason of criminal proceedings for all purposes of that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself. It has frequently been held upon constitutional grounds under the various State Constitution that a witness or party called as a witness cannot be made to testify against himself as to matters which would subject his property to forfeiture. At early common law no person could be compelled to testify against himself or to answer any question which would have had a tendency to expose his property to a forfeiture, or to form a link in a chain of evidence for that purpose as well as to incriminate him. Under this common-law doctrine of protection against compulsory disclosures which would tend to subject the witness to a forfeiture, such protection was claimed and availed of in some early American cases without placing the basis of the protection upon constitutional grounds.” (23 Am. Jur. 616; Emphasis ours.)

“Proceedings for forfeitures are generally considered to be civil and in the nature of proceedings in rem. The statute providing that no judgment or other proceedings in civil cases shall be arrested or reversed for any defect or want of form is applicable to them. In some aspects, however, suits for penalties and forfeitures are of quasi-criminal nature and within the reason of criminal proceedings for all the purposes of that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself. The proceeding is one against the owner, as well as against the goods; for it is his breach of the laws which has to be proved to establish the forfeiture and his property is sought to be forfeited.” (15 Am. Jur., Sec. 104, p. 368; Emphasis ours.)

“The rule protecting a person from being compelled to furnish evidence which would incriminate him exists not only when he is liable criminally to prosecution and punishment, but also when his answer would tend to expose him to a forfeiture. (58 Am. Jur., Sec. 43, p. 48; Emphasis ours.)

“As already observed, the various constitutions provide that no person shall be compelled in any criminal case to be a witness against himself. This prohibition against compelling a person to take the stand as a witness against himself applies only to criminal, quasi-criminal, and penal proceedings, including a proceeding civil in form for forfeiture of property by reason of the commission of an offense, but not a proceeding in which the penalty recoverable is civil or remedial in nature.” (58 Am. Jur., Sec. 44, p. 49; Emphasis ours.)

“The privilege of a witness not to incriminate himself is not infringed by merely asking the witness a question which he refuses to answer. The privilege is simply an option of refusal, and not a prohibition of inquiry. A question is not improper merely because the answer may tend to criminate but, where a witness exercises his constitutional right not to answer, a question by counsel as to whether the reason for refusing to answer is because the answer may tend to incriminate the witness is improper.

“The possibility that the examination of the witness will be pursued to the extent of requiring self incrimination will not justify the refusal to answer questions. However, where the position of the witness is virtually that of an accused on trial, it would appear that he may invoke the privilege in support of a blanket refusal to answer one and all questions.” (98 C.J.S., p. 252; Emphasis ours.)

“A person may not be compelled to testify in an action against him for a penalty or to answer any question as a witness which would subject him to a penalty or forfeiture, where the penalty or forfeiture is imposed as a vindication of the public justice of the state.

“In general, both at common law and under a constitutional provision against compulsory self-incrimination, a person may not be compelled to answer any question as a witness which would subject him to a penalty or forfeiture, or testify in an action against him for a penalty.

“The privilege applies where the penalty or forfeiture is recoverable, or is imposed in vindication of the public justice of the state, as a statutory fine or penalty, or a fine or penalty for violation of a municipal ordinance, even though the action or proceeding for its enforcement is not brought in a criminal court but is prosecuted through the modes of procedure applicable to an ordinary civil remedy.” (98 C.J.S., pp. 275-6.)

Thus, in *Boyd vs. U.S.* (116 U.S. 616, 29 L. ed. 746), it was held that the information, in a proceeding to declare a forfeiture of certain property because of the evasion of a certain revenue law, “though technically a civil proceeding, is in substance and effect a criminal one”, and that suits for penalties and forfeitures are within the reason of criminal proceedings for the purposes of that portion of the Fifth Amendment of the Constitution of the U.S. which declares that no person shall be compelled in a criminal case to be a witness against himself. Similarly, a proceeding for the removal of an officer was held, in *Thurston vs. Clark* (107 Cal. 285, 40 pp. 435, 437), to be in substance criminal, for said portion of the Fifth Amendment applies “to all cases in which the action prosecuted is not to establish, recover or redress private and civil rights, but to try and punish persons charged with the commission of public offenses” and “a criminal case is an action, suit or cause instituted to punish an infraction of the criminal laws, and, with this object in view, it matters not in what form a statute may clothe it; it is still a criminal case.” This view was, in effect confirmed in *Lees vs. U.S.* (37 L. ed. 1150-1151). Hence, the *Lawyers Reports Annotated* (Vol. 29, p. 8), after an extensive examination of pertinent cases, concludes that said constitutional provision applies whenever the proceeding is not “purely remedial”, or intended “as a redress for a private grievance”, but primarily to punish “a violation of duty or a public wrong and to deter others from offending in a like manner.”

We are not unmindful of the doctrine laid down in *Almeda vs. Perez*, L-18428 (August 30, 1962) in which the theory that, after the filing of respondents' answer to a petition for forfeiture under Republic Act No. 1379, said petition may not be amended as to substance pursuant to our rules of criminal procedure, was rejected by this Court upon the ground that said forfeiture proceeding is civil in nature. This doctrine refers, however, to the purely procedural aspect of said proceeding, and has no bearing on the substantial rights of the respondents therein, particularly their constitutional right against self-incrimination.

WHEREFORE, the writ prayed for is granted and respondent Judge hereby enjoined permanently from proceeding further in Criminal Case No. 60111 of the Court of First Instance of Manila. It is so ordered.

Padilla, Bautista Angelo, Labrador, Reyes, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.
Bengzon, C.J., is on leave.