



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

DATU MALINGIN (LEMUEL TALINGTING y SIMBORIO),
 Tribal Chieftain, Higaonon-Sugbuanon Tribe,

Petitioner,

- versus -

PO3 ARVIN R. SANDAGAN, PO3 ESTELITO R. AVELINO, PO2 NOEL P. GUIMBAOLIBOT, HON. PROSECUTOR III JUNERY M. BAGUNAS and HON. JUDGE CARLOS O. ARGUELLES, Regional Trial Court, Branch 10, Abuyog, Leyte,
Respondents.

G.R. No. 240056

Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,
 HERNANDO,
 INTING,
 DELOS SANTOS, and
 BALTAZAR-PADILLA,* JJ.

Promulgated:

12 OCT 2020

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DECISION

INTING, J.:

This resolves the Petition for *Mandamus*¹ with prayer for Writ of Preliminary Injunction filed by Datu Malingin (Lemuel Talingting y Simborio) (petitioner) praying that the Court (a) declares Branch 10, Regional Trial Court (RTC), Abuyog, Leyte to be without jurisdiction to settle disputes involving Indigenous Peoples (IP); (b) orders Prosecutor III Junery M. Bagunas (respondent Prosecutor) to refrain from prosecuting cases involving IPs; and (c) declares Police Officer (PO) III Arvin R. Sandagan, PO3 Estelito R. Avelino, PO2 Noel P. Guimbaolibot (respondent Police Officers) guilty of Arbitrary Detention (collectively respondents).

* On leave:
¹ *Rollo*, pp. 3-31.

The Antecedents

Through the criminal Informations issued by respondent Prosecutor, petitioner was accused of having carnal knowledge of a 14-year-old minor, AAA,² on six occasions by force, threat, intimidation and by taking advantage of superior strength. Consequently, Criminal Case Nos. 3821, 3822, 3823, 3824, 3825 and 3826 were filed against him for rape and raffled with the RTC presided by Judge Carlos O. Arguelles (respondent Judge).³

Subsequently, petitioner filed a Motion to Quash⁴ on the ground of lack of jurisdiction. He averred that he was a member of the Higaonon-Sugbuanon Tribe, an indigenous group. According to him, pursuant to Sections 65⁵ and 66,⁶ Republic Act No. (RA) 8371,⁷ the criminal cases filed against him should be resolved first through the customary law and practices of the indigenous group he belonged to and thereafter, the issues must be referred to the National Commission on Indigenous Peoples (NCIP).

² The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes;" RA 9262, "An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes;" Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

³ As culled from the Motion to Quash filed by petitioner with Branch 10, Regional Trial Court, Abuyog, Leyte, *rollo*, p. 38.

⁴ *Id.* at 38-39.

⁵ Section 65. *Primacy of Customary Laws and Practices.* — When disputes involve ICCs/IPs, customary laws and practices shall be used to resolve the dispute.

⁶ Section 66. *Jurisdiction of the NCIP.* — The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving rights of ICCs/IPs: *Provided, however,* That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

⁷ The Indigenous Peoples' Rights Act of 1997.

On August 31, 2017, respondent Judge issued a Joint Order⁸ denying the Motion to Quash for lack of merit. He ratiocinated that the invocation of petitioner of the provisions of RA 8371 was misplaced. He specified that RA 8371 covered only disputes concerning customary law and practices of Indigenous Cultural Communities (ICCs) and did not extend to those recognized by regular courts such as violations of RA 8353⁹ and the Revised Penal Code (RPC).

Proceedings before the Court

Undeterred, petitioner filed the present petition contending that *mandamus* is the only available remedy in order to ensure that the victims of violations of cultural rights are given reparation.

Petitioner also argued that respondent Prosecutor committed grave abuse of discretion when he failed to observe the rights of members of an indigenous group. He claimed that the IPs are not included in the persons subject of the country's penal laws because they have the right to use customary laws and practices to resolve disputes.¹⁰

Petitioner, likewise, ascribed grave abuse of discretion against respondent Judge arguing that the latter did not take into account that the cases cognizable by regular courts do not include those covered by RA 8371.¹¹

Finally, petitioner posited that respondent Police Officers committed Arbitrary Detention because they detained him without warrant on June 3, 2017.¹²

Meanwhile, respondent Judge in his Comment¹³ countered that the petition should be denied outright because of its procedural infirmities. He stressed that *mandamus* is the applicable remedy when the complained act involved a ministerial duty. He asserted that he is exercising judicial, not mere ministerial function, and the issue of lack of

⁸ *Rollo*, pp. 43-45.

⁹ *The Anti-Rape Law of 1997*.

¹⁰ *Rollo*, pp. 12, 15.

¹¹ *Id.* at 15.

¹² *Id.* at 11-12.

¹³ *Id.* at 62-67.

jurisdiction is a matter proper subject of a *certiorari* petition, not a petition for *mandamus*.

Respondent Judge also contended that the petition was filed out of time. He posited that petitioner did not file a motion for reconsideration on the denial of the Motion to Quash which is a *sine qua non* condition in the filing of a petition for *certiorari*; and that the direct resort to the Court is unjustified and, thus, violative of the doctrine of hierarchy of courts.

Furthermore, respondent Judge contended that the petitioner cannot rely on RA 8371 because he is not exempt from criminal prosecution under the RPC; that following the principle of generality, penal laws are binding to all persons within the territorial jurisdiction of the Philippines; that rape cases are excluded in the claims or disputes involving the rights of petitioner as a supposed member of ICCs or IPs; and that to subscribe to the submissions of petitioner that he is exempt from criminal prosecution by a regular court is to surrender police power and grant him criminal immunity which he is not entitled under the law.

On the other hand, respondents Prosecutor and Police Officers manifested¹⁴ that they adopt the Comment filed by respondent Judge and prayed that the petition be dismissed for utter lack of merit.

Issue

May the Court issue a writ of *mandamus* to compel respondents Judge and Prosecutor to desist from proceeding with the rape cases against petitioner and declare respondent Police Officers guilty of Arbitrary Detention?

Our Ruling

The Petition for *Mandamus* lacks merit.

¹⁴ See Manifestation for the Adoption of the Comment of the Hon. Judge Carlos Arguelles, *id.* at 71-72, 82-83.

*Non-observance of the doctrine
of hierarchy of courts.*

Section 5(1),¹⁵ Article VIII of the Constitution provides that the Court exercises original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto* and *habeas corpus*. It shares this original jurisdiction with the RTC and the CA as provided for under Sections 9(1)¹⁶ and 21(1)¹⁷ of Batas Pambansa Bilang 129. By reason of the shared jurisdiction, the immediate and direct recourse to the Court is frowned upon following the doctrine of hierarchy of courts.¹⁸

Specifically, the doctrine of the hierarchy of courts guides litigants on the proper forum of their appeals as well as the venue for the issuance of extraordinary writs. As to the latter, even if the RTC, the CA, and the Court have concurrent original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, litigants must, as a rule, file their petitions, with the court below and failure to do so will be sufficient for the dismissal of the case.¹⁹

This doctrine serves as a “constitutional filtering mechanisms” to allow the Court to focus on its more important tasks. The Court is and must remain the court of last resort. It must not be burdened with the obligation to deal with suits which also fall under the original jurisdiction of lower-ranked courts.²⁰ Moreover, direct recourse to the Court is allowed only in exceptional or compelling instances. There being no extraordinary circumstance that was established here, then the

¹⁵ Section 5(1), Article VIII, CONSTITUTION:

Section 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

¹⁶ Section 9(1), Batas Pambansa Blg. 129 provides:

SECTION 9. *Jurisdiction*. — The Intermediate Appellate Court shall exercise:

(1) Original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction[.]

¹⁷ Section 21(1), Batas Pambansa Blg. 129 provides:

Section 21. *Original Jurisdiction in Other Cases*. — Regional Trial Courts shall exercise original jurisdiction:

(1) In the issuance of writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction which may be enforced in any part of their respective regions[.]

¹⁸ See *Ha Datu Tawahig v. Lapinid*, G.R. No. 221139, March 20, 2019.

¹⁹ See *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019.

²⁰ *Id.*

non-observance of the doctrine of hierarchy of courts warrants the dismissal of the case.²¹

Invocation of the provisions of RA 8371 is insufficient to evade criminal prosecution.

At any rate, even if the Court sets aside the failure of petitioner to abide by the doctrine of hierarchy of courts, the Petition for *Mandamus* will still fail as it is not a proper recourse to compel respondents to defer from pursuing the criminal cases against him.

Under Section 3, Rule 65 of the Rules of Court, a petition for *mandamus* is an appropriate remedy when any tribunal, corporation, board, officer or person: (1) unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station; or (2) unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled. Added to this, it must be shown that there is “no other plain, speedy and adequate remedy in the ordinary course of law” that may be availed of by the aggrieved person.

The present petition falls within the first instance cited above considering that petitioner contends that respondents neglected their duties that the law required of them to do. This being so, for a writ of *mandamus* to be issued, there must be the concurrence of petitioner’s legal right and a corresponding ministerial duty imposed by law upon respondents which they failed to perform.²²

Petitioner’s legal right must be clearly shown and the petition must also prove that respondents indeed neglected to do a *ministerial* duty mandated by law. In contrast with discretionary duty, ministerial duty does not involve the exercise of judgment. It is a duty where an officer or tribunal, for that matter, undertakes one’s tasks in a prescribed manner and in compliance with the law, without regard to one’s own judgment.²³

²¹ *Saint Mary Crusade to Alleviate Poverty of Brethren Foundation, Inc. v. Judge Riel*, 750 Phil. 57, 68 (2015).

²² *Lihaylihay v. Tan*, G.R. No. 192223, July 23, 2018.

²³ *Id.*, citing *Samson v. Barrios*, 63 Phil. 198, 203 (1936).

Notably, the foregoing requirements were not established in the case.

First, petitioner failed to show that he has a clear legal right which respondents had violated.

To stress, petitioner relied on Sections 65 and 66 (on the jurisdiction of the NCIP), RA 8371 in arguing that respondents have no jurisdiction to prosecute him for his supposed criminal liability. However, his postulation is untenable because RA 8371 finds application in disputes relating to claims and rights of ICCs/IPs. This is not the case here.

Let it be underscored that petitioner's indictment for Rape has nothing to do with his purported membership in an ICC, but by reason of his alleged acts that is covered by the RPC. At the same time, RA 8371 does not serve as a bar for criminal prosecution because crime is an offense against the society.²⁴ Thus, penal laws apply to individuals without regard to his or her membership in an ICC.

Definitely, customary laws and practices of the IPs may be invoked provided that they are *not* in conflict with the legal system of the country. There must be legal harmony between the national laws and customary laws and practices in order for the latter to be viable and valid and must not undermine the application of legislative enactments, including penal laws.²⁵

The recent case of *Ha Datu Tawahig v. Lapinid*²⁶ (*Ha Datu Tawahig*) also involved a petition for *mandamus* against a judge and prosecutor in relation to the prosecution of another IP member and tribal leader for rape. Therein petitioner also relied on the provisions of RA 8371 maintaining that he was not covered by penal laws.

The Court explained in *Ha Datu Tawahig* that the intention of our laws to protect the IPs does not include the deprivation of courts of its

²⁴ *Ha Datu Tawahig v. Lapinid*, supra note 18, citing P.J. Ortmeier, Public Safety and Security Administration 23 (1999).

²⁵ *Id.*

²⁶ G.R. No. 221139, March 20, 2019.

jurisdiction over criminal cases. This means that members of the ICC who are charged with criminal offenses cannot simply invoke the provisions of RA 8371 to evade prosecution and the possibility of criminal sanctions.

Interestingly, herein petitioner raised substantially the same arguments as the petitioner in *Ha Datu Tawahig*. For this reason, the Court reiterates Our earlier pronouncement that one's membership in an indigenous group shall not hinder the filing of a criminal case against the concerned person. This being the case, it follows that no right of petitioner, as an alleged member of an ICC, was violated by the filing of rape charges against him. Thus, the first requirement for the issuance of a writ of *mandamus* is lacking.

Second, petitioner did not prove any ministerial duty on the part of respondents which they neglected to perform.

In prosecuting a criminal case, the State, through the public prosecutor, exercises its police power and punishes those who are found guilty, through the determination by the court of law. Undeniably, criminal prosecution and the court's adjudication pertain to discretionary duties, not ministerial functions, because they require respondents Judge, Prosecutor and even respondents Police Officers to act in accordance with their own judgments and consciences uncontrolled by anyone. Overall, when the law requires and grants a public officer the right to decide on how he or she shall perform one's duty, then he or she is vested with discretionary functions,²⁷ as in the case of respondents.

Verily, in the absence of a clear legal right on the part of petitioner and the corresponding ministerial duties required by law on respondents that they neglected to perform, then a writ of *mandamus* cannot be issued.


WHEREFORE, the Petition for *Mandamus* is **DISMISSED**.


²⁷ *Lihaylihay v. Tan*, *supra* note 22, citing *Sy Ha v. Galang*, 117 Phil. 798, 805 (1963).

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

(On leave)
PRISCILLA J. BALTAZAR-PADILLA
Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice

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