

REPUBLIC OF THE PHILIPPINES
MUNICIPAL TRIAL COURT IN CITIES
11th Judicial Region
Branch 7
Davao City

THE PEOPLE OF
THE PHILIPPINES

CRIM. CASE NO. 114,961-G-2003

-versus-

FOR: VIOLATION OF CITY
ORDINANCE NO. 043-02

ATTY. GILBERT
A. TORRIJOS,

Accused.

x ----- /

ORDER

For resolution is the Motion to Dismiss filed by the accused dated February 4, 2004 and the prosecution's Comment thereto, dated March 24, 2004.

Accused contends that the instant case should be dismissed on the ground that the Comprehensive Anti-Smoking Ordinance (CASO) of Davao City has been rendered ineffective by the enactment and effectivity of the Tobacco Regulation Act of 2003 (RA 9211).

It is further argued by the accused that the term "enclosed or confined places or areas" that are covered by the CASO was vaguely defined. Under the ordinance, a structure with a roof even without walls is considered enclosed and covered by the said ordinance. Clearly, this does not conform to the supposed policy and spirit of the regulation.

On the other hand, prosecution opposes the said Motion maintaining that there is no inconsistency between the CASO and RA 9211. Whether it is under the CASO or RA 9211, accused can still be held liable because he was caught smoking inside Cynthia's Lechon House, a restaurant which is considered a public place where smoking is strictly prohibited.

It is clear that the Motion of the accused will rise and fall on the construction of RA 9211. If the provisions of the CASO under which the accused is charged are found to be inconsistent with those of RA9211, then the repealing clause of RA 9211, Section 39 thereof, would come into play. The necessary effect of this would be the acquittal of the accused under the principle "*Nullum crimen, nulla poena, sine lege*", there is no crime and no penalty if there is no law providing for it.

A reading of Section 5 of RA 9211 shows that restaurants are among those places where smoking is prohibited. If this section were to be applied alone, the position of the accused would fall.

However, well settled is the principle in statutory construction that laws are construed as a whole. As stated in *National Power Corporation vs. Zain B. Angas* (G.R. Nos. 60225-26. May 8, 1992), thus:

"xxx It is axiomatic in legal hermeneutics that statutes should be construed as a whole and not as a series of disconnected articles and phrases. In the absence of a clear contrary intention, words and phrases in statutes should not be interpreted in isolation from one another. A word or phrase in a statute is always used in association with other words or phrases and its meaning may thus be modified or restricted by the latter."

Applying this principle to the case at bar, it should be taken into consideration that Section 5 makes the qualification that smoking is prohibited *"in the following "public places""*.

The accused correctly points out that Section 4 paragraph (n) of RA 9211 defines a public place as referring to *"ENCLOSED OR CONFINED AREAS"* of the places referred to in the said provision. Even the public prosecutor makes this concession in his Comment.

The question now is whether or not there is a conflict between the concept of an enclosed or confined space under the CASO and under RA9211.

This Court finds merit in the contention of the accused that the definition of an enclosed space in the CASO is vague at best. This Court takes judicial notice of the fact that: due to the vagueness of the said definition, the local government of Davao City has used the rule of thumb that any place with a roof is deemed to be an enclosed space. Under this definition, Cynthia's Lechon House, where the accused is claimed to have been caught smoking, would definitely be an enclosed space and thus, his alleged actions would have been covered by the ordinance.

On the other hand, an enclosed space is defined under the Implementing Rules of RA 92111 as:

*"Rule III, Section 1.8- **Enclosed Area** - refers to an area that is physically separated from adjacent areas by walls or partitions and a roof or ceiling. The walls or partitions must be continuous, interrupted only by doors and windows. The mere presence of a roof or ceiling over the structure, but without walls or partitions surrounding said structure, does not constitute an enclosed area."*

Under this definition, it could be said that Cynthia's Lechon House could be said to be not enclosed. Thus, the alleged actions of the accused would not be considered criminal.

In view of this disparity between the CASO and RA9211, which disparity is determinative of the existence or non-existence of criminal liability, this Court cannot help but to conclude that there is indeed an irreconcilable conflict between the two laws which, as stated above, will necessarily result to the repeal of the penal provisions of the CASO under which the accused is charged.

Further, even if the conflict is deemed to be vague or ambiguous, it is undeniable that in our jurisdiction, penal laws are construed in favor of the accused. (People vs. Leonida P. Meris, G.R Nos. 117145-50 & 117447, March 28, 2000)

WHEREFORE, PROCEEDING FROM THE FOREGOING, this Court finds merit in the Motion to Dismiss filed by the accused and hereby orders this case DISMISSED. No pronouncement as to costs.

SO ORDERED.

Given in Chambers this April 16, 2004, at the City of Davao, Philippines.

ORIGINAL SIGNATURE
RUFINO S. FERRARIS, JR.
Presiding Judge

RSFJ/mmme

Serve on:

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