

G.R. No. L-12517

[ **G.R. No. L-12517. May 19, 1958** ]

**ALBERTO PAÑGAN AND ARSENIO PABALAN, JR., PETITIONERS, VS. HON. LADISLAO PASICOLAN, ET AL., RESPONDENTS.**

## **D E C I S I O N**

### **BAUTISTA ANGELO, J.:**

On May 8, 1954, Gloria Lagman filed a complaint for forcible abduction against Alberto Pañgan, Arsenio Pabalan, Jr., and one Teofilo Dizon in the Justice of the Peace Court of Mexico, Pampanga. After the required preliminary examination, the court issued a warrant for the arrest of the three accused who later filed bail bonds for their provisional release. On June 3, 1954, after the necessary preliminary investigation, the justice of the peace court forwarded the case to the court of first instance for further proceedings wherein it was docketed as Criminal Case No. 1884.

Before filing a formal complaint, the provincial fiscal conducted a reinvestigation of the case wherein both complainant and the three accused were present assisted by counsel. After the reinvestigation, finding that the evidence was insufficient to hold Pañgan and Pabalan, Jr. criminally liable, the fiscal filed a motion for dismissal of the case as to them, limiting the information against Teofilo Dizon only. On September 10, 1956, the court granted the motion and, accordingly, dismissed the case against Pañgan and Pabalan, Jr.

Five months thereafter, or on February 18, 1957, the complainant filed a motion for reconsideration praying that the order be set aside on the grounds (a) that no copy of the motion for dismissal was served on her counsel, nor was the latter notified of the hearing thereof, notwithstanding the fact that his appearance had already been made of record; and (b) the finding of the

provincial fiscal that the evidence was insufficient to establish a *prima facie* case against Pañgan and Pabalan, Jr. is erroneous. This motion was opposed by the fiscal who contended that he did not commit any error in the evaluation of the evidence and that under the law he had the authority and discretion to file a motion for dismissal even over the objection of the private prosecutor. On June 11, 1957, the court granted the motion and, accordingly, set aside its previous order and set the hearing of the motion for dismissal filed by the fiscal on June 27, 1957. On this latter date, the court, upon petition of private counsel, issued another order granting the accused Pañgan and Pabalan, Jr. ten (10) days within which to reinstate their bail bonds with the understanding that, if they fail to do so, it will order their arrest. The effects of these two orders, however, have been suspended in order to give the two accused, or their counsel, an opportunity to test the validity of said order-before the Supreme Court. Hence, the present petition for certiorari.

The issue before us is whether the lower court acted properly or within its jurisdiction when it set aside its order of September 10, 1956 dismissing the case against petitioners nine months thereafter, or on June 11, 1957.

The lower court, in setting aside its previous order of dismissal, said:

“Without passing upon the evidence adduced in the justice of the peace court and in the office of the fiscal, and considering that the court may take into account any information that the private prosecutor may furnish the court (U.S. vs. Barredo, 32 Phil., 444, 449-451), the order of September 10, 1956 is set aside x x x.” Evidently, the lower court considered it necessary for the fiscal to notify the private prosecutor of his motion for dismissal before action can be taken thereon in view of the following comment made by this Court in the Barredo case, to wit: “But if he (the Judge) is not satisfied with the reason assigned by the fiscal, or if it appears to him from the record of the proceedings in the court of the Justice of the Peace, or as a result of information furnished by the private prosecutor, or otherwise, that the case should not be dismissed, he may deny the motion.” (Underlining supplied) And the lower court set aside its previous order because the private prosecutor was not notified of the motion of dismissal.

While the court may find it necessary to hear the views of a private prosecutor before acting on a motion for dismissal filed by the fiscal, it does

not follow that it can set aside its order dismissing the case even if the same has already become final. The comment made by this Court in the Barredo case is merely persuasive in character, which it may follow in the exercise of its discretion, but there is no law which requires notice to a private prosecutor, because under our rules all criminal actions are prosecuted “under the direction and control of the fiscal” (Section 4, Rule 106). And we say that the order in question has already become final because more than fifteen (15) days had elapsed since it was issued by the court (Section 6, Rule 118). In this instance, the motion for reconsideration was filed five months thereafter and the order of the court reconsidering it, after nine months. It is apparent that the lower court acted without jurisdiction in issuing the order in question.

Another error committed by the lower court is when it ordered petitioners to file new bail bonds for their provisional liberty even if the case against them had been dismissed. This can only be done if a new complaint is filed against them and the required preliminary examination conducted as required by law.

We therefore hold that the orders issued by the lower court dated June 11, 1957 and June 27, 1957 are null and void and should be set aside. The remedy of the offended party is to lodge a new complaint against petitioners either before the justice of the peace court having jurisdiction over the case, or with the provincial fiscal, and have a new examination conducted as required by law. In case the provincial fiscal should fail or refuse to act even when there is sufficient evidence on which action may be taken, the offended party may take up the matter with the secretary of Justice who may then take such measures as may be necessary in the interest of justice under Section 1679 of the Revised Administrative Code.

Wherefore, petition is granted. The orders subject matter of the petition are hereby set aside. No costs.

*Paras, C.J., Bengzon, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J.B.L., Endencia and Felix, JJ., concur.*

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