104 Phil. 392

[G. R. No. L-12247. August 26, 1958]

BEATRIZ RAMOS VDA. DE BAGATUA, ET AL., PETITIONERS AND APPELLANTS, VS. PEDRO A. REVILLA AND LEONIDAS S. LOMBOS, AS CITY ATTORNEY AND ASSISTANT CITY ATTORNEY, RESPECTIVELY, OF QUEZON CITY, RESPONDENTS AND APPELLEES.

D E C I S I O N

FELIX, J.:

Lot No. 569 of the Piedad Estate, formerly falling within the jurisdiction of Caloocan, Rizal, now of Quezon City, with an area of 43,371 square meters more or less, was originally registered in the name of Apolonio Bagatua and covered by Transfer Certificate of Title No. 21411. Upon his demise, his widow, Beatriz Ramos, and their children, Rodrigo, Paz, Lydia, and Basilia, all of legal age and surnamed Bagatua, executed a document styled “Settlement of Estate and Donation of Real Property” dated June 2, 1953, wherein Beatriz Ramos donated to her said 4 children the aforementioned property and which donation was accepted in the same instrument. As such common owners the Bagatuas were able to secure a certificate of title in their names (T. C. T. No. 21995). Thereafter, as they decided to subdivide the lot among themselves, they engaged the services of Burgos L. Pangilinan, a real estate broker.

It appears that on June 29, 1954, the Bagatuas, together with their spouses and their mother Beatriz Ramos, executed a public instrument which was duly registered, wherein they sold and conveyed ownership unto Burgos Pangilinan of a part of the lot with an area of 3,358 square meters in consideration of the sum of P6,000. On June 21, 1956, however, Rodrigo Bagatua, acting for himself and on behalf of his sisters, accused Burgos L. Pangilinan of estafa before the City Attorney of Quezon City for having allegedly induced them to sign papers supposedly necessary for the subdivision of their lot, but one of which turned out to be a deed of sale. In virtue of which, they charged that they were prejudiced in the amount of P13,432.

Upon receipt of said complaint, the Assistant City Attorney of Quezon City, acting for the City Attorney, conducted a preliminary investigation which lasted for several days, during which occasions both parties were duly represented by counsel. Testimonial as well as documentary evidence was presented and after the parties had filed their respective memoranda, the Assistant City Attorney, in a memorandum addressed to the City Attorney, recommended the dismissal of the complaint for lack of merit. Accordingly, the complaint wag dismissed. The complainants thus filed a petition for mandamus with the Court of First Instance of Quezon City against the City Attorney and the Assistant City Attorney (Civil Case No. Q-2270) seeking to compel the aforesaid officials to file the corresponding information against Burgos Pangilinan for estafa under Article 315, subsection 3, paragraph (a) of the Revised Penal Code, contending that the respondents, in dismissing the complaint, committed a grave abuse of discretion.

To this petition, respondents filed a motion to dismiss for failure to state a cause of action, on the theory that as the duties of a fiscal are not ministerial but involve discretion, it cannot be controlled by mandamus unless there had been a grave abuse thereof. It is averred that the respondent Assistant City Attorney, in recommending the dismissal of the complaint and the City Attorney to dismissing the same did not commit any grave abuse of discretion.

In its order of February 23, 1957, the Court of First Instance of Quezon City sustained the motion to dismiss on the ground that there was no clear indication that in the performance of their duties, respondents abused their discretion. From this order, petitioners appealed to this Court.

Section 28-(h) of Republic Act No. 537, known as the Revised Charter of Quezon City, prescribes that:

> "(*h*) He (the City Attorney) shall cause to be investigated all charges of crimes, misdemeanors, and violations of ordinances and have the necessary information or complaint prepared or made against the persons accused. He or any of his Assistants may conduct such investigations by taking oral evidence of reputable witnesses, and for this purpose may issue subpoena, summon witnesses to appear and testify under oath before him, * * *."

The Rules of Court also specifically provide that all criminal actions, either commenced by

complaint or information, shall be prosecuted under the direction and control of the fiscal (Section 4, Rule 106, Rules of Court), and from these legal mandates springs the principle that where the fiscal, after conducting a preliminary investigation is convinced that the evidence is insufficient to establish, at least prima fade, the guilt of the accused, he has the perfect authority to dismiss the same (See Gonzales vs. Court of First Instance of Bulacan, 63 Phil., 846; People vs. Orias, 65 Phil., 744; People vs. Natoza, 100 Phil., 533; 53 Off. Gaz. [22] 8099). Under the aforesaid ruling, the fiscal or the city attorney, as prosecuting officer, is under no compulsion to file the corresponding information based upon a complaint, where he is not convinced that the evidence gathered or presented would warrant the filing of an action in court. It is true that this authority involves the exercise of discretion to a wide latitude and while it may invite the commission of abuses, yet it must also be recognized that necessity demands that prosecuting officers should be given such authority if we are to avoid the courts from being flooded with cases of doubtful merit or to unduly compel the fiscals to work against their convictions. It may be stated in this connection, that although prosecuting officers under the power vested upon them by law not only have the authority but also the duty of prosecuting persons who, according to the evidence received from the complainant, are shown to be guilty of a crime committed within the jurisdiction of their offices, they are likewise bound by their oath of office to protect innocent persons from groundless, false or malicious prosecution. And since as lawyers they have sworn not to aid or consent to any unlawful suit, the respondents would certainly commit a serious dereliction of duty by prosecuting any person whom they do not believe to have committed the offense he was charged with by an alleged offended party, or when the evidence available is not, in their opinion, sufficient to warrant the conviction of the accused. Of course, the power of the City Attorney or prosecuting fiscal in connection with the filing and prosecution of criminal charges in court is not altogether absolute; but the remedy is not that of mandamus but the filing with the proper authorities or court of criminal or administrative charges if the alleged offended parties believe that the former maliciously refrained from instituting actions for the punishment of violators of the law (Article 208, Revised Penal Code).

In the case at bar, appellants in charging that there was a grave abuse of discretion involved herein bring out the fact that the preliminary investigation elicited no improper motive on the part of said complainants (appellants) to accuse Pangilinan of the offense charged, and thus considered the dismissal of the complaint as erroneous. The absence of motive alone is not sufficient to presume the existence of a *prima facie* case. The circumstances and evidence on record must be taken together before such a conclusion may be arrived at. We

have gone over the report or memorandum of the Assistant City Attorney and from the facts established by the preliminary investigation conducted by him as well as the reasons given for the dismissal of the complaint, we could glean nothing that would reveal or tend to reveal any semblance of abuse perpetrated by respondents and appellees.

A fiscal's failure to give credence or weight to the testimony of witnesses or otherwise appreciate the evidence presented in a preliminary investigation, unless patently capricious or arbitrary, cannot be taken as an abuse of discretion, for he must have formed his impression after observing and evaluating the demeanor and conduct of a witness testifying before him.

Wherefore the order appealed from being in consonance with law is hereby affirmed, with costs against appellants. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J.B.L., and *Endencia, JJ.,* concur.

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