

CRESENCIOS S. NOMBRES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, ET AL., RESPONDENTS.

G.R. No. L-11437. February 28, 1959

Ponente: PARAS, C.J.

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PARAS, C.J.:

A criminal charge of bigamy having been presented against petitioner in the Office of the City Fiscal of Manila, Assistant Fiscal Lavadia set its preliminary investigation on August 16, 1956. Petitioner appeared at the City Fiscal's Office on that date, but the preliminary investigation was not held because said fiscal was absent on account of illness. The aforesaid case was then assigned to Assistant Fiscal's Perfecto who on August 30, 1956, issued a subpoena to the petitioner at his residence at No. 31 Tolentino St., San Francisco del Monte, Quezon City, where he was previously served with a similar subpoena issued by Assistant Fiscal Lavadia, commanding him to appear at the preliminary investigation of said case which was set on September 8, 1956 at 8:00 o'clock in the morning. Served at the above-mentioned address, petitioner could not be found because he had never moved to another place, without notifying the City Fiscal's Office of his new address. In his absence, on September 8, 1956 at 8 o'clock in the morning. Served at the above-mentioned address. petitioner could not be found because he had never moved to another place, without notifying the City Fiscal's Office of his new address. In his absence, on September 8, 1956, Assistant Fiscal Perfecto proceeded with the preliminary investigation, and three days thereafter filed the corresponding information against petitioner. Upon learning of this, petitioner posted the corresponding bond, and forthwith filed a motion for reinvestigation on the ground that said information was filed without a previous preliminary investigation. This motion was denied. A motion for reconsideration was immediately filed, and it was also denied.

The disputed order denying petitioner's motion for reinvestigation was based on the certification of the Fiscal incharge, appearing at the foot of the information that a preliminary investigation of said criminal case had been conducted. According to respondent Judge, said certification gave rise to the presumption that a preliminary investigation had already been conducted in accordance with law.

Petitioner invokes Sec. 38-C of Republic Act No. 1201, which provides that no complaint or information concerning cases brought to the office of the City Fiscal involving crimes cognizable by the Court of First Instance, where the accused is not already legally detained, shall be filed without first giving the accused a chance to be heard in a preliminary investigation, where such accused can be subpoenaed and appears before the investigation fiscal, with the right to cross-examine the complainant and his witnesses. It will be noted that petitioner was not denied a chance to be heard. As a matter of fact, a subpoena was issued to him by Assistant Fiscal Perfecto at his known address. Aware of a pending preliminary investigation against him, petitioner's act of moving out from his last known residence without advising the City Fiscal's Office constitutes an implied waiver of his chance to be heard in a preliminary investigation.

Wherefore, the petition is dismissed and the writ of preliminary injunction dissolved. So ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, and Endencia, JJ., concur.

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