

**AURELIO R. BANZON, PETITIONER, VS. HON. FEDERICO L. CABATO,
AS JUDGE OF THE CITY COURT OF BAGUIO CITY, BRANCH III, AND
RAMONA VILLARUZ, RESPONDENTS.**

G.R. No. L-31447. June 27, 1975

Ponente: ANTONIO, J.

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ANTONIO, J.:

Certiorari and prohibition with preliminary injunction to annul the Order, dated December 6, 1969, of respondent Judge Federico L. Cabato setting the preliminary examination and investigation of Criminal Case No. 22610 for estafa on December 27, 1969; to enjoin the respondent Judge from further proceeding with said case for want of jurisdiction; and to order respondent Ramona Villaruz to pay the costs of this proceeding.

On September 7, 1967, an Information was filed by Special Counsel Pastor V. de Guzman, Jr., Office of the City Fiscal of Baguio, with the City Court, Branch I (Criminal Case No. 20237), charging herein petitioner Aurelio Banzon with the crime of estafa, committed as follows:

"That on or about the 31st day of August, 1965, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the said accused, pretending and misrepresenting himself to be a holder of Townsite Sales Application V-5017, covering a parcel of land located in Res. Sec. 'H', City of Baguio, surveyed as Lot No. Tsa-V-5017-D, containing an area of 750 sq. meters, more or less, did then and there wilfully, and feloniously, with intent to defraud, offer to sell said lot to one RAMONA VILLARUZ for the sum of P4,000.00, and the latter deceived by the pretension and misrepresentation of the accused, bought the said property in cash in the aforementioned amount of P4,000.00, later to find out that the said property did not belong to the accused but to the Heirs of Pool, to the damage and prejudice of RAMONA VILLARUZ in the amount of FOUR THOUSAND (P4,000.00) PESOS, Philippine Currency." (Annex "A", Petition.)

However, the case was reassigned to Branch II of the City Court of Baguio, presided over by Judge Patricio C. Perez. On July 29, 1968, when said case was called for hearing, counsel for the accused (herein petitioner) verbally moved to quash the case on the ground that there was no previous preliminary investigation as required by Section 14 of Rule 112 of the Revised Rules of Court. There being no objection on the part of the City Fiscal, as well as the private prosecutor, and finding the motion to quash well-taken, Judge Perez issued an Order on the same day granting said motion and, consequently, dismissing the case, "without prejudice of the prosecution to refile the same upon compliance with the requirements of law," and discharging the "personal bail bond filed for the temporary liberty of the accused" (Annex "B", Petition).

Subsequently, respondent Ramona Villaruz refiled the same case against the petitioner with the Office of the City Fiscal of Baguio. It was assigned to Special Counsel Pastor V. de Guzman, Jr., who on October 4, 1968, conducted a preliminary investigation. Thereafter, upon his recommendation, the case was dismissed, with the approval of City Fiscal Antonio G. Bautista, on the ground that they found no probable cause against petitioner Aurelio Banzon. The Resolution states the basis of its conclusion, thus:

"There is no question that respondent Aurelio Banzon sold or transferred his rights and interests over Townsite Sales Application No. V-5017 as evidenced by the document which the parties themselves executed on August 31, 1965 in the City of Baguio, Philippines and which is marked as Annex "B" of respondent's affidavit. The best evidence therefore to show the intentions of the parties is the document itself which is Annex 'B'.

"As held in the case of 'People vs. Lotivio,' (C.A.) 40 O.G. (Supp. 5) 104, there are three (3) conditions necessary for the crime of Estafa as defined in par. 1 of Article 316 of the Revised Penal Code: '(1) that the thing be immovable property; if it were movable, the fact may perhaps constitute the crime of theft or any other but not of estafa; (2) that he who is not owner of said property should represent that he is; if he should believe in truth, that fact constitutes an error, an ignorance but not a crime of estafa to which the element of deceit or fraud - is - inherent; and (3) that the alleged owner should have executed an act of ownership to the prejudice of the real owner, as for example, selling it, leasing it, encumbering it or mortgaging it.' To these elements, we could add another which is 'that the act be made to prejudice the owner or a third person or at least with the intention to cause it, because this is the generic condition of all the crimes to defraud.' (7 Groizard, Penal Code, p. 222).

RECOMMENDATION:

It appearing that the facts of the case as gathered during the preliminary investigation do not come within the purview of Art. 316, par. 1 of the Revised Penal Code, the investigator therefore recommends the dismissal of this cases, for lack of probable cause. The incident arose out of the sale of the rights and interests over TSA No. V-5017 and the mere fact that the vendee cannot pursue the said application because it has been cancelled, will not give rise to a criminal responsibility. However, the aggrieved or offended party may have a recourse in a civil action." (Annex "C", Petition. Italics supplied.)

Thereafter, respondent Ramona Villaruz moved for a reconsideration of the above-quoted dismissal resolution, and the case was assigned for further investigation to 2nd Assistant Fiscal Antonino L. Cortez, but later on she withdrew the same.

About a year after said dismissal, or on September 16, 1969, respondent Ramona Villaruz refiled the same criminal complaint for estafa (Annex "A", Petition) against petitioner Aurelio R. Banzon with the City Court of Baguio, Branch III, presided over by respondent Judge Federico L. Cabato, and docketed therein as Criminal Case No 22610. On September 23, 1969, respondent Judge purportedly pursuant to Section 13 of Rule 112 of the Revised Rules of Court issued a notice of hearing, addressed to both petitioner Aurelio R. Banzon and respondent Ramona Villaruz, and duly received by them, in the following tenor:

"There having been filed with this court a complaint for Estafa involving P4,000.00, falling within its concurrent jurisdiction without previous preliminary examination and investigation conducted by the Fiscal, the undersigned judge will conduct the preliminary examination and investigation simultaneously conformably to law;

"WHEREFORE, you are hereby cited to appear before the undersigned for the above purpose on October 24, 1969, at 8:30 o'clock sharp in the morning, together with your witnesses, if any. You are entitled to avail yourself of the services of counsel." (Annex "D", Petition. Italics supplied.)

Upon the receipt of the above-quoted notice of hearing, petitioner filed on October 20, 1969 a "Motion to Dismiss and Postponement" of said Criminal Case No. 22610 (Annex "E", Petition) alleging, among others, that this case refers to the same case which was the subject matter of a preliminary investigation conducted by the Office of the City Fiscal of Baguio and which was dismissed for lack of probable cause against the petitioner as per resolution of the investigating fiscal, contrary to the statement of respondent Judge in the aforesaid notice of hearing that there was no "previous preliminary examination and investigation" of the complaint for estafa, and therefore in

flagrant violation of Section 13 of Rule 112 of the Revised Rules of Court; and praying that the preliminary investigation scheduled on October 24, 1969 be postponed until after the resolution of his motion to dismiss.

On November 5, 1969, respondent Ramona Villaruz filed her opposition to the motion to dismiss (Annex "B", Answer) alleging, among others, that the said resolution of the fiscal was not a final determination of the case and that the filing of the criminal complaint directly with the City Court was authorized by law and pertinent jurisprudence. On the same date, the respondent Judge issued an Order holding in abeyance the resolution on the motion to dismiss and resetting the preliminary investigation on December 6, 1969 (Annex "C", Answer), on which latter date neither petitioner nor his counsel, appeared as directed. Consequently, the respondent Judge issued another Order, dated December 6, 1969, denying petitioner's motion to dismiss and again resetting the preliminary investigation of Criminal Case No. 22610 on "December 27, 1969 at 8:30 o'clock in the morning with intransferable in character." (Annex "F", Petition.)

Petitioner, claiming that said Order of December 6, 1969 has precluded him from filing any motion for reconsideration and that respondent Judge, in giving due course to said Criminal Case No. 22610, has acted without or in excess of jurisdiction, filed with this Court on January 9, 1970 the present petition. He questions the authority of respondent Judge Federico L. Cabato to conduct a preliminary investigation of said criminal case after the case was preliminarily investigated by the Office of the City Fiscal of Baguio City, and thereafter dismissed for lack of probable cause.

On January 16, 1970, We gave due course to the petition and issued an Order restraining respondent City Judge from further proceeding with the preliminary examination and investigation of Criminal Case No. 22610.

The decisive consideration is whether or not the respondent city judge has the authority to conduct any preliminary investigation over a case which falls within the concurrent jurisdiction of the city court and the court of first instance, for in the case at bar, the offense charged is estafa involving the amount of P4,000.00 and, as such, falls within the concurrent jurisdiction of the municipal and city courts, and the courts of first instance.[1]

This issue has been definitely resolved in the cases of *People vs. Abejuela* and *People vs. Endan*. [2] This Court, speaking thru Mr. Justice Teehankee, held that the accused in an offense falling within the concurrent jurisdiction of the city courts and courts of first instance is not entitled to be heard in a preliminary investigation. By way of explanation, this Court said:

"1. It is settled dogma that the right to a preliminary investigation is of statutory character and the right thereto may be invoked only when specifically granted by the statute. In promulgating the present Revised Rules of Court effective January 1, 1964, the Court's intention to withhold the right of preliminary investigation from the accused in cases triable by municipal and city courts was made manifest and of record in the proceedings of the U.P. Law Center's Institute of the Revised Rules of Court conducted on December 12-14, 1963, by Mr. Justice Alejo Labrador (now retired), chairman, with Mr. Justice J.B.L. Reyes, as member, of the Court's Committee on Rules, thus:

'Now, Section 11 of Rule 108 of the old rules has been amended. Please turn to Section 10 of Rule 112 of the Revised Rules of Court on the right of the accused to preliminary investigation. After the arrest of the accused and his delivery to the court, he shall be informed of the complaint or information filed against him. He shall be given access to the testimony and evidence presented against him at the preliminary examination, and, if he desires to testify or to present witnesses or evidence in his favor, he shall be allowed to do. The testimony of the witnesses presented at this investigation need not be reduced in writing but the testimony of the accused shall be taken in writing and subscribed by him. x x x.

'Now look at the second paragraph. We inserted that provision. It provides that in cases triable by the justice of the peace or municipal courts, the accused shall not be entitled as a matter of right to a preliminary

investigation in accordance with this Section. He is not entitled to it because the case goes to trial already. That is the rule: the practice, rather. This is a new provision.'

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"Indeed, balancing the considerations, the withholding of the right of the preliminary investigation from the accused in cases triable by the inferior courts involving offenses with lower penalties than those exclusively cognizable by courts of first instance, could not be termed an unjust or unfair distinction. The loss of time entailed in the conduct of preliminary investigations, with the consequent extension of deprivation of the accused's liberty, in case he fails to post bail, which at times outlasts the period of the penalty provided by law for the offense, besides the mental anguish suffered in protracted litigations, are eliminated with the assurance of a speedy and expeditious trial for the accused, upon his arraignment (without having to undergo the second stage of the preliminary investigation), and of a prompt verdict on his guilt or innocence. On the other hand, the so-called first stage of preliminary investigation or the preliminary examination, conducted by the duly authorized officer, as borne out by the examination and sworn written statement of the complainants and their witnesses, generally suffices to establish the existence of reasonable ground to charge the accused with having committed the offense complained of.

"2. The lower court's construction of the provisions in question is difficult to sustain, furthermore, because it would insert double qualifications in the Rules, where none has been provided. Thus, it would qualify section 14 of the Rule by taking the rule to mean that 'no information for an offense cognizable by the Court of First Instance concurrently with the inferior courts shall be filed' without the accused having been given a chance to be heard in a preliminary investigation - when the rule is clearly expressed and intended to apply only when the case is cognizable by the Court of First Instance, be it one of its exclusive jurisdiction, or of concurrent jurisdiction filed with it. In addition, the lower court would further qualify section 10 of the Rule by straining its clear and unambiguous provision to mean that the withholding of the right of preliminary investigation applies only in cases which are triable by the inferior courts under their exclusive original jurisdiction - when the rule plainly provides that there shall be no right of preliminary investigation in cases triable by the inferior courts, without distinction as to whether such cases be of their exclusive or concurrent jurisdiction.

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"5. The lower court's contention whereby it would qualify the application of section 10 of the Rule providing for no preliminary investigation in cases which are triable by the inferior courts only to cases falling under their exclusive original jurisdiction, because the trial in such cases is 'more of summary in nature since the proceedings are not recorded and judgment thereof is appealable to the court of first instance and it is tried de novo before the appellate court' - is untenable, in the light of the rule's rationale, as expounded by Mr. Justice Labrador, *supra*, that the ensuing trial on the merits takes the place of preliminary investigation, without needless waste or duplication of time and effort, and a final verdict on the innocence (or guilt) of the accused is thereupon rendered, rather than an inconclusive dismissal of the charge by the fiscal in a preliminary investigation which would not constitute jeopardy."

Accordingly, We, therefore, hold that the respondent Judge is without authority to conduct the preliminary investigation of Criminal Case No. 22610, involving an offense falling within the concurrent jurisdiction of the City Court of Baguio and the Court of First Instance.

WHEREFORE, the questioned Order of December 6, 1969 is hereby set aside and the temporary restraining order issued on January 19, 1970 is made permanent, with costs against respondent Ramona Villaruz.

Fernando, Chairman, Barredo, Aquino, and Concepcion Jr., JJ., concur.

[1] Municipal or city courts have concurrent jurisdiction with Courts of First Instance where the penalty exceeds six (6) months imprisonment or P200.00 fine, or both, but does not exceed six (6) years imprisonment or P6,000.00 fine, or both (Sec. 87, subpar. [b] of the Judiciary Act of 1948, as amended by Rep. Act No. 3828. Courts of First Instance shall have original jurisdiction in all criminal cases in which the penalty provided by law is imprisonment for more than six (6) months, or a fine of more than two hundred pesos (Sec. 44, subpar. [f], Judiciary Act of 1948).

[2] G.R. Nos. L-29715 & L-29833, March 31, 1971, 38 SCRA 324.

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