

DOMINGO REYES, PETITIONER, VS. THE HONORABLE JUDGE SERAFIN E. CAMILON AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-46198. December 20, 1990

Ponente: PARAS, J.

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PARAS, J.:

Contested in this special civil action for certiorari and prohibition is the Order of the Court of First Instance of Rizal, Pasig, Rizal, Branch VII, penned by Judge Serafin E. Camilon, which denied Domingo Reyes motion to declare the information invalid thereby sustaining the validity of said information against him.

The facts are as follows:

A complaint for Violation of Anti-Graft and Corrupt Practices Act was filed by Pedro Domingo, Jr. against Domingo Reyes before the Office of the Provincial Fiscal, Pasig, Rizal.

A preliminary investigation was conducted by Assistant Fiscal Zenaida S. Baltazar and on February 25, 1976, searching and clarificatory questions were propounded to both parties (Rollo, p. 59).

The parties were given up to March 29, 1976 within which to file simultaneous memoranda but on March 11, 1976, counsel for Reyes sent a letter to the Provincial Fiscal of Pasig, Rizal, requesting that the complainant be ordered to specify the particular provisions of R.A. 3019 on which he based his denuncia against Reyes (Rollo, p. 51).

On June 23, 1976, Fiscal Baltazar promulgated a Resolution stating that the requested bill of particulars is no longer necessary as all the evidence for both parties had already been submitted and that based on both oral and documentary evidence adduced by the parties, sufficient prima facie evidence was established by Pedro Domingo, Jr. that Reyes committed a violation of Section 3, paragraph b, of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act (Rollo, pp. 46-48).

On even date, an information for violation of said offense was filed against Reyes with the Court of First Instance of Rizal, Pasig, Rizal, docketed as Criminal Case No. 19176, alleging thus:

"That in or about and during the period comprised between May and June, 1974, inclusive, and for sometime subsequent thereto, in the municipality of Pasig, province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then employed as a Building Superintendent II of the Bureau of Buildings and Real Property Management and as such, has the duty of making estimates and supervising projects under the control and supervision of the Bureau of Buildings and Real Property Management, did then and there willfully, unlawfully and feloniously demand and/or receive the total amount of P46,200.00 for himself and other officials of the Bureau of Buildings and Real Property Management, as 20% share and bribe money in connection with the construction projects being undertaken by said Pedro Domingo, Jr. at the Central Luzon General Hospital under the supervision and control of the Bureau of

Buildings and Real Property Management and in which project, the above-named accused in his official capacity as Building Superintendent II has to intervene under the law.

Contrary to law." (Rollo, p. 28).

Reyes filed a Motion to Declare Information Invalid on the following grounds: (1) The acts for which he stands charged do not constitute a violation of Section 3(b) of Republic Act No. 3019; (2) He has not been afforded the right of due preliminary investigation; and (3) The information is defective in form and substance in that it is violative of Section 1, Rule 110 of the Rules of Court, the prosecuting fiscal having failed to include all the public officers who appear to be responsible for committing the offense charged (Rollo, pp. 30-45).

On August 26, 1976, Assistant Fiscal Herminio I. Benito filed an Ex-Parte Motion to Set the case for hearing to determine the validity of the information preparatory to the issuance of an order to suspend the accused-Reyes from office (Rollo, p. 52).

On May 17, 1977, the trial court denied Reyes' motion to declare the information invalid, stating inter alia that:

"Section 3(b) of Republic Act No. 3019, as amended, provides:

'(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other party, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.'

"The information alleges that the accused was, on the dates mentioned therein, a Building Superintendent II of the Bureau of Buildings and Real Property Management. He was therefore then a public officer within the contemplation of Section 3(b) of Republic Act No. 3019, as amended.

"It is also alleged that as such public officer he has the duty of making estimates and supervising projects, under the control and supervision of the Bureau; included in those projects are the construction works undertaken by one Pedro Domingo, Jr. at the Central Luzon General Hospital in which the accused in his official capacity as such public officer has to intervene under the law. The gist of the offense, as counsel for the accused states in his Motion, and as the information succinctly alleges is that the accused 'willfully, unlawfully and feloniously demanded and/or received the total amount of P46,200 for himself and other officials of the Bureau of Buildings and Real Property Management, as 20% share and bribe money in connection with (the said construction project)'.

"It is therefore clear that the information states explicitly and directly all the facts and essential ingredients of the offense with which the accused is charged and contains a clear statement of the acts constituting it sufficient to enable him to prepare and meet it at his trial. The information adheres in all respects to the provision of Section 3(b), Republic Act No. 3019, as amended.

"The accused assails the conclusion of the investigating fiscal that he intervened in his official capacity in any activity pertaining to the construction project at the Central Luzon General Hospital as but a bare faced allegation bereft of factual and legal basis.

"As counsel for the accused grudgingly admits, the question of whether the accused did in fact intervene in his official capacity in the said project depends on the evidence; it is a matter of defense that cannot be utilized to quash an information.

"The first ground therefore has no merit.

"As regards the plea that the accused was not afforded the right of due preliminary investigation, even a cursory perusal of the counsel's own discussion of the matter (II, Motion) will indicate that the accused was afforded every opportunity to refute the charges. He had filed motion for reconsideration which was denied.

Besides, the Court cannot disregard, merely on the basis of the arguments in the Motion, the presumption that official duty has been regularly performed, a presumption that acquires considerable significance from the fact that it appears affirmatively on record that the investigating fiscal had in truth conducted a preliminary investigation. Another equally cogent consideration that argues against the motion is the established rule that failure to hold a preliminary investigation cannot be made the basis of a motion to quash; neither does it affect the validity of an information.

"Regarding the alleged defect in form and substance of the information, counsel, charging the investigating fiscal with bias, argues that other officials of the Bureau and the complainant as well should have been included. The omission renders the information defective; it does not conform to the provisions of Section 1, Rule 110 of the Rules of Court.

"It must be admitted that Section 1, Rule 110 makes it mandatory on the Fiscal to commence criminal actions against all persons who appear to be responsible for an offense, but this does not mean that he has no discretion at all. He still is called on to determine whether the evidence before him is enough to justify a reasonable belief that a person has committed an offense. It is the prerogative of the Fiscal, on the basis of the evidence gathered by him, in the exercise of such discretion, to charge the accused to the exclusion of others." (Rollo, pp. 53-58).

On even date, Reyes was likewise ordered suspended effective immediately from public office pending final determination of the criminal case against him (Rollo, p. 58).

Hence, this petition.

On June 1, 1977, the Court resolved to require the respondents to file an answer and to issue a TEMPORARY RESTRAINING ORDER, effective immediately and continuing until otherwise ordered (Rollo, p. 73).

In his answer, the Acting Solicitor General for respondents contended that the "statement of facts in the body of the information filed in this criminal case sufficiently apprises" Reyes "that he stands charged with an offense of violation of Section 3, clause (c) of the Anti-Graft Law. The erroneous designation of the particular provision of law (i.e., Section 3, clause (b), Republic Act No. 3019) in the information does not vitiate the sufficiency and validity of the said information" (Rollo, pp. 85-90). (Underscoring supplied)

The crucial issue in this case is whether or not respondent Judge committed grave abuse of discretion amounting to lack of, or in excess of jurisdiction in denying Reyes' motion to declare the information invalid, and in ordering his suspension from office thereafter effective immediately.

The petition is devoid of merit.

The remedy of certiorari is limited to acts of any agency or office exercising judicial functions or of any judge which are claimed to be "without or in excess of its jurisdiction, or with grave abuse of discretion." It does not lie for the correction of errors of judgment which may be brought about only by appeal. Not every error in procedure, or every erroneous conclusion of law or of fact of serious nature, is correctible by certiorari, appeal being the appropriate remedy, except where the error constitutes grave abuse of discretion i.e., "such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction." (People v. Cuaresma, 172 SCRA 422-423 [1989]).

Having found the information filed against Reyes to be valid and sufficient in form and substance and that preliminary investigation preceded the filing thereof, the trial court obviously did not commit a grave abuse of discretion in denying Reyes' motion to declare the information invalid.

Preliminary investigation is merely inquisitorial, and it is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the fiscal to prepare his complaint or Information. It is not a

trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. It does not place the person against whom it is taken in jeopardy (*Tandoc, et al. v. Resultant*, G.R. Nos. 59241-44, July 5, 1989).

Reyes was accorded due process during the preliminary investigation and to insist on another one would be to ask for what is *fait accompli* (*People v. Dulosan*, 160 SCRA 492 [1988]).

The trial court correctly ruled that the question of whether or not accused-Reyes as a public official has to intervene in the executed contract between the government and complainant-Pedro Domingo, Jr. is evidential and would largely depend on the substantiation of the parties at the trial on the merits.

It is axiomatic that the denial of a motion to dismiss or to quash, being interlocutory, cannot be questioned by certiorari. It cannot be the subject of appeal until final judgment or order is rendered. The ordinary procedure to be followed in such a case is to enter a plea, go to trial and if the decision is adverse, reiterate the issue on appeal from the final judgment (*Buaya v. Judge Polo*, 169 SCRA 471 [1989]). Certiorari is not a proper remedy where a motion to quash a criminal charge is denied. The appropriate recourse being to proceed to trial and in case of conviction, to appeal such conviction as well as the denial of the motion to quash (*Ladrado, et al. v. Laurilla*, G.R. No. 87172, March 9, 1989, *En Banc*, Minute Resolution).

As to the matter of suspension of Reyes from public office, the court *a quo* precisely applied Section 13 of R.A. No. 3019 after ruling on the validity of the information.

Failure of the fiscal to include the other public officials who appear to be responsible for the offense charged as co-accused in the information filed against Reyes does not in anyway vitiate the validity of the information under Section 1, Rule 110 of the Revised Rules of Court (now Sec. 6, Rule 110, 1985 Rules on Criminal Procedure). This is so since the matter of prosecuting witnesses for the people is a prerogative of the prosecuting fiscal (*People v. Andiza*, 164 SCRA 642 [1988]).

As to whether the information against accused-Reyes should be designated as Violation of Section 3(b) or (c) of Republic Act No. 3019 is inconsequential. What controls is not the designation of the offense charged or the particular law or part thereof allegedly violated but the description of the offense claimed to have been committed (*Tugbang v. Court of Appeals*, 174 SCRA 424 [1989]). In considering indictments that where an offense may be committed in any of several modes, and the offense, in any particular instance, is alleged to have been committed in two or more modes specified, it is sufficient to prove the offense committed in any one of them, provided that it be such as to constitute the substantive offense (*Tugbang v. Court of Appeals*, *ibid.*).

The real nature of the criminal charge is determined not from the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the actual recital of facts in the complaint or information. It is not the technical name given by the fiscal appearing in the title of the information that determines the character of the crime but the facts alleged in the body of the information (*People v. Mendoza*, G.R. No. 67610, July 31, 1989).

Verily, it bears reiteration that injunction will not be granted to restrain a criminal prosecution since public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society (*Romero, et al. v. Chief of Staff*, 170 SCRA 408 [1989]).

PREMISES CONSIDERED, the petition is hereby DISMISSED for utter lack of merit.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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