

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. RODOLFO B. ALBANO, IN HIS CAPACITY AS JUDGE OF CIRCUIT CRIMINAL COURT, 16TH JUDICIAL DISTRICT, DAVAO CITY AND CITY MAYOR ANTO...

G.R. Nos. L-45376-77. July 26, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

Petition for certiorari seeking to annul and set aside the order of the Circuit Criminal Court, 16th Judicial District, Davao City, dated 20 December 1976, in Criminal Case No. CCC-XVI-1-GSC (255) and Criminal Case No. CCC-XVI-2-GSC (256), which denied Petitioner's Motion for Reconsideration of a previous order, dated 28 October 1976, resolving that the informations filed therein are "invalid ab initio" and consequently dismissing said criminal cases.

On 11 June, 1971, an information was filed in the Court of First Instance of South Cotabato, Branch I, General Santos City, docketed as Criminal Case No 255, charging City Mayor Antonio C. Acharon for violation of Paragraphs (e) and (f), Section 3 of Republic Act 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. The information reads as follows:

"That for the period from January to December 1968, in the City of General Santos, Philippines and within the jurisdiction of this Honorable Court, said accused being then the incumbent Municipal Mayor of General Santos, South Cotabato, and thereafter from July 8, 1968 to the present is the City Mayor of the City of General Santos, Philippines, and being the public officer charged with the grant of license or permit to operate cockpits in the said City (formerly a Municipality), did then and there willfully, unlawfully and feloniously, deny the application for renewal of one EMILIO EVANGELISTA for license or permit to operate his cockpit situated at Labangala, now City of General Santos, Philippines, and issuing instead - in the same year 1968 - a license and permit to operate, as in fact said accused did issue a license or permit to LUIS ACHARON, his uncle (relative within the third civil degree) to operate a new cockpit about 250 meters away from the cockpit of Emilio Evangelista and in spite of the order of the CFI in Civil Case No. 840, entitled "MANDAMUS" in which Emilio Evangelista is the Petitioner, directing the then Municipal Mayor to accept and give due course to the application of petitioner Emilio Evangelista for a license or permit to operate his cockpit; the said accused failed and refused to accept and give due course to said application for a license or permit, thereby causing injury to said applicant and gave his uncle, LUIS ACHARON, an unwarranted benefit, advantage or preference in connection with which City Mayor under Section 10 of Republic Act 5412, known as the City Charter of General Santos City, has the sole charged (sic) of issuing license or permits, giving his relative within the third civil degree preference in the discharge of his official functions thru his manifest partiality, evident bad faith or gross inexcusable negligence and/or he has neglected or refused after due demand or request of Emilio Evangelista for the renewal of his permit to operate his cockpit without any sufficient justification, thus, giving directly or indirectly his own uncle, LUIS ACHARON, benefit or advantage or has discriminated on Emilio Evangelista in the performance of his official duties.

CONTRARY TO PARAGRAPHS (e) and (f) of Section 3, Republic Act No. 3019. x x x"[1]

On the same day, another information was filed in the same court, docketed as Criminal Case No. 256 charging City Mayor Antonio C. Acharon and then City Vice-Mayor Rosalina Bernabe of violating Section 3, in relation to Section 1, of Republic Act 3019. Said information reads as follows:

"That for the period July to December, 1969, in the City of General Santos, Philippines and within the jurisdiction of this Honorable Court, said accused, being the incumbent City Mayor and City Vice Mayor, respectively, of General Santos City, Philippines, taking advantage of their positions as City Mayor and City Vice Mayor, which positions and offices are public trust, conspiring, confederating together and mutually assisting one another, did then and there willfully, unlawfully and feloniously, use the names of 327 employees of the city government of General Santos City, fraudulently procure and purchase 1,635 sacks of rice in bulk with the Regional Office of the Rice & Corn Administration, Region No. XIII, stationed at General Santos City, by using their own money and after obtaining said 1,635 sacks of RCA rice at a price very much lower than the prevailing price in the open market for the same quality of rice, dispose the same illegally to persons other than the said 327 employees of the city government in violation of paragraph (a), (e), (h) and (j) of Section 3, in relation to Section 1 of Republic Act 3019, the accused City Vice Mayor Rosalina Bernabe persuading, inducing or influencing accused City Mayor Antonio C. Acharon to make a fraudulent official procurement of rice from the RCA and accused City Mayor Antonio C. Acharon allowed himself to be so persuaded, induced or influenced to make said fraudulent official procurement and, as a result the accused City Mayor has caused injury to the government by the fraudulent official procurement of rice from the RCA and has given accused City Mayor an unwarranted benefit and advantage thru said fraudulent official procurement of rice from the RCA; the Mayor being an officer charged with the grant of concession, namely, the official procurement of rice for city employees without whose intervention no such rice in bulk can be obtained except from RCA accredited retailers by the gantas, and/or both accused, directly or indirectly, had financial or pecuniary interest in the fraudulent procurement of rice from the RCA in connection with which the said accused intervened in their official capacities, the accused City Vice Mayor having used her own money in paying the low price of said price and, thereafter, illegally disposing of the same and accused City Mayor knowingly approved or granted the privilege or benefit in favor of the accused City Vice Mayor who was not qualified or legally entitled from procuring said rice in bulk from said agency, the official request being a privilege or a benefit.

CONTRARY to Section 3, in relation to Section 1, Republic Act No. 3019. x x x"[2]

The prosecution then filed an Urgent Motion for the issuance of an order suspending the accused from office. The accused Rosalina Bernabe filed a Motion to Dismiss in Criminal Case No. 256. The trial court thereupon issued a "show cause" order in both criminal cases, directing the accused to show the invalidity of the informations filed against them.

Before the pre-suspension hearings in the two (2) cases could be held, the accused were arraigned, both pleading not guilty. Likewise, pursuant to a resolution of this Court, both cases were transferred, to the Circuit Criminal Court, 6th Judicial District, Davao City (hereinafter referred to as the trial court) for trial and disposition. Criminal Case No. 255 and Criminal Case No. 256 were re-docketed as Criminal Case No. CCC-XVI-1-GSC (255) and Criminal Case No. CCC-XVI-2-GSC (256), respectively.

On 30 October 1972, the cases were set for trial. However, at the instance of the Acting District State Prosecutor, and on the latter's manifestation that a petition for reinvestigation had been filed with his office by accused Acharon, and that the granting of the same was still pending determination, trial was postponed. Likewise, the presiding judge who was hearing the cases was subsequently appointed to another court: hence, the trial of the cases was further delayed until herein respondent judge, Hon. Rodolfo B. Albano was appointed in December 1975 presiding judge of the trial court.

In September 1976, the cases were again set for hearing. On the date of hearing, 4 October 1976, accused Acharon filed a Motion to hear the validity of the informations filed against him.

In said hearing, the contending parties in both cases agreed to submit the question of the validity or invalidity of the two (2) informations on the basis of the records of each case. And with such submission, the trial court subsequently issued an Order, dated 28 October 1976, deciding the cases on the merits by making findings of fact based on its assessment of the records of the antecedent proceedings had in the cases, taking into consideration matters of defense of the accused, resolving that the informations in both cases are "invalid ab initio" and consequently dismissing said cases. The prosecution moved for reconsideration; however, on 20 December 1976, the trial court issued its Order denying the same.

Hence this petition by the prosecution.

Basically, petitioner challenges the manner in which the trial court arrived at its conclusion that the informations filed in both cases are invalid. Petitioner assigns as reversible errors the following:

"1. THE HONORABLE RESPONDENT COURT ERRED IN FINDING THAT THE ACTS FOR WHICH BOTH ACCUSED ARE CHARGED DO NOT CONSTITUTE VIOLATIONS OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019) BY TAKING INTO CONSIDERATION MATTERS NOT ALLEGED IN THE INFORMATIONS.

"2. THE HONORABLE RESPONDENT COURT ERRED IN DECIDING THE CASE ON THE MERITS WITHOUT TRIAL; CONSEQUENTLY, THE ORDER OF DISMISSAL IS NULL AND VOID AB INITIO FOR WANT OF DUE PROCESS."[3]

This assignment of errors raises in turn the following issues:

- whether in a pre-suspension proceeding to determine the validity or invalidity of an information filed under the Anti-Graft and Corrupt Practices Act, a court may consider matters not alleged in the information under consideration.
- whether a court may, without a trial proper, decide a case on the merits by making findings of fact after an assessment of the evidence on the record, taking into consideration matters of defense of the accused, and, on the basis thereof, dismiss the same.

Section 13 of Rep. Act 3019 provides that:

"x x x Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him."

The Court has previously ruled that under Sec. 13, Rep. Act 3019, suspension of a public officer is mandatory.[4] However, suspension cannot be automatic, the reason being that "a hearing on the validity of the information appears conformable to the spirit of the law, taking into account the serious and far reaching consequences of a suspension of an elective public official even before his conviction and that public interest demands a speedy determination of the issues involved in (the) cases." [5] Thus, before a suspension order can be issued, a hearing on the issue of the validity of the information must first be had. This pre-suspension hearing is conducted to determine basically the validity of the information, from which the court can have a basis to either suspend the accused, and proceed with the trial on the merits of the case, or withhold the suspension of the latter and dismiss

the case, or correct any part of the proceeding which impairs its validity.

As the Court held:

"xxx No specific rules need be laid down for such pre-suspension hearing. Suffice it to state that the accused should be given a fair and adequate opportunity to challenge the VALIDITY OF THE CRIMINAL PROCEEDINGS against him, e.g. that he has not been afforded the right of due preliminary investigation, that the acts for which he stands charged do not constitute a violation of the provisions of Republic Act 3019 or the bribery provisions of the Revised Penal Code which would warrant his mandatory suspension from office under section 13 of the Act; or he may present a motion to quash the information on any of the grounds provided for in Rule 117 of the Rules of Court x x x." [6]

It should be stressed that the right to challenge the validity of the information, in prosecutions under the anti-graft law, is not limited to the right to challenge the completeness or sufficiency of the recitals in the information vis-a-vis the essential elements of the offense as defined by substantive law. Considering the serious and far-reaching consequences of a suspension of a public official even before his conviction, the right to challenge the validity of an information entitles the accused to challenge the validity of the CRIMINAL PROCEEDINGS leading to the filing of the information against him.

However, this right of the accused does not divest the prosecution of its right to prove the guilt of the accused in a trial on the merits, nor should the pre-suspension hearing substitute the trial proper.

Thus, in a pre-suspension proceeding, the accused is accorded the right to prove that the information filed against him was filed without prior and due preliminary investigation to which he is entitled under the law. [7] This is to protect him from hasty, malicious and oppressive prosecution.

Likewise, he is accorded the right to challenge the propriety of his prosecution on the ground that the acts for which he is charged do not constitute a violation of Rep. Act 3019, or of the provisions on bribery of the Revised Penal Code, and the right to present a motion to quash the information on any of the grounds provided in Rule 117 of the Rules of Court.

However, a challenge to the validity of the criminal proceedings on the ground that the acts for which the accused is charged do not constitute a violation of the provisions of Rep. Act 3019, or of the provisions on bribery of the Revised Penal Code, should be treated only in the same manner as a challenge to the criminal proceeding by way of a motion to quash on the ground provided in Paragraph (a), Section 2 of Rule 117 of the Rules of Court, i.e., that the facts charged do not constitute an offense. In other words, a resolution of the challenge to the validity of the criminal proceeding, on such ground, should be limited to an inquiry whether the facts alleged in the information, if hypothetically admitted, constitute the elements of an offense punishable under Rep. Act 3019 or the provisions on bribery of the Revised Penal Code.

Private respondent Bernabe objects to this procedure, contending that:

"x x x This would render nugatory the purpose of the pre-suspension hearing. Considering the harshness of suspension from office, an accused should be allowed to present evidence in his behalf to refute the allegations in the information. Otherwise, any public officer can be suspended from office on the basis of an information complete and regular upon its face but which may have been based on false, malicious and unfounded imputation by unscrupulous persons, x x x" [8]

Contrary to private respondent's contention, the right to be secured against false, malicious and unfounded imputations is already covered by the right to a due preliminary investigation granted to the accused. The law does not require that the guilt of the accused must be established; in a pre-suspension proceeding before the trial

on the merits proceeds. Nor does it prohibit the trial, and thus the suspension, of the innocent. The law permits the trial of the accused based merely on probable cause, as long as probable cause has been properly determined. And for honest lapses in its administration, the law provides for remedial measures upon which an innocent public officer is vindicated and compensated. As the law provides:

"x x x Should he [the accused] be convicted by final judgment, he shall lose all retirement or gratuity benefits under the law, but IF HE IS ACQUITTED, HE SHALL BE ENTITLED TO REINSTATEMENT AND TO THE SALARIES AND BENEFITS WHICH HE FAILED TO RECEIVE DURING THE SUSPENSION, unless in the meantime administrative proceedings have been filed against him." [9] (Emphasis supplied)

Considering the mandatory suspension of the accused under a valid information, the law does not contemplate a proceeding to determine (1) the strength of the evidence of culpability against him, (2) the gravity of the offense charged, or (3) whether or not his continuance in office could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence, so that a court can have a valid basis in evaluating the advisability of his suspension pending the trial proper of the case filed against him. [10] Besides, a requirement that the guilt of the accused must first be established in the pre-suspension proceeding before trial proper can proceed would negate the ruling of the Court that the "x x x mandatory suspension ... requires at the same time that the hearing be expeditious, and not unduly protracted such as to thwart the prompt suspension envisioned by the Act" [11] and make the trial proper a surplusage.

In the case at bar, respondent Antonio Acharon does not claim that he was denied his right to due preliminary investigation. Private respondent Bernabe filed a motion to dismiss dated 18 June 1971, on the ground that the facts alleged in the information against her do not constitute an offense. Further, respondent Antonio Acharon filed a motion, dated 4 October 1976, praying that a pre-suspension hearing of the cases be held to determine the validity of the informations against him, but he did not specify any ground upon which he challenged the validity of the same.

In any event, when the contending parties in both cases agreed to submit the question of the validity of the informations on the basis of the records of the cases, among others, [12] to determine whether accused Acharon can be mandatorily suspended, the trial court was competent to inquire only whether or not (1) accused Acharon had been afforded due preliminary investigation prior to the filing of the informations against him, (2) the acts for which he was charged constitute a violation of the provisions of Rep. Act 3019 or of the provisions on bribery of the Revised Penal Code, or (3) the informations against him can be quashed, under any of the grounds provided in Section 2, Rule 117 of the Rules of Court, not deemed waived in view of the previous arraignment of the accused. [13]

Consequently, the submission by the parties of the issue of invalidity of the informations on the basis of the records of the case makes said records, in addition to facts admitted by the prosecution and indubitable facts contained therein, only a legal source from which the trial court can inquire whether accused Acharon was afforded due preliminary investigation before the informations were filed against him.

Likewise, in determining whether the acts for which respondent Antonio Acharon was charged do not constitute a violation of the provisions of Rep. Act 3019 or of the provisions on bribery of the Revised Penal Code, the trial court should have limited its inquiry to (1) the averments in the informations, as hypothetically admitted, (2) facts admitted by the prosecution, and (3) indubitable facts.

To traverse the allegations contained in the information, and conclude that, "no law had been violated by the accused," [14] merely on the basis of the records of the case which contain evidence submitted by the prosecution in the preliminary investigation, pre-emptively denies the prosecution its right to exhaustively present its evidence

against the accused at the trial proper.

Considering that the law does not require the conviction of the accused in the pre-suspension proceeding but only the determination of the validity of the criminal proceeding leading to the filing of the information, and given the ability of the latter to overcome a motion to quash, the prosecution should not be faulted if what it presents as evidence in the pre-suspension proceeding does not satisfy a finding of guilt beyond reasonable doubt of the accused.

The records of the instant case do not show that the proceedings leading to the filing of the informations against the accused were tainted with any irregularity so as to invalidate the same. Likewise, a reading of the informations shows that the allegations contained therein meet the essential elements of offense as defined by substantive law.[15] The record is also bereft of undisputed facts to warrant the quashal of the informations under any of the grounds provided in Section 2, Rule 117 of the Rules of Court.

The trial court exceeded its jurisdiction when it practically held that the prosecution failed to establish the culpability of the accused in a proceeding which does not even require the prosecution to do so. It acted with grave abuse of discretion, tantamount to lack of jurisdiction, when it pre-emptively dismissed the cases and, as a consequence thereof, deprived the prosecution of its right to prosecute and prove its case, thereby violating its fundamental right to due process.[16] With this violation, its Orders, dated 28 October 1976 and 20 December 1976, are therefore null and void.[17] Likewise, for being null and void, said orders cannot constitute a proper basis for a claim of double jeopardy.[18] As held by the Court:

"x x x to raise the defense of double jeopardy, three requisites must be present: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first.

Legal jeopardy attaches only (a) upon a valid indictment, (b) before a competent court, (c) after arraignment, (d) a valid plea having been entered; and (e) the case was dismissed or otherwise terminated without the express consent of the accused (People vs. Ylagan, 58 Phil. 851). The lower court was not competent as it was ousted of its jurisdiction when it violated the right of the prosecution to due process.

In effect, the first jeopardy was never terminated, and the remand of the criminal case for further hearing and/or trial before the lower courts amounts merely to a continuation of the first jeopardy, and does not expose the accused to a second jeopardy." [19]

WHEREFORE, petition is GRANTED. The challenged orders of the trial court are hereby declared NULL and VOID. Criminal Case No. CCC-XVI-1-GSC (255) and Criminal Case No. CCC-XVI-2-GSC (256) are remanded to the trial court for further proceedings in accordance with law. No costs.

SO ORDERED.

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

[1] Rollo, p. 62

[2] Rollo, p. 66

[3] Rollo, p. 33

[4] Luciano v. Provincial Governor, 20 SCRA 516.

[5] Luciano v. Wilson, 34 SCRA 639.

[6] Luciano v. Mariano, 40 SCRA 187

[7] While an irregularity in a proceeding may not affect the validity of an information in the narrow sense of the word, it may result in a serious defect tantamount to an infringement of the right of an accused to due process of law that would warrant the invalidity of the criminal proceedings against him. This can be explained as follows:

This Court has consistently ruled that the absence of a preliminary investigation does not impair the validity of the criminal information or render it defective. Much less does it affect the jurisdiction of the court over a case. Thus, in the absence of a preliminary investigation, a court, instead of dismissing an information, should either conduct such preliminary investigation or order the provincial fiscal to make it. (People v. Casiano, 111 Phil. 73; People v. Manlapaz, 5 SCRA 883; People v. Figueroa).

However, in anti-graft cases, the right to a preliminary investigation, being one made available to secure the innocent against hasty, malicious and oppressive prosecution, aside from the trouble, expense and anxiety of a public trial, (Salonga v. Pano, 134 SCRA 438; Trocio v. Manta, 118 SCRA 241; Hashim v. Boncan, 71 Phil. 216; U.S. v. Grant, 18 Phil. 122) plays an important role in protecting the right of a public officer from being unduly disturbed in his office. To dispense with the right in a criminal proceeding against a public officer prosecuted under the Anti-graft law or the provisions of the Revised Penal Code on bribery, under an information valid on its face, may occasion the denial of the letter's right to due process of law because under the law a valid proceeding against him mandates his suspension. Thus, as a way of protecting the accused, a criminal proceeding should be struck down as invalid in the absence of a preliminary investigation.

[8] Rollo, p. 353

[9] R.A. 3019, Section 13

[10] The procedure contemplated under Rep. Act 3019 may be distinguished from the present law on suspension of elective public officials, which vests on the Secretary of Local Government, the provincial governor and the city or municipal mayor the authority to suspend elective provincial, city, municipal or public officers, as the case may be, as provided under Par. (1), Sec. 63, Batas Pambansa Blg. 137. Under Par. (2) of Sec. 63 of said Batas Pambansa, suspension may be imposed:

"x x x when there is reasonable ground to believe that the respondent has committed the act or acts complained of, when the evidence of culpability is strong, when the gravity of the offense so warrants, or when the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence."

[11] Luciano v. Mariano, supra.

[12] It should be noted that the issue of pre-suspension does not apply to private respondent Bernabe (already out of public office). However, considering that her Motion to dismiss, on the ground that "the facts charged do not constitute an offense," was deemed by the trial court to be intertwined with the issues to be threshed out in the pre-suspension proceeding, said private respondent was also heard in the same proceeding.

[13] The grounds to quash an information not waived by a previous arraignment are:

- a) The complaint or information does not charge an offense;
- b) The court has no jurisdiction over the case;
- c) The defendant has been in former jeopardy; and

d) The defendant has been pardoned of the offense.

[14] Rollo , p. 149

[15] Both informations comply with the essential elements of acts deemed to constitute corrupt, practices of public officers under Paragraphs (e) and (f), respectively, of Section 3 of Rep. Act 3019, to wit:

"(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of officers or government corporations charged with the grant of licenses or permits or other concessions.

"(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any pending matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discrimination against any interested party."

[16] People vs. Bocar, 138 SCRA 166; Uy vs. Genato, 57 SCRA 123; Serino vs. Zosa, 40 SCRA 433; People vs. Gomez, 20 SCRA 293; People vs. Balicasan, 17 SCRA 1119.

[17] Banco Espanol Filipino vs. Palanca, 37 Phil. 921.

[18] People vs. Bocar, supra.

[19] Id.

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