

JUAN D. NASSR, PETITIONER-APPELLEE, VS. HON. PATRICIO C. PEREZ AND THE HON. CITY FISCAL OF BAGUIO, RESPONDENTS-APPELLANTS.

G.R. No. L-28779. February 28, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

An appeal by the prosecution from an order of the court of first instance of Baguio City and Benguet granting, upon motion for reconsideration of petitioner-appellee, the petition for certiorari and prohibition questioning the authority of the special counsel designated as such by the Secretary of Justice to sign the three original informations filed against petitioner as accused in three criminal cases filed against him in the Baguio city court and dismissing without prejudice the said informations.

The background of the case is narrated in the original order dated August 31, 1967 issued by the Baguio court of first instance[1] dismissing the action for certiorari and prohibition filed by petitioner, as follows:

"This is an action for certiorari and prohibition with preliminary injunction seeking to restrain the respondents from proceeding with the trial of Criminal Cases Nos. 18677, 18788 and 18798 of the City Court of Baguio mainly on the ground that the officer who filed the informations had no authority to do so. This Court enjoined the respondents from proceeding with the trial of said cases pending resolution of this special civil action.

"It appears that the following informations were filed before the City Court of Baguio, Branch II: 1) Crim. Case No. 18677 - for violation of City Ordinance No. 118, as amended by City Ordinance Nos. 247, 278, 310, 404, on June 20, 1966; 2) Crim. Case No. 18788 - for violation of Sec. 10(c) in relation to Sec. 13 of Revenue Regulations No. V-57 (Revised Amusement Tax Regulations) of the Department of Finance and pursuant to Sections 338 and 352, National Internal Revenue Code, on July 16, 1966; and 3) Crim. Case No. 18798 - for violation of Sec. 17, par. 3 in relation to Sec. 25 of Revenue Regulations No. V-1 (Bookkeeping Law and Regulations) of the Department of Finance and pursuant to Sections 338 and 352, National Internal Revenue Code, on July 18, 1966. All these informations were signed by the special counsel of the City Fiscal's Office, Baguio, 'For the City Fiscal' on the first two informations 'For the Officer-in-Charge' on the third information.

"On November 6, 1966, a motion to quash was filed based on the following grounds: a) the officer who has filed the informations has no authority to do so; b) the informations do not conform substantially to the prescribed form; and c) more than one offense is charged except in those cases in which existing laws prescribed a single punishment for various offenses. This motion to quash was resolved by the City Court sustaining the contention that the officer who filed the informations had no authority to do so. The other two grounds, for lack of merit, were overruled. The City Court then directed that the informations be signed by a regular fiscal. On October 19, 1966, amended informations were filed in Crim. Cases Nos. 18788 and 18798 signed by the same special counsel of the City Fiscal's Office 'For the Officer-in-Charge.' No amended information was filed in Crim. Case No. 18677.

"On November 23, 1965, the City Court issued an amended order directing that the charges in Crim. Cases Nos. 18788 and 18798 be signed by an employee of the government or governmental institution in charge of the enforcement or execution of the law violated considering that they are violations of the Internal Revenue Code. On November 28, 1966, criminal complaints in said cases - 18788 and 18798 - were filed signed by the Regional Director of the Bureau of Internal Revenue.

"On January 24, 1967, another motion to quash was filed based on the following grounds: a) this Honorable Court has no jurisdiction over the subject matter of the cases; b) the officer who has filed the information has no authority to do so; and c) with respect to Criminal Case No. 18677 the offense charged had already prescribed. This motion to quash was denied for the reason that the prosecution had already corrected the defects as previously directed and then set the cases of arraignment of the accused. Defendant's motion for reconsideration having been denied, he comes to this Court by way of this special civil action."

The Baguio court correctly restated petitioner's contentions thus: "(P)etitioner now contends that respondent judge's order denying his second motion to quash clearly and definitely contravenes the settled doctrines that: a) informations filed by officers who have no authority to do so are void ab initio and are, in contemplation of law, inexistent; b) only valid informations can be amended and informations filed by officers who have no authority to do so can never be amended even by the silence, acquiescence or even the express consent of the accused; and c) orders sustaining motions to quash are final orders subject to appeal in accordance with sec. 6, Rule 122 of the Rules of Court.

Just as correctly, the Baguio court ruled that "there is no question that the special counsel who signed the three original informations had the authority to do so by virtue of his designation as such by the Secretary of Justice" and that as such, he could validly sign informations charging violations of the National Internal Revenue Code.[2]

Accordingly, the Baguio court ordered the dismissal of the petition and the lifting of the injunction he had issued against the respondent prosecution-appellant.

Upon motion for reconsideration filed by petitioner-appellee, however, the Baguio court, while reiterating that "there is no serious legal issue involved," inexplicably turned volte face and avowedly "to terminate this confusion ('snafu') once and for all" - which was of its own creation - granted the motion for reconsideration and directly ordered the dismissal without prejudice of the questioned informations or complaints, per its order dated October 16, 1967, as follows:

"The issue hinges on whether the informations on record which were 'partly quashed' by the said Hon. Patricio Perez in his order and amended order both dated November 28, 1965, to the effect that the word, 'information' in Criminal Cases Nos. 18788 and 18798 of this court be changed to the word, 'Complaint' and be signed by the Regional Director of the Bureau of Internal Revenue, which was done (Annexes E and E-1, Petition). With respect to Criminal Case No. 18677, the original order requiring that the same be signed by the Fiscal of the City instead of the Special Counsels-Pastor de Guzman and Jose P. Basco-remains undisturbed.

"There is no serious legal issue involved, probably only technicalities of the law since the accused Juan D. Nassr was never arraigned in any of them.

"To terminate this confusion ('snafu') once and for all and avoid possible errors, since there is really some doubt as to the authority of the special counsels to file 'informations' and likewise, while the representatives of the B. I. R. could file complaints in cases falling under their jurisdiction, the same should be before the fiscals who are undoubtedly authorized to file informations in Court, the MOTION FOR RECONSIDERATION is granted, and the informations or complaints abovementioned dismissed without prejudice to whether (sic) action may be taken in the premises."

Hence, this appeal.[3]

The lower court's reconsideration order granting the petition for certiorari and ordering the dismissal of the three informations filed against petitioner - notwithstanding its own recitation of the background facts showing that the prosecution had faithfully complied with all the requirements imposed by the city court to the extent of criminal complaints having been filed supplementarily over the signature of the regional director of the Bureau of Internal Revenue and despite its express awareness of this Court's established jurisprudence recognizing the authority of duly designated special counsels under section 1686 of the Revised Administrative Code to file criminal informations - was clearly contrary to law and whimsical, and must be set aside.

This Court has consistently upheld the validity of informations filed by special counsels. In the latest case of *People vs. Sierra, Jr.*,^[4] the Court, thru Mr. Justice Fernando, thus traced its jurisprudence upholding the authority of special counsels or pro-secutors duly appointed as such under the cited article of the Revised Administrative Code to file criminal informations:

"xxx xxx xxx The first decision where this question was passed upon, and which until now is controlling, is *Lo Cham v. Ocampo*,^[5] a 1946 decision. As noted in the opinion of Justice Tuason, the sole question presented was whether or not the special prosecutor named therein, later Judge Gregorio T. Lantin, could sign informations as Assistant City Fiscal. The answer was categorically in the affirmative. Thus: 'There is nothing so sacrosanct in the signing of complaints, making of investigations and conducting of prosecutions that only an officer appointed by the President or one expressly empowered by law may be permitted to assume these functions. Certainly a lawyer who is vested with the same authority as might be exercised by the Attorney General or Solicitor General is presumed to be competent to be entrusted with any of the duties, without exception, devolving on a prosecuting attorney. That the person designated in a particular instance does not measure up to the educational specifications imposed by law is beside the point. It does not detract from the conclusion that, in the light of the high standard of training and experience required, there is no anomaly and no injustice is committed in lodging on the person designated by the Secretary of Justice those powers of the prosecuting attorney which we have named.'^[6] In *Go Cam vs. Gatmaitan*,^[7] this Court through the then Justice Padilla held that a special prosecutor detailed by the Secretary of Justice 'possesses the authority and power to sign and file the information in question.'^[8] Then came *People vs. Henderson III*,^[9] where precisely one of the questions raised was the validity of a criminal charge with a special prosecutor filing an information after an investigation without the consent of the City Fiscal of Manila. In the opinion of the then Justice, later Chief Justice Bengzon, it was stated: 'The question is not new, We have held in [*Lo Cham vs. Ocampo*] that a lawyer appointed by the Secretary of Justice, pursuant to Section 1686 of the Revised Administrative Code, as amended, to assist the City Fiscal is authorized to sign informations, make investigations and conduct prosecutions'.^[10]

"Even on the assumption that there was still an aspect of the question left untouched by previous adjudications, a decision, *Secretary of Justice v. Maglanoc*,^[11] xxx xxx xxx should remove any doubt about its being bereft of support in law. xxx xxx"

The authority of fiscals or special counsel to file informations for violations of the Tax Code against persons charged with violation of its provisions such as petitioner, without need of express approval of the Commissioner of Internal Revenue cannot be questioned either. As quoted from *U. S. vs. Rodriguez*^[12] by the lower court itself in its original order dismissing the petition, "(T)he contention of the appellant, that it is necessary to secure the approval of the Collector of Internal Revenue before an information is filed, charging a criminal violation of the Internal Revenue Law is so absurd that it is not worthy of serious consideration. What that law does provide is that no civil action for the recovery of taxes or the enforcement of fine, penalty or forfeiture under that Act shall be begun without the approval of the Collector of Internal Revenue. (See section 1581, Administrative Code of 1917.) Of course, it is perfectly obvious that the fines, penalties, and forfeitures therein mentioned, are administrative penalties which are only recoverable by civil action, and that the law in no

way affects or applies to criminal prosecutions."

Parenthetically, in the case at bar, the regional director of the Bureau of Internal Revenue had signed the criminal complaints, pursuant to the city court's order. Hence, petitioner could not even raise this unmeritorious and irrelevant question that the criminal complaints against him should have been initiated by the Commissioner of Internal Revenue. For the regional director's act of filing the amendatory complaints must certainly be taken to have been done under the Commissioner's authority, absent any reprobation or showing to the contrary.

ACCORDINGLY, the appealed order is hereby set aside and reversed. The criminal cases in question (Nos. 18677, 18788 and 18798 of the Baguio city court) are hereby ordered remanded to the city court of Baguio for prompt trial and disposition on the merits. With costs against petitioner-appellee.

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Makasiar, Antonio, and Esguerra, JJ., concur.
Fernando and Barredo, JJ., did not take part.

[1] In Special Civil Action Case No. 1785, presided by Hon. Feliciano Belmonte.

[2] Citing U.S. vs. Rodriguez, 38 Phil. 759.

[3] Petitioner-appellee moved to dismiss the appeal as having been filed out of time claiming that copy of the notice of appeal was not given him, but such motion was denied in the Court's resolution of June 13, 1968, Rollo, p. 28.

[4] 46 SCRA 717 (Aug. 30, 1972) and cases cited.

[5] 77 Phil. 635.

[6] Ibid., p. 638.

[7] 85 Phil. 802 (1950).

[8] Ibid., p. 805.

[9] 105 Phil. 859 (1959). Cf. People v. Mapa, G.R. No. L-15345, May 26, 1962, 5 SCRA 95; Guevarra v. Gimenez, G.R. No. L-17115, Nov. 30, 1962, 6 SCRA 807; People v. Alvarez, G.R. No. L-19072, Aug. 14, 1965, 14 SCRA 901, and Ocampo v. Duque, G.R. No. L-23812, April 30, 1966, 16 SCRA 962.

[10] Ibid., p. 865.

[11] G.R. No. L-19600, July 19, 1967, 20 SCRA 683. Cf. Siazon v. Hon. Judge of the Court of First Instance of Cota-bato, G.R. No. L-29354, Jan. 27, 1969, 26 SCRA 664; Es-trella v. Orendain, G.R. No. L-19611, Feb. 27, 1971, 37 SCRA 640; Oliveros vs. Villaluz, G.R. No. L-33362, July 30, 1971, 40 SCRA 327.

[12] Supra, fn. 2.

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