

ACTING PROVINCIAL FISCAL OF COTABATO (INCLUDING SOUTH COTABATO) ALEJANDRO C. SIAZON, PETITIONER, VS. THE HON. JUDGE OF THE COURT OF FIRST INSTANCE OF COTABATO, BRANCH II, GENERA...

G.R. No. L-29354. January 27, 1969

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is an original petition for certiorari, prohibition and mandamus filed by Prosecutor Alejandro C. Siazon, in his capacity as Acting Provincial Fiscal of Cotabato, wherein he seeks, among other things, the nullification of certain orders of the respondent Judge of the Court of First Instance of Cotabato, Branch II, in Criminal Case No. 1647 and Civil Case No. 848 of the said court, allegedly issued in grave abuse of discretion.

Insofar as pertinent to the present proceedings, the facts of the case are as follows:

As a consequence of the slaying of Jaime Anchinges in the evening of April 18, 1965, a complaint for murder was filed in the Municipal Court of General Santos, Cotabato (Crim. Case No. 2998) by the Assistant Provincial Commander of that province against Adan de las Marias alias "Maestro" alias "Octopus"; Eduardo Montinola alias "Baby"; Norberto Fragados alias "Norbing", and Alderico Lubaton alias "Jack" alias "Jackal". The corresponding warrants for their arrest were issued and all the named accused were taken into custody. Thereupon, the accused filed a joint petition for bail, on the ground that the evidence against them was weak; at the same time, a petition for hospitalization of accused Adan de las Marias was also filed.

On July 5, 1967, Acting Municipal Judge Narciso N. Mirabueno denied both petitions, upon the finding that the evidence of guilt of the accused was strong, and that the physical condition of De las Marias has already improved. A motion for reconsideration of the foregoing order was denied on July 23, 1967.

Thereafter, a new municipal judge for the municipality of General Santos (Honorable Armie E. Elma) was appointed. On August 8, 1967, the accused filed a motion to dismiss the complaint, which motion was submitted for resolution on the pleadings. On September 1, 1967, the Secretary of Justice designated Alejandro C. Siazon Acting Provincial Fiscal of Cotabato for the purpose of the investigation and prosecution of the Anchinges case, by virtue of administrative order which reads:

"ADMINISTRATIVE ORDER No. 174

"Pursuant to the provisions of Section 1679 of the Revised Administrative Code, as amended, Mr. ALEJANDRO C. SIAZON, State Prosecutor, this Department, is hereby designated Acting Provincial Fiscal of Cotabato in the investigation and prosecution of the Anchinges Murder case, filed against Adan de las Marias and others effective immediately and to continue until further orders. . . ."

On September 9, 1967, Judge Elma denied the accused's motion to dismiss, the order further providing as follows:

"WHEREFORE, in view of the fact that the evidence fails to show any conclusive or definite findings regarding the extent, gravity or fatal consequences of the sickness of Adan de las Marias, the Court, in further modification of the order dated July 23, 1967, hereby orders his jailer, the Commanding Officer, 453rd PC Company, to bring the person of Adan de las Marias to Manila or any other city within the Philippines for a thorough medical check-up and treatment therein in any hospital or medical clinic of his choice, at his expense. In said place and, upon his return to General Santos, Cotabato, at the Yap's Clinic, he shall there be confined during his treatment and shall last for as long as his ailment demands hospitalization, and he shall not be taken out therefrom without any order from this Court or the Court of First Instance concerned. . . ."

Adan de las Marias was admitted at the San Juan de Dios Hospital on September 16, 1967.

On October 17, 1967, accused Eduardo Montinola filed an urgent motion to be hospitalized in any clinic of his choice. Copies of this motion were served on the regular Acting Provincial Fiscal of Cotabato and the Assistant Provincial Commander, who refused to accept it. The motion was set for hearing, and in fact was actually heard, at 2 p.m. of October 17. On the following day, October 18, it was granted. The copy (of the motion) for petitioner Acting Provincial Fiscal, presumably addressed at the Prosecution Division of the Department of Justice in Manila, bore the postal stamp mark, October 24, and was received by the addressee on October 31, 1967.

On October 31, 1967, accused De las Marias, who was denied admission at the V. Luna General Hospital,[1] was ordered brought to either the Philippine General Hospital or the Dr. Jose R. Reyes Memorial Hospital to be examined by the hospital director or by any medical specialist therein. Previous to this date, or on October 27, 1967, the municipal judge directed Assistant Provincial Commander Captain A. C. Bueno, Jr., to go to Manila and secure the medical records of Adan de las Marias at the San Juan de Dios Hospital where the latter appeared to have stayed until November 7, 1967. However, on November 3, 1967, before said official could return to Cotabato, and based mainly upon the certification issued by a certain Dr. Benjamin Castillo, Medical Specialist I of the Dr. Jose R. Reyes Memorial Hospital, Adan de las Marias was granted temporary liberty on a bail bond of P50,000.00. All accused, having waived their right to preliminary investigation (second stage), the case was ordered remanded to the Court of First Instance on November 10, 1967, where it was docketed as Criminal Case No. 1647.

Evidently unaware of the remand-order, herein petitioner filed with the municipal court motions for the reconsideration of the orders of October 19 and 31, and November 3, 1967, premised primarily on the lack of proper service to him of the other parties' pleadings and of court orders. And when the municipal court denied said motions on the ground that it had lost jurisdiction over the case, petitioner instituted certiorari proceeding in the Court of First Instance, entitled "Alejandro C. Siazon (as Acting Provincial Fiscal of Cotabato) petitioner vs. The Honorable Municipal Judge of General Santos, Cotabato, et al." (Civil Case No. 848), charging therein respondent judge of having abused his discretion in issuing the orders of September 9, October 18, 19, 31 and November 3, 1967.

Meantime, in the criminal case also pending before the same Court of First Instance, motions for admission to bail were filed one after the other by accused Alderico Lubaton (on February 7, 1968), Eduardo Montinola (on May 7) and Norberto Fragados (on May 28), invariably on ground of ill-health. On April 4, 1968, Lubaton's motion was granted and said accused was released on a bail bond for P50,000.00. Petitioner was not furnished with copies of these motions and order.

On May 29, 1968, the accused were formally charged with murder, and on May 31, 1968, they were arraigned. On the same day, the respondent Judge set the case for trial on the merits. Petitioner objected, maintaining that the pending certiorari case and the motion for cancellation of the bond of accused De las Marias in the criminal case should first be resolved. As the court, in spite of his opposition, scheduled the hearing of the criminal case for

August 14 and 15, 1968, petitioner filed the present action in this Court. And this Court, granting petitioner's prayer, issued on August 13, 1968, a temporary writ restraining the respondent Judge "from proceeding with the trial of Criminal Case No. 1647 of the Court of First Instance of Cotabato, Branch II, entitled 'People versus Adan de las Marias, etc., et al.'"

On August 28, 1968, acting on petitioner's motions for cancellation of the bond of De las Marias and for the latter's medical examination, pending in Criminal Case No. 1647, the respondent Judge denied the same, reasoning that the grounds therefor were already properly pleaded in the certiorari case (Civil Case No. 848). Then, on September 10, 1968, the same respondent issued an order dismissing Civil Case No. 848, for the reason that petitioner has no legal capacity to bring the action, the real party in interest being the State or the People of the Philippines; that the creation of the City of General Santos (on July 8, 1968) terminated the authority of petitioner to appear in Criminal Case No. 1647, such authority being now lodged in the City Fiscal; that the petition for certiorari was defective for lack of allegation that there is no other plain, adequate and speedy remedy available to petitioner in law, and of the necessary supporting papers; and that the matter of granting or denial of bail previously determined by the municipal court is already *res judicata*. But there is record that on August 27, 1968, a new judge had qualified to preside over Branch II of the Court of First Instance of Cotabato (Annex U, Supplement to "Reply to Respondents' Answer").

Stripped of non-essentials, the issues properly raised in the present proceeding are not many; they can be narrowed down to (1) whether or not the designation of petitioner as Acting Provincial Fiscal by the Secretary of Justice, pursuant to Section 1679 of the Revised Administrative Code, conferred on the former exclusive authority to prosecute Criminal Case No. 1647, so that the failure of the accused and of the court to furnish him directly with the pleadings filed and orders issued in the case rendered said pleadings without effect and the orders null and void; and (2) whether or not the dismissal of Civil Case No. 848 for certiorari, was correct.

That petitioner has been duly designated Acting Provincial Fiscal only for the purpose of conducting the investigation and prosecution of the accused in the Anchinges case, is not in dispute. It is the stand of the respondent Judge, however, that such designation did not divest the regular provincial fiscal of Cotabato of authority to appear and take part in the prosecution of the case; that herein petitioner's role is merely to assist the regular provincial fiscal in the latter's duties. Thus, according to this respondent, service of pleadings and orders on the regular provincial fiscal satisfied the requirement of the Rules. Parenthetically, this argument is an admission that petitioner, as the latter claimed, was not really furnished with copies of certain pleadings and court orders.

The theory of the respondent Judge cannot be sustained. Contrary to his allegation, the naming of a lawyer to act as provincial fiscal under Section 1679 of the Revised Administrative Code, is not merely for the purpose of giving assistance to the regular provincial fiscal in discharge of his duties; that would be covered by Section 1686 of the same Code. For section 1679 is explicit—

"Section 1679. When Secretary of Justice shall appoint acting provincial fiscal.— When a provincial fiscal shall be disqualified by personal interest to act in a particular case or when for any reason he shall be unable, or shall fail, to discharge any of the duties of his position, the Secretary of Justice shall appoint an acting provincial fiscal, who shall discharge all the duties of the regular provincial fiscal which the latter shall fail or be unable to perform. Such officer shall, for the days actually employed, be paid out of the provincial treasury the same compensation per day as that provided by law for the regular provincial fiscal. The person so appointed shall be either a practicing attorney or some competent officer of the Department of Justice or office of any provincial fiscal. This may also be done in case of vacancy, pending the appointment of a permanent fiscal." (Italics supplied.)

Clearly, what is contemplated in the abovequoted provision is not a prosecution under the joint responsibility of the regular provincial fiscal and the designee of the Secretary of Justice, but one under the sole supervision of the latter. It provides for a complete take over by the designated fiscal of "all the duties" ordinarily discharged by the regular fiscal and which the latter shall be unable to perform.[2] As the proper government counsel in charge of the prosecution in Criminal Case No. 1647, petitioner, therefore, should have been served with the pleadings filed and orders issued therein at his known address in Manila. In this connection, it may be stated that although the setting of motions for hearing lies within the discretion of the trial judge, an appropriate exercise of that discretion should have impelled the respondent Judge to fix the date of hearing of the accused's motions in such a way that the government counsel may be assured of receiving the notice on time and be enabled to prepare for trial, giving due regard to the latter's address and allowance for the service of mail.

Considering that, as far as those pleadings filed in the case without corresponding proof of service to petitioner are concerned, they are deemed no more than scraps of paper (*Manila Surety & Fidelity Co., Inc. vs. Batu Construction Co.*, L-16636, June 24, 1965; *PNB vs. Donasco*, L-18638, Feb. 28, 1963, and cases cited therein), such pleadings could not have been made the bases of court orders. And any such order issued by the court upon defective pleading, is a nullity.

As regards the second issue in this case, we consider as decisive to its resolution the fact that when the order dismissing Civil Case No. 848 was issued by the respondent Judge on September 10, 1968, a new appointee had already qualified to the position of Judge of the Court of First Instance of Cotabato, Branch II, where said case was pending. For it is necessary for the validity of a judgment or order terminating a case on the merits that it be in writing, personally and directly prepared by the judge, signed by him,[3] and promulgated during incumbency as judge of that court.[4] In view of the fact that as of August 27, 1968, a new judge had qualified to preside over Branch II of the Court of First Instance of Cotabato, which had the effect of terminating the temporary assignment of the respondent Judge to the same court, the latter's order dated August 28, 1968 in Criminal Case No. 1647 and the order of September 10, 1968, dismissing Civil Case No. 848, were issued without due authority.

WHEREFORE, the petition is hereby granted, and the abovementioned order of August 28, 1968 in Criminal Case No. 1647 and that of September 10, 1968, dismissing Civil Case No. 848 of the Court of First Instance of Cotabato, as well as the orders of the municipal court of General Santos dated October 18, 1967 (allowing the hospitalization of Eduardo Montinola) and November 3, 1967 (granting bail to Adan de las Marias), which were issued upon petitions or motions of which petitioner was not duly served with copies, are hereby declared null and void. The writ of preliminary injunction heretofore issued is made permanent. No costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano and Barredo, JJ., concur.

Teehankee, J., did not take part.

[1] On October 19, 1967, the court allowed De las Marias to be brought to the V. Luna General Hospital in Quezon City for medical check-up.

[2] There is no allegation here that the designation of an Acting Provincial Fiscal to take charge of the prosecution of the case is irregular or improper

[3] Section 1, Revised Rule 36.

[4] *People vs. So*, L-8732, July 30, 1957, and cases therein cited; *Ling Ong Sui vs. Paredes*, L-21638, July 26, 1966; *Jimenez vs. Republic*, Feb. 17, 1968, 22 SCRA 622; *People vs. Soria*, L-25175, March 1, 1968, 22 SCRA

948.

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