

JAIME HERNANDEZ, PETITIONER AND APPELLANTS, VS. DELFIN ALBANO, ET AL., RESPONDENTS AND APPELLEES.*G.R. No. L-17081. May 31, 1961*

Ponente: BAUTISTA ANGELO, J.

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Sometime in March, 1959, Congressman Delfin Albano sent to the city fiscal of Manila two unsworn letters dated March 6 and March 23, 1959 denouncing petitioner's interest in the Bicol Electric Co., University of Nueva Caceres, University of the East, DMG Corporation, and Rural Bank of Nueva Caceres. These unsworn letters gave rise to the docketing in the office of the city fiscal of five separate cases charging petitioner with the violation of Article 216 of the Revised Penal Code, Commonwealth Act No. 626, and Republic Act No. 265.

These five charges were assigned for investigation by the city fiscal to two of his assistants who thereupon set them for preliminary investigation. At the initial hearing, petitioner moved for the dismissal of the charges on the ground that Congressman Delfin Albano is not one of those competent to subscribe to a complaint under Section 2 of Rule 106 of the Rules of Court[1]. The motion was denied, and so were the two motions for reconsideration filed by petitioner.

On April 25, 1959, petitioner filed with the Court of First Instance of Manila an action for prohibition with preliminary injunction against respondents seeking to prohibit them from conducting the preliminary investigation of the five charges mentioned above on the ground that a complaint filed in the office of the city fiscal must be sworn to as required by Section 2, Rule 106, of the Rules of Court, and since Congressman Albano has not sworn to the five charges he has filed, respondents fiscals were acting in excess of their authority in conducting the preliminary investigation as above adverted to. The petition for a writ of preliminary injunction was not acted upon in view of the manifestation of respondents fiscals that they would suspend their scheduled preliminary investigation pending determination of the petition for prohibition.

After due hearing, the trial court rendered decision upholding the authority of respondents fiscals to conduct the preliminary investigation of the charges filed by Congressman Albano even if they do not conform to the requirement of Section 2, Rule 106, of the Rules of Court. Consequently, it dismissed the petition. The appeal taken by petitioner is now before us by virtue of a certification made by the Court of Appeals.

The main theme of appellant is that the trial court erred in holding that the complaint contemplated in Section 2 of Rule 106 is the one filed in court and not the one filed in the office of the city fiscal because it is the one prepared after the preliminary investigation conducted by said official.

The pertinent provisions which need to be quoted for the purposes of this case are those which grant to the city fiscal and his assistants the power to investigate crimes, violations of laws and ordinances in the city, to wit:

"SEC. 38.-B. Duties of the City Fiscal.—The City Fiscal shall be the chief legal adviser of the city and all offices and departments thereof. * * * He shall also have charge of the prosecution of all crimes and violations of the city ordinances, in the Court of First Instance and the municipal courts of the city, and shall discharge all

the duties in respect to criminal prosecutions enjoined by law upon provincial fiscals. (*Italics supplied*)

"The City Fiscal shall cause to be investigated all charges of crimes and violations of ordinances and have the necessary informations or complaints prepared or made against the persons accused. He or any of his assistants may conduct such investigations by taking oral evidence of reputed witnesses, and for this purpose may issue subpoena, summon witnesses, to appear and testify under oath before him, and the attendance or evidence of any absent or recalcitrant witness may be enforced by application to the municipal court or the Court of First Instance. * * *

"SEC. 38.-C. Preliminary investigation of cases cognizable by the Court of First Instance.—In all cases brought to the Office of the City Fiscal involving crimes cognizable by the Court of First Instance, where the accused is not already in the legal custody of the police, no complaint or information shall be filed without first giving the accused a chance to be heard in a preliminary investigation, but he must sign a waiver of the provisions of Article one hundred twenty-five of the Revised Penal Code, as amended: * * *." (Republic Act No. 409).

"SEC. 1687. Authority of Fiscal to conduct investigation in criminal matter.—A provincial fiscal shall have authority to conduct investigation into the matter of any crime or misdemeanor and have the necessary information or complaint prepared or made against persons charged with the commission of the same. * * *"
(Revised Administrative Code).

As may be seen from the foregoing provisions, the city fiscal and his assistants, in the same manner as provincial fiscals, are vested with the power and authority to investigate all charges of crimes and violations of ordinances irrespective of whether the person who complains is the offended party or not. Said provisions do not require that a sworn written complaint be first filed before the city fiscal in order that he may investigate the case complained of, except of course if the offense is one which cannot be prosecuted *de officio*, or is private in nature, where the law requires that it be started by a complaint sworn to by the offended party, or when it pertains to those cases which need to be endorsed by specified public officers as required in Section 2, Rule 106 of the Rules of Court. The charges involved in these cases do not come within the two classes of offenses above referred to, and therefore they do not need to be initiated by a sworn complaint in order that they may be investigated by the city fiscal. In fact, it has always been the practice in the City of Manila since time immemorial to investigate charges involving the commission of crimes or violations of law without the need of a previous complaint under oath filed in the office of the city fiscal, and this practice has been endorsed by this Court in several decisions, among which we quote the following:

"The proceedings in the case at bar rest upon an information filed by the public prosecuting officer, and there can be no question as to the authority of such officers to institute and maintain a criminal action without regard to the intervention of the private persons who may have been directly injured by the commission of the alleged offense, excepting prosecutions for the offenses formerly designated private offenses which by express provision of law can only be instituted at the instance of the offended party." (U.S. vs. Barreto, 36 Phil., 204, 208-209)

"Section 2465 of the Revised Administrative Code, as amended by Commonwealth Act No. 537, provides that 'The Fiscal of the city shall cause to be investigated all charges of crimes, misdemeanors, and violations of ordinances, and have the necessary informations or complaints prepared or made against the person accused.' Section 2474 of the Revised Administrative Code (Manila Charter) pertinently provides that in cases triable only in the Court of First Instance the defendant shall not be entitled as of right to a preliminary examination in any case where the fiscal of the city, after a due investigation of the facts, shall have presented an information against him in proper form.' The power is reaffirmed—and not taken away—by section 2 Rule 108 of the Rules of Court. * * *

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"The framers of the Rules could not have intended to brush aside these lessons of experience and to tear down an institution recognized by law and decision and sanctioned by years of settled practice. They could not have failed to keep intact an effective machinery in the administration of criminal justice, as expeditious and simple as any reform they have infused into the new Rules. * * *" (Hashim vs. Boncan, et al., 71 Phil., 216, 224-225; See also Espiritu vs. De la Rosa, 78 Phil., 827; Italics supplied.)

The contention that the trial court erred in ruling that the complaint contemplated in Section 2, Rule 106 is the one filed in court because it is the one prepared after the preliminary investigation is conducted by the prosecuting official is untenable. This ruling is but a sequel to our interpretation above set out to the effect that, with the exception of the two cases already mentioned, a sworn written complaint is not necessary to be filed in the office of the fiscal before he can start the required preliminary investigation preparatory to the filing of a formal charge. The trial judge, Hon. Jesus Y. Perez, in a well-written opinion, made a clear exposition of the reasons supporting his ruling which constitute the best refutation of the error attributed to him by appellant. Portions of said opinion we are herein quoting with approval:

"It is contended by the petitioner that all complaints filed with the Office of the City Fiscal should conform with the definition of 'complaint' under Section 2, Rule 106 which states as follows:

"'The term complaint is defined as a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated.'

"In support of his stand, the petitioner cites the following pronouncement of the Supreme Court in Espiritu vs. De la Rosa, 78 Phil., 829) to wit:

"It is not correct to say that a complaint, as defined in Section 2, Rule 106, must be filed with a court of justice, because said section which provides that 'Complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated,' does not require that it be filed with a court of justice. Unlike Section 3 of said rule which requires an information to be "filed with the court", a complaint need not necessarily be filed with the court. Hence it may be laid before the City Fiscal for investigation.'

"A thorough perusal of the above pronouncement shows that it is authority only for the proposition that if a sworn written statement charging a person of an offense is filed with the City Fiscal for purposes of investigation, such written charge is also deemed a complaint within the definition of complaint in Section 2 of Rule 106. Of course, it is a complaint filed with the Fiscal for what other denomination could be given to such a sworn charge? But, there is nothing in the language of the Supreme Court from which it can be inferred that the charge filed with the fiscal for purposes of preliminary investigation must, in all cases, conform to the requirements of a complaint as defined in Section 2 of Rule 106 of the Rules of Court. Besides, that the complaint contemplated in Section 2, Rule 106 is one that starts the judicial proceeding is clarified in the case of People vs. Santos, et al., 101 Phil., 798 wherein the Supreme Court, construing the provision of Section 2 of Republic Act No. 732 which provides that 'A provincial fiscal shall have authority to conduct preliminary investigation into the matter of any crime or misdemeanor and have the necessary information or complaint prepared or made against persons charged with the commission of the crime' hold that the complaint mentioned in this provision of law is precisely what is defined and mentioned in the Rules of Court and the Penal Code'. The complaint contemplated in Section 2 of Rule 106 is hence the one filed in court because it is the one prepared after the preliminary investigation is held under Republic Act No. 732. This rule is applicable to cases under investigation by the City Fiscal of Manila because Section 2 of Republic Act No. 732 abovequoted and paragraph two of Section 38-B of the Revised Charter of the City of Manila are substantially the same, the latter providing that 'The City Fiscal shall cause to be

investigated all charges of crimes and violations of ordinances and have the necessary informations or complaints prepared or made against the persons accused'. Since the complaint referred to in Section 2 of Republic Act No. 732, which is also the complaint referred to in the second paragraph of Section 38-B of the Revised Charter of the City of Manila is precisely what is defined in Section 2 of Rule 106 of the Rules of Court made after the preliminary investigation is held, the charges filed by respondent Congressman Albano are not covered by the requirement of Section 2 of Rule 106 of the Rules of Court, said charges not having been filed with the Court and also not filed after the preliminary investigation is terminated.

"That the 'complaint' which must conform with the requirements of Section 2, Rule 106 is the one filed in Court and not the one filed for purposes of preliminary investigation before the City Fiscal is further clarified by the provision of Section 38-C of the Revised Charter of Manila which states that:

"In all cases brought to the Office of the City Fiscal involving crimes cognizable by the Court of First Instance
* * * no complaint or information shall be filed without first giving the accused a chance to be heard in a
preliminary investigation. * * *"

Since the above provision of law clearly shows that the preliminary investigation precedes the filing of the complaint which is what is defined and mentioned in the Rules of Court, the charge filed by respondent Congressman Albano which was not the result of the preliminary investigation but started it need not conform to the definition of complaint in the Rules of Court."

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Bengzon, C.J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

[1] Complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated."

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