

**NARCISO D. SALCEDO AS PROVINCIAL FISCAL OF CAVITE,
PETITIONER, VS. HON. PABLO D. SUAREZ AS DIS-TRICT JUDGE OF
CAVITE, RESPONDENT.**

G.R. Nos. L-46103-12. October 28, 1977

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court sets aside the contempt orders and fines imposed by respondent judge against petitioner fiscal on the ground that petitioner fiscal did not act improperly and with contempt of respondent judge's court in filing the informations in the ten cases in question with the Circuit Criminal Court of the 7th Judicial Dis-tribt since they fell within the concurrent criminal jurisdiction of said Circuit Criminal Court and the Court of First Instance pre-sided by respondent judge.

Upon preliminary investigations having been conducted by municipal judges of several towns in Cavite province of criminal offenses cognizable by the Court of First Instance of Cavite and the Cities of Cavite, Tagaytay and Trece Martires, 7th Judicial District, Branch I with station at Naic, Cavite presided by respondent Judge Pablo D. Suarez and the Circuit Criminal Court of the same 7th Judicial District with station at Pasig, Rizal presided by Judge Onofre Villaluz, the records of ten criminal cases[1] were elevated for prosecution and filing of the corresponding informations[2] to respondent judge's court where they were docketed.

Petitioner in his capacity as incumbent Provincial Fiscal of Cavite and ex-officio City Fiscal of Trece Martires City, upon receipt of the records of the criminal cases, after studying the same and satisfying himself of the sufficiency of the evidence for the pro-secution prepared the corresponding informations and in the exer-cise of his discretion either *motu proprio* (pursuant to "the primary purpose of the creation of the Circuit Criminal Courts in addition to the existing Courts of First Instance to mitigate the caseload[3] of the Courts of First Instance as well as to expedite the disposition of criminal cases involving serious offenses"[4] or at the request of the offended parties or kins of victims of murder and other serious crimes and their witnesses (who were thus em-boldened to appear and testify at the trials held by the Circuit Cri-minal Court at Pasig, Rizal rather than in Cavite) filed the cases with the Circuit Criminal Court at Pasig, Rizal.

On November 4, 1976, petitioner received identical orders dated October 21, 1976 issued in the ten cases by respondent judge ordering petitioner "to show cause and explain within five (5) days from receipt of copy of this order why he has not reported on the development of this case, it appearing that he should have acted on this case sooner and should have reported to this Court on the con-sequences produced by him considering that the record of this case has been in his possession for quite a long time already for investigation and/or appropriate action," and ordering him "to return to this court of these cases immediately, unless there is a valid ground to retain the same in his possession."[5]

Petitioner promptly filed on November 8, 1976 his Explanation stating that the cases had already been filed with the Circuit Criminal Court at Pasig, Rizal and "(T)hat the failure to advise the Clerk of Court of the filing of these

with the CCC at Pasig is an unfortunate oversight for which the undersigned apologizes humbly to this Honorable Court;" pleading that "the matter of advising the Clerk of Court of the filing of the cases with the CCC at Pasig, Rizal is purely administrative and should be routinary for the Administrative Officer of this office;" but "begging the indulgence" of respondent judge for such failure due to "an acute lack of personnel" in his office; and further stating that two cases against the Orbistondo brothers (Emilio and Mundo, CCC-VII-1507 and 1508) "were already decided by the Honorable Judge Onofre Villaluz on October 21, 1976, the brothers Emilio and Mundo Orbistondo having been sentenced to death for Murder and to suffer an undeterminate sentence of from 10 years and 1 day of reclusion temporal, minimum to 17 years, 4 months and 1 day of reclusion temporal as maximum;" while a third case against Antonio Orbistondo was still pending because said accused was confined in the Bilibid Hospital for advance T.B. and was said to be "in danger of dying of said ailment." [6] As to the other cases, petitioner asked for an extension of time to inform respondent judge of their status as the records were with the Circuit Criminal Court at Pasig and pending receipt of the reports of his assistant fiscals. [7]

Respondent judge, however, in six identical orders all dated November 22, 1976 [8] rejected petitioner's Explanation as "not well taken and unsatisfactory" and found him guilty of indirect contempt of court and sentenced him to pay a fine of P100.00 in each of the ten cases or a total of P1,000.00 with a warning "not to repeat the said offense for a repetition of the same will be dealt with more sternly and severely," ruling that

"His explanation, which drew the ire and dismay of this Court, was that instead of returning the record of this case to this Court with the corresponding information filed in connection therewith, he opted to file the said case before the Circuit Criminal Court of Pasig, Metro Manila, thereby leaving this case as pending before the docket of this Court for an indefinite period of time. It appears that had this Court not exercised prudence by making the order dated October 21, 1976, the said case will remain pending and open in its docket forever and the same will adversely affect the competence and efficiency of this Court. The Provincial Fiscal, in filing this case with the Circuit Criminal Court, did not even have the courtesy of moving nor informing this Court about the transfer of venue of the same when this Court of equal power and jurisdiction has already acquired jurisdiction over it upon its receipt from the Municipal Court of Rosario, Cavite. It is very apparent that the Provincial Fiscal has reduced to and treated this Court as a mere Municipal Court which is offensive and an insult to this Court."

Hence, the present appeals of petitioner fiscal by way of review on certiorari. Respondent judge in his comment on the petition reasserted that jurisdiction was "already vested" in his court over the same ten cases which were "docketed" therein "although there were still no informations in their records;" that his court should have first "expressly granted and ordered the withdrawal of such cases from its dockets and it is only at such time that the petitioner-appellant provincial fiscal may exercise his authority to file such informations with the Circuit Criminal Court;" that "to defend and stress [his court's] integrity and dignity" he imposed the fines upon petitioner who "deliberately committed such act(s) of indirect contempt;" that the Circuit Criminal Court "did not have any jurisdiction to hear, try and decide such ten criminal cases" and he therefore prayed for dismissal of the petition and "that the corresponding records of the same ten criminal cases should be returned by petitioner to the Cavite Court of First Instance for the lawful actions which are needed on them."

It is obvious that respondent judge's contempt orders were based on the misconception that jurisdiction over the ten criminal cases had already "vested" in his court when the municipal judges who conducted the preliminary investigation transmitted the records of the cases to his clerk of court, as provided by Rule 112, section 12 of the Rules of Court. [9] This may have been true in a sense before the enactment on September 8, 1967 of Republic Act No. 5179 creating the Circuit Criminal Court in each of the sixteen judicial districts and granting them concurrent criminal jurisdiction over the criminal cases therein specified with the regular courts of first instance which theretofore fell within the latter's original and exclusive jurisdiction.

Upon receipt of the record in the court of first instance from the municipal court, it is well settled as reaffirmed in *Talusan vs. Ofiana*[10] that the provincial fiscal (or his assistant) has the power "to conduct his own investigation or reinvestigation of a case already elevated to the Court of First Instance by a municipal judge or justice of the peace who conducted a preliminary investigation thereon, in order to determine his own course of action as prosecuting officer," and thereafter he may either move to dismiss the case (subject to the sound discretion of the judge presiding the court who usually grants although he may deny the same, but who however may not order the movant fiscal to file the corresponding information in the event of his denial of the fiscal's dismissal motion[11]) or file the corresponding information.

As provided by Rule 110, section 4 of the Rules of Court (and Republic Act No. 5180) "(A)ll criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal." Where the fiscal after his study of the record finds reasonable ground against the accused and files the information, it is within his authority and discretion under existing administrative procedures[12] to file the same either with the Court of First Instance or the Circuit Criminal Court (in the same manner as with cases falling within the concurrent criminal jurisdiction of these two courts and the city [and municipal] courts). Thus, in *People vs. Abejuela*[13] the Court recognized the fiscal's choice of court or forum wherein to file the information for offenses of concurrent criminal jurisdiction and held that "It is to be assumed that the right of choice of forum granted to the city fiscal will be exercised properly in the interests of an expeditious and orderly administration of justice, and experience has borne out that informations for such offenses have been invariably filed with the inferior courts - absent an overriding compelling reason to file the same with the courts of first instance whose dockets are generally more taken up with cases requiring protracted trials - for considerations equally of benefit to the State as well as to the accused since their decisions are given the same weight as those of the courts of first instance and are appealable directly to the Court of Appeals or the Supreme Court, as the case may be. Similarly, provincial and city fiscals have been granted the choice of forum with regard to the filing of informations for serious crimes within the concurrent jurisdiction of the courts of first instance and the circuit criminal courts with a case filed with the circuit court having the advantage or disadvantage, depending upon the accused's viewpoint, of continuous trial until termination and a prompt verdict within thirty days from submittal of the case for decision, but the validity of the law cannot be seriously challenged." [14]

Petitioner fiscal, as already stated, filed the informations in the ten cases with the Circuit Criminal Court rather than with the respondent judge's court to mitigate the latter court's caseload in accordance with the purpose of the Circuit Criminal Court law or at the request of the offended parties and complainants. Since the filing of the information or complaint "supplies the occasion for the exercise of jurisdiction vested by law in a particular court"[15] and the law confers concurrent jurisdiction in the Circuit Criminal Court, the said court properly assumed jurisdiction over the said cases and there is no lawful basis for respondent judge's prayer that said cases be returned to his court "for the lawful actions which are needed on them" and to set at naught the judgments of conviction already rendered by the Circuit Criminal Court in some of the cases and the other proceedings therein.

For administrative and record purposes, however, petitioner fiscal should have promptly and in due course advised the clerk of respondent judge's court that the informations had been filed with the Circuit Criminal Court. Petitioner fiscal recognized this oversight and duly "apologized humbly" to respondent judge and pleaded an "acute lack of personnel in his office" in extenuation. Under the circumstances and considering that petitioner was only discharging his duty according to his best lights, and could not be said to have in any way acted arbitrarily or in bad faith in filing the informations with the Circuit Criminal Court, his apology could have been graciously accepted by respondent judge with an admonition to exercise greater care in the future, in lieu of the unwarranted imposition of punitive fines in the total sum of P1,000.00,

ACCORDINGLY, the questioned contempt orders and fines imposed therein are annulled and set aside. Without costs.

Makasiar, Muñoz Palma, Martin, Fernandez, and Guerrero, JJ., concur.

[1] Nine cases were docketed as TM-355, TM-352, TM-251, TM-282, TM-337, TM-45, TM-239, TM-247 and TM-389. The 10th case, docketed as TM-103, was originally docketed as CCC-VII-960, having been filed directly for preliminary investigation with the Circuit Criminal Court at Pasig, Rizal (not by the municipal court) after which the information was filed by petitioner fiscal with said court under Rule 112, sec. 13. Rollo, page 23.

[2] As provided by Rule 112, section 12, Rules of Court.

[3] A computation of the docket numbers given the ten cases at respondent judge's court ranging from TM-45 to TM-389 indicates that there was a total number of 344 cases docketed therein during the period in question, out of which the informations in these ten cases were filed directly with the Circuit Criminal Court (less than 1/3 of 1% of the 344 docketed cases).

[4] Collector of Customs vs. Villaluz, 71 SCRA 356 (1976).

[5] Annexes G to K, petition.

[6] Annex N, petition. Records of this Court, L-45407-08 where the death sentences of Emilio and Mundo Orbistondo have been elevated for automatic review show that Antonio did in fact die on May 19, 1977 of PTB.

[7] Annex M, petition.

[8] Annexes A to F, petition.

[9] The rule provides: "SEC. 12. Transmission of record. - Upon the conclusion of the preliminary investigation, the judge or corresponding officer shall transmit without delay to the clerk of the Court of First Instance having jurisdiction of the offense the record of the case, including (a) the warrant if the arrest was by virtue of a warrant, and the written testimony in support of the same; (b) an abstract of the testimony of the witnesses at the preliminary investigation; (c) the undertaking or bail of the accused; (d) the person of the accused if not on bail; and (e) his findings from the preliminary investigation." (Rule 112)

[10] 45 SCRA 467, 472 (1972), per Reyes, J.B.L., J.

[11] Ass't. Prov. Fiscal of Bataan vs. Dollete, 103 Phil. 914 (1958).

[12] Cf. Administrative Order No. 274 of the Department of Justice which authorizes fiscals and their assistants to file from 15 to 30 cases a month with the Circuit Criminal Courts.

[13] 38 SCRA 324, 333 (1971); emphasis supplied.

[14] To obviate any misapprehension that the fiscal's choice of forum may be exercised arbitrarily or motivated by considerations other than the interests of justice, the Court expressed the desirability of the Secretary of Justice's issuing definite administrative guidelines for the fiscal's exercise of such choice.

[15] Arcaya vs. Teleron, 57 SCRA 363, 366 (1974).

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