

**B. JOSE CASTILLO, PETITIONER, VS. HON. ONOFRE A. VILLALUZ,
JUDGE, CIRCUIT CRIMINAL COURT, 7TH JUDICIAL DISTRICT,
RENATO MONTES AND JOSE DE SILVA, RESPONDENTS.**

G.R. No. L-34285. March 08, 1989

Ponente: NARVASA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/2b63cf660768/>

NARVASA, J.:

Judges of Regional Trial Courts (formerly Courts of First Instance) no longer have authority to conduct preliminary investigations. That authority, at one time reposed in them under Sections 13, 14 and 16, Rule 112 of the Rules of Court of 1964,[1] was removed from them by the 1985 Rules on Criminal Procedure, effective on January 1, 1985,[2] which deleted all provisions granting that power to said Judges. We had occasion to point this out in *Salta v. Court of Appeals*, 143 SCRA 228, and to stress as well certain other basic propositions, namely: (1) that the conduct of a preliminary investigation is "not a judicial function ** (but) part of the prosecution's job, a function of the executive;" (2) that wherever "there are enough fiscals or prosecutors to conduct preliminary investigations, courts are counseled to leave this job which is essentially executive to them," and the fact "that a certain power is granted does not necessarily mean that it should be indiscriminately exercised."

The 1988 Amendments to the 1985 Rules on Criminal Procedure, declared effective on October 1, 1988,[3] did not restore that authority to Judges of Regional Trial Courts; said amendments did not in fact deal at all with the officers or courts having authority to conduct preliminary investigations.

This is not to say, however, that somewhere along the line RTC Judges also lost the power to make a preliminary examination for the purpose of determining whether probable cause exists to justify the issuance of a warrant of arrest (or search warrant). Such a power -- indeed, it is as much a duty as it is a power -- has been and remains vested in every judge by the provision in the Bill of Rights in the 1935, the 1973 and the present (1987) Constitutions securing the people against unreasonable searches and seizures,¹ thereby placing it beyond the competence of mere Court rule or statute to revoke. The distinction must, therefore, be made clear while an RTC Judge may no longer conduct preliminary investigations to ascertain whether there is sufficient ground for the filing of a criminal complaint or information,² he retains the authority, when such a pleading is filed with his court, to determine whether there is probable cause justifying the issuance of a warrant of arrest.³ It might be added that this distinction accords, rather than conflicts, with the rationale of *Salta* because both law and rule, in restricting to judges the authority to order arrest, recognize that function to be judicial in nature.⁴

The proceedings at bar have reference to the law in 1971, at which time a preliminary investigation (now in question) was conducted by respondent Judge of the Circuit Criminal Court.⁵ He did so with respect to a complaint dated July 9, 1971 (and Joint Affidavit dated July 21, 1971) filed directly with his Court by Renato Montes and Jose de Silva against Manuel Laconico. The complaint charged the latter with estafa in the amount of P1,000.00. The investigation culminated in the issuance by respondent Judge of an Order on July 28, 1971⁶ containing the following dispositive portion:

WHEREFORE, there being a preliminary examination and investigation conducted by the Court and considering that the respondent was given a chance to defend himself, let a warrant be issued for his apprehension. The respondent is hereby ordered to post a bond in the amount of P3,000.00 for his provisional release.

Pursuant to Section 6, Rule 135 of the New Rules of Court, in relation to Section 13, Rule 112 thereto, the Provincial Fiscal of Rizal is hereby ordered to file the corresponding information against the respondent before the court of competent jurisdiction within TWENTY-FOUR(24) hours from receipt hereof.

SO ORDERED.

Notice of the Order was served on the Provincial Fiscal of Rizal, herein petitioner, on July 29, 1971, but he failed to file the information required within the time appointed, or at any time thereafter. Consequently, on October 1, 1971, he was directed by His Honor to explain within ten (10) days "why he should not be punished for contempt of court for delaying the speedy administration of justice for disobeying a lawful order of the Court."¹ The Fiscal filed a motion for reconsideration,² but this was denied, by Order dated October 19, 1971.³ Hence, this petition for certiorari and prohibition was presented by petitioner Fiscal, seeking annulment of the aforesaid orders.

Petitioner submits that –

- 1) His Honor had no jurisdiction to conduct preliminary investigations, because the law creating Circuit Criminal Courts, R.A. No. 5179, conferred on said courts only the power to try and decide, concurrently with the regular courts of first instance, certain specific criminal cases, but not the power to conduct preliminary investigations;
- 2) a preliminary investigation is not a part of a trial or the rendition of a decision; it is a function which may very well be left to the public prosecutors as its discharge would unduly burden judges;
- 3) even assuming power in the respondent to conduct preliminary investigations, the power does not include the compulsion of a provincial fiscal, under sanction of contempt, to file an information in court without conducting his own preliminary investigation; the conduct thereof is a primary duty of his; as the official charged with the responsibility of instituting and prosecuting criminal cases in court, the determination of the sufficiency of the evidence to warrant such institution and prosecution is made to rest by law upon his sound discretion.

During the time that it existed,⁴ the Circuit Criminal Court had the same power as a Court of First Instance to conduct preliminary investigations of offenses cognizable by it. So we have ruled in two (2) cases: *Collector of Customs v. Villaluz*, 71 SCRA 356,⁵ and *de Guzman v. Villaluz*, 117 SCRA 182.⁶

Now, His Honor was evidently of the view that his determination of the existence of probable cause, founded on the results of his own preliminary investigation, was the last word on the matter, and the Provincial Fiscal had no option except to draw up and file the information on the basis of said preliminary investigation. This is why respondent Judge gave petitioner Fiscal only twenty-four (24) hours "to file the corresponding information."

The Judge is mistaken. It is the fiscal who is given by law "direction and control" of all criminal actions.⁷ It is he who initiates all prosecutions in the name of the People of the Philippines, by information or complaint, against all persons who appear to be responsible for the offense involve¹ It is he (or other public prosecutor), therefore, who is primarily responsible for ascertaining through a preliminary inquiry or proceeding "whether there is reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof."² That function, to repeat, is not judicial but executive. When a preliminary investigation is conducted by a judge, the judge performs a non-judicial function, as an exception to his usual judicial duties. The assignment of that function to judges of inferior courts and to a very limited extent to courts of first instance was dictated by "necessity and practical considerations," and the consequent policy; as we said in *Salta*, was that "wherever there were enough

fiscals or prosecutors to conduct preliminary investigations, courts were to leave that job which is essentially executive to them." It follows that the conclusions derived by a judge from his own investigation cannot be superior to and conclusively binding on the fiscal or public prosecutor, in whom that function is principally and more logically lodged. These considerations argue against giving the term "refer" used in Section 13 of the former Rule 112 -- which provided that if the judge, after conducting a preliminary investigation finds probable cause against a defendant, "*** he shall issue a warrant for his arrest, and thereafter refer the case to the fiscal for the filing of the corresponding information" -- the effect of imposing upon the fiscal the mandatory duty to file an information merely upon such reference being made; and this, even without regard to the fact that in its ordinary sense, the word "refer" conveys no such import nor connotes any compulsion. And it was no doubt on account of these obvious considerations that, as Salta further observes, Section 37 of Batas Pambansa Blg. 129 reiterated "the removal from Judges of Metropolitan Trial Courts in the National Capital Region of the authority to conduct preliminary investigation" and "Section 2 of Rule 112 of the 1985 Rules on Criminal Procedure no longer authorizes Regional Trial Judges to conduct preliminary investigations." It may not be amiss to point out, in this connection, that the 1988 Amendments to the 1985 Rules on Criminal Procedure (Sec. 5, Rule 112) explicitly provide inter alia that "(s)hould the provincial or city fiscal disagree with the findings of the investigating judge on the existence of probable cause, the fiscal's ruling shall prevail."³ Be it noted, however, that once the fiscal files an information with the Court and the Court thereby acquires jurisdiction over the case, the case may not be dismissed at the fiscal's instance except only by consent of the Court, which may grant or withhold it in its discretion.⁴

It was therefore grave abuse of discretion amounting to lack of jurisdiction on His Honor's part to seek to foreclose the petitioner fiscal's prerogative to conduct his own preliminary investigation to determine for himself the existence or non-existence of probable cause, and to require him to show cause for not filing the information within twenty-four (24) hours, on the sole basis of the Judge's conclusions. The fiscal was not bound to a blind, uncritical and unavoidable acceptance of those conclusions. He had the duty to satisfy himself of the existence of probable cause, and could not shirk or be made to evade it by an unreasoning and indiscriminate reliance on the judge's investigation.

Since the controversy at bar arose, many years have passed during which Circuit Criminal Courts were abolished, as already stated,¹ the petitioner Fiscal's public service was ended by compulsory retirement, and the respondent's stint as Judge, ended by his promotion to a higher court. It is time, too, that this case is ended.

WHEREFORE, the challenged Orders are hereby annulled and set aside. This resolution is immediately executory. No costs.

Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

Cruz, J., see separate concurrence.

[1] SEE Sec. 4, Rule 108, Rules of Court of 1940; *Peo. v. Solon*, 47 Phil. 443, cited in Moran, Comments on the Rules, 1980 ed., Vol. 4, pp. 115-116

[2] Promulgated on November 22, 1984

[3] The 1988 Amendments were published in the issue of Bulletin Today of October 29, 1988

¹ Sec 2, ART III of the 1987 Constitution, for instance, provides that "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to

be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

2 Or, as expressed in Sec. 1, Rule 112 of the 1985 Rules of Court, as amended in 1988, to determine "whether there is sufficient ground to engender a well founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof, and should be held for trial."

3 Sec. 6 of the same Rule 112 inter alia provides that, "Upon the filing of an information, the Regional Trial Court may issue a warrant for the arrest of the accused."

4 SEE Sec. 6, sub-secs. (a) and (b), and Sec. 9, sub sec (b) of the same Rule 112, supra

5 Circuit Criminal Courts were inter alia automatically abolished on completion on January 17, 1983 of the reorganization of the judiciary pursuant to Batas Pambansa Blg. 129

6 Rollo, pp. 23-24

1 Id., pp. 25-26

2 Id., pp. 27-38

3 Id., p. 39

4 Circuit Criminal Courts, as above stated [footnote 1, p. 2] ceased to exist upon completion of the reorganization of the judiciary on January 17, 1983 pursuant to Sec. 44, B.P. Blg. 129

5 Cited in *Salta v. C.A.* 143 SCRA 228, supra, p. 1 hereof

6 Decided in light of Sec. 3. RA 5179 creating the Circuit Criminal Courts, which made applicable to said courts the provisions "of all laws and the Rules of Court relative to the judges of the Courts of First Instance and the trial, disposition and appeal of criminal cases"

7 Sec 4, Rule 110, Rules of 1964, Sec. 5, Rule 110, 1985 Rules on Criminal Procedure

1 Secs. 1-3, Rule 110, Rules of 1964; Secs. 2-4, Rule 110, 1985 Rules on Criminal Procedure

2 Sec 1, Rule 112, Rules of 1964 -- or, as stated in Sec. 1, Rule 112 of the 1985 Rules on Criminal Procedure, supra,"... whether there is sufficient ground to engender a well founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof, and should be held for trial"

3 SEE *Peo. v. Pineda*, 20 SCRA 748 (1967) holding inter alia (at p. 756) that "The question of instituting a criminal charge is one addressed to the sound discretion of the investigating Fiscal. The information he lodges in court must have to be supported by facts brought about by an inquiry made by him. It stands to reason then to say that in a clash of views between the judge who did not investigate and the fiscal who did, or between the fiscal and the offended party or the defendant, those of the Fiscal's should normally prevail. In this regard, he cannot ordinarily be subject to dictation. **."

4 SEE *Crespo v. Mogul*, 151 SCRA 462 (June 30, 1987), cited in *Dungog v. C.A., et al.*, G.R. No. 77850-51, March 25, 1988, and *Sta. Rosa Mining Co. v. Asst. Provincial Fiscal, et al.*, G.R. No. 153 SCRA 367, Aug. 31, 1987

1 SEE footnote 4, at page 3 hereof, supra

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.