

**ISMAEL ANDAYA, MILA AQUIO AND CHUA TO, PETITIONERS, VS.
PROVINCIAL FISCAL OF SURIGAO DEL NORTE AND FIRST
ASSISTANT PROVINCIAL FISCAL CARLO H. LOZADA, RESPONDENTS.**

G.R. No. L-29826. September 30, 1976

Ponente: FERNANDO, J.

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FERNANDO, J.:

This prohibition proceeding was instituted by petitioners to restrain respondent fiscals[1] from conducting the preliminary investigation of a complaint accusing them of the crime of falsification of a public document. The contention is seriously pressed that there is a prejudicial question constituting a bar to such a proceeding, relying on a pending civil suit filed by them for breach of contract with damages against the complainant in the falsification charge, a certain Domingo R. Alvarez, the defendant in such civil action, who alleged that the document upon which the cause of action arose was a forgery.[2] That succinctly put is the essence of this petition for prohibition. What is clearly apparent is its lack of merit. As will be shown, the authoritative doctrines speak categorically and plainly that until after the filing of a case in court, a prejudicial question, even if impressed with merit, cannot be raised. What is sought to be obtained, therefore, in this petition is, to say the least, clearly premature. Nor does it change matters to allege that the complaint for falsification had been previously dismissed by a justice of the peace,[3] and thereafter filed anew with respondent Provincial Fiscal.[4] Again, the authorities are much too clear; they do not lend support to the pretension of petitioners. We have to dismiss the petition.

Now for the controlling decisions.

1. The answer to the petition praying for its dismissal relied primarily on *Dasalla v. City Attorney of Quezon City*,[5] a 1962 decision. As was explicitly made clear in the opinion of Justice Padilla: "Granting that the prejudicial question raised by the appellants be legally correct, still the time or moment to ask for the suspension of the criminal proceedings is not during the period of preliminary investigation by the city prosecuting officer but after such investigation and after he shall have filed the informations against the appellants." [6] Then came *Estrella v. Orendain, Jr.*, [7] with Justice Barredo as ponente. It appears from the facts that the Provincial Fiscal of Rizal refused to act on the complaint precisely because there was the alleged obstacle of an existing prejudicial question. That was an insufficient basis for the failure to fulfill his duty. So it was pointed out in the opinion: "Contrary to the contention of the petitioner, the Provincial Fiscal of Rizal refused to act. He refused to conduct any investigation of petitioner of the charge against him, alleging a supposed legal impediment which, at best, was erroneously. He claimed that a prejudicial question existed, but it is settled that the matter of prejudicial questions cannot be resolved by fiscals but by the court after the corresponding information has already been filed." [8] Petitioners relied on the earlier case of *De Leon v. Mabanag*, [9] a 1940 decision. It would clearly appear then, the petition having been filed in November of 1968, that they ignored the later decision of *Dasalla*. What cannot be denied is that *Mabanag* has now been overruled. So it could easily be inferred from *Estrella* where there was a reiteration of *Dasalla* and impliedly a rejection of *Mabanag* concerning the time and the forum as to when and where a prejudicial question may be raised. Whatever doubt on the matter may exist is removed by *Isip v.*

Gonzales,[10] also a 1971 decision, this Court speaking anew through Justice Barredo. Thus: "More definitely in *Estrella v. Orendain, Jr. and Quilop*, G.R. No. L-19611, February 27, 1971, We held that 'it is settled that the matter of prejudicial questions cannot be resolved (until) * * * after the corresponding information has already been filed.' Of course, this is not to overlook the holding in the earlier case of *De Leon v. Mabanag*, heavily relied upon by petitioners, which sustained an action for prohibition against the City Fiscal of Manila to stop him from proceeding with the preliminary investigation of a charge of falsification of public documents on the ground of the existence of a prejudicial question in a civil case; but *Dasalla* being much later in point of time, and since, on the other hand, it already formed part of our jurisprudence when the revised Rules of Court were promulgated in 1964, it is obvious that Section 5 of Rule 111 of said Rules should be construed consistently with the ruling in *Dasalla*." [11] The latest word on the subject is *Falgui, Jr. v. Provincial Fiscal of Batangas*, [12] a 1975 decision, the opinion of Justice Antonio quoting the above excerpt from *Isip*. Mention was likewise made that such a doctrine was followed in *Bautista v. Navarro* [13] and *Rojas v. People*. [14]

2. Nor is a different conclusion warranted by the stress on the petition that the complaint for falsification against petitioners was dismissed by the Municipal Court of Surigao, Surigao del Norte. [15] That is no obstacle to the provincial fiscal conducting his own preliminary investigation. So this Court explicitly affirmed in *People v. Pervez*, [16] a 1960 decision. If a municipal court now, a justice of the peace previously, in the language of the ponente, Justice J.B.L. Reyes, "dismisses the charge, then the case stands as if no charge had been made, and the Provincial Fiscal may thereafter conduct his own investigation of the same charge * * *, making it in the presence of the accused if and when the latter so requests." [17] Thereafter, the same jurist made use of the very same words in disposing of a similar issue raised in *People v. Reginaldo*, [18] and *Abubakar v. Arca*. [19] So did Justice Padilla in *People v. Mapa and Abalo* [20] and Chief Justice Concepcion in *People v. Tan*. [21]

3. That is about all, except for the pointed reference in the petition to respondent First Assistant Provincial Fiscal Lozada being assigned to conduct the preliminary investigation of the complaint for falsification against petitioners, an anomaly in their opinion considering that it was he who appeared "for the prosecution when [the] case against petitioners [thereafter dismissed] was still pending in the Municipal Court of Surigao." [22] Their concern is understandable. Doubts can honestly be entertained about the impartiality of respondent Lozada. He had as prosecutor made up his mind about the complaint against petitioners. Then he would be called upon to exercise his quasi-judicial power. What is said of judges equally applies then to a fiscal conducting a preliminary investigation. The well-settled doctrine followed by this Court and given expression is that any one entrusted with such an awesome responsibility must act in such a way that no bias or prejudice could justly be imputed to him. As recently set forth in *Castillo v. Juan*: [23] "In every litigation, perhaps much more so in criminal cases, the manner and attitude of a trial judge are crucial to everyone concerned, the offended party, no less than the accused. It is not for him to indulge or even to give the appearance of catering to the at-times human failing of yielding to first impressions. He is to refrain from reaching hasty conclusions or prejudging matters. It would be deplorable if he lays himself open to the suspicion of reacting to feelings rather than to facts, of being imprisoned in the net of his own sympathies and predilections." [24] Such a principle goes back to the leading case of *Gutierrez v. Santos*, [25] rightfully stressing "that every litigant is entitled to nothing less than the cold neutrality of an impartial judge." [26] It is imperative, therefore, that the hearing of the preliminary investigation be assigned to any fiscal other than respondent First Assistant Provincial Fiscal Lozada, on the assumption that he is still holding that position.

WHEREFORE, the petition for prohibition is dismissed. The restraining order issued by this Court on December 11, 1968 is hereby lifted, set aside, and declared of no further force or effect. No costs.

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

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- [1] The respondents are the Provincial Fiscal of Surigao del Norte and the First Assistant Provincial Fiscal, Carlo H. Lozada.
- [2] Petition, pars. 3-4.
- [3] Ibid, pars. 5-6.
- [4] Ibid, pars. 7-8.
- [5] 115 Phil. 179.
- [6] Ibid, 182-183.
- [7] L-19611, February 27, 1971, 37 SCRA 640.
- [8] Ibid, 660.
- [9] 70 Phil. 202.
- [10] L-27277, May 31, 1971, 39 SCRA 255.
- [11] Ibid, 263.
- [12] L-27523, February 25, 1975, 62 SCRA 462.
- [13] L-35345, November 24, 1972, 48 SCRA 176.
- [14] L-22237, May 31, 1974, 57 SCRA 243.
- [15] Petition, par. 6.
- [16] 110 Phil. 214.
- [17] Ibid, 218. Cf. *United States v. Banzuela*, 31 Phil. 564 (1915); *United States v. Yu Tuico*, 34 Phil. 209 (1916); *United States v. Marfori*, 35 Phil. 666 (1916); *Eustaquio v. Liwag*, 86 Phil. 540 (1950); *Assistant Provincial Fiscal v. Dollete*, 103 Phil. 914 (1958); *Ragpala v. Justice of the Peace of Tubod*, 109 Phil. 373 (1960).
- [18] 111 Phil. 963 (1961).
- [19] 116 Phil. 1219 (1962).
- [20] 115 Phil. 77 (1962).
- [21] L-17791, April 30, 1963, 7 SCRA 981. Cf. *People v. Bagsican*, L-13486, October 31, 1962, 6 SCRA 400 and *People v. Monton*, L-23906, June 22, 1968, 23 SCRA 1024.
- [22] Petition, par. 9.
- [23] L-39516-17, January 28, 1975, 62 SCRA 124.
- [24] Ibid, 127.
- [25] 112 Phil. 184 (1961).
- [26] Ibid, 189. Gutierrez was followed subsequently in *Del Castillo v. Javelona*, L-16742, Sept. 29, 1962, 6 SCRA 146; *People v. Gomez*, L-22345, May 29, 1967, 20 SCRA 293; *Austria v. Masaquel*, L-22536, Aug. 31, 1967, 20 SCRA 1247; *Zaldivar v. Estenzo*, L-26065, May 3, 1968, 23 SCRA 533; *Geotina v. Gonzales*, L-26310, Sept. 30,

1971, 41 SCRA 66. In *Luque v. Kayanan*, L-26826, Aug. 29, 1969, 29 SCRA 165 and *Tobias v. Ericeta*, Adm. Case No. 242-J, July 29, 1972, 46 SCRA 83, there was reference to the need for "the cold neutrality of an impartial judge" without invoking *Gutierrez v. Santos*. Cf. *People v. Ancheta*, L-39993, May 19, 1975, 64 SCRA 90.

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