

**MARIQUITA CAPARAS, BINO TIONLOC, ORLANDO AGONCILLO,
MERINO TEH, JESUS BLANCO, MARIANO FONACIER, ET AL.,
PETITIONERS AND APPELLANTS VS. PEDRO D. OFIANA, AS
PROVINCIAL FISCAL OF B...**

G.R. No. L-21614. October 31, 1963

Ponente: DIZON, J.

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DIZON, J.:

When the complaint by Majors Nicanor U. Gatchalian and Buenaventura B. Fernandez with the Provincial Fiscal of Bulacan, charging herein petitioners with a violation of Section 174 of the Internal Revenue Code and Sections 3601 and 3602 of the Tariff and Customs Code was called for preliminary investigation on January 10, 1963 herein petitioners questioned the Fiscal's jurisdiction, claiming that the offense charged was committed within the jurisdiction of the province of Ilocos Sur. This contention having been overruled, petitioners filed the present action for prohibition in the Court of First Instance of Bulacan, with a petition for the issuance of a writ of preliminary injunction, against the aforesaid Provincial Fiscal to restrain him from proceeding with the preliminary investigation and/or from filing the corresponding information.

The Court of First Instance of Bulacan issued a restraining order to be effective until the case was tried on the merits. Thereafter, the respondents filed their answer and subsequently filed a motion to dismiss upon the grounds set forth therein. Resolving said motion, the court, on April 18, 1963, dismissed the petition for prohibition and set aside the restraining order already mentioned and subsequently denied petitioners' motion for reconsideration. Thereafter, petitioners took the present appeal.

It appears that on September 12, 1963, the respondent Provincial Fiscal of Bulacan filed an information against petitioners charging them with having violated Section 3601 of Republic Act No. 1937, the same having been docketed as Criminal Case No. 5550 of the Court of First Instance of Bulacan. It is not denied that the charge is the same as the one subject of the preliminary investigation which petitioners sought to prevent the respondent Provincial Fiscal of Bulacan from conducting with the filing of the action for prohibition now before Us.

In view of the filing of the information mentioned in the preceding paragraph, respondents filed on October 8, 1963 a motion to dismiss the present appeal on the ground that the issue of jurisdiction may now be raised in the aforesaid criminal case.

Petitioners object to the dismissal of their appeal, claiming that the filing of the criminal information aforesaid can not deprive this court of its appellate jurisdiction over this case; that the aforesaid information was filed in order to prevent Us from deciding the present appeal from the order of dismissal mentioned heretofore. Moreover, in view of the failure of the Court of First Instance of Bulacan to act upon their petition for a restraining order in the aforesaid criminal case No. 5550 to be effective while the present appeal pending petitioners pray that we issue said restraining order.

After considering the matter arising from the motion to dismiss and petitioners' opposition thereto, we find the contention of the respondents to be well founded. It can not be denied that the purpose of the special civil action of prohibition (Civil Case No. 2742) filed by petitioners in the Court of First Instance of Bulacan was to restrain the respondent Provincial Fiscal from proceeding with the preliminary investigation of the complaint filed against them and restrain said official from subsequently filing a criminal information in connection with the charge therein made. It is likewise not disputed that the present appeal involves exclusively the question of whether the order dismissing the action should be affirmed or reversed, which, in turn, depends upon the other question of whether the charge was within the jurisdiction of the respondent Provincial Fiscal to investigate and within the jurisdiction of the Court of First Instance of Bulacan to try and decide. These matters may now be properly raised in Criminal Case No. 5550 of said court. A special civil action of prohibition is proper only upon a showing that the aggrieved party has no remedy by appeal or any other plain, speedy and adequate remedy in the ordinary course of the law. As petitioners may now raise the question of jurisdiction in Criminal Case No. 5550 mentioned heretofore, we find the present appeal to be of purely academic value.

Wherefore, the motion to dismiss the appeal is granted, with the result that said appeal is hereby dismissed, without costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Regala and Makalintal, JJ., concur.

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