

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. JOSE TAN, ACCUSED.*G. R. No. L-17791. April 30, 1963*

Ponente: CONCEPCION, J.

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Appeal by the prosecution from an order of the Court of First Instance of Ilocos Norte, dismissing this case with costs de oficio.

On January 27, 1960, a complaint charging Jose Tan with homicide was filed with the Justice of the Peace Court of Laoag, Ilocos Norte, and docketed, therein as Criminal Case No. 3176. After conducting the first and second stages of the corresponding preliminary investigation, on August 5, 1960, said court dismissed the complaint and forwarded the records to the Court of First Instance of Ilocos Norte. Subsequently, the Provincial Fiscal of Ilocos Norte conducted his own preliminary investigation, and then filed with the Court of First Instance of Ilocos Norte on September 16, 1960, an information charging Jose Tan with the same offense, which information was docketed as Criminal Case No. 3618 of the latter Court. Soon thereafter, or on October 1, 1960, the defendant moved to dismiss this information, upon the ground that in view of the dismissal of said complaint by the Justice of the Peace Court, the Provincial Fiscal could not, under Republic Act No. 1799, amending Republic Act No. 732, file a new information with the court of first instance "without first obtaining an order directing the justice of the peace to conduct another preliminary investigation." On November 27, 1960, said court of first instance issued the order appealed from, dismissing the aforementioned information. A reconsideration of this order having been denied, the prosecution interposed the present appeal.

The only issue in this appeal is whether the provincial fiscal could validly file said information, after a preliminary investigation made by him, in which he found that a probable cause exists against the accused, considering that the complaint filed with the Justice of the Peace Court had been dismissed by the same, after conducting the second stage of the preliminary investigation. The Court of First Instance of Ilocos Norte resolved the question in the negative, relying upon the cases of *U. S. vs. Marfori*: (35 Phil., 666) and *People vs. Magbanua* (C.A.-G.R. No. 19544- R, 54 Off. Gaz., 4500). We agree with the appellant herein that said Court has erred in reaching its aforementioned conclusion.

The *Marfori* case is not in point for no preliminary investigation was conducted therein by the provincial fiscal. The decision of the Court of Appeals in the *Magbanua* case was, also, invoked by the accused in *People vs. Pervez*, 110 Phil., 214 (November 29, 1960), which is identical to the one at bar. Like the lower court in the present case, the court of first instance granted the motion to dismiss the information in the *Pervez* case. Yet this Court reversed the order of dismissal therein upon the ground that:

"* * *if the charge for a crime cognizable by the Court of First Instance is filed by a competent party or officer in the Justice of the Peace Court, and the accused waives preliminary investigation therein, or the Justice of the Peace, after regular preliminary investigation, finds that a prima facie case exists, and consequently, elevated the records to the Court of First Instance, the Provincial Fiscal is not called upon to conduct another preliminary investigation, and may forthwith file the information in the Court of First Instance. Republic Act

732 does not apply in such a case. But if the Justice of the Peace, after due investigation, dismissed 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 under the aforementioned Republic Act 1799 (amending R. A. 732), making it in the presence of the accused if and when the latter so requests."

Upon the authority of our aforementioned decision in the Pervez case, which was reiterated in *People vs. Reginaldo*, m Phil., 963 and *Abubakar vs. Arca*, L-14916 (December 29, 1962), the order appealed from should, therefore, be, as it is hereby set aside, and the records of the present case remanded to the lower court for further proceedings, with the costs of this instance against defendant-appellee, Jose Tan.

It is so ordered.

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

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