

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS.
EDILBERTO GOMEZ, PRUDENCIO N. CICHON, CESAR V. CASTILLO,
PEDRO CUENTO AND JOHN DOE, DEFENDANTS-APPELLEES.**

G.R. No. L-29086. September 30, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

In 1962, four (4) informations were filed by the prosecuting fiscals before the Court of First Instance of Zamboanga City. They were as follows:

1. Criminal Case No. 3083. - On May 24, 1962, Edilberto Gomez, Prudencio N. Cichon, Cesar V. Castillo, Pedro Cuento and John Doe were charged in the Court of First Instance of Zamboanga City with the crime of Estafa thru falsification of public/official documents. The case was docketed as Criminal Case No. 3083.

The prosecuting officers certified under oath that they had conducted a preliminary investigation of the case in accordance with law; and that they believed that the offense charged had been committed and the accused were probably guilty thereof. The corresponding warrant of arrest for each of the accused was accordingly issued and the accused subsequently filed their bond for provisional liberty (pp. 10, 11, 15-18, 21, 25-26, Rec.).

On June 26, 1964, the accused Pedro Cuento and Cesar Castillo pleaded not guilty to the information (p. 54, Rec.); Edilberto Gomez and Prudencio Cichon pleaded not guilty on October 21, 1964 (p. 61, Rec.).

2. Criminal Case No. 3084. - On May 24, 1962, the state prosecutors filed another information in the lower court for the crime of Estafa thru falsification of public/official documents against Lorenzo Delantar, Prudencio Cichon, Jesus F. Atilano and two other unidentified persons, Richard Doe and John Doe. The case was docketed as Criminal Case No. 3084. As in the preceding case, the prosecution certified under oath that they conducted a preliminary investigation of the case, in accordance with law; that they believed the offense was committed and the accused were probably guilty thereof (pp. 1-3, Rec.). The accused Prudencio Cichon and Lorenzo Delantar, filed their respective bond for provisional liberty (pp. 23-24, 29-30, Rec.).

Upon arraignment, Jesus Atilano, Prudencio Cichon and Lorenzo Delantar pleaded not guilty to the offense charged in the information (pp. 60, 70, Rec.).

3. Criminal Case No. 3088. - On May 24, 1962, another information for Estafa thru falsification of public/official documents was filed in the Court of First Instance of Zamboanga City against Prudencio Cichon and Paulino Duma. This case was docketed as Criminal Case No. 3088. The information carries also the certification of the State Prosecutors that they had conducted a preliminary investigation in the case and that they believed that the offense charged had been committed and that the accused were probably guilty thereof (pp. 1-3, Rec.).

After their arrest, the accused were released provisionally upon filing a bond of P1 ,000.00 each (pp. 14-15; 16-17, Rec.). On April 26, 1964, the two accused pleaded not guilty to the charge (p. 33, Rec.).

4. Criminal Case No. 3128. - On October 1, 1962, Prudencio Cichon, Jesus F. Atilano and Pedro Cuento were charged in an information for Estafa thru falsification of public/official documents in the Court of First Instance of Zamboanga City (pp. 1-2, Rec.). This case was docketed as Criminal Case No. 3128. Since the information did not contain a certification that a preliminary investigation of the case had been made by the prosecutors, the District Judge himself made the preliminary investigation and once satisfied that a prima facie case against the three accused existed, issued warrants for their arrest on the same day, October 1, 1962 (p. 6, Rec.). The accused, however, were released on a bail of P1 ,000.00 each (pp. 9-10, 11-12, and 15-16, Rec.). At the arraignment on June 26, 1966, all the accused pleaded not guilty to the charge (pp. 31-32, Rec.).

On June 22, 1966, the accused in the four (4) cases, thru their counsel, filed a MOTION TO DECLARE INFORMATIONS AND WARRANTS OF ARREST null and void on the ground that the prosecution failed to observe the provisions of Section 13 and 14 of Rule 112 of the New Rules of Court regarding preliminary investigation and prayed the court to cancel the warrants of arrest issued.

On September 27, 1966, the lower court, for lack of merit, denied the aforesaid motion.

Upon a motion for reconsideration filed by the accused, thru counsel, the lower court, on November 2, 1966, reversed its former ruling and ordered the dismissal of all the four (4) cases against them, without prejudice to the refile of the same, and ordered the cancellation of the bonds posted for the provisional liberty of the accused.

From the said order of dismissal, the prosecution appealed to this Court alleging that the trial court erred "in dismissing Criminal Cases Nos. 3083, 3084, 3088 and 3128 on the ground that the preliminary investigations conducted therein were not in accordance with Sections 13 and 14 of Rule 112, in relation to Rule 144 of the Revised Rules of Court."

The People's appeal should be sustained. The trial court's questioned order of dismissal is erroneous. Sections 13 and 14 of Rule 112 of the New Rules of Court provide:

"SEC. 13. Preliminary examination and investigation by the judge of the Court of First Instance. - Upon complaint filed directly with the Court of First Instance, without previous preliminary examination and investigation conducted by the fiscal, the judge thereof shall either refer the complaint to the municipal judge referred to in the second paragraph of section 2 hereof for preliminary examination and investigation, or himself conduct both preliminary examination and investigation simultaneously in the manner provided in the preceding sections, and should he find reasonable ground to believe that the defendant has committed the offense charged, he shall issue a warrant for his arrest, and thereafter refer the case to the fiscal for the filing of the corresponding information."

"SEC. 14. Preliminary examination and investigation by provincial or city fiscal or by state attorney in cases cognizable by the Court of First Instance. - Except where an investigation has been conducted by a judge of first instance, municipal judge or other officer in accordance with the provisions of the preceding sections, no information for an offense cognizable by the Court of First Instance shall be filed by the provincial or city fiscal, or state attorney, without first giving the accused a chance to be heard in a preliminary investigation conducted by him or by his assistant by issuing a corresponding subpoena. If the accused appears the investigation shall be conducted in his presence and he shall have the right to be heard, to cross-examine the complainant and his witnesses, and to adduce evidence in his favor. If he cannot be subpoenaed, or if subpoenaed he does not appear before the fiscal, the investigation shall proceed without him.

"The fiscal or state attorney shall certify under oath in the information to be filed by him that the defendant was given a chance to appear in person or by counsel at said examination and investigation."

The preliminary investigations in these four (4) cases were terminated in 1962, or before the New Rules of Court

took effect on January 1, 1964. Rules 112 and 113 thereof cannot, therefore, apply to these cases at bar.

Besides, in Criminal Case No. 3803, the government prosecutors certified under oath that they had conducted a preliminary investigation in said case in accordance with law, and on the basis thereof, then Judge Carmelo Alvendia issued the corresponding warrant of arrest against all the accused.

Likewise, in Criminal Cases Nos. 3084 and 3088, there appear the certifications of Special Prosecutor Edilberto Barot, Jr. and Special Counsel Vicente G. Largo. And, in Criminal Case No. 3128, it was District Judge Gregorio Montejo who conducted the preliminary investigation and, finding the existence of a prima facie case, ordered the arrest of the defendant.

It is clear, therefore, that the required investigations were complied with.

But then, assuming that the informations did not contain the requisite certificates regarding the Fiscal's having held a preliminary investigation, the omissions are not necessarily fatal. The absence of preliminary investigations does not affect the court's jurisdiction over the case. Nor do they impair the validity of the information or otherwise render it defective. If there were no preliminary investigations and the defendants, before entering their plea, invite the attention of the court to their absence, the court, "instead of dismissing the information, should conduct such investigation, order the fiscal to conduct it or remand the case to the inferior court so that the preliminary investigation may be conducted." (People vs. Casiano, 1 SCRA 478). The defendants in these cases did not question the validity of the informations on the ground of defective certifications or the right to preliminary investigations before they entered the plea of not guilty. They filed the motion to declare informations and warrants of arrest null and void only after more than one (1) year thereafter. Consequently, when they entered a plea of not guilty, they thereby waived all objections that are grounds for a motion to quash, except lack of jurisdiction or failure of the information to charge an offense. Thus, they waived the right to a preliminary investigation when they failed to invoke it prior to, or at least at, the time of the entry of their plea in the Court of First Instance.

"Inasmuch as the settled doctrine in this jurisdiction is that the right to the preliminary investigation itself must be asserted or invoked before the plea, otherwise, it is deemed waived, it stands to reason, that the absence of the certification in question is also waived by failure to allege it before the plea." (Estrella vs. Ruiz, 58 SCRA 779)

All the defendants in the four (4) cases had already entered the plea of not guilty when they filed the motion to declare the informations and warrants of arrest null and void.

ACCORDINGLY, the order dated November 2, 1966 of the Court of First Instance of Zamboanga is set aside and the said court is hereby ordered to proceed with the trial of the said criminal cases.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ.,concur.

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