

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. CIRILO V. SORIANO, PRESIDING JUDGE, CITY COURT, BR. II, CITY OF SAN JOSE, AND ATTY. DAVID T. SORIANO, JR., RESPONDENTS.

G.R. No. L-43003. July 16, 1984

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is an appeal from the decision of the defunct Court of First Instance of Nueva Ecija, Branch VI, denying the petition for certiorari with preliminary injunction filed by the City Fiscal against the Hon. Cirilo V. Soriano, Presiding Judge of the City Court of San Jose City, Branch II, now Municipal Trial Court.

The factual and legal antecedents of the case are as follows:

On May 11, 1973, a complaint for estafa was filed with the Office of the City Fiscal of San Jose City against Atty. David T. Soriano, Jr., the private respondent herein, by Casimira Agustin Vda. de Mendoza, for allegedly misappropriating the amount of P100.00 given to him by the complainant "as filing fee and other court expenses" for a suit she intends to file against certain persons. Pursuant to the provisions of Republic Act No. 5180, otherwise known as the Law on Uniform Procedure of Preliminary Investigation, the City Fiscal conducted a preliminary investigation with due notice to and in the presence of the private respondent. The accused cross-examined the complainant and her witnesses but waived his right to pre-sent evidence on his behalf.

The fiscal, having conducted the preliminary investigation and finding probable cause therefrom against the private respondent, filed the Information before the City Court of San Jose, the said Information containing the requisite certification that the preliminary investigation was conducted

"x x x pursuant to the provisions of Rep. Act No. 5180, as amended by Rep. Act No. 732, the defendant having been given the chance to appear in person or by counsel at the said investigation and from such investigation, it was found out that there exists a reasonable ground to believe that the offense charged is committed and the accused is probably guilty thereof."

On the same day, August 28, 1973, the accused Atty. David T. Soriano, Jr., filed with the court a "Motion Praying the Court to Conduct Preliminary Examination of the Witnesses Before the Issuance of a Warrant of Arrest." This was followed on the following day, August 29, 1973, by an "Addendum to Motion of Accused Dated August 28, 1973" wherein it is alleged, among other things;

"1. That prior to the institution of the above-entitled information against the accused, a preliminary investigation was conducted by the City Fiscal of San Jose City. A preliminary investigation which from the very start was objected to by the accused on the ground that the said investigating City Fiscal cannot under any circumstance maintain a posture of fairness and impartiality citing several warranted reasons as may be gleaned from the following annexes marked A and A-1; B; C-C-1, which is hereto attached for the perusal and appreciation of the Honorable Court. These were however denied by Fiscal Maza, however, despite the pretensions to the contrary, the herein accused cannot believe in his judicious integrity as far as the

investigation of this case is concerned pursuant and on the basis of the demands of fairness, justice and absolute objectivity. Hence, with futility in purpose in sight, the herein accused elected to waive the presentation of his evidence with the corresponding reservation to question the result of the investigation later, rather than submit the same before an investigator whose findings would be one-sided, partial and foregone.

2. The apprehension and firm belief of the accused as mentioned above has become a reality upon the institution of the information against him before the court. But what is there to warrant the same? A probable cause? There is none and this is so despite the non-presentation of the evidence of the respondent, now accused. To prove this point, a simple analysis of the evidence of the complainant is in order. She claimed that she gave the amount of one hundred pesos to the accused who is her lawyer for a claim of more than fifty thousand pesos. Now, if this is correct, how can the case be filed when the amount of one hundred pesos is not even enough to cover the required filing and miscellaneous fees of the court without taking into consideration the fees for the preparation of the necessary pleadings. Considering this fact, the amount given is a retainer fee of the lawyer and not filing fee as it is not enough. If it is not enough, how can the expected case be filed? Now, granting for the sake of argument although not admitting that the amount alluded above is a filing fee, to give the cause of the complainant the necessary leeway, there is no period agreed upon to file the case, hence, to find the accused susceptible of being charged of Estafa is premature and without probable basis. These are only some of the features of the case although there are some more, which will in a way show that really there is no basis for the charge. Nevertheless, whatever are the concrete perspective of the accused in connection with the case, I subordinate the same to the findings of the Honorable Court, in the event that an examination of the complainant and her witnesses is conducted in accordance with law; x x x."

The city fiscal filed opposition to the two motions referred to above, claiming that pursuant to the provisions of Section 6, Rule 112 of the Revised Rules of Court, the Judge issuing the warrant of arrest is precluded from conducting a subsequent preliminary investigation of its own for the purpose of determining whether there is reasonable ground for the issuance of said warrant after the fiscal's office had conducted its preliminary investigation on the case pursuant to the provisions of Republic Act No. 5180, as amended by Presidential Decree No. 77; that the same issue of inhibition of the city fiscal was already raised by the accused in the Department of Justice so that the same cannot be raised collaterally in the case below; and thirdly, that the City Court has not acquired jurisdiction over the person of the accused, so that any order which may be issued by the City Court in connection with the motions of the accused would be illegal.

The City Court on September 10, 1973 issued its Order granting the prayer of the accused in his two motions, and ordered the Clerk of Court to "direct the appearance of the complainant and her witnesses before this court for a preliminary examination prior to the issuance of a warrant of arrest, should the issuance of one become necessary." According to the City Court, "it can conduct an examination of the complainant and her witnesses before the issuance of warrant of arrest in a case triable before it on the merits, and that it can validly resolve the motion filed by the accused dated August 28, 1973 x x x."

The city fiscal filed a motion for reconsideration, arguing that the law cited by the City Court in support of its Order of September 10, 1973 applied only in cases recognizable by the Court of First Instance, not in cases cognizable by the City Court in the exercise of its original and exclusive jurisdiction; and that the city fiscal is one of "such other responsible officer as may be authorized by law" included in Section 3, Article IV of the New Constitution, thus:

"Sec. 3. 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 not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after exa-mination 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."

For lack of merit, the city fiscal's motion for reconsideration was denied by the City Court.

On October 12, 1973, the city fiscal filed before the Court of First Instance of Nueva Ecija (Cabanatuan City) a petition for certiorari with writ of preliminary injunction against the Honorable Cirilo V. Soriano, Presiding Judge, City Court, Branch II, San Jose City, and prayed that "the orders of the Court, dated September 10, 1973 and September 25, 1973, Annex F and Annex I, respectively, be declared null and void and set aside and that the respondent Judge be ordered to issue the warrant of arrest on the basis and on the faith of the certification of the city fiscal as appearing in the information that a probable cause exists and that the accused is probably guilty thereof."

The petition was subsequently amended to include Atty. David T. Soriano, Jr. as party respondent, who submitted his answer to the petition, denying the material averments thereof and stressing the fact that what the City Court directed in its orders of September 10 and 25, 1973 was the preliminary examination of the complainant and her witnesses before the issuance of the warrant of arrest, which is a recognized prerogative of the said court, citing the case of *Amarga vs. Abbas*, 52 O.G. 2545, 98 Phil. 739 and Sec. 3, Art. IV of the New Constitution.

The case having been submitted jointly by the parties on the basis of the pleadings and memoranda filed, the court on January 4, 1974 rendered, judgment in favor of respondents, Judge Cirilo V. Soriano and Atty. David T. Soriano, Jr., the Court of First Instance of Nueva Ecija, Fourth Judicial District, Branch VI, holding that "(t)he preliminary investigation, therefore, conducted by the petitioner which form the basis of filing in the City Court of San Jose City of Criminal Case No. 1459 did not dispense with the duty of the respondent Judge to exercise his judicial power of determining before issuing the corresponding warrant of arrest whether or not probable cause exists," (*Provincial Fiscal Amarga vs. Hon. Judge Abbas*, G.R. No. I-8666, March 28, 1956, 98 Phil. 739) and citing the case of *U.S. vs. Ocampo*, 18 Phil. 1 where the Supreme Court held that the question whether probable cause exists or not must depend upon the judgment of the judge or magistrate issuing the warrant of arrest. His conclusion as to whether probable cause existed or not is final and conclusive. If he is satisfied that probable cause exists from the facts stated in the complaint made upon by the investigation conducted by the prosecuting attorney, then the conclusion is sufficient upon which to issue the war-rant of arrest. He may, however, if he is not satisfied, call such witnesses as he may deem necessary before issuing the warrant. Accordingly, the court directed that:

"In view of the foregoing, the instant petition for certiorari is hereby denied and dismissed, and it is ordered that the respondent Judge proceed immediately without unnecessary delay with the preliminary examination contemplated in his order."

On appeal to the Court of Appeals (now the Intermediate Appellate Court) the case was certified to this Court pursuant to Section 3, Rule 50 and Section 31 of the Judiciary Act. As per Our Resolution of February 27, 1976, the case was ordered docketed in this Court and declared submitted for decision.

The basic legal issue to be resolved herein is whether or not a city court, in a criminal case falling within its original and exclusive jurisdiction, may still conduct a preliminary examination for the purpose of determining the issuance of a warrant of arrest, despite the fact that the city fiscal had already conducted a preliminary investigation, had certified that the preliminary investigation was conducted "pursuant to the provisions of Republic Act No. 5180, as amended by Republic Act No. 732, the defendant having been given the chance to appear in person or by counsel at the said investigation and from such investigation, it was found out that there exists a reasonable ground to believe that the offense charged is committed and the accused is probably guilty thereof," and had filed the corresponding information with said city court.

The People contends that the lower court erred in holding that the preliminary investigation conducted by the city fiscal, basis of the information for estafa in the amount of P100.00 filed in the City Court of San Jose City, did not dispense said City Court from conducting another preliminary examination or investigation before the issuance of the warrant of arrest, citing Sections 29 and 88 of the San Jose City Charter (Republic Act 6051, approved August 4, 1969) which enumerates the powers and duties of the City Fiscal and prescribes the procedure in the City Court in the prosecution for violation of laws and ordinances, to wit:

"Sec. 29. The City Fiscal - His powers and duties. -- There shall be a city fiscal and assistant city fiscal who shall be the chief and assistant chief of the law department, and who shall discharge their duties under the general supervision of the Secretary of Justice. The city fiscal shall be the chief legal adviser of the city and all offices and departments thereof. He shall have the following powers and duties:

x x x

"(g) He shall cause to be investigated all charges of crimes, misdemeanors and violations of law and city ordinances brought to his knowledge, and have the necessary information or complaints prepared or made against the accused. He or any of his assistants may conduct such investigations by taking oral evidence of reputed witnesses and for this purpose may issue subpoena to summon witnesses to appear and testify under oath before him, and subpoena duces tecum for the production of documents and other evidence. The attendance of an absent or recalcitrant witness may be enforced by application for a warrant of arrest to the city court or to the Court of First Instance."

"Sec. 88. Procedure in City Court in prosecution for violation of laws and ordinance. - In a prosecution for the violation of any ordinance, the first process shall be summons; except that a warrant for the arrest of the offenders may be issued in the first instance upon the affidavit of any person that such ordinance has been violated; and person making the complaint has reasonable grounds to believe that the party charged is guilty thereof, which warrant shall conclude: 'Against the ordinance of the city in such case made and provided.' All proceedings and prosecutions for offense against the laws of the Philippines shall conform to the rules relating to process, pleading, practice and procedure for the judiciary of the Philippines, and such rules shall govern the city court and its officers in all cases insofar as the same may be applicable. An appeal from the city court to the Court of First Instance shall be governed by the provisions of the Rules of Court."

According to the Solicitor General, the above sections are similar to Sections 38 (b) and 43 of the charter of the City of Manila, respectively, to wit:

"Sec. 38(b) - The City Fiscal shall cause to be investigated all charges of crimes and violations of ordinances and have the necessary informations or complaints prepared or made against the persons accused. He or any of his assistants may conduct such investigations by taking oral evidence of reputed witnesses, and for this purpose may issue subpoena, summon witnesses to appear and testify under oath before him, and the attendance or evidence or any absent or recalcitrant witness may be enforced by application to the municipal court or the Court of First Instance. No witness summoned to testify under this section shall be under obligation to give any testimony tending to incriminate himself."

"Sec. 43. Procedure in municipal court in prosecution for violations of laws and ordinances. - In a prosecution for the violation of any ordinance, the first process shall be a summons; except that a warrant for the arrest of the offender may be issued in the first instance upon the affidavit of any person that such ordinance has been violated, and that the person making the complaint has reasonable grounds to believe that the party charged is guilty thereof, which warrant shall conclude: 'Against the ordinances of the city in such case made and provided.' All proceedings and prosecutions for offense against the laws of the Philippines shall conform to the rules relating to process, pleading, practice, and procedure for the judiciary of the Philippines and such rules shall govern the municipal court and its officers in all cases in so far as the same may be applicable."

And since there is "great similarity in the charter provisions of the City of Manila and San Jose City, insofar as the power of the City Fiscal to investigate charges of crime and the procedure for the prosecution of violations of law and ordinances in the city courts are concerned," and that "(i)n the City of Manila, the rule is that the Municipal Judge has no authority to conduct either a preliminary examination or a preliminary investigation," the Solicitor General maintains that this rule in the City of Manila should also apply to San Jose City, in that it suffices that if the City Fiscal of San Jose finds that there is a prima facie showing that the accused has committed the offense complained of, said City Fiscal files "the corresponding information with the certification made under oath that he conducted the investigation in accordance with law", as was done at bar, and "the court shall forthwith issue the warrant of arrest."

We do not agree with the position of the appellant for the City Charter of San Jose City provides under Section 89 thereof the following:

"Section 89. Preliminary examinations in the City Fiscal's Office, City Court and Courts of First Instance. - Each person arrested shall, without necessary delay, be brought before the city fiscal, the city court or the Court of First Instance for preliminary hearing, release on bail, or trial. In cases triable in the city court for violations of city ordinances, the defendant shall not be entitled as of the right to a preliminary examination, except to summary one to enable the court to fix the bail, in any case where the prosecution announces itself ready and is ready for trial within three days, not including Sundays, after the request for an examination is presented. In all cases brought to the office of the city fiscal involving crimes cognizable by the Court of First Instance, where the accused is not already in the legal custody of the police, no complaint or information shall be filed without first giving the accused a chance to be heard in a preliminary investigation, where such accused can be subpoenaed and appears before the investigating fiscal, with the right to cross-examine the complainant and his witnesses: Provided, That when the accused is detained, he may ask for a preliminary investigation, but he must sign a waiver of the provision of Article One hundred twenty-five of the Revised Penal Code, as amended: And provided, further, That if the case has already been filed in court, he may ask for a reinvestigation thereof later on with the same right to cross-examine the witnesses against him: Provided, finally, That notwithstanding such waiver the said investigation must be terminated within seven days, from its inception." (Italics supplied).

The charter creating the City of San Jose is, to Our mind, decisive and controlling in the case at bar. In the case of *Callanta vs. Villanueva*, 77 SCRA 377, We held that unlike the city courts of Manila, the city courts of Dagupan City are authorized to conduct preliminary investigations, the Court, speaking through then Justice, now Chief Justice Fernando, thus:

"2. Nor can it be concluded that there is justification for the tone of certainty of counsel for petitioner that only the City Fiscal of Dagupan may conduct a preliminary examination. Apparently, he had in mind *Sayo v. Chief of Police of Manila*. That was a decision involving the Charter of the City of Manila. The opinion of Justice Feria did state the following: 'Under the law, a complaint charging a person of commission of an offense cognizable by the courts of Manila is not filed with the municipal court or the Court of First Instance of Manila because as above stated the latter do not make or conduct preliminary investigation * * *.' Such a doctrine is inapplicable. The reliance is, therefore, misplaced. The Charter of the City of Dagupan cannot be any clearer. The City Court of Dagupan City 'may also conduct preliminary investigation for any offense, without regard to the limits of punishment, and may release, or commit and bind over any person charged with such offense to secure his appearance before the proper court.'"

At this juncture, it is pertinent and very enlightening to note the concurring opinion of Justice Aquino in the *Callanta* case, wherein it is pointed out that Section 77 of the Dagupan City Charter expressly empowers its City Court (formerly Municipal Court) to "conduct preliminary investigation for any offense, without regard to the limits of punishment" and that this provision is also found in Section 87 of the Judiciary Law and in Section 2,

Rule 112 of the Rules of Court which provides that "every Justice of the Peace, Municipal Judge (meaning City Judge), City or Provincial Fiscal, shall have authority to conduct preliminary examination or investigation in accordance with these rules of all offenses alleged to have been committed within his municipality, city or province, cognizable by the Court of First Instance." It is also found in the last sentence of Section 41 of Republic Act No. 409, the Revised Charter of Manila, which took effect on June 18, 1949 or after *Sayo vs. Chief of Police of Manila*, 80 Phil. 859 was decided. But this provision is not found in Commonwealth Act No. 326, the Charter of Bacolod City, under which *Montelibano vs. Ferrer*, 97 Phil. 228 was decided nor in the old Manila Charter found in the Revised Administrative Code. Hence, in the *Sayo* and *Montelibano* cases, it was held that the City Court could not conduct preliminary investigations.

We, therefore, hold that under the above-quoted and underlined provisions of the City Charter of San Jose City, the City Court may conduct preliminary examination of the estafa charge against private respondent, the accused Atty. David T. Soriano, Jr., who may be granted the right to cross-examine the witnesses against him, notwithstanding the fact that the city fiscal had conducted and certified thereto the preliminary investigation in accordance with the provisions of Republic Act No. 5180.

We further note from the Motion of private respondent dated August 28, 1973 praying the court to conduct preliminary examination of the witnesses before the issuance of a warrant of arrest and the Addendum to the same motion filed August 29, 1973 that said pleadings allege substantial grounds to dispute the findings of the prosecuting fiscal. It is therein alleged that the P100.00 given by the complainant to the accused lawyer to pay for the filing fees and other court expenses and alleged to have been misappropriated was not sufficient to pay for the filing fees and other court expenses for the P50,000.00 damage suit to be filed by said lawyer-accused in behalf of his client, the complainant, for the death of the latter's husband and that said amount of P100.00 was his retainer's fee in the case. These grounds appear to be not only substantial but also justifiable which if substantiated the City Court may properly consider in determining whether to issue or not the warrant of arrest against the lawyer, the private respondent herein. It is fair to assume that having heard the evidence for the accused, the preliminary examination conducted by the City Court may result in avoiding a malicious or unfounded criminal prosecution of the accused person (*Luna vs. Plaza*, 26 SCRA 310) which after all is the ultimate purpose of a preliminary investigation.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the petition is hereby DISMISSED. The City Court of San Jose City, Branch II, is hereby directed to proceed accordingly pursuant to its Order of September 10, 1973.

No costs. SO ORDERED.

Concepcion, Jr., and De Castro, JJ., concur.

Makasiar, (Chairman), and Aquino, JJ., see concurrence.

Abad Santos and Escolin, JJ., in the result.

CONCURRING OPINION

AQUINO, J.:

I concur in the result. What accused David T. Soriano actually complains about is that City Fiscal Maza's charge of estafa, punished by *arresto mayor*, minimum and medium (two months and one day to six months), a light offense exclusively cognizable by the city court, is baseless. He was unjustly indicted. The sum of P100 given to him by the complainant was a retaining fee, not for filing fee. So, there is no estafa (*Compare Neri vs. Liwag*,

107 Phil., 845). He feels aggrieved that because of the unjust charge he would be arrested.

The hearing to be conducted by the city court pursuant to its order of September 30, 1973 should be a part of the trial. There is no preliminary investigation for light offense, only for offenses cognizable by the Regional Trial Court, formerly Court of First Instance (Sec. 1 Rule 112, Rules of Court; *Marinas vs. Siochi*, L-25707, May 14, 1981, 104 SCRA 423).

Ordinarily, the investigation conducted by the fiscal regarding the commission of a light offense is sufficient and will not be duplicated by the city court (*People vs. Villanueva*, G.R. No. 56443, December 19, 1981, 110 SCRA 465).

CONCURRING OPINION

MAKASIAR, J.:

My concurrence is based on Article IV, Section 3 of the 1973 Constitution, to wit:

"Sec. 3. 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 not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as maybe authorized by law, 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" (Italics supplied).

The City Fiscal of San Jose City in the instant case is not "such other responsible officer as may be authorized by law" inasmuch as until now "no law or presidential decree has been enacted or promulgated vesting the said authority in a particular "responsible officer." And "until such law is enacted by the National Assembly, only the Judge can validly conduct a preliminary examination for the issuance of a warrant of arrest or search warrant" (*Collector of Customs v. Villaluz*, June 18, 1976, 71 SCRA 380, 386).

Only the Judge, and no other official, can issue the warrant of arrest; and this power depends on the finding by the Judge himself of the existence of probable cause.

The determination of a probable cause by the prosecutor is not binding on the Judge who may conduct his own examination, although WE ruled in one case that the Judge may rely on the investigation conducted by the fiscal or prosecutor (*Amarga v. Abbas*, 98 Phil. 739, 741-742). The ultimate decision of issuing a warrant of arrest rests on the Judge and in his exercise of said function, he may or may not rely on the preliminary investigation conducted by the fiscal. To conduct his own examination and not rely on the investigation of the fiscal rests entirely upon the discretion of the Judge. This is confirmed by Section 6 of Rule 112 of the Revised Rules of Court, which directs the Judge to issue the warrant of arrest when he is "satisfied from the preliminary examination conducted by him or by the investigating officer that the offense complained of has been committed and that there is reasonable ground to believe that the accused has committed it, x x x."

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