

**ESTELA ISIP, PROCESO BRAGAIS, SALVADOR CASA, PASTOR ABAD,
JOSE SURBAN, AUGUSTO ANTONIO, BALDOMERO DAET AND
ENGRACIO SOMIDO, PETITIONERS, VS. HON. FELICIANO S.
GONZALES, IN HIS C...**

G.R. No. L-27277. May 31, 1971

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari seeking to annul the order—as well as the subsequent order turning down the motion for the reconsideration thereof issued by the respondent Judge of the Court of First Instance of Catanduanes denying the motion to suspend the proceedings then being conducted in the preliminary investigation of the criminal complaint lodged by private respondent against petitioners in the court a quo under the provisions of the election law.

The background facts are not disputed.

Sometime after the national elections of 1965, or on June 21, 1966, to be precise, a criminal complaint was filed with the Court of First Instance of Catanduanes by private respondent, Francisco A. Perfecto—one of the candidates for the lone congressional seat of that province in the said elections — charging all the petitioners with having allegedly conspired to have petitioner Estela Isip vote in that elections in November of 1965 with the aid and use of white carbon paper for the purpose of identifying her vote, a practice claimed to be violative of Section 135, in relation to Section 183 and 185 of the Revised Election Code. Acting upon the above-mentioned criminal complaint, docketed therein as Criminal Case No. 1069, the court a quo appears to have set for hearing the preliminary investigation of the charge in accordance with the pertinent provisions of the said Code;^[1] but on January 25, 1967, petitioners filed thru counsel a motion to suspend the preliminary investigation aforesaid on the ground of the existence of a prejudicial question raised in the election protest — Protest No. 168 of the House Electoral Tribunal — which private respondent had also filed against the proclaimed winner Jose M. Alberto. The said motion to suspend was seasonably opposed by private respondent who, in an opposition dated January 27, 1967, maintained, on the other hand, that there is no such prejudicial question.

On February 2, 1967, the said motion to suspend proceedings was denied in the order of respondent judge now assailed by petitioners, with His Honor, Judge Feliciano S. Gonzales, ruling therein as follows:

"ORDER

"The accused pray for the suspension of the criminal proceeding on the ground that the Electoral Protest by the complainant, Ex-commis-sioner Francisco A. Perfecto, with the Electoral Tribunal of the House of Representatives which has been docketed as Protest No. 168 is a prejudicial question. It is averred that the charge that the accused violated Section 135 of the Revised Election Code by allegedly making use of carbon paper for the purpose of making copies of the votes cast in order to identify them is the same charge or one of

the charges in the said Electoral Protest, a copy of which is appended to the motion.

"The Court has examined the protest of the complainant now pending before the Electoral Tribunal of the House of Representatives and has found that among the principal allegations therein are charges that the protestee and his leaders or followers had made extensive use of carbon paper in order to make copies of the votes cast by certain voters in order to identify their votes and that money and rice had been freely distributed in order to induce voters to vote for the protestee.

"Upon - consideration of the premises, the Court is of the opinion that the Electoral Protest and in particular, one of the main charges therein, that the protestee and some of his followers had made extensive use of carbon paper in order to make copies of the votes of individual voters for the purpose of identifying their votes is a prejudicial question. This is so because the determination by the Electoral Tribunal as to whether carbon paper had in fact been used by the protestee and his followers in the elections of November, 1965, which is also the subject of the criminal complaint in this case would determine whether such criminal action would proceed or not because if the Tribunal should find and decide in the negative, there would appear to be no reason for the criminal action to prosper.

"Upon the other hand, as pointed out by counsel for the complainant, the case is only under preliminary investigation and pursuant to Section 5 of the Rule 111 of the Rules of Court, 'a petition for the suspension of the criminal action based upon the pendency of a prejudicial question in a civil case, may only be presented by any party before or during the trial of the criminal action.' The case of *DESALLA, ET AL., versus CITY ATTORNEY OF QUEZON CITY, ET AL.*, G. R. No. L-17338, promulgated May 30, 1962, is cited as authority.

"The letter and spirit of the Rules appear to be positive and clear and would need no further elucidation and the ruling in the cited case is merely the logical consequence of its clear intent. In a preliminary investigation the only purpose is to find out the existence of a probable cause so that the accused may be held to a formal trial in case it is found to exist. If it is found otherwise, the prosecution automatically ceases. Consequently, it would be premature to raise the issue of suspension of the criminal action on the ground of a pre-judicial question before the Court or the investigating officer, as in the case of a City Attorney, has actually found the existence of a probable cause and has actually filed a valid information by which the accused may be brought to formal trial. In this particular case, if the Court does not find any probable cause, the complaint would be automatically dismissed. In case the contrary is found and the accused are held for formal trial, that would be the time when suspension of the criminal action would be in order if the Electoral Protest, in the meantime has not yet been finally resolved by the House Electoral Tribunal.

"WHEREFORE, in view of the foregoing, the motion is denied."

Petitioners filed a motion for reconsideration of the order above-quoted on February 8, 1967, but the same was denied in the order of the court dated February 13, 1967, hence, the present petition for certiorari wherein it is claimed that the respondent judge had acted with grave abuse of discretion amounting to lack of jurisdiction in the premises.

The first issue We have to resolve is whether or not a motion to suspend proceedings on the ground of the pendency of a prejudicial question in a civil case may legally be entertained during the preliminary investigation stage of a criminal complaint.

The pertinent provisions of law involved are as follows: Article 36 of the Civil Code -

"Art. 36.- Prejudicial question, which must be decided before any criminal prosecution may be instituted or may proceed, shall be governed by rules of court which the Supreme Court shall promulgate and which shall not be in conflict with the provisions of this Code."

Section 5, Rule 111, Rules of Court -

"Sec. 5. Suspension by reason of pre-judicial question.- A petition for the suspension of the criminal action based upon the pendency of a pre-judicial question in a civil case, may only be presented by any party before or during the trial of the criminal action."

The court a quo was right in the holding that under these provisions, the petition to suspend the preliminary investigation being conducted by him on the ground of the alleged existence of a prejudicial question in the electoral protest also filed by private respondent in this case was prematurely raised, inasmuch as it is only after said preliminary investigation that the court could determine the existence of a probable cause by reason of which said petitioners may alone be brought to formal trial. As pointed out by His Honor, absent a finding of probable cause, the complaint would be automatically dismissed; and it is only in case the contrary is found and petitioners are held for formal trial that suspension of the criminal action would be in order. To this effect indeed was the holding of this Court in the case of *Dasalla, et al. vs. City Attorney of Quezon City and Francisco T. Koh*, [2]

"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. Should the prosecuting officer find that the mortgage on the parcels of land was not really executed, or, if executed, it was through deceit and misrepresentation, he certainly would not file the informations."

More definitely, in *Estrella vs. 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 vs. Mabanag*,³ 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*. [4]

Petitioners contend that the construction given by this Court in Section 5 of Rule 111 in the *Dasalla* case makes the same inconsistent with the above-quoted Article 36 of the Civil Code. The point of petitioners is that the phrase "before any criminal prosecution may be instituted or may proceed" in said Article 36 contemplates that the prejudicial question must be decided before the preliminary investigation, considering that in *People vs. Olarte*, L-22465, February 28, 1965, 19 SCRA 494, We held that the period of prescription for a criminal action is tolled by the filing of the criminal complaint in court, even if said filing is only for purposes of preliminary investigation, hence, the preliminary investigation is already part of the criminal prosecution. Petitioners are in error. While Article 36 does provide logically that a prejudicial question should be decided before the criminal case proceeds, it does not fix at what precise stage the criminal prosecution should be suspended to await the resolution of the prejudicial question. Precisely, Article 36 leaves the procedure for invoking, considering and deciding prejudicial questions to the rules of court promulgated by the Supreme Court. Inasmuch as in Section 5, Rule 111 and *Dasalla* and *Estrella* We have provided and ruled that the question of whether or not a criminal action shall be suspended because of a prejudicial question may not be raised during the stage of preliminary investigation but only after of finding a probable cause and the case is already in the court of proper jurisdiction for trial, the contention of petitioners is clearly untenable.

Coming now to the holding of the lower court in its order here assailed that: "the Electoral Protest and in

particular, one of the main charges therein, that the protestee and some of his followers had made extensive use of carbon paper in order to make copies of the votes of individual voters for the purpose of identifying their votes is a prejudicial question," and, that, "this is so because the determination by the Electoral Tribunal as to whether carbon

paper had in fact been used by the protestee and his followers in the election of November, 1965, which is also the subject of the criminal complaint in this case would determine whether such criminal action would proceed or not because if the tribunal should find and decide in the negative, there would appear to be no reason for the criminal action to prosper" it is the position of petitioners that the court a quo having so held that there is a prejudicial question, it committed grave abuse of discretion in not granting their motion to suspend the preliminary investigation in question. Further, petitioners maintain that private respondent is now estopped from putting in issue in this proceeding the correctness of such holding "because he has neither asked for a reconsideration of the said holding by respondent judge nor has he appealed from that portion of the said order."

Again, petitioners are not correct. Like an order denying a motion to dismiss, the order denying the motion to suspend proceedings involved in this case is interlocutory and not appeal-able. Moreover, it is not reasonable to expect that private respondent would appeal the court's ruling that there is a prejudicial question involved here, considering that the dispositive portion of the order in question was favorable to him in the sense that it precisely denied the motion to suspend the criminal proceedings initiated by him against petitioners.

Now, on the issue of whether or not the electoral protest of private respondent or any issue therein constitutes a prejudicial question to the criminal action involved in this proceeding, We agree with private respondent that there is no such prejudicial question. To begin with, there is here no showing that the specific incident involving petitioner Estela Isip is involved in the protest before the Electoral Tribunal of the House of Representatives referred to by petitioners. It is true that in said electoral protest, the Electoral Tribunal must necessarily resolve the question of whether or not protestee therein and his leaders or followers used carbon paper for the purpose of identifying certain votes cast in the elections concerned, but as pointed out by private respondent — and this is not denied by petitioners — the carbon paper allegedly used by petitioners Estela Isip, which is the basis of the criminal complaint against petitioners, is not among the hundreds of such

white carbon paper devices already marked as exhibits in said electoral protest, and, according to private respondent, the carbon paper allegedly used by petitioner Estela Isip is still in his possession; it follows then, that even if the Electoral Tribunal should find that there really had been extensive use of such carbon paper device by other voters, such finding would not necessarily be determinative of the guilt or innocence of petitioners under the criminal complaint filed against them in this case. (See *Jimenez vs. Averia*, L-22759, March 29, 1968, 22 SCRA 1380.)

Moreover, in that case of *Jimenez vs. Averia*, supra, We reiterated that:

"A prejudicial question has been defined to be one which arises in a case, the resolution of which (question) is a logical antecedent of the issue involved in said case, and the cognizance of which pertains to another tribunal (Encyclopedia Juridical Española, p. 228). In *People vs. Aragon*, G. R. No. L-5930, February 17, 1954, We held in connection with this subject that the question claimed to be prejudicial in nature must be determinative of the case before the court, and that jurisdiction to try and resolve said question must be lodged in another tribunal."

In other words, there is a prejudicial question only when the matter that has to be priorly decided by another authority is one the cognizance of which pertains to that authority and should not, under the circumstances, be passed upon by the court trying the criminal case. We hold that there is neither law nor jurisprudence to the effect

that the question of whether or not the alleged infraction of the election law by petitioner Isip by allegedly using white carbon paper in preparing her ballot is a matter that only the Electoral Tribunal may determine. Even logic alone suggests that if that matter is involved in a criminal charge against her, the criminal court should have ample authority to decide it regardless of its being also involved in an election contest.

We see no reason for holding that the exclusive jurisdiction conferred upon by the House Electoral Tribunal to be "the sole judge of all contests relating to the election, returns and qualifications" of the members of the House of Representatives should deprive the courts of their jurisdiction to try and decide criminal charges related to contests filed with said tribunal, except perhaps in extreme instances where the question of who may be declared legally elected would depend exclusively on whether or not the criminal act imputed to the accused has been feloniously committed by the said accused, since then it might be absurd for the tribunal and the court to make separate contradictory or inconsistent findings. Such a remote hypothesis, however, is not, as already demonstrated, what obtains in the case at bar. In cases like the present, it is even the policy of the law that the criminal prosecution be initiated as early as possible. As may be seen, Section 188 of the Revised Election Code fixes a very short period of prescription. Former Senator Vicente J. Francisco aptly explains the reasons for this provision in his book, *The Revised Election Code*, thus:

"Where political parties represent personal followings rather than divergent political principles changes in political allegiance are frequent and it is therefore especially important that election offenses be brought before the courts promptly. If several years are allowed to elapse, before the prosecution is instituted, many of the voters may, in the meantime, have become dissatisfied with their former party connections or, in effect, resentful towards the leading members of the party. Such persons are usually willing witnesses for the prosecution of their former party associates, are particularly dangerous to the accused by reason of the inside information they are supposed to possess, and their testimony is likely to be given greater credit than that of persons known to have belonged to a party opposed to that of the accused. And it is no reflection on the ability and integrity of the judiciary to say that judges, knowing as they do that irregularities have, unfortunately, been quite common in past elections are frequently inclined to look with suspicion upon an election official accused of an infraction of the Election Law and to turn the usual presumption of innocence into a presumption of guilt. Under such circumstances it is not to be expected that the motives prompting the witnesses for the prosecution will be very closely scrutinized. It therefore seems to me that the Legislature has acted wisely in providing a short period of prescription of election offenses, so that unless the offense is sufficiently obvious and grave to attract the attention of the prosecuting authorities within that period, the matter will be allowed to rest. (*People vs. Parel*, 44 Phil., 437, 449-450.)" (1965 Ed., pp. 829-830)

Indeed, the specific provision in said Section 188 of the Revised Election Code to the effect that "if the discovery of such (electoral) offenses be made in election contest proceedings, the period of prescription shall commence on the date in which the judgment in such proceedings becomes final" strongly indicates that as a rule, electoral offenses the commission of which is already known before an election contest is filed should be prosecuted without regard to such contest.

FOR ALL THE FOREGOING CONSIDERATIONS, the present petition for certiorari should be, as it is hereby dismissed, with costs against petitioners.

Concepcion, C.J., Reyes, J.B.L., Dizon. Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

[1] "SEC. 187. Jurisdiction of Courts of First Instance -The Courts of First Instance shall have exclusive

original jurisdiction to make preliminary investigations, issue warrants of arrest and try and decide any criminal action or proceeding for violation of this Code. From its decision an appeal shall lie as in other criminal cases."

[2] L-17338, May 30, 1962, 5 SCRA 193, 196.

[3] 70 Phil. 202 (June 26, 1940).

[4] See: 4 Martin, Rules of Court in the Philippines with Notes and Comments, 2nd Ed. (1969), 161, et seq.

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