

**BENJAMIN SILAO AND PAULO SILAO, PETITIONERS-APPELLANT VS. JUAN L. BAGANO, IN HIS CAPACITY AS JUSTICE OF THE PEACE OF PILAR, CEBU, RESPONDENT-APPELLEE.**

*G.R. No. L-5185. March 28, 1952*

Ponente: JUGO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/4c06ba96e816/>

---

**JUGO, J.:**

This is an appeal from the order of the Court of First Instance of Cebu denying the petition for certiorari against the Justice of the Peace of Pilar, Cebu.

Way back on June 22, 1948, a complaint for estafa was filed in the Justice of the Peace Court of Pilar, Cebu, against Dominador Almendras, Guillermo Nolasco, Gaudencio Barrera and Clemente Garces alias Jesus, charging them with having fraudulently sold morphine sulphate which turned out to be counterfeit, causing a damage of P18,000 to the victim.

On July 24, 1948 the original complaint was amended to include Benjamin Silao and Paulo Silao, the petitioners-appellants herein. Upon the amendment of the complaint, some additional witnesses were investigated prior to the issuance of the warrant of arrest.

On July 30, 1948, the petitioners-appellants were arrested in Ormoc City, Leyte, and they executed bonds for their release.

On September 18, 1948, when the case was ready for the preliminary investigation after the arrest, the petitioners-appellants filed a motion waiving their right to said second preliminary investigation, which motion was granted, their intention being to have the case tried on the merits before the Court of First Instance.

On September 20, 1948 the petitioners-appellants filed with the Justice of the Peace Court of Pilar, Cebu, a motion withdrawing the waiver, which was granted.

On September 2, 1948, the petitioners-appellants filed a motion with the Justice of the Peace Court of Pilar, for the dismissal of the case against them on the ground that the court had issued the order for their arrest without previously conducting preliminary examination as required by section 1 of Rule 108. This motion was denied on September 11, 1948.

On September 17, 1948 the petitioners-appellants filed a motion for reconsideration, adducing additional arguments on September 25, 1948. The Justice of the Peace denied this motion on October 9, 1948.

On October 22, 1948, the petitioners-appellants filed a petition for certiorari in the Court of First Instance of Cebu, praying in substance that the warrant of arrest issued by the Justice of the Peace of Pilar be declared null and void and the case in said court dismissed.

On November 10, 1946, the respondent Justice of the Peace filed a motion for dismissal of the petition for certiorari on the ground that the complaint did not state a cause of action. The attorney for the

petitioners-appellants filed on January 12, 1950, opposition to the motion for dismissal filed by the respondent Justice of the Peace. The motion was argued.

The Court of First Instance of Cebu issued an order dated January 18, 1950, the principal part of which reads as follows:

"In the instant case, as aforesaid, the case was set for preliminary investigation which the petitioners have waived, although said waiver was withdrawn two days thereafter, and later attacked the proceedings by contending that nothing appears on record that the Justice of the Peace had made the necessary finding before the issuance of the warrant of arrest, although said petitioners admitted having seen respondent Justice of the Peace confer with the witnesses for the prosecution. Under the circumstances there is every reason to presume that the Justice of the Peace had made such finding of probable cause before issuing its warrant for the accused's arrest, unless the contrary is proven, for the regularity of official commitments is presumed. Under the circumstances, the petitioners should have questioned the proceedings once the case is before this Court instead of filing the remedy asking for the issuance of a Writ of Certiorari. At any rate, the result is the same, that is, that said petition would have been denied as unfounded.

"Motion for the issuance of a Writ of Certiorari is denied, with the costs against the petitioners."

From the above order the petitioners appealed to the Court of Appeals.

In view of the fact that no trial was held for the presentation of evidence in the Court of First Instance, the Court of Appeals held that only questions of law can be considered and, therefore, certified the case to this Court.

The parties did not offer any evidence in support of their contentions, thus waiving its presentation. Consequently, we agree with the holding of the Court of

Appeals that only questions of law can be reviewed at this stage of the proceedings in certiorari.

It is stated in the order of the Court of First Instance appealed from that the petitioners-appellants saw or "admitted having seen respondent Justice of the Peace confer with the witnesses for the prosecution," evidently meaning before the issuance of the order of arrest. The Judge of the Court of First Instance held that "under the circumstances, there is every reason to presume that the Justice of the Peace had made such finding of probable cause before issuing its warrant for the accused's arrest, unless the contrary is proven, for the regularity of official commitments is presumed." There was, therefore, a substantial compliance with the requirements of the rules with regard to the preliminary examination prior to the issuance of the order of arrest. The petitioner have no substantial or practical ground for complaining, for the reason that they even waived the preliminary investigation subsequent to the arrest, and, only as an afterthought, in order to reinforce in any possible way the weakness of their cause, they withdrew the waiver.

In view of the foregoing, the order of the Court of First Instance dated January 18, 1950, appealed from, is affirmed, without costs.

### **IT IS SO ORDERED.**

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Bautista Angelo, JJ., concur.

Feria, J., took no part.

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.