

**JOSE R. OLIVEROS, PETITIONER, VS. THE HONORABLE JUDGE
ONOFRE A. VILLALUZ, JUDGE, CIRCUIT CRIMINAL COURT, 7TH
JUDICIAL DISTRICT; THE PEOPLE OF THE PHILIPPINES; CHIEF
STATE PROSE...**

G.R. No. L-33362. July 30, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

An information filed on 31 March 1971 in the Circuit Criminal Court, 7th Judicial District, and signed by Assistant Provincial Fiscal Eliseo C. de Guzman of Rizal and State Prosecutor Edilberto Barot, Jr., and docketed as Criminal Case No. CCC-VII-753, Rizal (People vs. Jose Rentoria Oliveros, et al.), charged herein petitioner Oliveros with a violation of Sections 3(a) and 3(e) of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019). In substance, it was alleged therein that between 1 August 1968 and 31 January 1969 said petitioner, as Municipal Mayor of Antipolo, Rizal, in conspiracy with other persons unknown, in bad faith and with intent to defraud the Government of the Philippine Republic, appointed his brother, Simplicio, to the position of confidential agent to the office of the mayor, knowing the appointee to be an employee of the Far East Bank & Trust Company, and caused the salary as confidential agent from 1 August 1968 to 31 January 1969, in the sum of P1,080, to be charged to the general funds of the Municipality of Antipolo, without the appointee rendering service nor presenting proof of service, as required by the applicable regulations.

On 31 March 1971, the presiding judge, respondent Onofre A. Villaluz, without previous hearing, issued an order (Annex "A", Petition) suspending the accused Oliveros, under Section 13 of Republic Act No. 3019, and stating, inter alia, the following:

"Considering that the information is sufficient in form and substance, the same being duly approved by the Chief State Prosecutor Emilio Gancayco and filed by State Prosecutor Edilberto Barot, Jr. and Assistant Provincial Fiscal Eliseo C. de Guzman, they having certified that a preliminary investigation has been conducted in the above-entitled case in accordance with law; that the accused was given a chance to appear in person or by counsel; that there is reasonable ground to believe that the offense complained of has been committed and that the accused are probably guilty thereof, the accused Jose Rentoria Oliveros is hereby ordered SUSPENDED from office within twenty-four (24) hours from receipt of this order."

Petitioner applied to this Court for writs of certiorari and prohibition, pleading grave abuse of discretion and excess of jurisdiction, in that (a) the prosecutors who filed the information had no authority to do so, and that they filed it without giving him proper preliminary investigation; (b) that he was ordered suspended without giving him opportunity to contest the sufficiency of the information.

We find the charge of lack of preliminary investigation to be without merit. The annexes to the petition and the answer plainly show that a preliminary investigation was first conducted by respondent Assistant Fiscal Eliseo de Guzman, who recommended to his chief, the Provincial Fiscal of Rizal, that an information be filed for violation

of the Anti-Graft law (Republic Act 3019); that upon petitioner Oliveros' motion, the Provincial Fiscal had the case reviewed by First Assistant Fiscal Luis Victor and State Prosecutor Joel Tiangco, who later recommended dismissal of the charges, with which Provincial Fiscal Castillo concurred.

However, the latter, on 20 January 1971, submitted the recommendation to quash the charges and the entire record of the case to the Secretary of Justice, for review by the Department (Answer, Annex "2"). The case was referred to State Prosecutor Edilberto Barot, Jr., who, after study, concurred with Assistant Fiscal de Guzman, and recommended that the charges be filed (Answer, Annex "3"). The Department of Justice returned the records to the Provincial Fiscal, with instructions to take appropriate action in conformity with the Barot report; but as the Provincial Fiscal considered the action asked of him to be contrary to his convictions, upon his suggestion and request (Annex "5"), the Department of Justice, by Administrative Order No. 130, designated respondent Barot to handle the case (Annex "6"), and thus the information came to be filed.

Thus petitioner's claim that the original charges against him had been quashed by the Provincial Fiscal, and that no information could be there-after filed against him without another investigation, is unfounded. The quashing of the charges never became operative, since the Secretary of Justice, in the exercise of his supervisory power as Department Head (Sections 83, 74 and 76, Revised Administrative Code), reversed the opinion of the Provincial Fiscal, and designated State Prosecutor Barot to handle the case as special prosecutor, as authorized by Section 3, Republic Act No. 3783, as amended by Republic Act No. 5184. This authority of the Secretary has been repeatedly upheld by this Court.[1]

We agree with petitioner Oliveros, however, that the order of suspension issued by respondent Judge Villaluz was premature and in grave abuse of discretion, being contrary to the doctrine set by this Court in *Luciano vs. Wilson*, L-31347, 31 August 1970 (34 SCRA 638, 643). There, upon review of a similar *ex parte* order of suspension under Section 13 of the Anti-Graft and Corrupt Practices Act, this Court held that before an order of suspension should be issued,

"a hearing on the validity of the information appears conformable to the spirit of the law, taking into account the serious and far reaching consequences of a suspension of an elected public official even before his conviction",

and accordingly set aside the order of suspension issued by Judge Herminio Mariano of Rizal, and directed him to "forthwith hold a hearing on the validity of the information".

The same rule applies to this case. It goes without saying that should the court judicially uphold the validity of the information, after due hearing of the parties, it may reissue the suspension order.

ACCORDINGLY, the writ of certiorari is granted, and the order of respondent judge dated 31 March 1971 suspending petitioner Mayor of Antipolo is set aside, and said respondent is ordered to hold a preliminary hearing on the validity of the information, Criminal Case No. CCC-VII-753, Rizal, after due notice to the parties. The petition is dismissed as to the other respondents. The preliminary injunction is dissolved. No costs.

Concepcion, C.J., Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur. Ruiz Castro and Dizon, JJ., on official leave.

[1] *Estrella vs. Orendain, Jr.*, L-19611, 27 February 1971, 37 SCRA 640, per Barredo, J., and cases therein cited.

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