

AMADOR E. GOMEZ, PETITIONER, VS. JOSE S. AMADORA, AS CITY FISCAL OF CEBU CITY, RESPONDENT.*G.R. No. L-30005. June 19, 1973*

Ponente: MAKASIAR, J.

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On January 6, 1969, the petitioner as Judge of the 2nd District of the Court of First Instance of Cebu stationed at Cebu City, filed this petition for prohibition with preliminary injunction to enjoin the respondent City Fiscal of Cebu City from conducting the preliminary investigation of the charges of falsification of public documents filed against petitioner by Atty. Vicente S. del Rosario, claiming that said charges were filed against petitioner by a certain group in retaliation for the contempt proceedings instituted by the petitioner against the provincial warden of Cebu City by reason of which petitioner has been receiving death threats, and for his having convicted a defendant in a murder case; that petitioner has reasonable grounds to believe that no fair preliminary investigation can be conducted in a prevailing atmosphere of intimidation and violence; and that because of the respondent's former association with the aforesaid group protecting the provincial warden and the defendant whom petitioner convicted of murder, respondent was not completely free from pressure.

It appears from the petition and answer that Atty. Vicente del Rosario filed with the respondent City Fiscal a complaint for falsification of public documents against petitioner, and the City Fiscal accordingly set the case for preliminary investigation. Upon petitioner's request, the Secretary of Justice, in Administrative Order No. 181 dated September 2, 1968, designated Jesus Vergara, 2nd Assistant Fiscal of Isabela, as acting City Fiscal of Cebu to conduct the investigation and to prosecute with fairness all the charges filed against petitioner. Upon receipt of said Administrative Order No. 181, the respondent postponed the preliminary investigation pending further instruction from the Secretary of Justice. On the other hand, Fiscal Jesus Vergara set the charges for preliminary investigation. Subsequently, respondent City Fiscal set the preliminary investigation to be conducted by himself personally.

On November 15, 1968, the Secretary of Justice issued Administrative Order No. 324 directing the Solicitor General to conduct an administrative inquiry into the criminal complaint for alleged falsification of public documents filed with the respondent's office.

Despite the two directives of the Secretary of Justice, respondent City Fiscal insisted on conducting the preliminary investigation.

In a resolution dated January 7, 1969, this Court directed the respondent City Fiscal to file an answer within ten (10) days, and issued a restraining order enjoining the respondent or his deputies or agents from conducting the preliminary investigation.

On February 4, 1969, respondent filed his answer denying the factual allegations in the petition and asserting that he has the power to conduct the preliminary investigation under the law because he is neither disqualified nor physically incapacitated to do so.

Because in Criminal Case No. V-1306 entitled "People of the Philippines vs. Juanita Gotianuy, et. al." petitioner issued an order dated January 10, 1969 wherein he stated that he "had to go to the Supreme Court in order to ask for relief against the harassment and malicious persecution made and conducted by the City Fiscal of Cebu in connivance with Atty. Vicente del Rosario," a libel charge was filed with the respondent by Atty. Vicente del Rosario against herein petitioner, which libel case was also set by respondent City Fiscal for preliminary investigation. As a consequence, petitioner filed on March 1, 1969 a supplemental petition praying that respondent be also enjoined from conducting a preliminary investigation on the libel complaint against him. Accordingly, We issued a resolution on March 6, 1969 directing respondent to answer the supplemental petition and another restraining order.

On March 18, 1969, respondent filed his answer to the supplemental petition.

Thereafter, the petitioner and the respondent filed their memoranda respectively on March 25, 1969 and April 8, 1969, after which the case was deemed submitted for decision.

However, respondent filed on April 12, 1969 a supplemental memorandum which is in effect a reply to petitioner's memorandum.

In a letter dated May 4, 1972, complainant Manuel Zosa requested the respondent City Fiscal of Cebu City to dismiss his complaint for falsification of public documents against herein petitioner.

In a letter dated September 30, 1972, Atty. Vicente del Rosario requested the City Fiscal to dismiss the falsification charges he filed against petitioner on the ground that he is no longer interested in the prosecution thereof because the petitioner has given him reasonable explanation on the matter involved in his complaint. In a letter dated October 2, 1972, Atty. Vicente del Rosario likewise requested the respondent City Fiscal of Cebu City to dismiss the libel complaint he filed against petitioner on the ground that he is no longer interested in the prosecution thereof. Pursuant to said request, herein respondent City Fiscal dismissed both charges for falsification of public documents and libel respectively on May 15, 1972 and October 17, 1972.

By reason of the dismissal of the charges against him, herein petitioner filed on May 30, 1973 a motion to dismiss this case for being moot and academic, which We find meritorious.

AS PRAYED FOR, THIS CASE IS HEREBY DISMISSED AS MOOT AND ACADEMIC, WITHOUT COSTS.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Antonio, and Esguerra, JJ., concur.
Teehankee and Barredo, JJ., took no part.

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