

**HON. ATILANO C. BAUTISTA, IN HIS CAPACITY AS JUDGE,
MUNICIPAL COURT OF MONTALBAN, RIZAL, PETITIONER, VS. HON.
PEDRO C. NAVARRO, IN HIS CAPACITY AS JUDGE, COURT OF FIRST
INSTANCE...**

G.R. No. L-35345. November 24, 1972

Ponente: FERNANDO, J.

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FERNANDO, J.:

The question in this appeal by way of certiorari filed on August 7, 1972 from a decision of respondent Judge Pedro C. Navarro of the Court of First Instance of Rizal, permanently enjoining petitioner Atilano C. Bautista as Judge of the Municipal Court of Montalban, Rizal from further proceeding in the preliminary investigation of a criminal case[1] pending in this Court, is whether there was a grave abuse of discretion in the ruling thus rendered by respondent Judge in the light of the doctrines announced in what to petitioner are the applicable decisions of this Court in *Dasalla vs. City Attorney*[2] and *Isip vs. Gonzales*. [3] The opinion in the latter case rendered by Justice Barredo reiterated the ruling in the earlier decision to the effect that the time to ask for the suspension of a criminal proceeding on the ground that there is a prejudicial question raised in a civil action is not during the period of preliminary investigation by the City officer but after filing of an information if warranted. Petitioner's contention is that respondent Judge notwithstanding the clarity of the above doctrine enjoined further proceeding in the preliminary investigation aforesaid. When asked to comment, private respondent Maximo Calalang, the private party proceeded against in the preliminary investigation before the sala of petitioner, stressed that on the facts as presented by him there was no basis for such preliminary investigation, the criminal complaint being plainly for "harassment and prosecution." [4]

On October 2, 1972, petitioner filed a manifestation and motion for clarification in the following tenor: "1. That a motion to dismiss special civil case No. 13738, entitled *Maximo Calalang vs. Hon. Atilano C. Bautista, etc.*, Court of First Instance of Rizal, has been filed before the sala presided by Respondent Judge, Hon. Pedro Navarro by Private Respondent, Maximo Calalang, on the ground that said petition has become moot and academic upon the withdrawal of the complainant of his charge against said private respondent in Criminal Case No. 1303, entitled *People of the Philippines vs. Atty. Maximo Calalang*, Municipal Court of Montalban, Rizal; 2. That the withdrawal of said case is grounded on an amicable settlement of their differences as evidenced by a joint motion to dismiss dated September 18, 1972, * * *; 3. That on September 26, 1972, a resolution bearing date of September 22, 1972; was received by petitioner from this Honorable Supreme Court requiring herein petitioner to reply to the comment of the respondents on the petition for review on certiorari within ten (10) days from notice of said resolution; 4. That simultaneous with the filing of this manifestation and motion for clarification, counsel for herein petitioner is also filing a motion to set aside the decision of the Court A Quo dated July 1, 1972, and to dismiss this case and special civil case No. 13738, CFI-Rizal, entitled *Maximo Calalang vs. Hon. Atilano C. Bautista, etc.*; 5. That in view of all the foregoing circum-stances, petitioner respectfully moves for clarification as to whether or not he should still file a reply to respondents' comments on the petition for review on certiorari;

and 6. That should said resolution still stand, the petitioner also moves that the period of ten (10) days required of him to file said reply be deemed suspended upon the filing of this manifestation and motion for clarification." [5] His prayer is "that a resolution issues from this Honorable Supreme Court clarifying if herein petitioner will still be required to file a reply to respondents' comments on the petition for review on certiorari, it appearing that the principal parties in the cases, which precipitated this appeal have already settled their differences and, therefore, any decision on the merits that may be rendered by this Honorable Court in this instant action will only become moot and academic; and that pending resolution of this motion for clarification, the period of ten (10) days given to petitioner, within which to reply to said respondents' comment on the petition for review on certiorari, be deemed suspended." [6] Included as annex A is the following order: "Acting on the Motion to Dismiss dated September 22, 1972 filed by the petitioner, Atty. Maximo Calalang, and considering the grounds set forth therein to be well taken, same is hereby [granted] and this case is hereby ordered dismissed, without pronouncement as to costs." [7] From the above, it would appear therefore that no further action need be taken by this Court as the controversy out of which this proceeding arose appeared to have been set at rest by the action taken by respondent Judge.

WHEREFORE , this appeal by way of certiorari against respondent Judge is ordered dismissed for being moot and academic.

Castro, Makasiar, Antonio, and Esguerra, JJ., concur.

Concepcion, C.J., concurs in the foregoing as well as in the observation made by Mr. Justice Teehankee.

Teehankee, J., concurs and adds that petition should have been filed in the name of complainant instead of municipal judge who is a mere formal party.

Makalintal, Zaldivar, and Barredo, JJ., took no part.

[1] Criminal Case No. 1303, People of the Philippines vs. Calalang, Municipal Court of Montalban, Rizal.

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

[3] L-27277, May 31, 1971, 39 SCRA 255.

[4] Comments on Petition of Respondent, p. 14.

[5] Manifestation and Motion for Clarification, 1-2.

[6] Ibid, 2-3.

[7] Annex A, Comment by Respondent.

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