

PEOPLE OF THE PHILIPPINES, PROVINCIAL FISCAL MARTIN PAULETE, AND SPECIAL PROSECUTOR VICENTE ORENDAIN, JR., PETITIONERS, VS. HON. GERONIMO MARAVE, JUDGE OF THE CFI OF SULU, PROVI...

G.R. No. L-19023. July 31, 1964

Ponente: REGALA, J.

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REGALA, J.:

This is a petition for certiorari, prohibition, mandamus with preliminary injunction, praying that the Judge of the Court of First Instance of Sulu be enjoined from carrying out his orders in Criminal Case No. 2500 of that court dated August 29 and September 25, 1961, and that he be compelled to proceed with the trial of the said case on the merits.

The facts antecedent to the filing of the criminal case are stated in the order dated September 25, 1961, to wit: On October 25, 1960, the Provincial Board of Sulu passed Resolution 172 abolishing the position of Special Counsel of that province, effective November 1, 1960. In view of this abolition, the Provincial Board suppressed the corresponding salary appropriation for such position in the 1960-61 provincial budget. Thenceforth, series of communications were sent by the Provincial Governor to the Provincial Fiscal advising him of the abolition and requesting him to terminate the services of said special counsel. The Provincial Fiscal, however, did not heed this advice and the special counsel continued to hold office.

In the early morning of June 15, 1961, the then provincial governor Benjamin Abubakar, accompanied by Assistant Provincial Warden Enrique Teackle, P.C. Sgt. Amil Alpasain, PC Cpl. Daniel Palileo and some prisoners repaired to the room of said special counsel and closed the same by nailing bamboo splits therein. While so doing, Provincial Fiscal Martin Paulate arrived. He approached the Governor and asked him under whose orders he was closing the room. The latter answered, it was his orders. Whereupon, Fiscal Paulate told the Governor that his act was illegal because his office is not under him but under the Department of Justice. The Governor retorted that he should not discuss with him unless he wants personal violence. The Fiscal answered, "If they (referring to the Governor's bodyguards) are going to shoot, they can do so. As long as I am in the performance of my official duties, I have to protect the integrity and good name of the office, including his subordinates."

Consequently, on July 28, 1961, an information was filed with the lower court charging the Provincial Governor Benjamin Abubakar, Asst. Provincial Warden Enrique Teackle, PC Sgt. Amil Alpasain, PC Cpl. Daniel Palileo and several John Does of the crime of direct assault with grave coercion. The information reads:

"That on or about the 15th day of June 1961, in the Municipality of Jolo, province of Sulu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all armed, being public officials with another civilian-clothed bodyguard, six provincial jail guards whose identities are unknown and six detained prisoners whose identities are entirely unknown, with the aid of armed men, did then and there

willfully, unlawfully and feloniously, without a public uprising, employ force and serious intimidation in fencing and closeting a portion of the office of the Provincial Fiscal of Sulu to prevent the Provincial Fiscal and/or his assistants to freely perform their functions in connection with public records enclosed within the above portion or office despoiling such part of the Office; and in so doing, the abovenamed accused did then and there willfully, unlawfully and feloniously, without authority of law by means of violence, prevent the Special Counsel, occupant of the portion of the Office of the Provincial Fiscal enclosed, from making use of the same and of his official and personal papers and belongings therein.

Preliminary investigation was conducted by a Special Prosecutor, Vicente Orendain, Jr. After considering the testimonies given during said investigations, the court, on August 29, 1961, issued an order with the findings that—

"What determines the nature of the crime committed is the intention of the defendant. From the above testimonies of both the Fiscal and the defendant, it is clear that it was not the intention of Governor Abubakar, when he went to the office of the Provincial Fiscal on the morning of June 15, 1961, to assault Fiscal Paulate. His intention was to close the office of special counsel Jose T. Piñon in the belief that he was authorized by law to do so by reason of the abolition by the Provincial Board of the position of Special Counsel. It was when Fiscal Paulate informed Gov. Abubakar that the latter's actions were illegal that the defendant flared up and told Fiscal Paulate that he should not interfere unless he wants physical violence.

"From the foregoing, the Court believes that the crime of assault against a person in authority defined and penalized in Article 148 of the Revised Penal Code has not been committed. It is the opinion of the Court that, if the Governor did not have the right or authority to close the office of Special Counsel, he had committed the crime of coercion.

"The Court does not find sufficient evidence to link Assistant provincial Warden Enrique Teackle, PC Sgt. Amil Alpasain and PC Cnl. Daniel Palileo in the commission of an offense.

"WHEREFORE, Special Prosecutor Vicente Orendain, Jr. is hereby directed to act accordingly within ten days from notice. If after this period no action is taken in the manner indicated above, (this case shall be dismissed."

Instead of acting in pursuance with the above-quoted order, the Special Prosecutor Vicente Orendain, Jr. filed a motion for reconsideration, which motion was, however, denied by the Court on September 25, 1961.

Treating the order dated August 29, 1961 as one of dismissal and/or acquittal, the petitioners brought the case here by certiorari, presenting the following arguments:

"That in practically acquitting the accused of the criminal charge against them without any trial and without waiting for the presentation of the evidence of the prosecution, respondent judge acted without, and in excess of his jurisdiction, or with grave abuse of discretion;

"That, likewise, respondent judge acted with grave abuse of discretion in holding that there is no probable cause to justify the issuance of the warrant without hearing the complainant and the witnesses he may produce and in refusing to issue a warrant for the arrest of the accused; and

"That assuming arguendo, that after respondent judge had examined the complainant and his witnesses, he believed that there is no probable cause, he can only refuse to issue a warrant of arrest but he cannot violate proprio acquit the accused of the offenses charged and direct the fiscal to file a new charge.

Without need of any individual discussion of the issues raised, the action should be dismissed for being premature.

A careful reading of the order dated August 29, 1961 will show that it is not one really of dismissal. While it is, true that there is a portion in which the judge stated he would have the case dismissed upon failure of the Special Prosecutor to "act accordingly" this insinuation, however, is not dismissal in itself that could be the object of the

writ applied for. The court may yet change its mind on this threatened dismissal.

Also, the order is hardly an acquittal because the case is only at its initial stage, there having been no arraignment yet. Neither is it a definite order upon the Special Prosecutor to amend the information. In other words, there is nothing in the order that would give cause for complaint of an utter abuse of discretion or lack of jurisdiction on the part of the respondent judge.

This Court has repeatedly held that there is grave abuse of discretion justifying the issuance of the writ of certiorari when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction; where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law.^[1] We find none of those circumstances to be attendant in the issuance of the order complained of. The said order, as a matter of fact, merely gives a leeway for the Special Prosecutor to act as he may deem proper under the circumstances of the case in its present stage.

What the Special Prosecutor could have done was either to act upon the order of the court, or if not, to wait for the action of the court on his failure or refusal to so act. And in the event of any unreasonable and abusive action on the part of the court, that would be the time for him to elevate the case here for a writ of certiorari.

WHEREFORE, the petition is hereby dismissed and the preliminary injunctive writ heretofore issued dissolved. No costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes and Makalintal, JJ., concur.

[1]See *Abad Santos vs. Province of Tarlac*, 67 Phil. 480; *Tan vs. People*, 88 Phil. 609; *Tavera-Luna, Inc. vs. Nable*, 67 Phil. 340; *Alafriz vs. Nable*, 72 Phil. 278; *Liwanag, et al. vs. Cartillo*, 106 Phil. 375; *Ilueda vs. Court of Agrarian Relations*, 106 Phil. 300.

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