

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. CESARIO C. GOLEZ, JUDGE, COURT OF FIRST INSTANCE OF CAPIZ, BRANCH I, AND ISAGANI ROBLETE, RESPONDENTS.**

*G.R. No. L-26420. May 31, 1971*

Ponente: BARREDO, J.

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**BARREDO, J.:**

Original petition for certiorari - filed by the People of the Philippines - seeking to annul the order of dismissal as well as the subsequent order denying the motion for reconsideration thereof issued by the Court of First Instance of Capiz in its Criminal Case No. 4220 - commenced therein by an Information filed by the Assistant City Fiscal of Roxas City against private respondent for alleged violation of the Revised Election Code - which said court based on the ground that under Section 187 of the said Code, courts of first instance have exclusive original jurisdiction to make preliminary investigations, issue warrants of arrest and try and decide any criminal action or proceeding for violations of the election law and, therefore, the proceeding undertaken by the above-mentioned assistant city fiscal in conducting his own preliminary investigation of the charge and in subsequently filing the corresponding Information with the court a quo, being without authority of law, the only jurisdiction the said court thereby acquired was to declare the said proceeding illegal and dismiss the criminal action.

The following antecedent facts of the case are gleaned from the pleadings of the parties: Sometime before March 25, 1966, the Office of the Election Registrar of Roxas City lodged with the Office of the Fiscal of said city, a complaint against private respondent for alleged violation of Section 92 of Republic Act No. 180, as amended, otherwise known as the Revised Election Code. Thereupon, Assistant City Fiscal Sergio Pestaño of Roxas City conducted a preliminary investigation of the indictment wherein the accused (private respondent), through counsel, voluntarily appeared and cross-examined the witnesses for the prosecution (Memorandum for Petitioner, pp. 48-49, Rollo). Convinced after the termination of the preliminary investigation that a prima facie case existed against said respondent, on March 25, 1966, the above-named assistant city fiscal filed with the Court of First Instance of Capiz the corresponding Information, worded as follows:

"INFORMATION

"The undersigned accuses ISAGANI ROBLETE of VIOLATION OF SECTION 92 OF REPUBLIC ACT NO. 180, AS AMENDED, OTHERWISE KNOWN AS THE REVISED ELECTION CODE, committed as follows:

"That on the 4th day of September, 1965, which was a registration day for the 1965 elections, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without any authority or permission to enter and participate in the registration proceedings then being conducted by the Board of Election Inspectors of Precinct No. 74 of this City, did then and there willfully, unlawfully and feloniously enter the polling place of said precinct and while there shouted, insulted, berated, and threatened one Editha Anonat, then acting in her official capacity as chairman of the Board of Election Inspectors of said precinct, thus causing a commotion inside the polling place and disturbing and interrupting the orderly and

peaceful registration of new voters then be-ing conducted by said Board of Elec-tion Inspectors.

"Contrary to law."

"Roxas City, Philippines, March 22, 1966.

(Sgd.) SERGIO PESTAÑO

Asst. City Fiscal

"Pursuant to Section 24 of Republic Act 603, in relation to Rule 112 of the Rules of Court, a preli-minary investigation has been con-ducted in this case under my direct-ion having examined the witnesses under oath and having afforded the accused a chance to appear in person or by counsel in said preliminary in-vestigation.

(Sgd.) SERGIO PESTAÑO

Asst. City Fiscal

"SUBSCRIBED AND SWORN to before me this 25th day of March, 1966, at Roxas City, Philippines.

(Sgd.) LEOPOLDO B. DORADO

Clerk of Court

CFI, Capiz, Roxas City

"WITNESSES:

1. Atty. Jose Ma. Castillo -COMELEC, Roxas City
2. Editha Anonat - Roxas City
3. Cirila Mesada - Roxas City
4. Nenita Ariñez - Dinginan, Roxas City

AND OTHERS.

"BAIL RECOMMENDED: - - - P3,000.00"

To prevent his subsequent arrest and detention, private respondent seasonably posted a bail bond in the amount of P3,000.00; when called for arraignment on April 1, 1966, however, he moved to quash the Information and all the proceedings had in the case on the ground that Assistant City Fiscal Pestaño had no legal authority to file the Information above-quoted; and acting upon that motion to quash, the respondent judge of the court a quo issued, on even date, an order quashing the Information and dismissing the case. In said order of dismissal, His Honor reasoned thus:

"It appears that Isagani Roblete was made defendant in a charge of violation of Section 92 of the Re-vised Election Code (RA-180, as amended). The charge was filed with the Office of the City Fiscal of Roxas City. Assistant City Fis-cal Sergio Pestaño conducted the preliminary investigation thereon in accordance with section 24, RA-603, in relation to Rule 112, Rules of Court; after which he filed the within information on March 25, 1966, charging said Isagani Roblete with violation of the Revised Elec-tion Code; and which information is now the subject of said defendant's motion to quash on the ground that the said information was filed by Assistant City Fiscal Sergio Pestaño without proper authority to do so.

"In regard to cases involving election offenses, the Court of First Instance has exclusive original juris-diction to make preliminary investi-gations, issue warrants of arrest and try and decide any criminal action or proceeding for violation of the election law. (Section 187, RA-180, as amended.)

"When the prosecuting City Fiscal herein conducted the preliminary in-vestigation and pursuant to the same he filed the within information, he acted plainly without jurisdiction and all his actuations in the said proceeding were done by him without authority of law.

"Jurisdiction is conferred by law and not by the parties. It remains where the law has placed it. And the law has placed the conducting of preliminary investigations of election offenses under the exclusive original jurisdiction of the Court of First Instance. By the language of the law, no other courts or officers may exercise the power and authority to conduct preliminary investigations of such cases.

"The proceeding in question having been conducted obviously without authority of law, the only jurisdiction acquired by this Court is to declare it illegal and dismiss this action.

"WHEREFORE, the entire proceeding leading to the filing of the within information is hereby quashed and this case dismissed with costs de officio. The bail bond posted for the accused herein is hereby cancelled and discharged."

Petitioner moved for the reconsideration of the order of dismissal above-quoted, pointing out in its motion that respondent judge should not have ordered the outright dismissal of the case but should have conducted, instead, his own preliminary investigation on the basis of the Information filed with his court (Memorandum for Respondent, p. 41 - last paragraph - Rollo). That motion failed to move the trial court which, in an order dated May 3, 1966, denied the motion for reconsideration referred to for lack of merit. Hence, the present petition for certiorari.

To be sure, the ruling of the respondent judge that only his court, to the exclusion of the City Fiscal, had authority to conduct preliminary investigations is unassailable. (Tagayuma vs. Lastrilla, et al., L-17501, August 30, 1962, 5 SCRA 937, 940-942; Sec. 187, Rule 180, Revised Election Code, as amended). Under the circumstances of this case, however, it was an abusive resort to technicality for the said respondent judge to have dismissed the criminal case outright merely because, before it was filed with him, the fiscal had, perhaps in an excess of caution, conducted a preliminary investigation of his own, which was unnecessary since, anyway, such preliminary investigation could not have, in law, finally terminated the matter either way. As suggested by the fiscal in his motion for reconsideration filed with the respondent judge, the simple remedy was for the court to have conducted its own preliminary investigation without regard to the one undertaken by the fiscal. Had the respondent judge acceded, as he should have done, to said suggestion, the valuable time and effort of everyone concerned, including this Court, could have been saved and the merits of the complainant's charge, affecting as it does an alleged violation of the Election Law which public interest requires to be settled as soon as possible, could have been determined and the public interest as well as the interests of justice would have been best served. No question, the herein petition must be granted.

There are incidental issues extant in the pleadings, among them, the propriety of the present remedy of certiorari instead of appeal, particularly, because there is no allegation of grave abuse of discretion in the petition, and the matter of waiver by the accused, respondent Roblete, of his right to the preliminary investigation provided by Section 187 of the Revised Election Code, even if it is therein specified that it should be the proper court of first instance that should conduct it, said accused having voluntarily appeared in the investigation in the fiscal's office and cross-examined the witnesses of the prosecution and also filed bail for his provisional release, but We do not see the necessity of passing upon them now. Suffice it to say, in connection with the nature of the present remedy, that grave abuse of discretion is apparent in the recital of facts in the petition and an allegation regarding such abuse is no more than a legal conclusion which generally need not be alleged in a pleading. Besides, since in the climate of waning faith that prevails these days regarding the efficacy of our election laws and procedures in eradicating malpractices frustrating the popular will, certiorari instead of appeal would seem to be the more

speedy and adequate remedy, in appropriate cases like the one at bar, if only to dispell as quickly as possible any doubt about alleged violations of the right of suffrage and the laws governing the same.

We may add, for clarification, that in election cases, the criminal prosecution may be initiated by filing either a criminal complaint subscribed and sworn to by the offended party, any peace officer or any duly authorized representative of the Comelec (sec. 2, Rule 110) or an information signed by the fiscal, who need not necessarily conduct the preliminary investigation since pursuant to Sec. 14 of Rule 112, a fiscal may file an information even without conducting a preliminary investigation when such investigation is required by law to be undertaken by a judge or another officer.

WHEREFORE, the appealed orders are reversed, and the respondent court is ordered to proceed consistently with the above opinions, without costs.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

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