

ANTONIO CALLANTA, PETITIONER, VS. HON. MANUEL LOPEZ ENAGE, ANTONIO GONZALES AND THE PHILIPPINE CONSTABULARY OF AGUSAN, RESPONDENTS.

G.R. No. L-27695. September 30, 1982

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Petition for certiorari and prohibition, with preliminary injunction, to annul and set aside the order issued by the respondent judge on June 23, 1967 in an undocketed criminal case of the Court of First Instance of Agusan, entitled: "People of the Philippines, plaintiff, versus Antonio Callanta, accused," for "Assault upon a Person in Authority with Slight Physical Injuries," which directed the issuance of a warrant for the arrest of the petitioner; and to restrain the respondents from enforcing the same.

The record shows that in the morning of June 23, 1967, there was an altercation between the herein petitioner Antonio Callanta and the private respondent Antonio Gonzales in the office of the City Treasurer of Butuan, Agusan, where both are employed. Thereafter, each claimed that he was assaulted by the other. The petitioner Antonio Callanta lodged his complaint with the City Fiscal of Butuan City. The private respondent Antonio Gonzales, upon the other hand, went directly to the respondent judge of first instance where he filed a complaint for "Assault upon a Person in Authority with Slight Physical Injuries," and on that same day, the respondent Judge Manuel Lopez Enage issued the questioned order for the issuance of a warrant for the arrest of the petitioner.[1]

Hence, the present recourse. As prayed for, the Court issued a writ of preliminary injunction, restraining the respondents from enforcing or executing the warrant of arrest issued, from detaining the petitioner under said warrant, or from proceeding with the trial, or from deciding the case.[2]

The petitioner claims that the respondent judge of first instance acted without jurisdiction or with grave abuse of discretion in issuing the warrant of arrest against him since there was no notice to him of the proceedings supposedly held by the respondent judge in gross violation and utter disregard of the applicable law.

We find merit in the petition. Section 13, Rule 112 of the Revised Rules of Court provides, as follows:

"Sec. 13. Preliminary examination and investigation by the judge of the Court of First Instance. - Upon complaint filed directly with the Court of First Instance, without previous preliminary examination and investigation conducted by the fiscal, the judge thereof shall either refer the complaint to the municipal judge referred to in the second paragraph of section 2 hereof for preliminary examination and investigation, or himself conduct both preliminary examination and investigation simultaneously in the manner provided in the preceding sections, and should he find reasonable ground to believe that the defendant has committed the offense charged, he shall issue a warrant for his arrest, and thereafter refer the case to the fiscal for the filing of the corresponding information."

In the case of *Albano vs. Arranz*,[3] the Court ruled that this section does not contemplate of only one proceeding or the holding of preliminary examination which may be conducted ex parte, or in the absence of the accused, but

requires that both examination and investigation be conducted by the judge simultaneously, that is, on the same occasion by receiving the evidence of the complainant in the presence of the accused as well as the evidence of the latter, if he so desires and it is only when he finds reasonable ground to believe that the accused had committed the offense charged that he shall issue a warrant for the arrest of the accused. Accordingly, the questioned order issued after the pro-ceeding conducted by the respondent judge, without prior notice to the accused but which the respondents claim to be the preliminary examination and preliminary investigation required by the rule, was without any legal basis and, therefore, null and void.

WHEREFORE, the petition is granted and the order issued by the respondent judge of first instance on June 23, 1967 in an undocketed criminal case of the Court of First Instance of Agusan, entitled: "People of the Philippines, plaintiff, versus Antonio Callanta, accused," for "Assault upon a Person in Authority with Slight Physical Injuries," should be, as it is hereby, annulled and set aside. The writ of preliminary injunction heretofore issued is made permanent. Without costs.

Barredo , (Chairman), Aquino, Guerrero, Abad Santos, and Escolin, JJ.,concur.

De Castro, J., no part.

[1] Rollo, p. 8.

[2] Id., p. 13.

[3] G.R. No. L-24403, Dec. 22, 1965, 15 SCRA 518.

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