

LUDOVICO N. PATANAO, PETITIONER, VS. HON. MANUEL LOPEZ ENAGE, ANTONIO GONZALEZ AND THE PHILIPPINE CONSTABULARY OF AGUSAN, RESPONDENTS.

G.R. No. L-27709. March 28, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Petition to annul and restrain the service of three warrants of arrest which were issued by the respondent judge.

This Court issued a writ of preliminary injunction after the petitioner had posted a cash bond in the amount of P1,000.00.

When the petition was filed the private respondent, Antonio Gonzalez, was Acting Assistant City Treasurer of Butuan and the respondent judge was his boarder. Gonzalez signed three complaints against the petitioner: for assault upon an agent of a person in authority, grave slander and challenging to a duel. He did not file the complaints with the City Fiscal because that official is the son-in-law of the petitioner. He filed them instead with the respondent judge of the Court of First Instance of Agusan.

The petitioner claims that the respondent judge did not observe the appropriate provisions of the Rules of Court when he conducted preliminary investigations on the complaints. The petitioner avers that the preliminary investigations were conducted ex-parte, i. e. without his presence. This fact is admitted in the answer of the private respondent.

The petition is impressed with merit. Albano vs. Arranz, 122 Phil. 916, 15 SCRA 518 (1965) gives the explanation, thus:

"... the new Rules of Court introduced an innovation in the proceedings when the investigation is to be conducted by a court of first instance. The innovation consists in requiring said court not only to conduct the preliminary examination proper but the preliminary investigation as well, as it is clearly seen in Section 13 of Rule 112 already quoted above.

"Thus, it is interesting to note that the aforequoted Section 13 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 that only when he finds reasonable ground to believe that the accused had committed the offense charged that he shall issue a warrant for his arrest. Hence it is a mistake to claim that it merely contemplates one proceeding, or the holding of preliminary examination which may be conducted ex parte, or in the absence of the accused. This is precisely an innovation which, according to Mr. Justice Alejo Labrador, was introduced to dispel the ambiguity existing in the old rules, as may be gleaned from the following comment:

'Now, we come to Section 13. The old rule is found in Rule 108, Section 4, with regard to investigation by the Judge of the Court of First Instance. We have changed that considerably. The section heading is now 'Preliminary Examination and Investigation by the Judge of the Court of First Instance.' Under Section 13, if

the judge of the Court of First Instance decided to make an inquiry on a complaint filed directly with his court, he can conduct both the preliminary examination and investigation simultaneously in a manner provided in the preceding sections. If he finds reasonable ground to believe that the defendant committed the offense charged, he should issue a warrant of arrest, and thereafter refer the case for the fiscal for the filing of the corresponding information. Now, does the fiscal investigate further? No more! The judge of the Court of First Instance has already conducted the preliminary examination and investigation.' (Proceedings of the Institute on the Revised Rules of Court, p. 75).'

"Since compliance with such procedure is a requirement of due process, it is clear that its non-observance has the effect of nullifying the proceedings of the court. And since in this particular case such procedure was not followed our opinion is that the proceedings had by respondent judge leading to the arrest of petitioners herein are null and void and should be set aside." (Pp. 921-923; see also *Callanta vs. Enage*, G.R. No. L-27695, Sept. 30, 1982.)

WHEREFORE, the petition is granted; the warrants of arrest issued by the respondent judge are hereby annulled; and the injunction is made permanent. The petitioner shall be entitled to a refund of his cash bond. Costs against the private respondent.

SO ORDERED.

Makasiar, Concepcion, Jr., Guerrero, and Escolin, JJ., concur.

Aquino, J., is on leave.

De Castro, J., took no part.

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