

PEOPLE OF THE PHILIPPINES AND CITY FISCAL NESTORIO M. PLACER AND ASSISTANT CITY FISCAL ERNESTO M. BROCOY OF BUTUAN CITY, PETITIONERS, VS. CITY JUDGE NAPOLEON D. VILLANUEVA OF BU...

G.R. No. L-56443. December 19, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

The city fiscal and an assistant fiscal of Butuan City filed in the city court on September 15, 1980 an information charging Rogelim Yee with serious slander by deed. It was alleged therein that in the afternoon of July 14, 1980 Yee with the deliberate intent of bringing one Ofelia V. Torralba, a fourth-year student, into discredit, disrepute and contempt, willfully attacked and assaulted her and inflicted a contusion in her left cheek in the presence of her visitors, teachers and classmates to her great embarrassment and inconvenience (Criminal Case No. 11500).

The fiscal certified that he conducted the corresponding preliminary investigation and that there was probable cause or reasonable ground to believe that serious slander by deed was committed by Yee. He recommended bail in the amount of P600.

The affidavits of the complainant and her witnesses were attached to the information. Respondent judge, instead of issuing a warrant of arrest, as has been the time-honored practice, conducted an *ex parte* preliminary examination by scanning the record to determine once more the existence of probable cause.

After a perusal of the affidavits, he concluded that the offense committed was either slight slander by deed committed in the heat of anger or slight physical injuries, a light felony. Because the information was filed sixty-four days after the offense was committed, respondent judge dismissed the case *sua sponte* on the ground of prescription. The dismissal order was issued on September 17, 1980 or two days after the filing of the information.

Respondent judge denied the fiscal's motion for recon-sideration. The fiscal received a copy of the order of denial on January 6, 1981. The prosecution failed to appeal the order of dismissal to this Court, a procedure sanctioned by Republic Act No. 5440 in relation to section 5 of Republic Act No. 5967, a 1969 law which expanded the jurisdiction of city courts and which up to this time is not known to some lawyers and judges.

Long after the issuance of the order of dismissal, or on March 17, 1981, the city fiscal and his assistant filed in this Court the instant petition for certiorari and mandamus wherein they assailed the order of dismissal on the ground of grave abuse of discretion amounting to lack of jurisdiction.

We hold that the fiscals' petition cannot be entertained because, as expressly indicated in sections 1 and 2, Rule 65 of the Rules of Court, generally, certiorari and mandamus are not proper when ordinary appeal is available as an adequate remedy. As a rule, certiorari is not a substitute for an appeal (3 Moran's Comments on the Rules of Court 176).

Where an appeal would have been an adequate remedy but it was lost through petitioner's inexcusable negligence, certiorari is not in order. Time and again, this Court dismissed petitions for certiorari to annul decisions or final orders which could have, but were not, appealed. They were dismissed because certiorari cannot take the place of an appeal (3 Moran's Comments on the Rules of Court 178, citing *Profeta vs. Gutierrez David*, 71 Phil. 582; *Republic vs. Maglanoc*, 123 Phil. 508).

However, in the exercise of our supervisory jurisdiction and for the guidance of the parties in this case and in similar cases in the future involving the issuance of the warrant of arrest after the information is filed in court, we will resolve the issues raised herein (See *Alfonso vs. Yatco*, 80 Phil. 407).

To justify the dismissal order, respondent judge alleged that his practice has been that after an information is filed by the fiscal, he would conduct a preliminary examination to determine probable cause. That examination would be ex parte because the fiscal usually did not file with the information a motion for hearing. After such preliminary examination, he either motu proprio dismissed the information for lack of probable cause or he gave it due course (p. 54, Rollo).

In this case, he dismissed the information since he "was not satisfied of the existence of a probable cause because the crime committed by the accused had already been extinguished by prescription" and "it was his legal duty not only to refuse to issue the warrant of arrest but to dismiss the case" (p. 55, Rollo).

Respondent judge's position is that the fiscal's preliminary investigation under Presidential Decree No. 911 does not preclude him from exercising his "legal duty" "to exercise his judicial power of determining before issuing the corresponding warrant of arrest" the existence of probable cause (p. 59, Rollo).

Undoubtedly, respondent judge, before issuing the warrant of arrest, is clothed with the prerogative of ascertaining probable cause. That power is granted to him by section 3, Article IV (Bill of Rights) of the Constitution which provides that "no warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce".

The power is also granted to any judge authorized to conduct preliminary investigations and respondent judge is given that authority by section 6, Rule 112 of the Rules of Court and by the charter of Butuan City, Republic Act No. 523.

But that Power does not include the authority to dismiss outright the information if the judge believes that there is no probable cause. The judge should require the fiscal to present additional evidence to show probable cause. If the fiscal refuses to do so, then the case may be dismissed for "lack of prosecution" (*Amarga vs. Abbas*, 98 Phil. 739, 743).

The fiscal is also authorized to determine probable cause not only by the Bill of Rights but also by the law or rule empowering him to conduct preliminary investigations (Secs. 2 and 14, Rule 112, Rules of Court; Sec. 1687 of the Revised Administrative Code as amended by Republic Acts Nos. 732 and 1799 and Republic Act No. 5180 as amended by Presidential Decrees Nos. 77 and 911).

The fiscal is a "responsible officer authorized by law" within the meaning of section 3 of the Bill of Rights. His determination of probable cause is a sufficient justification for the issuance of a warrant of arrest.

Thus, it was held that "in a clash of views between the judge who did not investigate and the fiscal who did, or between the fiscal and the offended party or the defendant, those of the fiscal's should normally prevail" (*People vs. Pineda*, 65 O. G. 2595, 20 SCRA 748, 756).

In fact, the settled practice is that after the fiscal has conducted a preliminary investigation and filed an information, the Court of First Instance issues the warrant of arrest.

Generally, the Court of First Instance does not conduct any preliminary examination to determine probable cause or to confirm the fiscal's determination thereof for that would be a time-wasting ritual or a duplicitous proceeding.

The time-saving practice has been for the judge (municipal, city or Court of First Instance) to rely on the preliminary investigation conducted by the fiscal as the basis for issuing the warrant of arrest. That practice is supported by the presumption that the fiscal performed his duties regularly and competently (*Edillon vs. Narvios*, Administrative Case No. 1753, August 21, 1980, 99 SCRA 174) And that practice existed even under the old Constitution when section 1(3) of the Bill of Rights did not contain the terms "warrant of arrest" and "such other responsible officer as may be authorized by law".

We hold that, as a rule, a trial judge should not hold another preliminary examination to determine probable cause in case the fiscal has filed an information and certified that he has conducted the requisite preliminary investigation. That certification means that there is a prima facie case against the accused and that the issuance of a warrant of arrest is justified.

Ordinarily, the fiscal's certification should be a sufficient compliance with the constitutional requirement of probable cause as a sine qua non for the issuance of a warrant of arrest. Thus, it was held that the filing of an information in the city court by the city fiscal implies that the fiscal had conducted the requisite preliminary investigation so that no further investigation would have to be made by the city court. (*Astero vs. Chief of Police of Dagupan City*, L-26741, July 31, 1969, 28 SCRA 1078, 1084; *People vs. Villaraza*, L-46228, January 17, 1978, 81 SCRA 95, 98).

This case illustrates the mischief or prejudice arising from the act of the city judge in duplicating the preliminary examination held by the fiscal. Here, respondent judge on the pretext of determining probable cause arrived at the conclusion (before arraignment) that the criminal liability of the accused was extinguished by prescription.

What respondent judge actually did was not to verify whether the fiscal's determination of probable cause was correct but to find out whether the criminal liability of the accused was already extinguished, which is a different matter. Extinction of criminal liability presupposes not merely probable cause but the guilt of the accused.

In the instant case, the investigating fiscal gave accused Yee a chance to be heard at the preliminary investigation. He did not submit any counter-affidavit. He was furnished by the fiscal with a copy of the latter's resolution wherein he found that there existed a prima facie case for grave slander by deed against the accused. Yee did not controvert that resolution.

The case against him was terminated because of the precipitate or premature order of dismissal issued by respondent judge on his own volition on the basis of his independent assessment of Yee's criminal liability. As already noted, that order was rendered two days after the filing of the information.

In *People vs. Ocaya*, L-47448, May 17, 1978, 83SCRA 218, the fiscal, after holding a preliminary investigation, charged the three accused with lesiones graves in the Court of First Instance. Instead of issuing a warrant of arrest, the district judge dismissed the case because in his opinion the crime committed was only lesiones leves since it was stated in the medical certificate that the victim's injuries would require medical attendance from seven to ten days.

The certification contradicted the victim's affidavit that she was incapacitated from her customary labor for more

than thirty days and the allegation in the information that she suffered a disfigurement in the face. The trial court's order of dismissal was assailed in this Court by means of a petition for certiorari and mandamus.

It was held that the trial court prematurely dismissed the case. The dismissal order was set aside and the case was assigned to another trial judge who was directed to issue a warrant of arrest and thereafter to proceed with the arraign-ment and trial.

In the Ocaya case, the trial judge did not advance the contention put forward in this case by respondent city judge that the court where the information is filed should hold another preliminary examination before issuing the warrant of arrest.

Although in the instant case we find that the city court erred in dismissing the case on its own motion on the con-troversial ground of prescription, nevertheless, the petition has to be dismissed because no appeal was seasonably made from the dismissal order and certiorari and mandamus are not substitutes for an appeal that had lapsed.

WHEREFORE, the petition is dismissed. No costs.

SO ORDERED.

Concepcion, Jr., and De Castro, JJ., concur.

Barredo, J., (Chairman), concur in the judgment of dismissal and in due holding thus certiorari, even in instances of lack of jurisdiction or grave abuse of discretion, cannot as a rule be a substitute for appeal. I reserve my opinion in the other consideration nor with in the main opinion.

Abad Santos, J., in the result.

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