

THE PEOPLE OF THE PHILIPPINES, ET AL., PETITIONERS, VS. HON. JOSE S. RODRIGUEZ, ETC., ET AL., RESPONDENTS.

G. R. Nos. L-14059-62. September 30, 1959

Ponente: BENGZON, J.

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BENGZON, J.:

The Fiscal and his assistant of Cebu City seek to prevent the respondent Municipal Judge of the same city from conducting the preliminary investigation of certain criminal cases.

They allege that after conducting a preliminary investigation in which the accuse Florentino C. Rafols duly assisted by counsel was present and was given the right to cross-examine the witnesses against him and to present evidence in his favor, they found sufficient cause for prosecution and filed against him four informations for estafa through falsification of public documents in the court of, first instance of Cebu; that the accused was arrested, but presented bail bonds for his temporary liberty; that subsequently, said accused submitted in said four cases a motion praying that they be referred to the Municipal Court of Cebu City for preliminary investigation proper; that the herein petitioner opposed the motion, contending that under the Cebu City Charter Commonwealth Act 58) the defendant was not entitled as of right, to a preliminary investigation, and that anyway, the City Fiscal's Office had already conducted it, as herein previously stated; and that the Cebu court of first instance overruling their opposition, referred the cases to the municipal court of the city for preliminary investigation.

They further allege that after failing in a motion to reconsider, they tried to persuade the municipal judge to refrain from conducting "another" preliminary investigation but the latter declined to be so persuaded and scheduled the criminal cases for preliminary investigation.

Petitioners ask for prohibition to inhibit the municipal court, and mandamus to compel the return of the cases to the court of first instance for trial.

Required to answer, the respondent municipal judge set up two lines of defense: (1) he was merely complying with the order of the court of first instance; and (2) the court of first instance had the power to order in the interest of justice, another preliminary investigation, and in so doing, it may require the municipal judge, instead of the fiscal,, to perform the work.

The other respondent made no answer.

On November 5, 1958, this petition was called for hearing, nobody appeared, and the matter was submitted without oral argument or written memoranda.

Upon taking up the record for decision, we find that the petition should be dismissed because the petitioners, disregarding sec. of Rule 67, failed to join as party defendant the person interested in sustaining the proceeding in the courts, namely, the accused Florentino C. Rafols. It was he who asked for such investigation in the municipal court; he was interested in sustaining the actuations of both judges.

Said section reads as follows:

SEC. 5. Defendants and costs in certain cases. When the petition filed relates to the acts or omissions of a court or judge, the petitioner shall join, as parties defendant with such court or judge, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such person or persons to appear and defend, both in his or their own behalf and in behalf of the court or judge affected by the proceedings, and costs awarded such proceedings in favor of the petitioner shall be against the person or persons in interest only, and not against the court or judge".

It is fairly evident that the accused Rafols is, indispensable party in this case. In fact, he is the most interested party. The judges are more or less nominal parties. So much so that one of them did not defend himself, expecting the said Rafols to sustain the order issued at his own request. Not having been impleaded and not having had his day in court, Rafols could rightly complain if the cause be decided without his intervention.

When an indispensable party is not before the court, the action should be dismissed.[1] Supposing that under sec. 11, Rule 3, we have discretion to order Rafols' inclusion as party, we do not feel justified to do so because a new delay (answer, oral argument, etc.) would be inconsistent with his right as accused, to speedy trial, and because, anyway, no irreparable harm accrues to the interest of the People from the new investigation.[2] Apart from the additional question whether the order being interlocutory in nature, the prosecution could by special civil action, resort to restraining measures without waiting for the outcome, which if it performed its duty (investigated properly), it should expect to be favorable.

The petition is dismissed. No costs.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera and Gutierrez David, JJ., concur.

[1] Ruguian, et al., 9 Phil., 527; See American cases in Francisco, Rules of Court, Rev. Ed. (1056) Vol. I, p. 196.

[2] CF. U.S. vs. Yu Tuico, 34 Phil., 209.

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